

**Court of Appeal Sitting**

**Grenada**

**Monday, 26<sup>th</sup> March to Friday, 30<sup>th</sup> 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 A. Rawlins - Justice of Appeal

**Judgment Delivered**

**Nelson Lewis et al v dirk Burkhardt et al**

Civ. App. No.7 of 2006

Law of Real Property-Constituents of a Valid Contract-Notice to Quit

**Appearances:**

Appellant: Mr. Dickon Mitchell  
Respondent: Mrs. Celia Edwards

**Issues:** Whether the finding of the Judge that there was a completed contract between the parties can be supported by the facts and in law.

**Result:** **28<sup>th</sup> March, 2007**  
Appeal dismissed. Prescribed costs to the Respondent.

**Reason:** Not only was there a contract in existence between the appellants and the respondents in December 2002 but there is before the Court a sufficient memorandum in writing signed by the appellants and on their behalf setting out the terms of that agreement.

**26<sup>th</sup> March, 2007**

**Motions/Applications**

**Joseph J. Morrel v Godwin Bibby**

Civ. App. No.13 of 2006

Civil Practice & Procedure - Stay of Execution

**Appearances:**

Appellant: Mr. Anselm Clouden  
Respondent: Mr. George Prime

**Issues:**

1. Whether there was compliance with the Order of Alleyne J. as is evidenced by the signed conveyance and Deed of Indemnity.
2. Whether the Respondent is guilty of non-compliance with the Order.
3. Whether it is inequitable for the Respondent to seek enforcement of the Order.

**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 A. Rawlins - Justice of Appeal

**Result:** **27<sup>th</sup> March, 2007**  
Traversed to next sitting at request of both parties in order to achieve settlement.

**Gordon Renwick v Margaret Blackburn**  
Civ. App. No.19 of 2006  
Civil Practice & Procedure-Stay of Execution

**Appearances:**

Appellant: Ms. Sheila Harris holding for Mr. Leslie Haynes QC instructed by Grant Joseph & Co.  
Respondent: Mr. Gregory Delsin instructed by Renwick & Payne

**Issues**

1. Whether all further proceedings in this matter should be stayed pending the appeal of the Judgment of Hon. Justice Davidson Baptiste.
2. Whether the Trial Judge erred in holding that the factual matrix was such as to justify the imposition of equitable considerations on the exercise of the powers of management under the Articles and By Laws so as to allow the Respondent's participation in the Company's management during the lifetime of the Appellant.
3. Whether the Trial Judge gave undue weight to the fact that the shareholders of the Company were also partners of Renwick & Payne.
4. Whether the Trial Judge erred in construing the Articles and By-Laws in finding that the Company was so structured that the Respondent was assured of her participation in the management of the Company during the lifetime of the Appellant.
5. Whether the Trial Judge erred in holding that there was justifiable lack of confidence in the conduct and management of the Company's affairs as he failed to consider properly or at all that the acts complained of by the Respondent were matters of policy, disagreement with which is not sufficient to invoke the "just and equitable rule".
6. Whether the Trial Judge erred in failing to find that the Respondent could not complain of a deadlock when such deadlock was caused by her refusing to attend the meeting called by the Appellant.
7. Whether the Trial Judge erred in failing to find that the Court could remove a deadlock by exercising its powers under Section 132 of the Companies Act.
8. Whether the Trial Judge failed to establish a methodology for the valuation of the shares and to set the conditions for the buy-out including a time frame for a buy-out and an order for winding up if the said time frame is not met.

**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 A. Rawlins - Justice of Appeal

**Result:** **26<sup>th</sup> March, 2007**  
Court advises Counsel to draft an undertaking to be submitted to the Court with a

consent order to be incorporated.

**By Consent And Upon** the Respondent undertaking not to:- (i) borrow in the name of the said Equity Holding Inc.; (ii) sell, lease, mortgage or otherwise dispose of the assets of the said Equity Holding Inc.; pending the determination of the appeal; The application for a stay of execution is withdrawn.

