

Court of Appeal Sitting

British Virgin Islands

4<sup>th</sup> June, 2007

Coram:

Her Ladyship, the Hon. Ms. Dancia Penn, QC - Justice of Appeal (Ag.)

Application

BETTITO FRETT

Respondent/Appellant

and

ALLEN WHEATLEY dba Wheatley Consulting  
WESLEY PENN dba Accurate Construction  
NATIONAL EDUCATION SERVICES CO. LTD

Appellant/Respondent

JOHN SCHULTHEIS

BETWEEN:

BETTITO FRETT

Appellant/Respondent

and

JOHN SCHULTHEIS  
PEARLINE WILLIAMS-VERGEER

Appellant/Respondent

BETWEEN:

BETTITO FRETT

and

JOHN SCHULTHEIS  
MALCOLM MADURO

Appellant/Respondent

Civil Appeal No.2 of 2006

**Appearances:**

Appellant: Mr. Kevon Swan  
Respondent: Mrs. Tana'ania Small-Davis

**Issues:** Application for final leave to appeal to the Privy Council.

**Preliminary  
Objections:**

Preliminary Issues – Conditional  
1. Only two parties were granted leave now all the Respondents have made application for final leave.  
2. Whether the £500.00 security was to be paid by each Appellant.

**Result:** Final leave granted.

**Reason:** All conditions have been satisfied.  
The record reveals that all Respondents had applied for leave to appeal.

**Application**

**Devon Dawson v The Queen**  
Civil Appeal No.1 of 2007

**Appearances:**

Appellant: Unrepresented, present in person  
Respondent: Mrs. Grace Henry-McKenzie with her Ms. Christalyn Benjamin

**Issues:** Criminal - Attempted Murder  
Wounding with intent  
Application for extension of time to appeal

**Result:** Granted as prayed.  
Appeal adjourned to the next sitting of the Court.

**Reasons:**  
1. No objection from the other side.  
2. In the circumstances the proposed Appellant should not be shut out particularly because he is unrepresented.

**Application**

**Norgulf Holdings Limited et al v Michael Wilson & Partners Limited**  
Civil Appeal No.8 of 2007

**Appearances:**

Appellant: Mr. Phillip Jones with him Mr. Malcolm Arthur  
Respondent: Mr. Christopher Young with him Mr. Phillip Kite

**Issues:** Mr. Jack Husbands with him Ms. Julie Engwirda for the Reciever Mr. Tacon (also present)

**Result:** Matter stood down for hearing on 5<sup>th</sup> June 2007 at 10:30 or as soon thereafter as possible.

**Reason:** Pending determination of application in the Court below.

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

### **Application**

#### **Employers International and Others v Boston Life and Annuity Company Limited**

Civil Appeal No.5 of 2007

### **Appearances:**

Appellant - Mr. Martin Kenney  
Respondent - Mr. Michael Fay

**Issues:** Application for leave to appeal

**Result:** Adjourned to Tuesday June 5, 2007.

**Reason:** Matter to be discussed with Hon. Justice of Appeal Mr. Hugh Rawlins, to determine whether matter should be heard by the full Court or a single Judge.

**Coram:** His Lordship, the Hon. Mr. Brian Alleyne, SC - Chief Justice (Ag.)  
His Lordship, the Hon. Mr. Hugh Rawlins - Justice of Appeal  
Her Ladyship, the Hon. Ms. Ola Mae Edwards - Justice of Appeal (Ag.)

### **Application**

#### **Lorne Parsons v The Queen**

Criminal Appeal No.2 of 2006

### **Appearances:**

Applicant/  
Appellant Ms. Benedicta Samuels-Richardson  
Respondent: Mr. Terrence Williams for the Respondents

**Issues:** Criminal – Murder

1. Application to withdraw Notice of Intention to Appeal to the Judicial Committee of the Privy Council.
2. Application for order permitting Counsel to withdraw as legal Practitioner for the Applicant/Appellant.
3. Whether the Court of Appeal has jurisdiction to grant leave to appeal to the Judicial Committee of the Privy Council.

**Results:** Adjourned to Tuesday, 5<sup>th</sup> June, 2007.  
**Reason:** For Decision to be given.  
**Coram:** His Lordship, the Hon. Brian Alleyne, SC - Chief Justice (Ag.)

### **Application**

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

#### **Appearances:**

Respondent/Appellant - Applicant/Respondents In person  
Mr. Terrence Williams, Director of Public Prosecution,

**Issue:** Appeal against conviction and sentence

**Result:**

1. Adjourned to next sitting of Court of Appeal.
2. Applicant to file Submission by 31<sup>st</sup> August.
3. Respondent to file submission by 10<sup>th</sup> September 2007.

