

Court of Appeal Sitting

Antigua & Barbuda

Monday, 12th March, 2007 to Friday, 16th March, 2007

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

Date: 12th March, 2007

Applications in Chambers before Hon. Michael Gordon Q.C.

James Lowhoy v LIAT (1974) Limited
App. No.28 of 2004

Appearances:

Appellant: Trevor Kendall
Respondent: Nelleen Rogers Murdoch

Issue: Application to file Partial Record of Appeal.

Result:

1. Record of Appeal as compiled by the Appellant on the 19th day of February, 2007 as being a partial record of the High Court trial record is deemed sufficient for the hearing of the Appellant's appeal before the Court.
2. The record of appeal as compiled is deemed to have been properly filed at the date of filing.
3. The Appellant is granted leave to file supplementary record prior to the hearing of the appeal of such further documents as may be found or may become available for the use of the Court at the hearing not later than 21 days before the hearing.

Reason:

Eunice Edwards v Keith Edwards
Civ. App. No.12 of 2005

Appearances:

Appellant: Rhodette Browne
Respondent: Eleanor Clarke-Solomon

Issues: Application for leave to file and serve skeleton arguments.

Result: Applicant is granted leave to file and serve Skeleton Arguments for and on behalf of the Respondent in this Appeal and filing the same on 22nd February, 2007 is deemed proper.

Reason:

Constantine Edwards v Victoria Edwards
Civ. App. No.20 of 2005

Appearances:

Appellant: S.C.O. Benjamin.
Respondent: Cherissa Roberts-Thomas

Issues: Application for Leave to withdraw Appeal.

Result: Application Granted. Appeal dismissed.
Costs agreed at \$1,500.00

Reason:

Jacklyn Tracye Harris v Sylvester N. Harris
Civ. App. No.12 of 2004

Appearances:

Appellant: S.C.O. Benjamin
Respondent: No appearance on behalf of the Appellant

Issues: Application for the Extension of time to Appeal.

Result: Matter stood down for the appearance of the Attorney for the Respondent.

Reason:

Andre Winter (As personal Representative of Elpert Winter, deceased v Charles Richardson
Civ. App. No.25 of 2006

Appearances:

Appellant: Dane Hamilton
Respondent: Hugh Marshall with Cherissa Roberts-Thomas

Issues: Application for Stay of Execution.

Result: Judgment sum in the amount of \$91,000 to be put in an escrow account in the joint names of both Attorneys (Dane Hamilton and Hugh Marshall)
Order to be drawn up by Mr. Hamilton.

Keith McCauley v the Director of Public Prosecutions
Crim. App. No.1 of 2007

Appearances:

Appellant: S.C.O. Benjamin.
Respondent: No Appearance for the DPP

Issues: Application for extension of time to file Notice of Appeal and sentence imposed to be stayed.

Result: Time to file appeal is extended to 13th February, 2007. Sentence is stayed until the determination of the Appeal.

Reason: Written notice from DPP not to oppose leave to file notice of appeal.

Alex John trading as Anko Trading v Bank of Antigua
Civ. App. No.4 of 2007

Appearances:

Appellant: Kendrickson Kendish
Respondent: Veronica Thomas

Issue: Application for leave to appeal against a decision of the Master and for Stay of Execution.

Result: Leave granted to appeal against a decision of the Master.
Execution stayed pending the hearing of the Appeal.

Reason:

Coram: His Lordship, the Hon. Mr. Brian Alleyne, SC - Chief Justice
His Lordship, the Hon. Mr. Denys Barrow, SC - Justice of Appeal
His Lordship, the Hon. Mr. Hugh A. Rawlins - Justice of Appeal
Before the Full Court

Appearances:

David Sims et al v Audubon Holdings Ltd et al
Civ. App. Nos.14 & 15 of 2006 [BVI]

Appellant: E. Ann Henry appearing for Sydney Bennett Q.C.

Respondent: Kamalah Roberts appearing for Gerard Farara Q.C.
Denise Parillon appearing for Steven Moverly Smith Q.C.

Issue: Judgment.

Result: Appeals of both Appellants dismissed except for costs. Costs set aside and order that defendants pay prescribed costs is substituted.