No Order as to Costs

**Attorney General of Grenada v Peter Charles David et al**

Civ. App. No.34 of 2006

Civil Practice & Procedure-Extension of Time to Appeal

**Appearances:**

Appellant: Mr. Roand Henriques QC and Mr. Hugh Wildman  
Respondent: Dr. Francis Alexis, Mr. Anselm Clouden and Mr. Ruggles Ferguson

**Issues:**

1. Whether the Claimant's time for appealing against the Judgment of Justice Kenneth Benjamin given on the 12<sup>th</sup> day of September 2006 should be extended.
2. Whether the Judge erred in law in finding that a challenge to the qualification of a member of the House of Representatives under Section 37 (1) (b) of the Constitution could only be brought by means of an Election Petition under Section 97 (2) of the Representation of the Peoples Act of 1993.
3. Whether the Judge erred in finding that the provisions of Section 97(2) of the RPA 1993 in effect "repealed" the provisions of Section 37(1)(b) of the Constitution and whether in so finding he failed to give any or any adequate consideration to the entrenched provision contained in Section 31(1)(a) of the Constitution.
4. Whether the Judge erred in law in holding that Section 97 of the RPA of 1993 created a narrower "election petition jurisdiction" that entirely usurped the "election jurisdiction" of Section 37 of the Constitution in respect of questions as to the membership of the House of Representatives.
5. Whether the Judge erred in law in placing reliance on the cases of *Peters v AG* [2002] 2 LRC 32 and *Sue v Hill* [1999] HCA 30, as neither case was determinative of the issue before him.
6. Whether the Judge erred in law in finding that it "mattered nor" to the question of his jurisdiction that the relevant period for the bringing of an Election Petition had passed and that the relevant information did not surface until after the expiry of that period.
7. Whether the Judge erred in law in placing weight upon the fact that no authority had been cited "to advance and support" the proposition that a challenge to the validity of the membership of a member of the House of Representatives can be brought outside of the procedures prescribed by Section 97 of the RPA of 1993.
8. Whether the Judge erred in law in finding that the provisions of Section 97-100 of the RPA 1993 operated to exclude the jurisdiction of the High Court under Section 37(1) (b) of the Constitution once the statutory period for invoking Section 97 of the RPA of 1993 had passed.
9. Whether the Judge erred in law in holding that the issue before him could only

have been raised by way of Election Petition, rather than under the Rules of court as a constitutional issue as to the interpretation of S. 31(1)(a) of the Constitution.

**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 A. Rawlins - Justice of Appeal

**Result:** **27<sup>th</sup> March, 2007**  
Judgment Reserved.

**Grenada Development Bank v BNP Entertainment Limited et al**  
Civ. App. No.4 of 2006  
Civil Practice & Procedure-Permission to amend Notice of Appeal

**Appearances:**

Appellant: Mr. Gregory Delsin  
Respondent: For 3<sup>rd</sup> Respondent Mr. Henry Paryag

**Issues:**

1. Whether the Applicant can be granted permission to amend the Notice of Appeal filed in this appeal in terms of the Amended Notice of Appeal filed 16<sup>th</sup> January 2007 in this appeal.
2. Whether the Amended Notice of Appeal filed 16<sup>th</sup> January 2007 in this appeal can be deemed properly filed.
3. Application that the Firm of Henry, Henry & Bristol be removed from the record as acting for the Third Respondent.
4. Application for adjournment.

No objection to application to file amended Notice of Appeal.

**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 A. Rawlins - Justice of Appeal

**Result:** **27<sup>th</sup> March, 2007**  
Matter traversed to next sitting.  
The 3<sup>rd</sup> Respondent to file and serve skeleton arguments on or before the 27<sup>th</sup> April 2007.  
Response to be filed and served within 14 days thereafter.

**Hugh Wildman v The Judicial and Legal Services Commission**  
Civ. App. No.9 of 2006  
Civil Practice & Procedure-Conditional Leave to Appeal to Her Majesty-in-Council

**Appearances:**

Appellant: Mr. Roand Henriques QC  
Respondent: Mr. James Bristol

**Issue:** Whether the Appellant should be granted conditional leave to appeal to Her Majesty in

Council from the judgment of the Court of appeal given on the 1<sup>st</sup> day of March 2007 and upon such conditions as security as may be deemed just.

**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 A. Rawlins - Justice of Appeal

**Result:** **26<sup>th</sup> March, 2007**  
Conditional Leave to appeal is refused. Appellant will have to seek leave directly to the Privy Council.

**Reason:**

1. The right to a fair hearing is not a right to which any value can be ascribed.
2. Court not satisfied that any matters which involve a serious issue of law, a constitutional provision that has not been settled, an area of law in dispute or a legal question, the resolution of which imposes dire consequences on the public is involved. In the circumstances the Applicant will have to seek special leave from the Privy Council.