**Reason:** Appellant to seek legal representation.

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

**Devin Maduro v The Queen**  
Criminal Appeal No.3 of 2005

#### **Appearances:**

Applicant: Mr. Paul Webster, QC  
Respondent: Mr. Terrence Williams, Director of Public Prosecution

**Issues:** Appeal against conviction.

**Results:**

1. Adjourned to next sitting of Court of Appeal.
2. Applicant to file submission by 31<sup>st</sup> August.
3. Respondent to file by 10<sup>th</sup> September 2007.

**Reasons:** To allow time for filing of submission.

**Coram:** His Lordship, the Hon. Brian Alleyne, SC - Chief Justice (Ag.)

### **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 for leave to appeal to Privy Council  
Application for stay of execution  
Preliminary issue – Whether applicant is entitled to bring this application as he is in contempt of the Court below.

#### **Result:**

Adjourned to 5<sup>th</sup> June, 2007.

#### **Reason:**

Decision to be given.

#### **Coram:**

His Lordship, the Hon. Brian Alleyne, SC - Chief Justice (Ag.)

### **Application**

**Edison Aguilar Segundo et al v The Commissioner of Police**  
Civil Appeal No.1 of 2004

#### **Appearances:**

Appellant: Mr. Herbert McKenzie  
Respondent: Mr. Terrence Williams

#### **Issues:**

Appeal against conviction.

#### **Results:**

Adjourned to the next sitting of Court of Appeal  
Submissions to be filed by Appellants 31<sup>st</sup> August  
Respondent' Submission by 10<sup>th</sup> September.

#### **Reasons:**

For Transcript to be prepared by 31<sup>st</sup> July.

**5<sup>th</sup> June, 2007**

#### **Coram:**

His Lordship, the Hon. Brian Alleyne, SC - Chief Justice (Ag.)  
His Lordship, the Hon. Mr. Hugh Rawlins - Justice of Appeal  
His Lordship, the Hon. Ola Mae Edwards - Justice of Appeal (Ag.)

### **Application**

**Lorne Parsons v The Queen**  
Criminal Appeal No.2 of 2006

**Appearances:**

Appellant: Mrs. Tana'ania Small-Davis holding for Ms. Benedicta Samuels-Richardson  
Respondent: Mr. Terrence Williams, Director of Public Prosecution

**Issues:**

1. Criminal - Application for leave to withdraw Notice of Intention to appeal to the Judicial Committee of the Privy Council
2. Application by Counsel for the Appellant to be removed from the record.

**Results:**

1. Leave granted to withdraw Notice of Intention to Appeal to the Judicial Committee of the Privy Council.
2. Leave granted to remove the name of Samuels Richardson & Co. from the record as Counsel for the Appellant.
3. No order as to cost.

**Reasons:**

1. The Court of Appeal has no jurisdiction to grant leave in matters such as these (Murder).
2. Sufficient grounds given for removal from the record of Counsel for the Appellant.

**Coram:**

His Lordship, the Hon. Brian Alleyne, SC - Chief Justice (Ag.)  
His Lordship, the Hon. Mr. Hugh Rawlins - Justice of Appeal  
Her Ladyship, the Hon. Ms. Ola Mae Edwards - Justice of Appeal (Ag.)

**Application**

**Lawrence Wheatley v Raishauna Wheatley**  
Civil Appeal No.6 of 2007

**Appearances:**

Appellant: Mrs. Tana'ania Small-Davis  
Respondent: Ms. Susan Demers

**Issues:**

Matrimonial Proceedings  
Maintenance  
Leave to Appeal, stay of execution

**Results:**

1. Decision on the Application for leave to Appeal will be deferred until the High Court committal application has been dealt with.
2. Application for stay refused.
3. No order as to cost.

**Reasons:**

The maintenance order was made in the Court below on 16<sup>th</sup> April 2007. The Respondent commenced committal proceedings for non-compliance with that order. That Application is expected to be heard on 13<sup>th</sup> June.

No application will be entertained by a person who knowingly disobeys the order of the Court until such contempt has been purged.

### **Application**

**Kensington International Limited v Montrow International Limited  
(In Provisional Liquidation)**  
Civil Appeal No.7 of 2007

#### **Appearances:**

Appellant: Mr. Michael Black, QC  
Respondent: Mr. Stephen Moverley Smith, QC with him Mr. Morton & Ms. Cheily Rosan  
  
Provisional Liquidator: Mr. Michael Fay with him Ms. Claire Louise Whiley, Mr. Tacon

#### **Issues:**

Commercial  
Ex parte appointment Provisional of Liquidator  
Leave to Appeal  
Stay

#### **Result:**

Adjourned to 6<sup>th</sup> June 2007.

