

COURT OF APPEAL SITTING
ST. CHRISTOPHER CIRCUIT
14TH JANUARY 2008

Coram: Hon. Sir Brian Alleyne, SC, KCN, Chief Justice [Ag.]
Hon. Denys Barrow, SC, Justice of Appeal
Hon. Errol Thomas, Justice of Appeal [Ag.]

I. HIGH COURT CIVIL APPEALS

Leroy Benjamin et al v Lindsay Fitz Patrick Grant
[Civ. App. No. 9 & 11 of 2006]

Leroy Benjamin et al v Eugene Hamilton
[Civ. App. No. 12 of 2006]

Appearances:

Appellant: Mr Maurice King, Q.C. with him Mr Arudranauth Gossai and Mr Adrian King
Respondent: Mrs Marguerite Foreman with her Mr Fitzroy Eddy holding for Ms Constance Mitcham

Issue: Appeal against the decisions of **Francis Belle J** contained in judgments delivered on 12th July 2006 and 26th July 2006. National Assembly Elections Act Cap 162 of the Laws of St. Christopher and Nevis (Revised Edition 1961) St. Christopher and Nevis Constitution Order 1983 - Costs. CPR 2000 Part 62.2 (1).

Result: The decision is reserved.

II. APPLICATIONS

Wycliffe H. Baird v David Goldgar et al
[Civ. App. No. 21 of 2007]

Appearances:

Appellant: Mr Terence Byron
Respondent: Mr Damian Kelsick

Issue: Application for leave to appeal.

Result: The matter is stood down until Tuesday 15th January 2008.

Craig Reeves v Platinum Trading Management Ltd.

[Civ. App. No. 22 of 2007]

Appearances:

Appellant: Mr Frank Walwyn with him Ms Midge Morton

Respondent: Mr Mark Brantley with him Ms Dahlia Joseph

Issue: Application to strike out Notice of Appeal. Procedural Appeal - CPR 2000 Part 62.10 (1); 26.8.

Result: The decision is reserved.

Coram: Hon. Hugh Rawlins, Justice of Appeal

St. Christopher Club Ltd. v St. Christopher Club Condominiums et al
[Civ. App. No. 5 of 2007]

St. Christopher Club Ltd. v St. Christopher Club Condominiums et al
[Civ. App. No. 7 of 2006]

Appearances:

Appellant: Mr Sylvester Anthony

Respondent: Mr Fitzroy Eddy for the 1st respondent
Mr Glenford Hamilton for the 2nd to 9th respondent

Issue: There being several appeals in these matters, there was doubt as to which matter was before the Court. Whether there is an existing injunction. What is before the Court if the appellant has withdrawn its appeal. Costs.

Result: The appeal is withdrawn and therefore dismissed with no order as to costs.

ORDER: Consolidated appeals Nos. 7 of 2006 and 5 of 2007 are withdrawn and accordingly dismissed.

Consequent on paragraph 1, the application by Mr Hamilton on behalf of the intervenors filed herein on the 27th day of July, 2007 is also hereby withdrawn and accordingly dismissed.

By consent, there is no order as to costs.

Reason: The appellant withdrew the appeal.

**St. Christopher Club Ltd. v St. Christopher Club Condominiums et al
[Civ. App. No. 4 of 2007]**

Appearances:

Appellant: Mr Sylvester Anthony

Respondent: Mr Fitzroy Eddy for the 1st respondent
Mr Glenford Hamilton for the 2nd to 9th respondents

Issue: Civil Procedure – application to vary order under the slip rule or the inherent jurisdiction of the court – whether errors contained in the order were errors of substance or genuine slips – rule 42.10 of the Civil Procedure Rules 2000 (CPR 2000)

Result: The order is varied under the inherent jurisdiction of the court. No order as to costs.

Reasons: (1) After an order is perfected or an appeal against that order is filed, the slip rule may only be used to correct genuine clerical errors or accidental slips or omissions in the order or judgment.

McKnight v McKnight (1983) 44 WIR 349, **Markos v Goodfellow No. 2** [2002] EWCA Civ 1542 and **Smithkline Beecham Plc. v Apotex Europe Ltd.** [2005] EWHC 1655 applied.

(2) Since the errors contained in the order of 30th May, 2007 were errors of substance rather than genuine slips the court cannot vary or amend that order under rule 42.10 of CPR 2000.

(3) However, the errors are so clear on the face of the order that the court will, in its inherent jurisdiction, amend the order in the interest of justice.