Reason:

Jeweller's Warehouse v. Cecile Norde
Civ. App. No.29 of 2004

Appearances:

Appellant: David Dorsett
Respondent: Hugh Marshall

Issue: Application for Extension of time to apply to Her Majesty in Council.

Result: Application is declined for want of jurisdiction.

Reason: The lower court has no authority to extend time.

Elaine Knowles v George Knowles
Civ. App.17 of 2005

Appearances:

Appellant: C. Debra Burnette
Respondent: Hugh Marshall

Issue: Application for final leave to appeal.

Result: Leave granted.

Reason: No objections from Mr. Marshall.

Lester Bryant Bird et al v The Attorney General
Civ. App.23 of 2006

Appearances:

Appellant: Hugh Marshall
Respondent: Justin Simon

Issue: Application for leave to appeal and for Stay of execution.

Result: Leave to appeal is granted. Order of stay of execution pending the determination of the Appeal.

Reason: Attorney General not opposing.

Sherfield Bowen v The Queen
Crim. App. No.4 of 2005

Appearances:

Appellant: Sir Richard Cheltenham with Trevor Kendall
Respondent: Anthony Armstrong, DPP

Issue: Appeal against conviction.

Result: Judgment reserved.

Reason:

Date: 13th March, 2007

Coram: His Lordship, the Hon. Mr. Brian Alleyne, SC - Chief Justice
His Lordship, the Hon. Mr. Michael Gordon, QC - Justice of Appeal
His Lordship, the Hon. Mr. Denys Barrow, SC - Justice of Appeal

Radcliffe Rawlins v The Queen
Crim. App. No.5 of 2005

Appearances:

Appellant: S.C.O. Benjamin
Respondent: Anthony Armstrong, DPP

Issue: Appeal against Conviction.

Result: Appeal is allowed. Conviction and Sentence set aside.

Reason: DPP concedes the appeal. Does not seek a retrial because the Virtual Complainant and the defendant have amicably settled their differences.

Attorney General of Antigua and Barbuda v Hilroy Humphreys
Civ. App. No.1 of 2007

Appearances:

Appellant: Kendrickson Kentish
Respondent: Dr. Henry Browne with Arthur Thomas

Issue: Application for leave to appeal.

Result: Matter set down for hearing in St. Lucia next Friday 23rd March, 2007. Submissions from Dr. Browne to be received by Wednesday 21st March, 2007 and from Mr. Kentish by the end of today (13th March, 2007).

Reason:

Alistair Greene v Half Moon Bay Hotel
Civ. App. No.34 of 2004

Appearances:

Appellant: Alistair Greene in person
Respondent: Kendrickson Kentish

Issue: Application for leave to appeal to Her Majesty in Council.

Result: Leave granted on the condition that within 90 days the statutory deposit is paid. Within the same 90 days record is prepared for the Privy Council.

Reason:

National Development Foundation v AWH Holdings t/a Anjo Wholesale
Civ. App. No.27 of 2007

Appearances:

Appellant: Tracey Benn of Roberts & Co
Respondent: E Ann Henry

Issue: Appeal against an order to pay costs.

Result: Appeal allowed. Costs of \$1,500 awarded to the Appellant

Reason: The Appellant was not a proper party to be joined in the claim

American International Bank v Grenville Radio Limited
Civ. App. No.13 of 2003

Appearances:

Appellant: Dr. David Dorsett
Respondent: Rika Bird
John Fuller

Issue: Application to Strike out Appeal

Result: Application granted. Agreed costs of \$20,000.00 to the Defendant

Maxwell Francis v Timothy DeGarve

Civ. App.26 of 2003

Appearances:

Appellant: Dane Hamilton

Respondent: E. Ann Henry

Issue: For what items upon a rescinded sale of land, after the purchaser has spent years in possession and possession is subsequently recovered from him, can damages be awarded?

Result: Judgment Reserved.

Reason:

Dream Company Limited t/a K-Club v Frederique Bonfils

Civ. App. No.35 of 2004

Appearances:

Appellant: Sharon Cort

Respondent: Gail Christian

Issue: Appeal against judgment of Industrial Court.