#### **Reasons:**

Continuation of Hearing.

### **Application**

**William Penn v The Queen**  
Civil Appeal No.1 of 2006

#### **Appearances:**

Appellant: Dr. Joseph S. Archibald with him Ms. Anthea Smith  
Respondent: Mr. Terrence Williams, Director of Public Prosecution with him Ms. Grace Henry-McKenzie

#### **Issues:**

Criminal – Burglary  
Appeal against conviction  
Appeal against Sentence –severity

1. Whether the trial was a nullity due to the non compliance with the provisions of the Jury Act in preparing a Jury Register.
2. Whether the no case submission should have been upheld.
3. Whether the judge placed unnecessary pressure on the Jury by directing them to return a verdict in two hours where there is provision in the Jury Act for the jury to deliberate up to four hours after the conclusion of the summing up.
4. Finger printing, videotape – admissibility.

**Result:** Decision reserved.

**Reasons:** Written Judgment to be delivered.

**6<sup>th</sup> June, 2007**

**Coram:** His Lordship, the Hon. Mr. Brian Alleyne, SC - Chief Justice (Ag.)  
His Lordship, the Hon. Mr. Hugh Rawlins - Justice of Appeal  
Her Ladyship, the Hon. Ms. Ola Mae Edwards - Justice of Appeal (Ag.)

### **Application**

**Kensington International Limited v Montrow International Limited  
(In Provisional Liquidation)  
Civil Appeal No.7 of 2007**

### **Appearances:**

Appellant: Mr. Michael Black, QC  
Respondent: Mr. Stephen Moverley Smith, QC with him Ms. Cheryl Rosan

Provisional Liquidator: Mr. Michael Fay with him Ms. Claire Louise Whiley

**Issues:** Commercial  
Ex parte appointment Provisional of Liquidator  
Leave to Appeal  
Stay

**Result:** Leave to appeal refused.  
Stay refused.  
Costs reserved pending discussion by parties.

**Reasons:**

1. There is no reasonable prospect of success.
2. The appointment of the provisional liquidator was made on an ex parte application. An inter partes hearing is scheduled and these matters could be addressed then. There is no useful purpose in hearing them here. Consequently the stay is also refused.
3. Bearing in mind certain comments made by the Judge in her judgment, the concerns of the Applicant in relation to the possible predisposition in relation to Montrow is understood. The hearing scheduled for 3<sup>rd</sup> July 2007 must be assigned to another Judge.

### **Application**

**Employers International et al v Boston Life And Ammuity Company Limited  
Civil Appeal No.5 of 2007**

**Appearances:**

Appellant: Mr. Martin Kenney with him Ms. Anthea Smith  
Respondent: Mr. Stephen Moverley Smith, QC with him Ms. Cheryl Rosan  
  
Provisional Liquidator: Mr. Michael Fay

**Issues:**

Commercial  
Application for leave to appeal  
Whether the Learned Master was wrong in law in refusing the request of Counsel for the Applicants for an extension of time to file and serve the Applicant's evidence and skeleton arguments forthwith  
Preliminary issue: Whether the Application for leave to appeal was filed out of time.

**Result:**

Decision reserved.

**Reasons:**

Judgment to be delivered.

**Application**

**Pacific Electric Wire & Cable Company Limited v Texan Management Limited et al**  
Civil Appeal No.19 of 2006

**Appearances:**

Applicant/  
Appellant: Mr. Gerard Farara, QC with Mrs. Tana'ania Small-Davis  
First & Second Respondent: Mr. Jack Husbands with Ms. Anabella Gillham  
Third & Fourth Respondent: Mr. Paul Webster, QC with Mr. Kerry Anderson

**Issues:**

Commercial – Forum Challenge  
Stay of proceedings  
Application for leave to adduce further evidence

**Results:**

Decision reserved.

**Reasons:**

To be delivered on the 7<sup>th</sup> June 2007.

**7<sup>th</sup> June, 2007**

**Coram:**

His Lordship, the Hon. Mr. Brian Alleyne, SC - Chief Justice (Ag.)  
His Lordship, the Hon. Mr. Hugh Rawlins - Justice of Appeal  
His Lordship, the Hon. Ms. Ola Mae Edwards - Justice of Appeal (Ag.)