### **High Court Criminal Appeal Against Sentence**

**Kelvin Taylor v The Queen**  
Crim. App. No.5 of 2005  
Criminal Law-Rape-Sentence

**Appearances:**

Appellant: Mr. Arley Gill  
Respondent: Mr. Christopher Nelson

**Issue:** Whether the sentence is excessive in law.  
Notice of intention to apply for leave to withdraw filed.

**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 A. Rawlins - Justice of Appeal

**Result:** **26<sup>th</sup> March, 2007**  
Application to withdraw granted. Appeal stands dismissed.

### **High Court Criminal Appeals Against Conviction**

**Elvon Barry v The Queen**  
Crim. App. No. 5 of 2004  
Criminal Law-Murder-Judges' Rules-Joint Enterprise

**Appearances:**

Appellant: Mr. Anselm Clouden

Respondent: Mr. Christopher Nelson

- Issues:**
1. Whether the caution statement of Appellant was wrongly admitted by the Judge.
  2. Whether the statement was taken in breach of the Judges rules.
  3. Whether there was unfairness in the summing up.
  4. Whether the Judge having admitted the Appellant's statement was obliged to give a Lucas Direction having regard to the contents of the Appellant's defence as contained in his un-sworn statement from the dock and the first statement that Sgt. Hall said he took from him where he denied everything.
  5. Whether the Judge gave an inadequate direction on the issue of Joint Enterprise.

**Result:** 26<sup>th</sup> March, 2007  
Judgment Reserved

**Zoyd Clement v The Queen**  
Crim. App. No.9 of 2004  
Criminal Law-Murder-Conviction

**Appearances:**

Appellant: Dr. Francis Alexis  
Respondent: Mr. Christopher Nelson

- Issues:**
1. Whether the submission of no case to answer made by the Appellant to the Judge should have been upheld.
  2. Whether the conviction is unsafe and unsatisfactory within the meaning of Section 41(1) CAP. 336 1990 revised Laws of Grenada because there was no evidence that the Appellant knew that the 3<sup>rd</sup> appellant had a gun so that the appellant could have intended or contemplated or envisaged the use of the gun by Phillip, and so Clement could not have authorized the use of the gun by Phillip.
  3. Whether the Judge failed to put to the Jury accurately or fairly Clement's defence that he had no knowledge of a gun and that he had no time to disengage or withdraw. Whether this non-direction was a mis-direction.
  4. Whether the non-directions and mis-directions constitute material irregularities in the course of the trial within the meaning of Section 41(1) Supreme Court Act, CAP. 336, 1990 Revised Laws, Grenada
  5. Whether the Judge's direction to the jury that if they felt that the shooting was an accident, Phillip "must be acquitted, that is the end of the case...you must find each and every one of the accused not guilty" was a misdirection.
  6. Whether the Judge ought in the proper exercise of his discretion to have given the jury a good character direction.
  7. Whether there was a miscarriage of justice as to Clement within the meaning of section 41(1) of the Supreme Court Act.

**Result:** 26<sup>th</sup> March, 2007  
Judgment Reserved

**Kenton Phillip v The Queen**

Crim. App. No.10 of 2004

Criminal Law-Murder-Defence of accident-Intention-Mitigating circumstances

**Appearances:**

Appellant: Mr. Derick Sylvester  
Respondent: Mr. Christopher Nelson

**Issues:**

1. Whether the Trial Judge erred in law in that the direction to the jury on the Appellant's defence of Accident fell short of the legal standard required.
2. Whether the Trial Judge erred in law in that he inadequately and or improperly directed the jury on the law of intention, thereby misdirecting the jury resulting in a miscarriage of justice.
3. Whether the trial Judge misdirected and/or pressured the jury into reaching a verdict of murder thereby ignoring manslaughter.
4. Whether the sentence imposed by the Trial Judge was extremely severe taking into consideration the mitigating and aggravating circumstances such as the Appellant's age no prior convictions (inter alia).

**Result:**

**26<sup>th</sup> March, 2007**  
Judgment Reserved

**Bob Modest v The Queen**

Crim. App. No.3 of 2005

Criminal Law-Dangerous Harm-Conviction

**Appearances:**

Appellant: Mr. Gregory Delsin appearing amicus curia  
Respondent: Mr. Darshan Ramdhani

**Issues:**

1. Whether the Attorney for the Complainant coerced the Accused into pleading Guilty and Whether the resulting conviction and sentence were accordingly unfair having been denied a full trial.
2. Application to appeal sentence.

**Result:**

**27<sup>th</sup> March, 2007**  
Sentence varied to Compensation of \$5000.00 to be paid over a twelve month period. A fine of \$1000.00 to be paid in months 13 and 14. In default of compensation two years imprisonment and in default of fine nine months imprisonment.

**Reason:**

It is apparent to the Court that the Appellant did not have the means to enable him to satisfy the sentence of the lower Court.

