

COURT OF APPEAL SITTING

Monday 16th June 2008

CORAM

Hon. Mr. Hugh Rawlins, Chief Justice (Ag.)
Hon. Mr. Denys Barrow, SC, Justice of Appeal
Hon. Ms. Ola Mae Edwards, Justice of Appeal (Ag.)
Hon. Mr. Dane Hamilton, QC, Justice of Appeal (Ag.)
Hon. Mr. John Carrington, Justice of Appeal (Ag.)

JUDGMENT

Case Name

**Celeste O'Carro v Royal Bank of Canada
[LTA T3 of 2007] Montserrat**

Appearances:

Appellant: Mr. Peter Foster holding papers for Mr. David S Brandt

Respondent: Ms. Natalie Augustin holding papers for Mr. Kenneth Allen QC

Issue:

Labour tribunal – appeal – s.36(1) Employment Act Cap 15:03 – right of appeal conferred by s.41 Employment Act - appeal by way of case stated on point of law – what is the procedure for appealing to the Court of Appeal – CPR 61- whether Notice of Appeal should be struck out since it had not been served on the respondent – CPR 62

Result:

The appeal was struck out with no order as to costs. In the event however that the respondent bank wishes to make representations on the issue of costs, the bank shall file and serve written submissions within 21 days of the date of the delivery of this judgment and the appellant, Celeste O'Garro, shall file and serve written submissions in response within 14 days of the service of the bank's submissions. The Court shall, in that event consider the issue of costs without an oral hearing.

Reason:

- (1) Part 61 of CPR 2000 provides the procedure for appeals by way of case stated. That procedure begins with a request to the tribunal whose decision is being appealed to state a case. After that request (or an order of the court to state a case, if necessary) is complied with the intending appellant then has to issue a fixed date claim with the case stated annexed. The Appellant must set out, in the claim form or in a statement of case served with it, the Appellant's contentions on the question of law to which the case relates.**
- (2) From these rules it is seen that there is a discrete procedure for appealing by way of case stated and the usual procedure for appealing by filing a notice of appeal does not apply.**
- (3) The consequence of using the entirely wrong procedure for appealing is**

that the Appellant did not commence proceedings for appealing. Even at this stage no case has been stated and no claim form has been issued.

- (4) The submissions that counsel for the Appellant made on relief from sanctions addressed only the failure of the Appellant to serve the Notice of Appeal (which is the wrong procedure for appealing in this case) and not the situation that this court's jurisdiction has not been engaged because no appeal had been made.

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HIGH COURT CIVIL APPEAL

Case Name

Lyndon K. Cooper v The Public Service Board of Appeal
[Civil Appeal No. 34 of 2007]

Appearances:

Appellant: Mr. George Charlemagne holding papers for Mr. Bryan Stephen

Respondent: Mr. Dexter Theodore

Issue:

Application for Adjournment

Result:

The appeal was traversed to the next sitting of the Court in Saint Lucia in September, 2008.

Reason:

The parties agreed. The Appellant's Skeleton Argument had not yet been served on the Respondent and the Court.

APPLICATIONS

Case Name

John Gumbs v Attorney General of Anguilla
[Civil Appeal No. 9 of 2005]

Appearances:

Appellant: Mr. Dexter Theodore holding papers for the Appellant

Respondent: Mrs. Cynthia Hinkson-Ouhla

Issue:

Application for Final Leave to Appeal to the Privy Council

Result: The matter was stood down.

Reason: In order to confirm whether the financial condition had been met.

Case Name La Baia Ltd. v Edwin Hughes
[Civil Appeal No. 8 of 2006] (Anguilla)

Appearances:

Appellant: Mr. Dexter Theodore holding papers for the Appellant

Respondent: Mrs. Wauneen Louis-Harris holding papers for the Respondent

Issue: Application for variation of the order and leave to file amended Notice of Appeal

Result: The Application of 15th April 2008 was dismissed with costs of EC\$3,000.00 to the Respondent.

Reason: The Application had no merit and was an abuse of the process of the Court in that it sought to delay the hearing of the matter to the detriment of the Respondent.

