

Court of Appeal Sitting

BVI

28th – 30th January 2008

28th January

Coram: Hon. Justice of Appeal Mr. Hugh Rawlins, President
Hon. Justice of Appeal (Ag.) Ms. Ola Mae Edwards
Hon. Justice of Appeal (Ag.) Mr. Errol Thomas

**HARRIS STEPHEN et al v. AGATHA SONSON
[Civil Appeal No. 26 of 2004]**

Appearances:

Appellant: Mr. Gerard Farara, QC holding for Mrs. Wauneen Louis Harris

Respondent: Mr. Jack Husbands holding for Mr. Hilford Deterville

**Issues: Civil Appeal – Notice to Quit
Usufructuaries – Whether compensation is payable by the
Respondent for improvements carried out to the property.**

Result:

- 1. Appeal dismissed. Judgment of trial Court stands.**
- 2. Prescribed costs awarded in the sum of \$14,000.00.**
- 3. Respondent to be awarded 2/3 of costs in Court below in this appeal.**

Reason: Judgment delivered.

Coram: Hon. Justice of Appeal Mr. Hugh Rawlins, President
Hon. Justice of Appeal (Ag.) Ms. Ola Mae Edwards
Hon. Justice of Appeal (Ag.) Mr. Errol Thomas

APPLICATION

DEVIN MADURO v. THE QUEEN
Criminal Appeal No. 3 of 2005

Appearances:

Appellant: Mr. Paul Webster, QC

Respondent: Mr. Terrence Williams, Director of Public Prosecutions

Issues:

**Application for leave to amend Notice of Appeal
Appeal against Conviction of Murder**

Result:

**Application for leave to amend Notice of Appeal is granted.
Substantive appeal is adjourned to the next sitting of the Court in
June 2008.**

Reason:

**The Privy Council will hear the appeal in Director of Public
Prosecutions v William Penn on the 25th February 2008. The
Director of Public Prosecutions asked the Court to await the
outcome of the Privy Council so that it may be determined how the
substantive appeal should be proceeded with.**

Coram:

**Hon. Justice of Appeal Mr. Hugh Rawlins, President
Hon. Justice of Appeal (Ag.) Ms. Ola Mae Edwards
Hon. Justice of Appeal (Ag.) Mr. Errol Thomas**

THE ATTORNEY GENERAL v. EDWARD BREWLEY
[Criminal Appeal No. 5 of 2006]

Appearances:

Appellant: Mr. Terrence Williams for Director of Public Prosecutions

Respondent: No Appearances

Issues:

Appeal against acquittal of the offence of unlawful sexual

intercourse.

Result: The appeal was withdrawn and accordingly dismissed.

Reason: Respondent is deceased.

Coram: Hon. Justice of Appeal Mr. Hugh Rawlins, President
Hon. Justice of Appeal (Ag.) Ms. Ola Mae Edwards
Hon. Justice of Appeal (Ag.) Mr. Errol Thomas

**TELECOMMUNICATIONS REGULATORY COMMISSION v DIGICEL
LIMITED
[Civil Appeal No. 16 of 2007]**

Appearances:

Applicant: Mr. Michael Fay, holding for Mrs. Benedicta Samuels-Richardson

Respondent: Mr. Paul Webster, QC with him Mr. Kerry Anderson
Mr. Gerard Farara, QC with him Mrs. Tana'ania Small-Davis for
Caribbean Cellular Telephones Telecom – Interested Party
Ms. Kiesha Durham for Cable & Wireless – Interested Party

Issues: Whether Board should reconsider application for licence.

Result: The appeal is adjourned to the next sitting of the Court of Appeal in the BVI in June 2008.

Reason: Adjournment was requested and not opposed. The Regulatory Commission's Board has to be reconstituted.

Coram: Hon. Justice of Appeal Mr. Hugh Rawlins, President
Hon. Justice of Appeal (Ag.) Ms. Ola Mae Edwards
Hon. Justice of Appeal (Ag.) Mr. Errol Thomas

APPLICATION

PACIFIC ELECTRIC CABLE CO. LTD v. TEXAN MANAGEMENT LIMITED
[Civil Appeal No. 19 of 2006]

Appearances:

Appellant: Mr. Paul Webster QC, with him Mr. Kerry Anderson for 3rd & 4th Respondents in the appeal who are Applicants in the Application.