**Judgment (Grenada)**

**The Attorney General of Grenada v Peter David**  
Civil Appeal No. 34 of 2006

**Appearances:**

Appellant: Mrs. Tana'ania Small-Davis holding for Mr. K. N. Henriques, QC  
Respondent: Mr. Paul Webster, QC holding for Dr. Francis Alexis

**Issues:**

Constitutional  
Application for extension of time within which to appeal  
Whether an appeal lies from the High Court decision notwithstanding the decision of the single Judge which dismissed the application for leave to appeal  
Whether the High Court decision was other than a final decision and therefore prohibited from Appeal under Sec 37 of the constitution

**Results:**

Matter adjourned.  
Registrar to issue the appropriate Case Management order.

**Reasons:**

The Court must now decide on the nature of Benjamin J's order before proceeding with the application for extension of time as this is fundamental to the jurisdiction of this Court. Since Counsel were not given the opportunity to submit on this issue it is appropriate that they should be allowed to make written submissions for consideration without a hearing.

**Application**

**The Attorney General v Edward Brewley**  
Criminal Appeal No.5 of 2006

**Appearances:**

Appellant: Mrs. Grace Henry McKenzie with her Ms. Christalyn Benjamin  
Respondent: No appearance

**Issues:**

Criminal Appeal against acquittal of the offence of unlawful sexual intercourse.

**Results:**

Matter adjourned to the next sitting of the Court of Appeal in the BVI.

**Reasons:**

Respondent not served.

**Application**

**Pacific Electric Wire & Cable Company Limited v Texan Management Limited et al**  
Civil Appeal No.19 of 2006

**Appearances:**

Applicant/ Mr. Gerard Farara, QC with Mrs. Tana'ania Small-Davis

Appellant:  
First & Second Respondent: Mr. Jack Husbands with Ms. Anabella Gillham  
Third & Fourth Respondent: Mr. Paul Webster. QC with Mr. Kerry Anderson

**Issues:** Commercial – Forum Challenge  
Stay of proceedings  
Application for leave to adduce further evidence

**Results:** Application granted as prayed.  
Cost reserved pending determination of the appeal.

**Reasons:** The Application is granted on the Ladd v Marshall test as modified in the Canada Trust Case, and the nature of the evidence applied to be adduced which may raise the question of the alternative procedure of summary judgment.

### **Civil Appeals**

**Pacific Electric Wire & Cable Company Limited v Texan Management Limited et al**  
Civil Appeal No.19 of 2006

#### **Appearances:**

Applicant/  
Appellant: Mr. Gerard Farara, QC with Mrs. Tana'ania Small-Davis  
First & Second Respondent: Mr. Jack Husbands with Ms. Anabella Gillham  
Third & Fourth Respondent: Mr. Paul Webster, QC with Mr. Kerry Anderson

**Issues:** Commercial – Forum Challenge  
Whether Hong Kong is the clearly or distinctly more appropriate forum for the BVI Action as opposed to the BVI Court.  
Whether the Learned Judge failed to take account of or give any or any proper weight to the fact that the reliefs claimed in each action are grounded upon distinct facts and therefore distinct allegations of fraud.

**Results:** Decision reserved.

**Reasons:** Written Judgment to be delivered.

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

### **Civil Appeals**

**IPOC International Growth Fund Limited v LV Finance Group Limited**  
Civil Appeal No.30 of 2006

**Appearances:**

Appellant: Mr. Peter Eggers  
Respondent: Mr. Jeffrey Elkinson with him Mr. Richard Evans

**Issues:**

Commerical  
Further submissions on the decision of the Swiss Federal Tribunal dismissing IPOC's appeal challenging the Second Partial Award. What impact, if any, does the decision have on this appeal.

**Results:**

Judgment reserved.

**Reasons:**

Written Judgment to be delivered. Court will endeavour to deliver judgment on 18<sup>th</sup> June 2007.

**Coram:**

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

**Application**

**Ray A. George v British Virgin Islands Ports Authority**  
Civil Appeal No.28 of 2006

**Appearances:**

Appellant: Mr. Lewis Hunte, QC with him Ms. Nelcia St. Jean  
Respondent: Ms. Willa Liburd

**Issues:**

Employment  
Wrongful dismissal  
Whether the termination clause in the Appellant's Contract of Employment was invalid by virtue of Sec C 7 of the Labour Code in that it falls below the minimum employment standards set out in Sec C10 and C58 of the said Statute.  
Whether failure to give a reason for termination constituted a breach of the contract of employment by the Respondents.

**Results:**

Adjourned to 8 June 2007.

**Reasons:**

Continuation of hearing.