CORAM Hon. Mr. Denys Barrow, SC, Justice of Appeal

APPLICATIONS

Case Name Marion Roberts et al v Oteron Gajadhar
[Civil Appeal No. 37 of 2007]

Appearances:

Appellant: Mr. Alvin St. Clair

Respondent: No appearance

Issue: Application to set aside Order
Application for Stay of Execution

Result: The matter was stood down.

Reason: To allow Counsel for the Respondent to appear.

Case Name Royal Bank of Scotland trading as Natwest v Caribbean Destination Management Services Limited et al
[Civil Appeal No. 10 of 2008]

Appearances:

Appellant: Mrs. Candice Cadasse Polius

Respondent: Mr. Mark Maragh for Caribbean Destination Management
Mr. Peter Foster with him Ms. Rene St. Rose for Windward Enterprise Limited

Issue: Application for Leave to Appeal

Result:

It was ordered that:

1. The Application for Leave to Appeal against the decision of Mason J dated 5th March, 2008 striking out the defence of the appellant and entering judgment for the Defendant/Ancillary Claimant was granted.
2. The Application for Leave to Appeal against the refusal of relief from sanctions and for leave to file witness statements was refused.
3. Leave to appeal against the award of costs thrown away in favour of the claimant was refused.
4. The Appellant was granted Leave to Appeal the decision to enter judgment against the Appellant and denying the Appellant the opportunity to argue the issue as to remoteness of damage. Leave to Appeal was not extended to arguing any other issue, except costs.
5. The Appellant was at liberty to argue by way of appeal that the costs of the claimant should be paid by the Ancillary Claimant.
6. The Appellant shall further be permitted to argue all aspects of the issue of costs as between the Appellant and the Ancillary Claimant.
7. The costs of this Application shall be costs in the appeal.
8. The Notice of Appeal and skeleton arguments in support must be filed and served on or before 1st July, 2008 and the other directions as to procedural appeals shall apply.

Reason:

Case Name Marion Roberts et al v Oteron Gajadhar
[Civil Appeal No. 37 of 2007]

Appearances:

Appellant: Mr. Alvin St. Clair

Respondent: Mr. Vernantius James

Issue: Application to withdraw appeal

Result: The appeal was withdrawn and accordingly dismissed with no order as to costs.

Reason: The parties agreed.

HIGH COURT CIVIL APPEALS

Case Name Michael Christopher v Police Constable 240 John Flavien et al
[Civil Appeal No. 2 of 2008]

Appearances:

**Applicant/
Respondent:** Mrs. Brender Portland-Reynolds

**Respondent/
Appellant:** Mr. Shawn Innocent

Issue: Application for extension of time to file Skeleton Arguments

Result: By consent, it was ordered that:
1. The Application by the Respondent in this case to extend the time for filing of Skeleton Arguments was extended to 15th July, 2008 pursuant to rule 62.16(1)(c) of the CPR 2000.
2. The Applicant/Respondent shall pay \$1000.00 costs to the Appellant in the Application.
3. Solicitors for the Appellant/Respondent shall file their Skeleton Arguments in reply on or before 1st September, 2008.

Reason: The parties agreed.

Case Name Imran Jean v Acting Chief Fire Officer et al
[Civil Appeal No. 40 of 2007]

Appearances:

**Appellant/
Respondent:** Ms. Cynthia Hinkson-Ouhla

**Respondent/
Applicant:** Mrs. Brender Portland-Reynolds with Mr. Dwight Lay

Issue: Application to strike out Notice of Appeal

Result: The Application to strike out was adjourned to Wednesday 18th June, 2008.

Reason: The transcript prepared for the hearing of the strike out application had only now been made available.

HIGH COURT CRIMINAL APPEAL AGAINST CONVICTION

Case Name Kuanda Tuitt v The Queen
[Criminal Appeal No. 5 of 2006]

Appearances:

Appellant: Mr. Horace Fraser

Respondent: Mr. Robert Innocent

Issue: Murder

Result: The matter was stood down.

Reason:

CORAM Hon. Mr. Hugh Rawlins, Chief Justice (Ag.)
Hon. Ms. Ola Mae Edwards, Justice of Appeal (Ag.)
Hon. Mr. Dane Hamilton, QC, Justice of Appeal (Ag.)

