

COURT OF APPEAL SITTING

ANTIGUA & BARBUDA

7th - 8th July 2008

Date: Monday 7th July, 2008

Coram: Hon. Denys Barrow, SC, President
Hon. Michael Gordon, Q.C. Justice of Appeal (Ag)
Hon. John Carrington, Justice of Appeal (Ag.)

APPLICATIONS

Case Name: **Careem Bedminister v The Queen**
[Criminal Appeal No. 2 of 2008]

Appearances:

Appellant: Mr. Steadroy Benjamin

Respondent: Mr. Anthony Armstrong, DPP

Issue: Bail pending Appeal

Result: Matter adjourned to Tuesday 8th July, 2008

Reason:

HIGH COURT CRIMINAL APPEALS AGAINST CONVICTION

Case Name: **Lester Richards v The Queen**
[Criminal Appeal No. 10 of 2004]

Appearances:

Appellant: Mr. Kendrickson Kentish and Ms. Nelisa Spencer

Respondent: Mr. Anthony Armstrong, Director of Public Prosecutions

Issue: Appeal against conviction

Result: The Appeal was dismissed and the conviction and sentence confirmed.

Reason: The court rejected the submissions that there was any deficiency in the summing up.

HIGH COURT CIVIL APPEALS

Case Name: **Eustace Gordon v Antigua and Barbuda Investment Bank Limited**
[Civil Appeal No. 9 of 2004]

Appearances:

Appellant: Mr. Hugh Marshall Jr. and Ms. Cherissa Thomas

Respondent: Mr. Conliffe Clarke

Issue: Whether a variation of the charge that was not executed in the presence of the Registrar of Lands was a nullity.

Result: The Appeal was dismissed with cost to the respondent of two thirds of the costs ordered below in accordance with rules 65:13 (b) of CRR 2000.

Reason: Counsel presented no authority or learning that supported his submission. The basic proposition was that an entry made on the Register was effective and in the absence of fraud or mistake in the registration process was to be treated as indefeasible.

Case Name: **Carlton Lewis v. Elderfield Gomes et al**
[Civil Appeal No. 23 of 2005]

Appearances:

Appellant: Mr. Hugh Marshall Jr.

Respondent: Mr. Gerald Watt QC and Dr. David Dorsette

Issue: Whether the judge was wrong to determine damages when there was a clear pre-trial order that liability only would be tried and damages would be subsequently determined.

Result: Appeal allowed judgment and award is set aside. The issue of quantum of damages is to be tried in the High Court. Costs of \$1500.00 awarded to the appellant.

Reason: There was no basis on which to depart from the order for a split trial.

Case Name: **Caribbean Pharmaceutical Supplies Ltd. v. Dr. Alvin G. Edwards**
[Civil Appeal No. 10 of 2004]

Appearances:

Appellant: Mr. Trevor Kendall holding for Dr. Cheltenham

Respondent: Ms. Debra Burnette holding for Ms. E. Ann Henry

Issue: Appeal against judgment

Result: Matter was traversed to the next available sitting of the Court of Appeal

Reason: The unavailability of counsel was due to

commitments in other jurisdictions and further due to the fact that the dates of the sitting in this jurisdiction had been changed. Both counsel agreed for the matter to be traversed.

Case Name: **Pamela Tyrell v. Director of the ONDCP**
[Civil Appeal No. 6 of 2007]

Appearances:

Appellant: Mr. Dane Raimond Hamilton Jr. holding for Dane Hamilton, QC

Respondent: Ms. Alicia Aska holding for Mr. Justin Simon, QC. Attorney General

Issue: Appeal against judgment

Result: Matter traversed to the next sitting of the Court of Appeal.

Reason: Due to unavailability of counsel who is serving as a temporary judicial officer in other jurisdictions and the Attorney General, who is required to attend Parliament. Both counsel agreed for the matter to be traversed to the next sitting of the Court of Appeal.

Case Name: **Kenneth Providence v. Elnathan Little**
[Civil Appeal No. 18 of 2007]

Appearances:

Appellant: Mr. Dane. Raimond Hamilton Jr.

Respondent: Ms. Nelissa Spencer holding for Mr. John Fuller

Issue: Appeal against judgment

Result: Matter traversed to the next sitting of the Court of Appeal.

Reason: There was a medical emergency in the close family of one counsel

Date: Tuesday 8th July, 2008

Coram: Hon. Michael Gordon, Q.C. Justice of Appeal (Ag)
Hon. Ola Mae Edwards, Justice of Appeal (Ag)
Hon. John Carrington, Justice of Appeal (Ag.)

APPLICATIONS

Case Name: **Careem Bedminister v. The Queen**

[Criminal Appeal No. 2 of 2008]
Carlton Bedminister v. The Queen
[Criminal Appeal No. 3 of 2008]

Appearances:

Appellant: Steadroy Benjamin for Careem Bedminister
Mr. Hugh Marshall Jr. for Carlton Bedminister

Respondent: Mr. Anthony Armstrong, Director of Public Prosecutions

Issue: Whether the appellants should be granted bail pending their appeal against conviction and sentence for attempted murder.

Result: Bail refused. Appellants are at liberty to renew their application at a later date where it is obvious that administrative delay has occurred and further delay is likely to result in their appeals not being heard before their sentences have expired.

Reason: The Court is not satisfied that exceptional circumstances presently exist four months from the date of their conversation. In the absence of the transcript of evidence, a prima facie case has not been made out in their applications that their appeals are likely to succeed; and that there is real likelihood that the appellants will have served their sentence before the transcript of the evidence is available for their appeal to be heard.