**Coram:**

His Lordship, the Hon. Mr. Denys Barrow, SC - Justice of Appeal  
His Lordship, the Hon. Mr. Hugh Rawlins - Justice of Appeal

His Lordship, the Hon. Ms. Ola Mae Edwards - Justice of Appeal (Ag.)

### High Court Civil Appeal

**Magadline Rhymer v Calvin Todman et al**  
Civil Appeal No.8 of 2006

**Appearances:**

Appellant: Mr. Herbert McKenzie  
Respondent: Mr. Clyde Williams with Ms. Benedicta Samuels Richardson

**Issues:**

Administration of Estates  
Whether the Executor has an absolute discretion in distributing property to a beneficiary under a devise.  
Whether the Judge erred in law when she held that the Appellant acted as an Executor de son tort.  
Whether the Appellant is liable in damages.

**Results:**

Matter adjourned.

**Reasons:**

Continuation of hearing. Oral decision to be delivered.

**8<sup>th</sup> June, 2007**

**Coram:**

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

### Civil Appeal

**Sonia O'Neal D/B/A Flamboyance Gift Shoppes v Yachting Development Limited**  
Magisterial Civil Appeal No.2 of 2006

**Appearances:**

Respondent/Applicant: Ms. Thalia Blair  
Appellant/Respondent: Mrs. Marie Lou Creque

**Issues:**

Application to strike out appeal.

**Results:**

The purported appeal is struck out.  
Costs of these proceedings to the Applicant in the sum of \$3,500.

**Reasons:**

Pursuant to Section 150 of the Magistrate's Code of Procedure Act the Notice of Appeal has been filed out of time and was not served.

## Application

### Ray A. George v British Virgin Islands Ports Authority

Civil Appeal No.28 of 2006

#### Appearances:

Appellant: Mr. Lewis Hunte, QC with him Ms. Nelcia St. Jean  
Respondent: Ms. Willa Liburd

#### Issues:

Employment  
Unfair dismissal – whether the employer was guilty of unfair dismissal.  
Whether the termination clause in the Appellant's contract of employment was invalid by virtue of Sec C 7 of the Labour Code Ordinance in that it falls below the minimum employment standards set out in Sec C10 and C58 of the said Statute.  
Whether failure to give a reason for termination constituted a breach of the Contract of Employment by the Respondents.  
Whether damages was a remedy for unfair dismissal.

#### Results:

Decision reserved.

#### Reasons:

Written judgment to be delivered.

#### Coram:

His Lordship, the Hon. Mr. Denys Barrow, SC - Justice of Appeal  
His Lordship, the Hon. Mr. Hugh Rawlins - Justice of Appeal  
Her Ladyship, the Hon. Ms. Ola Mae Edwards - Justice of Appeal (Ag.)

## High Court Civil Appeal

### Magadline Rhymer v Calvin Todman et al

Civil Appeal No.8 of 2006

#### Appearances:

Appellant: Mr. Herbert McKenzie  
Respondent: Mr. Clyde Williams with Ms. Benedicta Samuels Richardson

#### Issues:

Administration of Estates  
Whether the Executor has an absolute discretion in distributing property to a beneficiary under a devise.  
Whether the Judge erred in law when she held that the Appellant acted as an Executor de son tort.  
Whether the Appellant is liable in damages.

#### Results:

1. The appeal against the order that the Appellant shall take immediate steps to apply for the subdivision of Parcel 86 and to transfer the land shown in Plan 36T to the Respondents, who must meet the costs of the said transfer and subdivision, is dismissed.
2. The Appeal against the amount of general damages in the sum of \$10,000 is

- allowed.
3. Costs of the appeal to the Appellant on a prescribed costs basis. The value of the claim on appeal shall be determined by the Judge.
  4. Each party shall bear his or her own costs in the Court below.

**Reasons:**

Value of the claim on appeal is to be determined by the Judge rather than the Master as the Judge would already have a complete knowledge of the matter.  
The Appellant, not being the executrix of the estate, had no capacity to litigate the issue of the Respondents' entitlement to a specific parcel of land belonging to the estate.

**Civil Appeal**

**Lawrence Wheatley v Raishauna Wheatley**  
Civil Appeal No.6 of 2007

**Appearances:**

Appellant: Mrs. Tana'ania Small-Davis  
Respondent: Ms. Susan Demers

**Issues:**

Application by letter for review of the decision of the single judge made on 4<sup>th</sup> June 2007.

**Results:**

The application for a rehearing of the application for a stay of execution is deferred, without prejudice to the right of the Applicant to make a fresh application for a stay of execution to be heard by the single judge upon the hearing of the deferred application for leave to appeal.

**Reasons:**

Decision of the single Judge deferring the hearing of the application for leave to appeal.