**Michael Sylvester v The Queen**

Crim. App. No.6 of 2006

Criminal Law-Murder-Conviction-Specific Intent-Accident-Provocation-Good Character-

Sentence Excessive

**Appearances:**

Appellant: Mr. Ruggles Ferguson  
Respondent: Mr. Christopher Nelson and Mr. Darshan Ramdhani

**Issues:**

1. Application to deem the additional grounds as properly filed.
2. Whether the Judge failed to direct the jury on the requirement of specific intent as an essential ingredient in establishing the offence of murder.
3. Whether the Judge misdirected and/or gave inadequate directions to the jury on the defence of accident and failed to draw their attention to relevant evidence that would support such a defence.
4. Whether the Judge even though he gave proper and thorough legal direction on provocation, failed to put into context the fact of the case as it related to this particular issue.
5. Whether at the conclusion of his summing up the Judge failed to put all of the options available to the jury in their deliberations.
6. Whether the verdict of the jury is unsafe and unsatisfactory.
7. Whether the Judge even though he correctly directed the jury on the role of good character in a criminal trial, failed to guide them adequately on the relevant evidence that supported the good character of the Appellant.
8. Whether the sentence imposed on the Appellant was excessive in all the circumstances of this case.

**Result:**

**28<sup>th</sup> March, 2007**  
Judgment Delivered. Sentence reduced from 20 years to 12 years.

**28<sup>th</sup> 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 A. Rawlins - Justice of Appeal

**Enos Brown v The Queen**  
Crim. App. No.11 of 2006  
Criminal Law-Indecent Assault-Conviction

**Appearances:**

Appellant: Mr. Peter David  
Respondent: Mr. Christopher Nelson, Director of Public Prosecutions

**Issue:**

Whether the jury's verdict is unsafe having regard to the evidence adduced by the Prosecution.

**Result:**

**29<sup>th</sup> March, 2007**  
Matter traversed to next sitting of the Court.

## High Court Civil Appeals

### Adrian De Gale v Moses Bolah

Civ. App. No.9 of 2005

Company Law-Proprietary Estoppel-Detriment

#### Appearances:

Appellant: Mr. Cajeton Hood  
Respondent: Mr. Gregory Delsin

#### Issues:

1. Whether the Judge's decision is against the weight of the evidence in that he failed to give due weight to the admissions emanating from cross examination of the Respondent that the Respondent had on a prior occasion returned to live in Grenada and had then acquired extensive properties including a home and a farm in Grenada and that in relying on the conscience of the court the Respondent ought to have made full disclosure to the court of these facts without these facts having to be drawn from the Respondent in cross examination.
2. Whether the Judge erred in law in i) holding that the deceased Manoah De Gale induced in the Respondent a belief that a certain benefit was going to accrue to the Respondent on the death of the deceased ii) that the Respondent acted to his detriment; iii) the detrimental acts of the Respondent were done in reliance on or as a result of a belief that he the respondent would become entitled to the deceased's property on his death.
3. Whether the Judge erred in law in holding that there was clear evidence of the nature of an oral agreement in the statement made by the deceased.
4. Whether the Judge erred in law in holding that it would be unconscionable for the Appellant as personal representative of the deceased not to be bound by what he held to be the promise of the deceased in all the circumstances of the case.
5. Whether the Judge erred in law in holding that a promise by the deceased Manoah De Gale during the lifetime of his wife to give the property of his wife to her son, the Respondent, could give rise to an estoppel without evidence of a power in the deceased to so dispose of the property of his wife during her lifetime and without evidence of the agreement or acquiescence of the wife to or in such promise.

#### Result:

**29<sup>th</sup> March, 2007**  
Appeal dismissed with costs.

#### Reason:

Court of the opinion that Counsel's contention that Moses Bolah seeking an equitable remedy did not come to the Court with clean hands and that if the information regarding Moses Bolah's first return was given to the Judge the Judge would have been able to find that his return was not substantially on account of the request of the deceased, was merely speculative and was thereby correctly rejected by the Judge.

As long as there was something said capable of serving as an inducement, the fact that perhaps the Claimant may have been intending to return to Grenada does not deter from the entitlement to rely upon the inducement. He does not need to prove the inducement

and it is sufficient if such an inducement would have caused a reasonable man to have acted upon it.

Other aspects of non-disclosure relied upon by Counsel were insignificant and immaterial and therefore there is no merit in that aspect of the case.

There is amplitude of evidence to justify a finding in favour of Moses Bolah and therefore there is no basis for interfering with the finding that he was induced to return. It is clear that it was the intention of Manoah De Gale to give a share in the business to Moses Bolah. There is no basis for interfering with the Judge's findings/decision in relation to this.