HIGH COURT CRIMINAL APPEALS AGAINST CONVICTION

Case Name Kyon Frederick v The Queen
[Criminal Appeal No. 8 of 2007]

Appearances:

Appellant: Mr. Ermin Moise holding papers for Mr. Andy George

Respondent: Mrs. Victoria Charles-Clarke, Director of Public Prosecutions

Issue: Application for Adjournment

Result: The appeal was traversed to the next sitting of the Court in Saint Lucia in September, 2008.

Reason: The Solicitor for the Appellant was on national duty. The Application was not opposed.

Case Name Ashell Moise v The Queen
[Criminal Appeal No. 3 of 2007]

Appearances:

Appellant: Mr. Shawn Innocent

Respondent: Mrs. Victoria Charles-Clarke, Director of Public Prosecutions

Issue: Unlawful carnal knowledge

Result: The appeal was allowed. The conviction and sentence were quashed.

Reason:

1. The defence of mistaken belief as to age was not put to the jury. The failure to give a direction on an essential ingredient of the offence was a ground for quashing the conviction.
2. The Appellant had served a substantial portion of his sentence so that it would not be appropriate to order a retrial.

CORAM Hon. Mr. Hugh Rawlins, Chief Justice (Ag.)
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Hon. Mr. John Carrington, Justice of Appeal (Ag.)

HIGH COURT CRIMINAL APPEAL AGAINST CONVICTION

Case Name Kuanda Tuitt v The Queen
[Criminal Appeal No. 5 of 2006]

Appearances:

Appellant: Mr. Horace Fraser

Respondent: Mr. Robert Innocent

Issue: Murder – appeal against conviction and sentence – refreshing memory from previous inconsistent statement – good character direction

Result: Decision reserved until Tuesday 17th June, 2008.

Reason:

Tuesday 17th June, 2008

CORAM Hon Mr. Denys Barrow, SC, Justice of Appeal
Hon. Mr. Dane Hamilton, QC, Justice of Appeal (Ag.)
Hon. Mr. John Carrington, Justice of Appeal (Ag.)

HIGH COURT CRIMINAL APPEAL AGAINST CONVICTION

Case Name Kuanda Tuitt v The Queen
[Criminal Appeal No. 5 of 2006]

Appearances:
Appellant: Mr. Horace Fraser

Respondent: Mr. Robert Innocent

Issue: Murder – appeal against conviction and sentence – refreshing memory from previous inconsistent statement – good character direction

Result: Decision reserved until Wednesday 18th June, 2008.

Reason:

HIGH COURT CIVIL APPEAL

Case Name Robertina Regis v Alpheus George
[Civil Appeal No. 6 of 2004]

Appearances:
Appellant: Mrs. Wauneen Louis-Harris
Respondent: In person

Issue: Trespass to Goods – whether witness statement of the Defendant/Respondent was properly admitted as evidence

Result: The appeal was dismissed with costs of \$4,000.00 to the Respondent.

Reason: There was no merit in the appeal. In the exercise of its discretion, the Court reduced the prescribed costs award on account of the fact that the Respondent was not represented. It was noted that this was an exceptional exercise of the Court's discretion.

MAGISTERIAL CRIMINAL APPEAL AGAINST CONVICTION

Case Name Andrew Haynes v Commissioner of Police
[Magisterial Criminal Appeal No. 2 of 2007]

Appearances:
Appellant: No appearance
Respondent: Mr. Robert Innocent

Issue: Obstructing a police officer in execution of duty – whether sentence was excessive

Result: The matter was traversed to the next sitting of the Court in Saint Lucia in September, 2008.

Reason: The Appellant had not been served.

HIGH COURT CIVIL APPEAL

Case Name Peter Jn. Marie et al v Winston Cenac represented by his executrix Flora Cenac
[Civil Appeal No. 16 of 2008]

Appearances:
Appellant: Mr. Alvin St. Clair
Respondent: Mr. Oswald Wilkinson Larcher

Issue: Variation of judgment award
Costs

Result: The appeal was allowed. By consent, the order was varied as follows:
(1) The Defendant do pay the sum of \$350,000.00 with interest from today's date.
(2) Costs of \$50,000.00 to the Appellant.