**COURT OF APPEAL SITTING
ST. CHRISTOPHER CIRCUIT
15TH JANUARY 2008**

Coram:

**Hon. Hugh Rawlins, Justice of Appeal
Hon. Ola Mae Edwards, Justice of Appeal [Ag.]
Hon. Errol Thomas, Justice of Appeal [Ag.]**

I. JUDGMENT

**Antigua Commercial Bank v Louise Martin
[Civ. App. No. 22 of 2007]**

Appearances:

Appellant: Mr Damian Kelsick for The Antigua Commercial Bank on behalf of Roberts & Co.

Respondent: Ms Zara Lewis for Ms Debra Bennett for Louise Martin

Issue: *Civil Procedure – CPR 2000, rule 62.10 - Procedural Appeal – Appeal from interlocutory order - whether leave to appeal is required – section 31(2)(g) of the Eastern Caribbean Supreme Court (Antigua and Barbuda) Act*

Result: The appeal is allowed. The Notice of Appeal is struck out. Costs awarded to Mrs Martin which shall be 2/3 of the \$2500.00 awarded in the Court below as \$1667.67.

Reasons: (1) While no leave is required where the order or judgment appealed against is a final order or judgment, leave is required to appeal against an interlocutory order or judgment. The test by which to determine whether an order is interlocutory or final is the application test. An order is interlocutory which is made on an application which would not necessarily bring an end to the proceedings, whichever way the decision on it is made.

Othneil Sylvester v Satrohan Singh St. Vincent and the Grenadines Civil Appeal No. 10 of 1992 followed.

(2) Under the provisions of sub-rules 62.1(2) and 62.10 of CPR 2000, which must be read with section 31(2)(g) of the Eastern Caribbean Supreme Court (Antigua and Barbuda) Act, and the application test, the Bank's notice of appeal was not only a procedural appeal but also an appeal from an interlocutory judgment or order because a judgment in default of appearance, or in default of defence, lacks finality so long as it is liable to be set aside. The order which the High Court made on the application to set aside the judgment in default of defence therefore lacked finality.

White v Brunton [1984] 2 All ER 606 distinguished; **Vehicles and Supplies Ltd. et al v Financial Institutions Services Ltd.** [2005] UKPC 24 applied; **Jn. Marie and Sons Ltd. and Another v Jamie St. Louis**, St. Lucia Civil Appeal No. 14 of 2006 (16th April 2007) explained.

(3) The Bank required leave to appeal against that judgment in which the judge refused to set aside the default judgment against it. Since the Bank failed to apply for leave, the appeal was struck out as a nullity.

Maria Hughes v The Attorney General of Antigua and Barbuda, Antigua and Barbuda Civil Appeal No. 33 of 2003 (13th April 2004); **Nevis Island Administration v La Copproprete Du Navire**, St. Kitts and Nevis Civil Appeal No. 7 of 2005 (29th December 2005), followed.

III. HIGH COURT CRIMINAL APPEAL AGAINST SENTENCE

Mitchell Manners v The Director of Public Prosecutions
[Crim. App. No. 7 of 2007]

Appearances:

Appellant: In Person

Respondent: Mrs Pauline Hendrickson (DPP) with her Ms Simone Bullen, Mr Reynold Benjamin and Mrs Rhonda Nisbett-Browne

Issue: Wounding - Appeal against sentence - Whether sentence is too harsh.

Result: The appeal against sentence is allowed. The sentence of 9 years is reduced to 6 years to run from the date of the sentence which was 16 April 2007.

Reason: The Court is satisfied that the appellant pleaded guilty to the first count. The Court took into account the fact that the appellant pleaded guilty.

IV. HIGH COURT CRIMINAL APPEALS AGAINST CONVICTION

Kirk Hendrickson v The Director of Public Prosecutions
[Crim. App. No. 8 of 2005]

Appearances:

Appellant: Dr. Henry Browne

Respondent: Mrs Pauline Hendrickson (DPP) with her Ms Simone Bullen, Mr Reynold Benjamin and Mrs Rhonda Nisbett-Browne

Issue: Wounding with Intent - Appeal against conviction and sentence.

Result: The matter is adjourned to the end of the list.

Reason: To allow the Director of Public Prosecutions time to peruse the Notice of Motion.