The Court has no basis or entitlement to interfere with the findings of fact as found by the Judge below. There is no merit in the entire appeal.

On the issue of costs, the residuary estate must bear the costs of these proceedings. That is the estate that is left after there is paid out to Moses Bolah his one half share of the value of the estate so far as it relates to W&M De Gale.

### **Rashida Romain v Commissioner of Police**

Civ. App. No.14 of 2005

#### **Appearances:**

Appellant: Dr. Francis Alexis  
Respondent: Mr. Raulston Glasgow and Ms. Nadine Wilkins

#### **Issues:**

1. Whether the Judge erred in law in holding that the Appellant does not have an arguable case for the granting to her of leave to apply for an administrative order of certiorari and prohibition and for a declaration.
2. Whether the Judge erred in law in holding that the application by the Appellant for such leave was premature.
3. Whether the Judge erred in law in ruling that the Respondent's action was reasonable in the circumstances, given the contradictory evidence.
4. Whether the Judge erred in law in holding that disciplinary charge laid against the Appellant by the Respondent was reasonable and legal in the circumstances.
5. Whether the Judge erred in law in failing to hold that the disciplinary offence charged against the Appellant was no offence in law, given the uncontroverted absence of any statutory provision or any statute-like measure such as a circular or notice or memorandum, or any established procedure or practice, requiring the Appellant as diarist to obtain permission from the SPO in charge or from anyone else before issuing a firearm and ammunition to a colleague officer or a rural Constable of the Royal Grenada Police Force, so that the Respondent had no jurisdiction to charge her disciplinarily therefor and to purport to expose her to serious disciplinary punishments including dismissal.
6. Whether the Judge erred in law in holding that the Appellant was inviting the Court to enter into a consideration of the merits of the charge against her and not the fairness or reasonableness of the decision of the Respondent.

#### **Result:**

**28<sup>th</sup> March, 2007**

No appeal before the court. Purported appeal is struck out of the list. No order as to costs.

**Reason:** Leave required. Leave not sought.

**Kenny Smart v Godwin Alexis**

Civ. App. No.20 of 2005

Contract Law-oral agreement-Specific performance-time of the essence-equitable interest

**Appearances:**

Appellant: Mr. Cajeton Hood  
Respondent: Mrs. Celia Edwards

**Issues:**

1. Whether the Judge erred in law in holding that there was no contract on which the parties could claim specific performance.
2. Whether the Judge erred in law in holding that the Appellant could only rescind the contract by making time of the essence and thereafter acting on the breach.
3. Whether the Judge based his decision on perverse findings of fact in that the findings were inconsistent with the evidence that had been led before him.
4. Whether the Judge wrongly applied the law to the facts of the case and in the premises based his decision on irrelevant considerations.
5. Whether the Judge erred in law in holding that the Respondent was to be awarded an equitable interest in the property in all the circumstances of the case.
6. Whether the Judge erred in law in holding that the Respondent was entitled to receive half the value of the sum which would have accrued to him had he obtained half of the property and sold it.
7. Whether the Judge erred in law in holding that the ratable value to be applied to the valuation of the land was that rate at the time of the filing of the claim.

**Result:**

**29<sup>th</sup> March, 2007**  
Judgment Reserved

**Order:** Matter referred to mediation. Parties to agree upon a mediator within seven days of today's date. Mediation to be conducted within one month of today's date. The Registrar shall communicate the result of the mediation to the Chief Registrar immediately on completion of the mediation process and perfecting of the mediation order.

Failing a successful mediation, this Court will deliver the judgment on this appeal.

**Janin Caribbean Contractors Ltd. V Consolidated Contractors Company (UK) Ltd**

Civ. App. No.1 of 2006

Civil Practice & Procedure-Application without notice-Striking out

**Appearances:**

Appellant: Mr. Ian Sandy, Ms. Claudette Joseph, Mr. D. Horsford  
Respondent: Ms. Roslyn Wilkinson, Ms. Shireen Wilkinson

- Issues:**
1. Whether the Judge erred when he held the Defendant to a higher standard of stating his defence than was required of the Plaintiff in stating his claim.
  2. Whether the Judge erred when he characterized CPR 2000 Part 11.3(2) as providing a window of opportunity for a potential applicant to completely disregard Part 11.3(1) if he was prepared to pay the costs of the application.
  3. Whether the Judge erred when he heard and ruled on an oral application made without notice.
  4. Whether the Judge erred by not requiring that the applicant file the requisite evidence in support and give the mandatory notice to the Respondent.
  5. Whether the Judge erred by not following the process set out in CPR 2000 Part 26.2.
  6. Whether the Judge erred in stating that the evidence of Mr. Duncan was inadmissible.
  7. Whether the Judge erred in striking out the "impugned" paragraphs of the Witness statement of Anthony Croome prior to the process of examination and cross-examination.