Respondent: Mr. Jack Husbands with Ms. Gilliam for the 1st and 2nd Respondents in the Appeal who are 1st and 2nd Applicants in the Application. Mr. Gerard Farara with Mrs. Tana'ania Small-Davis for the Respondent in the Application.

Issues

Application by 1st and 2nd 3rd and 4th Appellants for permission to appeal to Privy Council from Judgment of the Court to Appeal. Forum non conveniens and procedural determinations.

Result:

**The hearing of the application for leave to appeal to Privy Council is adjourned pending delivery of forum non conveniens aspects of the judgment.
Application to be scheduled by the Registrar for hearing on a date convenient to the parties after the judgment is delivered.
Costs for today's hearing to be costs in the appeal.**

Coram:

**Hon. Justice of Appeal Mr. Hugh Rawlins, President
Hon. Justice of Appeal (Ag.) Ms. Ola Mae Edwards
Hon. Justice of Appeal (Ag.) Mr. Errol Thomas**

APPLICATION

THE FINANCIAL SERVICES COMMISSION v. EI LIMITED
[Civil Appeal No. 17 of 2006]

Appearances:

Appellant: Ms. Jacqueline Wilson and with her Ms. Dian DeCastro

Respondent: Mr. Jack Husbands

Issues: Application for an order requiring the Respondent to pass a resolution for its voluntary winding up due to the failure of the Respondent to comply with the undertaking to the Court of Appeal of September 2006 and failure to comply with the requirements of the BVI Business Companies Act (s. 204 (1)).

Result: The application was dismissed.
Costs to be paid by the Appellant to the Respondent in the sum of \$1,500.00.

Reason: The appeal was based on an undertaking by the respondent before this court to pass a resolution to wind up the company. This was done so that there was compliance with the undertaking. The aspect of the application in relation to the undertaking was therefore redundant.
The complaint by the Appellant Commission that certain steps which were to be taken pursuant to section 204(1) of the Business Companies Act were steps that were to be taken by the Liquidator and not by the Company. The Liquidator was not a party to the proceedings. The issue raised on the appeal in relation to non-compliance with section 204(1) does not therefore arise before this Court in a manner which gives this court jurisdiction to determine that matter.

Coram: Hon. Justice of Appeal Mr. Hugh Rawlins, President
Hon. Justice of Appeal (Ag.) Ms. Ola Mae Edwards
Hon. Justice of Appeal (Ag.) Mr. Errol Thomas

**KEENAN BETHELMY v THE QUEEN
[CRIMINIAL APPEAL No. 5 of 2007]**

Appearances:

Respondent: Ms. Christilyn Benjamin, Crown Counsel with her Mr. Terrence Williams, Director of Public Prosecutions

Appellant: Unrepresented

Issues: **Appeal against sentence.**
Whether sentences imposed were too lengthy for a guilty plea and disproportionate to the amount of property that was stolen.

Results: **Appeal against sentence is dismissed.**
Sentences passed by judge on 29th May 2007 as amended on re-sentencing hearing on the 4th June 2007 are affirmed except to specify that the sentences which run concurrently shall run from 20th December 2006, the date on which the Appellant was first incarcerated.

Reasons: **There is nothing that indicates that the trial judge had acted outside of the ambit of her sentencing discretion. The law does not take into consideration the amount of property stolen on a charge of burglary.**

Coram: **Hon. Justice of Appeal Mr. Hugh Rawlins, President**
Hon. Justice of Appeal (Ag.) Ms. Ola Mae Edwards
Hon. Justice of Appeal (Ag.) Mr. Errol Thomas

APPLICATION

MALCOLM MADURO v. THE QUEEN
[Criminal Appeal No. 4 of 2007]

Appearances:

Appellant: **Dr. J. S. Archibald, QC with him Mr. Thomas Theobalds**

Respondent: **Mr. Terrence Williams, Director of Public Prosecutions with him Mr. Myron Walwyn, Crown Counsel**

Issue: **Appeal against conviction for the offence of blackmail. Whether appellant was in possession of the drugs.**
Whether accused was involved in joint enterprise.
Whether the directions given by the learned Trial Judge rendered the conviction unsafe.