Reason: The parties agreed.

APPLICATION

Case Name John Gumbs v Attorney General of Anguilla
[Civil Appeal No. 9 of 2005]

Appearances:
Appellant: No appearance
Respondent: Mr. Oswald Wilkinson Larcher holding papers for the Attorney General of Anguilla

Issue: Application for Final Leave to Appeal

Result: The Application for Final Leave to Appeal was granted.

Reason: The Court was satisfied that all conditions had been met.

HIGH COURT CIVIL APPEAL

Case Name Anselma I. Augustin v Columbian Emeralds
[Civil Appeal No. 1 of 2008]

Appearances:
Appellant: Mr. Horace Fraser with Ms. Isabella Shillingford

Respondent: Mr. Mark Maragh

Issue:

1. Application to Adduce Fresh Evidence
2. Interest
3. Costs

Result:

1. The Application to adduce fresh evidence was refused.
2. The judgment in the court below was varied and interest awarded at 3% from the date of filing of the statement of claim to the date of judgment.
3. Each party was ordered to bear its own costs.

Reason:

1. Fresh evidence will normally be admitted only in accordance with the principles in Ladd v Marshall [1954] 1 WLR 1489. The evidence which the Appellant sought to adduce as fresh evidence on appeal could have been obtained with reasonable diligence for use at the trial. The Ladd v Marshall test was not accordingly met. Further, it was noted that it was exceptional and extraordinary for affidavit evidence on assessment of damages to be allowed where a witness statement was before the court: *Dominica Agricultural and Industrial Development Bank v Mavis Williams* Dominica Civil Appeal no. 20 of 2005 (delivered on 19 January, 2007).
2. The Appellant was entitled to interest from the date of the statement of claim having been “kept out of money”.
3. Having regard to the length of time spent in arguing the Application, the time spent on the issues generally, the fact that the cross-appeal was withdrawn, the fact that one of the appellant’s grounds of appeal was withdrawn and the otherwise limited success of the Appellant’s appeal, it was just and reasonable to make no order as to costs.

Wednesday 18th June, 2008

CORAM

Hon. Mr. Hugh Rawlins, Chief Justice (Ag.)
Hon. Ms. Ola Mae Edwards, Justice of Appeal (Ag.)
Hon. Mr. John Carrington, Justice of Appeal (Ag.)

HIGH COURT CRIMINAL APPEAL AGAINST CONVICTION

Case Name

Kuanda Tuitt v The Queen
[Crim. App. No. 5 of 2006]

Appearances:

Appellant: Mr. Horace Fraser

Respondent: Mr. Robert Innocent

Issue:

Murder - whether the Appellant should have been given the option of submitting an unsworn statement – whether the conviction was unsafe

Result: The appeal was allowed, the conviction quashed, the sentence set aside and a retrial ordered. The Appellant shall remain in custody in the meanwhile.

Reason:

1. The trial judge failed to give the third option election to the Appellant, that is, the option of giving an unsworn statement. The Appellant was put to the election on the basis of the Evidence Act 2002 which came into force in November 2005, whereas the trial had begun in September 2005. The Criminal Code 2004 made provisions for the Evidence Act 2002 to kick in only if the Appellant was unrepresented. The failure to give all 3 options amounted to the breach of a statutory right and breach of the right to a fair trial.
2. Certain aspects of the summation by the trial judge were not sufficiently clearly given and accordingly rendered the conviction unsafe.

CORAM Hon. Mr. Denys Barrow, SC, Justice of Appeal

HIGH COURT CIVIL APPEAL

Case Name Imran Jean v Ag. Chief Fire Officer
[Civil Appeal No. 40 of 2007]

Appearances:

Appellant: Mr. Tonjaka Hinkson

Respondent: Mrs. Brender Portland-Reynolds with Mr. Dwight Lay

Issue: Application to strike out Notice of Appeal

Result: The Application to strike out the Notice of Appeal was granted with no order as to costs.

Reason:

1. An order striking out a party is an interlocutory order. Leave was required to appeal against such an interlocutory order. Leave not having been obtained, the Application must be refused.
2. On the application of the general rule (rule 56.13(6) of the CPR 2000), no order as to costs was made on this administrative application.