**Result:** **29<sup>th</sup> March, 2007**  
Appeal allowed. Defence reinstated. Trial to proceed on the basis of pleadings as filed under Supreme Court Rules 1970 and costs of this appeal to follow the events in the trial

**Reason:** Matter commenced under 1970 Supreme Court Rules

**Tillman Thomas v Richard Cheltenham**  
Civ. App. No.2 of 2006

**Appearances:**

Appellant: Sir. Fenton Ramsahoye QC and Mr. Glasgow  
Respondent: Mr. Elliott Motley QC and Mr. Ruggles Ferguson

**Issue:**

**Result:** **28<sup>th</sup> March, 2007**  
Matter taken off the list. Commissioner is functus officio. Depending on whether the Commission is extended, Counsel will decide whether to pursue the matter.

**Grenada Development Bank v BNP Entertainment Limited et al**  
Civ. App. No.4 of 2006

**Appearances:**

Appellant: Mr. Gregory Delsin  
Respondent: Mr. Henry Paryag for 3<sup>rd</sup> Respondent

- Issues:**
1. Whether the Trial Judge erred in law when he ordered that the claim against the third named Respondent should be dismissed.
  2. Whether the Judge erred in law when he concluded that the third named

- Respondent was not liable to the Appellant.
3. Whether the Judge erred in law when he failed to consider the undisputed evidence that the third named Respondent signed the debenture and deed of further charge as a result of a free exercise of the donor's independent will and as such the transactions should not be set aside merely because the third named respondent did not receive independent legal advice.
  4. Whether the Judge erred when he failed to give any or any proper consideration to the evidence of the third named Respondent to the effect that she did not read the debenture and deed of further charge before she signed them particularly in the context of the undisputed evidence that she was very experienced and familiar with mortgage transactions.
  5. Whether the Judge erred in law in that he failed to consider or to give due consideration to the fact that there was no confidential relationship between the Appellant and the Third named Respondent, there was no agency between the Appellant and the second named Respondent and took no account of the fact that the third named Respondent held herself out to the Appellant as a principal officer of the first named Defendant.

**Result:**

**27<sup>th</sup> March, 2007**

Matter traversed to next sitting.

The 3<sup>rd</sup> Respondent to file and serve skeleton arguments on or before the 27<sup>th</sup> April 2007.

Response to be filed and served within 14 days thereafter.

**Magisterial Criminal Appeals Against Sentence**

**Atiba Campbell v Commissioner of Police**

Mag. Crim. App. No.5 of 2006

Criminal Law-Possession of a Controlled Drug

**Appearances:**

Appellant: No appearance

Respondent: Ms. Dionne Lawrence

**Issue:**

**Result:**

**29<sup>th</sup> March, 2007**

Matter traversed. Direction given to the Registrar to personally inform the Appellant of the date of the hearing on next occasion. Affidavit of proof of notice to be filed in the Court.

**Reason:**

Appellant not served.

**Fitzroy Miguel v Commissioner of Police**

Mag. Crim. App. No.2 of 2007

Criminal Law-Possession of a Controlled Drug-Sentence

**Appearances:**

Appellant: Mr. Peter David  
Respondent: Ms. Dionne Lawrence

**Issues:**

1. Whether sentence was unconstitutional.
2. Whether sentence should be reduced or appellant fined.

**Result:**

**29<sup>th</sup> March, 2007**

Appeal allowed. It is ordered that time served be considered the sentence in this matter.

**Reason:**

Sentence excessive.

**Sheldon Nelson v Commissioner of Police**

Mag. Crim. App. No.3 of 2007

Criminal Law-Stealing-Sentence

**Appearances:**

Appellant: Mr. Arley Gill  
Respondent: Ms. Dionne Lawrence

**Issue:**

Whether the sentence should run concurrently rather than consecutively.

**Result:**

**29<sup>th</sup> March, 2007**

Appeal withdrawn. Conviction and sentence upheld.

**Sherwin Marksman v Commissioner of Police**

Mag. Crim. App. No.4 of 2007

Criminal Law-Possession of a controlled drug-Sentence

**Appearances:**

Appellant: Mr. Peter David  
Respondent: Ms. Dionne Lawrence

**Issues:**

1. Whether sentence was too severe.
2. Whether a fine should be imposed rather than the custodial sentence.

**Result:**

**29<sup>th</sup> March, 2007**

Appeal allowed. Sentence reduced to time served.