MAGISTERIAL CRIMINAL APPEALS AGAINST SENTENCE

Case Name: **Nkoyo Anthony Meade v. Commissioner of Police**
[Criminal Appeal No. 2 of 2008]

Appearances

Appellant: Mr. Steadroy Benjamin

Respondent: Mr. Anthony Armstrong, Director of Public Prosecutions

Issue: Appeal against sentence - whether the Magistrate erred in convicting the appellant and imposing a sentence for drug trafficking on a complaint which charged the appellant with importing cannabis to which he had pleaded guilty. The director of Public Prosecutions did not oppose the appeal.

Result: The appeal against sentence was allowed, the conviction and sentence of 2 years imprisonment for drug trafficking set aside and a conviction and

sentence of 12 months imprisonment for importing cannabis substituted.
Time spent is time served.

Reason: The Magistrate erred in law and exceeded his jurisdiction since the complaint on which the appellant was convicted did not allege any drug trafficking offence or that the appellant was drug trafficking; and the maximum penalty that can be imposed on summary conviction for importing cannabis is a fine of \$200,000 or imprisonment for 12 months. The appellant had already served a period exceeding the maximum period of imprisonment under the Act.

Case Name: **Luchene Verde v. Commissioner of Police**
[Criminal No: 3 of 2000]

Appearances:

Appellant: Mr. Steadroy Benjamin

Respondent: Mr. Anthony Armstrong, DPP

Issue: Appeal against sentence – whether the Magistrate erred in convicting the appellant and imposing a sentence for drug trafficking on a complaint which charged the appellant with possession of cocaine to which he had pleaded guilty. The Director of Public Prosecutions did not oppose the appeal.

Result: The appeal against sentence was allowed the conviction and sentence of 31/2 years imprisonment for drug trafficking set aside, and a conviction and sentence of 2 years imprisonment for possession of cocaine substituted. Time spent is time served.

Reason: The Magistrate erred in law since although the offence of possession of cocaine was included in section 2 (a) of the definition of “drug trafficking offence” under the Misuse of Drugs Act as amended by Act No. 1 of 1993 the complaint did not allege that he committed the offence of drug trafficking and the maximum penalty for possession of cocaine on summary conviction was \$200,000 or 2 years imprisonment. The appellant’s period of incarceration had already exceeded the maximum penalty under the Act.

HIGH COURT CIVIL APPEALS

Case Name: **Caribbean Banking Corporation v. Alpheus Jacobs**
[Civil Appeal No. 10 of 2004]

Appearances:

Appellant: Ms. Debra Burnette

Respondent: Mr. Hugh Marshall Jr.

Issue: 1) Whether since the claim was not an action founded solely on the promissory note in question the Court should direct the High Court to determine the real question in controversy between the parties disclosed on the pleadings as to whether a debt is owing by the defendant to the claimant, even though this was not specified as a ground in the appellant's Notice of Appeal.

(2) Whether on the respondent's Counter Notice of Appeal the trial judge erred in law in concluding that the appellant as chargee in exercising its right of redemption had not breached its statutory duty to the respondent chargor by selling the charged property of the respondent at a gross undervalue contrary to section 75 of the Registered Land Act Chap. 374

Result: For Issue (1) The Court directs that the claim be remitted to the High Court for case management and for determination of the real question in controversy on the pleadings as to whether the defendant owes the respondent a debt..

For Issue (2) The appeal was heard and judgment reserved.

Reason: Re Issue (1) The Court was of the view that it should exercise its powers under section 33(2) of the Eastern Caribbean Supreme Court Act Cap. 143 of the Laws of Antigua and Barbuda and give such directions, having regard to the pleadings, and learned counsel Mr Marshall's acceptance that there was a debt owing to the appellant by the respondent, that the appellant's accuracy of accounting was never challenged by the respondent, and that despite the respondent's defence that the appellant could not sue on the promissory note which was never presented to the respondent, that this would not extinguish the debt where the appellant is unsuccessful on this issue.

Case Name: **Joseph W. Horsford v. Lester B. Bird et al**
[Civil Appeal No. 5 of 2008]

Appearances:

Appellant: Mr. Joseph W. Horsford in person

Respondent: Ms. Lesley Ann Brissett

Issue: Costs - Privy Council Order - Interpretation of prescribed rate and prescribed costs - Whether the learned judge erred in disallowing certain items of costs on the High Court action claimed in appellant's bill of costs - Whether appellant's costs of the appeal to the Privy Council incurred in Antigua and Barbuda is recoverable in the local jurisdiction

Result: Judgment reserved.

Reason:

Case Name: **Peter Bird v. Evangeline Piper**
[Civil Appeal No. 3 of 2008]

Appearances:

Appellant: Ms. Debra Burnette

Respondent: Dr. David Dorsette

Issue: Appeal against judgment – Whether the learned judge erred in law or on the facts in ordering the appellant spouse to pay \$8000 for the support of the respondent spouse under section 13 of the Divorce Act No 10 of 1997

Result: Appeal dismissed with no order as to costs.

Reason: It was open to the trial judge to make the questioned findings based on the unchallenged affidavit evidence and section 13 (5) and 13 (7) of the Divorce Act. There was no legal basis upon which the court could disturb the findings of the learned trial judge who applied the relevant law and did not err in law or fact in making the award.