Result: **Decision reserved.**

29th January 2008

Coram: Hon. Justice of Appeal Mr. Denys Barrow, SC, President
Hon. Justice of Appeal Mr. Hugh Rawlins
Hon. Justice of Appeal (Ag.) Ms. Ola Mae Edwards

APPLICATION

**ALFA TELLECOM TURKEY LIMITED v. CUKUROVA FINANCE
INTERNATIONAL LTD. Et al
[CIVIL APPEAL No. 27 of 2007]**

Appearances:

Appellant: Mr. Steven Smith, QC with him Mr. Robert Levy and Mr. Oliver Clifton

Respondent: Mr. Kenneth Mac Lean, QC with him Ms. Arabella di'Iorio

**Issues: Civil - Company Law- shares – What factors are involved in the right to appropriate
Whether the learned Judge's decision that an equitable mortgagee of shares must acquire the legal title to those shares before it can exercise the right of appropriation is correct.**

Results: Decision reserved.

Coram: Hon. Justice of Appeal Mr. Denys Barrow, SC, President
Hon. Justice of Appeal (Ag.) Ms. Ola Mae Edwards
Hon Justice of Appeal (Ag.) Mr. Errol Thomas

APPLICATION

**LAWRENCE WHEATLEY v RAISHAUNA WHEATLEY
Civil Appeal No. 6 of 2007**

Appearances:

Applicant: Mrs. Tana'ania Small-Davis and with her Mrs. Lorna Shelly-Williams

Respondent: Mrs. Susan Demers

Issue: Matrimonial - Ancillary Relief – Whether the learned judge erred in fact and law in finding that the Petitioner’s conduct was not such as to demonstrate her character and ought to have been considered when arriving at a determination as to financial provision and custody issues.

Result: Decision reserved. Interim Order staying a part of the maintenance payment extended until the decision of the Court. Suspension of the lump sum payment will continue until decision is given.

Coram: Hon. Justice of Appeal Mr. Denys Barrow, SC

APPLICATION

**MULTIPERILS INTERNATIONAL INC et al v. MARBLE POINT ENERGY LTD.
[CIVIL APPEAL No. 26 of 2007]**

Appearances:

Applicant: Mrs. Tana’ania Small Davis

Respondent: No Appearances for the Respondent

Issue: Application for extension of time to file Notice of Appeal

Result: Court declined to hear application for extension of time to file Notice of Appeal. The appeal was struck out and the order corrected in terms approved.

Reason: Court of Appeal previously ordered that the intended Applicant give Security for Costs. Registry omitted certain provisions. Court of Appeal proposed to correct that Order so as to provide for the consequences of the applicant not providing security for costs. Applicant does not oppose order being corrected as indicated. Applicant has not provided security for costs and the Applicant’s

legal practitioner told the Court that the Applicant is unable to do so. As a result, the application for extension of time for leave to appeal is rendered redundant.

Coram: Hon. Justice of Appeal Mr. Denys Barrow, SC

APPLICATION

**IPOC INTERNATIONAL GROWTH FUND LIMITED V. LV FINANCE GROUP LIMITED AND OTHERS
[Civil Appeal No. 30 of 2006]**

Appearances:

Applicant: No Appearances

Respondent: No Appearances

Issues: Application for leave to appeal to Her Majesty in Council and Stay of Execution

Results:

- 1. All further proceedings including application for leave to appeal to Her Majesty in Council and Stay of Execution are discontinued.**
- 2. There will be no further order as to costs.**
- 3. Application stands dismissed.**

Reasons: Notice of Discontinuance and Consent Order submitted to the Court. Consent Order was approved.

Coram: Hon. Justice of Appeal Mr. Denys Barrow, SC

APPLICATION

**MICHAEL WILSON AND PARTNERS LIMITED v. TEMUJIN
INTERNATIONAL SERVICES AND OTHERS
[Civil Appeal No. 14 of 2007]**

Appearances:

Applicant: Mr. Lewis Hunte, QC and with him Mr. Richard Arthur

Respondent: Mrs. Hazel-Ann Hannaway-Boreland and with her Mr. Andrew Thorp

Issues:

Application for leave to appeal

Result:

**Application for leave to appeal dismissed.
Costs of \$2,000.00 awarded to the Respondent.**

Reasons:

The Judge had every justification for calling the parties to attend on 6 June 2007 in view of the emails that Counsel on both sides were sending to the Registrar in the course of that week. On 4 June 2007 Junior Counsel for the Applicant informed the Judge that Senior Counsel would be available on a particular date.

The complaint that the Judge acted unreasonably and denied Counsel for the Applicant any proper opportunity to make representation and that the time was too short has no realistic prospect of success if there was an appeal.

The fact that the Judge assessed costs summarily without asking for supporting documents is incapable of producing an appeal. The claiming party gave a good breakdown of the costs claimed. The Respondent has, in any event, now provided documentation to support the precise figure of the claim subject to one adjustment.