**Reason:**

Sentence excessive.

**Montgomery Billy v Commissioner of Police**

Mag. Crim. App. No.5 of 2007

Criminal Law-Unlawfully Causing Harm-Sentence

**Appearances:**

Appellant: Mr. Peter David

Respondent: Ms. Dionne Lawrence

Issue: Whether the Appellant should be accorded the opportunity to have this matter retried.

Result: **29<sup>th</sup> March, 2007**  
Appeal allowed. Conviction and Sentence set aside. Retrial ordered.

Reason: The General Rule is that once a Defendant pleads Guilty with a cause, the Judicial officer must inquire into the cause. In the absence of that the conviction cannot be sustained. Such a plea initiates the necessity for an inquiry into the circumstances and if having heard the Defendant's explanation or cause the Magistrate is satisfied that the guilty plea is appropriate, then that is the end of the matter.

### **Magisterial Criminal Appeals Against Conviction**

#### **Darrel Charles et al v Commissioner of Police**

Mag. Crim. App. No.14 of 2006

Criminal Law-Breaking and Entering

#### **Appearances:**

Appellant: Appellant absent.

Respondent: Ms. Dionne Lawrence

Issue:

Result: **29<sup>th</sup> March, 2007**  
Traversed to next sitting of the Court. Notice to the Appellant. Affidavit of service of notice to be filed in the Court.

Reason: Appellant not served.

#### **Andy Thomas et al v Commissioner of Police**

Mag. Crim. App. No.15 of 2006

Criminal Law-Stealing

#### **Appearances:**

Appellant: No Appearance

Respondent: Ms. Dionne Lawrence

Issue:

Result: **29<sup>th</sup> March, 2007**  
Traversed to next sitting of the Court with notice to be given to John Bartholomew. Affidavit of service of notice to be filed in the Court.

#### **Lester James v Commissioner of Police**

Mag. Crim. App. No.16 of 2006

Criminal Law-Unlawful Wounding -Sentence

**Appearances:**

Appellant: In Person  
Respondent: Ms. Dionne Lawrence

**Issue:** Whether magistrate's findings of fact were correct?

**Result:** **29<sup>th</sup> March, 2007**  
Appeal dismissed.

**Reason:** Appeal without merit. Court has no jurisdiction to upset the findings of the Magistrate.

**Kenson Passie a.k.a. Kenson Phillip v Commissioner of Police**  
Mag. Crim. App. No.17 of 2006  
Criminal Law-Parking in a No Parking Area-Sentence

**Appearances:**

Appellant: In Person  
Respondent: Ms. Dionne Lawrence

**Issue:** Whether there should be a retrial?

**Result:** **29<sup>th</sup> March, 2007**  
Appeal dismissed. Appellant given one month from today's date to pay the fine imposed by the Magistrate

**Reason:** No affidavit evidence to support claim.

**Carlyle Joseph v Commissioner of Police**  
Mag. Crim. App. No.18 of 2006  
Criminal Law-Causing Harm-Conviction

**Appearances:**

Appellant: In Person  
Respondent: Ms. Dionne Lawrence

**Issue:** Whether the Appellant got a fair trial having regard to the fact that the Magistrate chose to believe the Complainant's version of the facts.

**Result:** **29<sup>th</sup> March, 2007**  
Appeal dismissed. Time for payment of fine and compensation is extended to two months from today.

**Reason:** Court cannot interfere with the Magistrate's findings of fact.

**Eric Lorenza Channer v Commissioner of Police**  
Mag. Crim. App. No.1 of 2007

Criminal Law-Possession of a Controlled Drug-Conviction

**Appearances:**

Appellant: Mr. Peter David  
Respondent: Ms. Dionne Lawrence

**Issue:** Volunteriness of a statement to the police

**Result:** **29<sup>th</sup> March, 2007**  
Appeal allowed. Conviction and sentence set aside. Appellant to be released from custody.

**Reason:** On the basis that the issue of voluntariness arose in the trial and there was a challenge whether the statements were voluntary, the Learned Magistrate was wrong in not allowing the voir dire.

**Damion Joseph v Commissioner of Police**  
Mag. Crim. App. No.6 of 2007  
Criminal Law-Stealing-Conviction

**Appearances:**

Appellant: Mr. Peter David appears amicus  
Respondent: Ms. Dionne Joseph

**Issue:** Application to withdraw appeal.

**Result:** **29<sup>th</sup> March, 2007**  
Application granted. Appeal dismissed.

**Magisterial Civil Appeals**

**Merritt Jones v Courts Grenada Limited**  
Mag. Civ. App. No.1 of 2006  
Warranty

**Appearances:**

Appellant: Mr. Ruggles Ferguson  
Respondent: Mr. Archelaus Joseph

**Issue:** Whether there was a breach of the warranty

**Result:** **29<sup>th</sup> March, 2007**  
By Consent Order of the Magistrate set aside. Respondent to reimburse the Appellant for three months installments on the hire purchase agreement.