Henry Paul Sutton v The Director of Public Prosecutions
[Crim. App. No. 9 of 2005]

Appearances:

Appellant: In Person

Respondent: Mrs Pauline Hendrickson (DPP) with her Ms Simone Bullen, Mr Reynold

Benjamin and Mrs Rhonda Nisbett-Browne

Issue: Break and Enter - Appeal against conviction and sentence.

Result: The appeal is withdrawn and accordingly dismissed.

Reason: The appellant withdrew the appeal.

**Derrick Hazel v The Director of Public Prosecutions
[Crim. App. No. 17 of 2005]**

Appearances:

Appellant: In Person

Respondent: Ms Simone Bullen

Issue: Indecent Assault - Appeal against conviction and sentence.

Result: The appeal against conviction is dismissed and sentence is affirmed.

Reason: The Court can find no compelling reason to upset the findings of the judge and verdict of the jury.

**Darius Warner v The Director of Public Prosecutions
[Crim. App. No. 11 of 2006]**

**Kevin Francis v The Director of Public Prosecutions
[Crim. App. No. 12 of 2006]**

Appearances:

Appellant: In Person(s)

Respondent: Ms Simone Bullen

Issue: Robbery with Violence - Appeal against conviction and sentence.- Whether conviction and sentence were unreasonable.

Result: The appeal by appellant Darius Warner against conviction and sentence is dismissed and accordingly the conviction and sentence are affirmed. The sentences shall run from the date of sentence which is 27th March 2006.

The appeal by appellant Kevin Francis against conviction and sentence is dismissed. The conviction is affirmed. The sentences to run concurrently from 5th October, 2005.

Reason: The guidelines indicate that where there is robbery associated with violence and the use of a weapon there must be a custodial sentence.

The Court will only disturb a sentence if the Court is of the view that it was unreasonable. The Court saw no reason to upset the conviction and verdict of the Jury and to reduce the sentences.

**Amal Whyte v The Director of Public Prosecutions
[Crim. App. No. 13 of 2006]**

Appearances:

Appellant: In Person

Respondent: Mrs Pauline Hendrickson (DPP) with her Ms Simone Bullen, Mr Reynold Benjamin and Mrs Rhonda Nisbett-Browne

Issue: Attempted Murder - Appeal against conviction and sentence.

Result: The appeal is withdrawn and accordingly dismissed.

Reason: The appellant withdrew the appeal.

V. HIGH COURT CIVIL APPEALS

**The Chief of Police et al v Calvin Nias
[Civ. App. No. 10 of 2007]**

Appearances:

Appellant: Mr Arudranauth Gossai

Respondent: Mr Damian Kelsick

Issue: Appeal against decision of **Francis Belle J** contained in a judgment dated 5th April 2007. Whether section 8 of the Small Charges Act contrary to sections 3 and 12 of the Constitution of St. Kitts and Nevis.

Result: The decision is reserved.

Coram: Hon. Sir Brian Alleyne, S.C. KCN, Chief Justice [Ag.]
Hon. Denys Barrow, SC, Justice of Appeal
Hon. Errol Thomas, Justice of Appeal [Ag.]

VI. APPLICATION

**Wycliffe H. Baird v David Goldgar et al
[Civ. App. No. 21 of 2007]**

Appearances:

Appellant: Mr Terence Byron

Respondent: Mr Damian Kelsick

Issue: Application for leave to appeal from the interlocutory order made on November 23rd, 2007 by **Francis Belle J.** Relief from sanctions.

Result: The appeal is allowed with costs to the appellant in the sum of \$1500.00. Counsel to prepare draft order to be submitted to the Court.

VII. HIGH COURT CIVIL APPEAL

Loris James v The Attorney General of St. Christopher and Nevis
[Civ. App. No. 15 of 2007]

Appearances:

Appellant: Mr Anthony Gonsalves

Respondent: Mr Arudranauth Gossai

Issue: Appeal against the decision of **Francis Belle J** contained in the judgment and orders dated 8th June 2007 - Land Acquisition Act Cap 273 - Section 19 1 (a) and (c). Land Acquisition Ordinance Amendment Act 10 of 1969, Section 13. Constitution of St. Christopher and Nevis 1983, Section 10 (1) (a) (b) (c) Second Schedule.

Result: The decision is reserved.

COURT OF APPEAL SITTING
ST. CHRISTOPHER CIRCUIT
16TH JANUARY 2008

Coram: Hon. Denys Barrow, SC, Justice of Appeal
Hon. Hugh Rawlins, Justice of Appeal
Hon. Ola Mae Edwards, Justice of Appeal [Ag.]