The Court has discretion to dispense with supporting documents. No point will be served in having an appeal.

Coram:

Hon. Justice of Appeal Mr. Hugh Rawlins

APPLICATION

EMPLOYERS INTERNATIONAL AND OTHERS v BOSTON LIFE AND ANNUITY COMPANY LTD.

[Civil Appeal No. 5 of 2007]

Appearances:

Appellants: Mr. Kenny, with him Ms. Anthea Smith for the 54 Appellants/Applicants, except Mr. Darrell Daugherty and Mr. Geraldo Aguirre, the 19th and 25th Appellants, respectively, instructed by J.S. Archibald & Co

**Respondent/
Applicant:** Mr. Michael Fay, instructed by Ogier

THIS MATTER WAS HEARD IN CHAMBERS.

Coram:

Hon. Justice of Appeal Mr. Denys Barrow, SC

APPLICATION

OCEAN CONVERSION LIMITED v. ATTORNEY GENERAL

[Civil Appeal No. 30 of 2007]

Appearances:

Applicant: Ms. Michelle Worrell

Respondent: Mr. Baba Aziz

Issues:

Application for leave to appeal.

Result:

**Leave granted to Applicant.
Notice of Appeal to be filed within 14 days.
Costs in the Appeal.**

Reasons:

Application was unopposed.

30th January 2008

Coram: Hon. Justice of Appeal Mr. Denys Barrow, SC, President
Hon. Justice of Appeal (Ag.) Ms. Ola Mae Edwards
Hon. Justice of Appeal (Ag.) Mr. Errol Thomas

IMANAGEMENT SERVICES LIMITED v CUKUROVA HOLDING A.S. et al
[Civil Appeal No. 25 of 2007]

Appearances:

Appellant: Mr. Fay with him Ms. Claire-Louise Wiley

Respondent: Mr. John Higham with him Mr. Christopher Young

Issues:

Civil - Commercial Law – forum non-conveniens

Whether the Judge was wrong in finding that Russia is not an available forum for the trial of this matter and that BVI is the appropriate forum.

Whether the Judge was wrong in saying there was a very heavy burden on the Appellant (because it is incorporated in the BVI) to show that BVI is not the appropriate forum.

Whether the Judge was wrong in finding that the governing law is BVI rather than Russian Law.

Result: Decision reserved.

Coram: Hon. Justice of Appeal Mr. Denys Barrow, SC, President
Hon. Justice of Appeal (Ag.) Ms. Ola Mae Edwards
Hon. Justice of Appeal (Ag.) Mr. Errol Thomas

APPLICATION

**GREGORY FORBES, FREDDY TALIEEN AND JOSE GOMEZ GARCIA
V. THE COMMISSIONER OF POLICE
[MAGISTERIAL CRIMINAL APPEAL NOS. 1, 2, & 5 of 2007]**

Appearances:

**Appellant: Mr. Dane Hamilton, QC for Appellant Gregory Forbes
Mr. Herbie Mckenzie for the Appellants Freddy Talien and Jose Gomez Garcia**

**Respondent: Mr. Terrence Williams for Director of Public Prosecutions with him
Ms. Tiffany Scatliffe, Crown Counsel**

Issue:

- 1. Did the learned Magistrate err in Law and misdirect herself on the evidence in rejecting the submission of no case made on behalf of the Appellant (Forbes) at the close of the prosecution case.**
- 2. Was the conviction of the Appellant against the weight of the evidence**
- 3. Was sentence excessive for all the Appellants.**

Result:

Forbes – appeal against conviction is dismissed. Conviction and sentence affirmed.
Talien & Garcia – Appeal against sentence is allowed. Sentence of 5 years to run from date of conviction is set aside and substituted with 5 years to run from the date of remand. In computing the time left to be served in the event of remission, the time spent on remand is not to be considered since sentence already considered it.

Reason:

The Magistrate had sufficient evidence to leave a case for Forbes to answer.

Based on the nature and quantity of drugs and scope of the operation, the appropriate sentence is 5 -7 years.

In respect of Talien and Garcia - they have no previous convictions and given their place in the hierarchy of the criminal enterprise, a sentence of 5 years is appropriate.

In respect of Forbes - he has a previous conviction for a drugs

offence and the Magistrate accepted that he was the leader of the enterprise. In his case, there was no justification for reducing his sentence.