**Cuthbert Andrews v Robert Findlay**  
Mag. Civ. App. No.1 of 2007

**Appearances:**

Appellant: Mr. Henry Paryag  
Respondent: Ms. Kim George

**Issue:** The notice of appeal was not served. Counsel was not retained, only appeared as a courtesy.

**Result:** **29<sup>th</sup> March, 2007**  
Appeal dismissed. No order as to costs.

**Chamber Applications**

His Lordship the Hon. Mr. Hugh A. Rawlins – Justice of Appeal

**29<sup>th</sup> March, 2007**

**Attorney General of Grenada v Eddison Dufferine, Percy Thomas**  
Civ. App. No.27 of 2006

**Appearances:**

Appellant: Ms. Nadine Wilkins and Mr. Raulston Glasgow  
Respondent: Mr. Alban John

**Issues:**

1. Whether the Judge erred in law in directing that the Registrar General register the name of the person the Applicant claims to be his father in the column reserved for name description and occupation of father on the Applicant's birth certificate.
2. Whether the Judge erred in law by finding contrary to the express provisions of S.27 of the Registration of Births and Deaths Act and the Registration of Births and Deaths (Amendment) Act of 1991 and whether it was contrary to the law for the Judge to direct that the Registrar amend the Register of Births in disregard of those provisions.
3. Whether the Judge erred in granting the Applicant's application even after finding that the Registrar had not erred in law in refusing the Applicant's request for the Register of Births to be amended.
4. Whether the Registration of Births and Deaths Act confers jurisdiction on the Court to hear an appeal from a decision of the Registrar General.

**Result:** This appeal is to be fixed for hearing at the next sitting of the Court of Appeal in this state in July 2007.

**Jason Thomas v The Queen**  
Crim. App. No.15 of 2003

**Appearances:**

Appellant: Mr. Peter David

Respondent: Mr. Darshan Ramdhani

Issue:

Result: Appellant admitted to bail in the sum of \$10,000.00 with one surety pending the prosecution of the appeal herein.

**The Public Service Commission v Godwin Bibby**  
Civ. App. No.2 of 2007

Appearances:

Appellant: Ms. Nadine Wilkins and Mr. Raulston Glasgow  
Respondent: No appearance

Issue: Application for stay of High Court Judgment pending determination of appeal.

Result:

**Order:**

1. Solicitors for the Appellant shall file and serve skeleton arguments in relation to the stay of execution of the Order of the Judge that was made 17<sup>th</sup> January 2007 on or before the 19<sup>th</sup> April 2007.
2. Respondent 's Solicitors on his behalf shall file and serve affidavit in reply if necessary and skeleton arguments on or before 30<sup>th</sup> April 2007.
3. This application shall be set down for hearing on the first chamber date in the Court of Appeal and may be decided on the written submissions by a single Judge of the Court who if necessary may also request oral submissions.
4. Costs reserved pending the determination of the appeal.

**O'Handley Mc Kenzie v Doris Mitchell et al**  
Civ. App. No.8 of 2007

Appearances:

Appellant: Mr. Alban John  
Respondent: 2<sup>nd</sup> Respondent present

Issue: Application for leave to appeal.

Result:

**Order:**

1. Pursuant to section 33 (2)(g)(ii) of the Eastern Caribbean Supreme Court (Grenada) Act, Cap. 336 of the Revised Laws of Grenada, 1990, the application for leave to appeal is hereby treated as notice of appeal, and consequentially the Draft Notice of Appeal which was filed with the application for leave to appeal is deemed to have been filed on the 22<sup>nd</sup> day of March 2007.
2. All further proceedings shall be in accordance with the rules which govern procedural Appeals to the Court of Appeal.
3. Solicitors for the Applicant shall file and serve a Record of Appeal which shall include the documents and pleadings that were filed in the High Court proceedings and a transcript of the proceedings before the High Court Judge on

or before the 12<sup>th</sup> day of April 2007, or as soon thereafter as may be possible.

4. Solicitors for the Respondent shall file and serve written submissions and a List of Authorities n or before the 12<sup>th</sup> day of April 2007.
5. The application for stay of the order of 12<sup>th</sup> March 2007 is dismissed.
6. This appeal shall be determined by a single Judge on the written submissions.
7. Costs shall be in the appeal.