I. HIGH COURT CIVIL APPEALS

The Attorney General of St. Christopher & Nevis et al v
Kaleel Jones (A minor by his next friend Leonie Hendrickson)
[Civ. App. No. 1 of 2004]

Appearances:

Appellant: Mr Arudranauth Gossai

Respondent: Mr Ronald Scipio, QC with him Mr Winston Patterson

Issue: Appeal against the decision of **Davidson Baptiste J** contained in the judgment dated 10th December 2003 - Suspension from school - The Education Act 1975 - Section 15 of the Constitution of St. Christopher and Nevis.

Result: The matter is traversed to another available sitting of the Court in another jurisdiction. Costs of the day to the respondent in the sum of \$1000.00 EC.

Reason: Counsel for the appellant who has conduct of the matter is ill.

Dudley Williams v Laureen James
[Civ. App. No. 16 of 2007]

Appearances:

Appellant: Mr Arudranauth Gossai

Respondent: Mr Fitzroy Eddy with him Mr Chesley Hamilton

Issue: Appeal against the decision of **Francis Belle J** contained in the judgment delivered on 18th June 2007. National Assembly Act Cap 162 - Regulations No. 5 of 1984 - Section 33 (2). CPR 2000 Part 62.11(2).

Result: The appeal is allowed. The Order of **Francis Belle J** is set aside. The decision of Registration Officer is restored. Costs in the sum of \$1000.00 to the appellant.

Reason: The Registration Officer was entitled on the evidence to take the view that the objector had put forward merely a bare assertion that the persons objected to did not live where they said, when they were registered, and the bare assertion was not sufficient.

II. MAGISTERIAL CRIMINAL APPEALS AGAINST CONVICTION

Percival Huggins v Licensing Authority [Crim. App. No. 3 of 2007]

Appearances:

Appellant: Ms Angela Inniss

Respondent: Mr Reynold Benjamin

Issue: Whether Magistrate erred in not allowing counsel to give closing arguments.

Result: The appeal is quashed and retrial ordered before a different Magistrate.

Reason: Statute mandated that counsel for a defendant should be permitted to make a closing address.

Icilma Francis v Chief of Police [Crim. App. No. 2 of 2007]

Appearances:

Appellant: Ms Angela Inniss

Respondent: Mr Reynold Benjamin

Issue: Appeal against sentence of \$20,000.00.

Result: Appeal against sentence allowed. \$7,000.00 to be paid in 14 days is substituted for the original fine of \$20,000.00 in default nine (9) months imprisonment.

Reason: A fine of \$20,000.00 for possession of 732 grams of cannabis is excessive having regard to the sentencing guidelines provided in St. Vincent and The Grenadines, Criminal Appeal No. 8 of 2003 *Desmond Baptiste v The Queen*.

III. MAGISTERIAL CIVIL APPEALS

Jacqueline Williams v Brian Lapray [Civ. App. No. 1 of 2007]

Appearances:

Appellant: Mr Terence Byron with him Ms Kamesha Graham

Respondent: No appearance for or of respondent.

Issue: Whether Magistrate erred in not granting adjournment on the basis that the summon was short served.

Result: The appeal is allowed. No order as to costs.

Reason: The summons was short served and the Magistrate erred in not adjourning the matter.

**Samuel Eddy v Priscilla Norford
[Civ. App. No. 2 of 2007]**

Appearances:

Appellant: Mr Terence Byron

Respondent: No appearance for or of the respondent.

Issue: Appeal against calculation of maintenance order of Magistrate.

Result: The appeal is allowed and amount of \$672.84 inclusive of costs is substituted for the original amount and payable in two (2) weeks.

Reason: The calculations of the payments made by the appellant established the true position which was different from what the Magistrate found.

IV. HIGH COURT CRIMINAL APPEALS AGAINST CONVICTION

**Kirk Hendrickson v The Director of Public Prosecutions
[Crim. App. No. 8 of 2005]**

Appearances:

Appellant: Dr. Henry Browne with him Mr Hesketh Benjamin

Respondent: Ms Simone Bullen

Issue: Appeal against conviction and sentence.

Result: The appeal against conviction is dismissed and sentence affirmed.

Reason: The virtual complainant was not an accomplice in the crimes for which the appellant was charged. The fact that the virtual complainant made an admission that he would have lied about the matter of his earlier assisting the appellant in handling sacks of marijuana went to his credibility. There was no need for the lower Court to give an accomplice warning.