Result: Court finds for the Employee i.e. she was unfairly dismissed. Award of Industrial Court is confirmed. Award of costs is annulled. Respondent will be paid wages for un-expired contract and accommodations. No order as to cost before tribunal or this Court.

Reason: The Termination was a breach of the Employee's contract.

Date: 14th March, 2007

Coram

His Lordship, the Hon. Mr. Brian Alleyne, SC, Chief Justice

His Lordship, the Hon. Mr. Michael Gordon, QC, Justice of Appeal

His Lordship, the Hon. Mr. Hugh Rawlins, Justice of Appeal

William Martin v Urcil Peters

Civ. App. No. 36 of 2004

Appearances:

Appellant: Vashist Marajah with Georgice Mendes-Blackman

Respondent: Mary White

Issue: Assault and Battery and Trespass by the Appellant to the person and goods of the Respondent.

Result: Appeal is dismissed. Costs on the general rule of 2/3 of the costs below.

Reason: There was no basis on which the Court of Appeal could over turn the findings of fact of the trial Judge.

Cicely Foster et al v Marie Makhoul
Civ. App. No.2 of 2005

Appearances:

Appellant: Gerald Watt Q.C.
Respondent: Hugh Marshall with Cherissa Thomas

Issue: Application to set aside judgment in default.

Result: Default Judgment is set aside. Appellant to bear costs below and of this appeal.

Reason: Court is of the view that in the particular circumstances of this case the overriding objective should apply – dealing with cases justly. Litigants should not be faced with default judgments on a clerical error.

Eunice Edwards v Keith Edwards
Civ. App. No.15 of 2005

Appearances:

Appellant: Sir Fenton Ramsahoye with Lionel Greenidge instructed by Phillips Phillips & Archibald
Respondent: Eleanor Clarke-Solomon

Issue: Joint Tenancy and the procedure and methods for the severance of such a tenancy.

Result: Appeal is allowed. Order of the trial judge is vacated. This Court awards 2/3 of costs awarded below (\$2,500.00).

Barbuda Council v Antigua Aggregates et al
Civ. App. No.11 of 2005

Appearances:

Appellant: Eleanor Clarke-Solomon
Respondent: Hugh Marshall with Cherissa Thomas

Issue: Recoverability and limitation period applicable to a claim for the payment of tonnage dues by the Respondent to the Appellant.

Result: Judgment Reserved.

Reason:

Glentis Goodwin v Hon. Winston Baldwin Spencer et al
Civ. App. No.25 of 2005

Appearances:

Appellant: Ralph Francis
Respondent: Justin Simon (Attorney General)

Issue: The constitutionality of Section 3(1) of The Millennium Naturalization Act (MNA).

Result: Appeal is dismissed. No order as to costs.

Reason: The Constitution authorizes Parliament to pass laws granting citizenship to category of persons under the Constitution other than those covered by the Constitution and the MNA does not abrogate or change existing rights.

Date: 15th March, 2007

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

Alistair Greene v Builder's Merchant Ltd.
Civ. App. No.5 of 2006

Appearances:

Appellant: Alistair Green in person
Respondent: Tracey Benn with Kamilah Roberts

Issue: Judgment entered for failure to file Defence on a Fixed Date Claim Form. Time for filing Defence.

Result: Appeal allowed. Matter is sent back to Judge for Case Management Directions. Money held in escrow to be released to Mr. Greene. No order as to costs.

Reason: Judgment was entered prematurely.

Paul Saunders v Antigua Power Company
Civ. App. No.13 of 2006

Appearances:

Appellant: Kamilah Roberts
Respondent: E. Ann Henry with Jasmine Wade

Issue: Appeal against decision of Industrial Court.

Result: Appeal dismissed with costs to the Respondent in the sum of \$2,500.00.

Reason: Amendment of Section C10 of the Labour Code constrains an Employer from going outside of the bounds of a letter of dismissal to justify the dismissal.

Lennox Linton v Maureen Hyman, Chief Magistrate
Civ. App. No.16 of 2006

Appearances:

Appellant: Dane Hamilton
Respondent: Bridget Nelson with Carla Brookes Harris

Issue:

Result: Appeal is withdrawn and stands dismissed.