

**IN THE COURT OF APPEAL OF THE  
EASTERN CARIBBEAN SUPREME COURT  
SAINT VINCENT AND THE GRENADINES  
APPEAL RESULTS  
[6<sup>TH</sup> TO 10<sup>TH</sup> OCTOBER 2008]**

**Date** Monday 6<sup>th</sup> October 2008

**Coram:** The Honourable Chief Justice Mr. Hugh Rawlins  
The Honourable Justice of Appeal Mr. Denys Barrow, SC  
The Honourable Justice of Appeal (Ag.) Ms. Ola Mae Edwards  
The Honourable Justice of Appeal (Ag.) Mr. Michael Gordon, QC  
The Honourable Justice of Appeal (Ag.) Ms. Indra Hariprashad-Charles

**JUDGMENTS**

**Caribbean Banking Corporation v Alpheus Jacobs  
Civil Appeal No. 10 of 2004 --- Antigua and Barbuda**

**Appearances:**

**Appellant:-** Ms. Patina Knights holding for Mr. C.D. Burnette and Ms. Shantiyah Ali-Schneider for the Appellant/Respondent.

**Respondent:-** Mr. Emery Robertson holding for Mr. Hugh Marshal for the Respondent/Counter Appellant.

**Issue:** Civil Appeal – Property Law – chargee’s statutory duties upon the exercise of its power of sale – good faith – duty to have regard to the interests of the chargor – Valuation of property – whether negligently obtained – whether bank liable – Auction – Advertisement – whether sufficient and proper in all of the circumstances of the case – section 75 of the Registered Land Act Cap. 374. Pleadings – sufficiency of pleadings – rule 10.7 of the Civil Procedure Rules 2000.

**Result:** The counter-appeal is allowed in part, the order of the judge is varied by ordering an inquiry into the damage suffered by the respondent with respect to the sale of the Coolidge property and the Respondent is awarded half of his costs in the court below and in the counter-appeal

**Reason:**

1.) Upon the exercise of a chargee’s power of sale, the chargor no longer has an interest in the land itself but has an interest in the proceeds of the sale of the land, in accordance with the equitable doctrine of conversion. The chargor’s interest is however, limited to the recovery of any surplus above the debt owed to the chargee.

2.) In exercising the power of sale, the chargee is required by section 75(1) of the Act to act in good faith and to have regard to the interests of the chargor. Section 75 represents a codification of the existing equitable duty. The statute does not create an absolute duty on the part of the chargee who is not required to sacrifice his own interest in favour of those of the chargor but is required to take

reasonable care to obtain the true market value of the property at the time of sale.

3.) Valuation is not an exact science so that the mere fact that the valuation obtained from the bank's valuer differed significantly from that of the respondent's was not conclusive evidence of negligence. The respondent in fact failed to prove that there was any negligence on the part of the bank's valuer in conducting the valuation. There was accordingly no duty on the bank to seek a further valuation so as to comply with its duty under section 75 of the Act.

4.) On the question of the pleadings in relation to the advertisements, the Defence and Counterclaim contained a sufficient averment that the respondent was raising an issue concerning the bank's breach of statutory duty as chargee in the exercise of its power of sale. The witness statements supplied particulars of the alleged breach by referring to the inadequacy of the advertisements for the sale of the properties. The pleadings were accordingly sufficient in the circumstances.

5.) In advertising the properties for sale, the bank was required in accordance with its statutory duties to describe the properties properly in the advertisements and ensure that the advertisements were sufficient in number and content and made sufficiently in advance of the sale to reach the appropriate market. The bank was also required to ensure that the auction was held under reasonable conditions. There is however, no absolute duty to advertise wisely and what is proper advertisement depends on the circumstances of each case.

6.) On these facts, the bank was in breach of its duty in advertising the Coolidge property for sale for the advertisements were confusing, insufficiently particularised, insufficiently advertised and failed to give reasonable notice of the auction dates.

**Becker v Bank of Nova Scotia** [1986] LRC (Comm) 638, **Cuckmere Brick Co. v Mutual Finance Ltd.** [1971] Ch D 949 and **Apple Fields and Others Limited v Damesh Holdings Ltd.** [2004] 3 LRC 221 applied.

**East Caribbean Flour Mills Limited v Ormiston Ken Boyea** Saint Vincent and the Grenadines Civil Appeal No. 12 of 2006 followed.

### **Pacific Wire & Cable Company Limited v Texan Management Limited et al Civil Appeal No. 19 of 2006 --- British Virgin Islands**

#### **Appearances:**

**Appellant:-** Ms. Nicole Sylvester holding for Mr. Gerard Farara Q.C. and Mrs. Tana'ania Davis for the Appellant/Respondent.  
**Respondent:-** Mr. Bertram Commissiong Q.C. holding for Mr. Samuel J. Husbands, Mr. Paul Webster Q.C. and Mrs. Willia Tavernier for the Respondents/Applicants.

#### **Issue:**

Civil Appeal – Civil Procedure – Leave to Appeal to the Privy Council – relevant considerations – Stay of Execution pending appeal – Part 9.7 of the Civil Procedure Rules 2000 – Virgin Islands (Appeal to Privy Council) Order No. 234 of 1967.

#### **Result:**

1. The Applicants shall have conditional leave to appeal to Her Most Excellent Majesty in Council from the decision of the Court of Appeal delivered on

15<sup>th</sup> October 2007 in the matter upon the following condition:

- (a) The Applicants shall each within 30 days from the date of this Order enter good and sufficient security in the sum of £500 sterling for the due prosecution of the appeal and the payment of all such costs that may become payable by any of them in the event of it not obtaining an order granting it final leave to appeal or of the appeal being dismissed for want of prosecution, or of the Privy Council ordering it to pay the costs of the appeal; and
  - (b) The Applicants shall within 8 weeks from the date of the Order take necessary steps for the purpose of procuring the preparation of the record and the dispatch thereof to England.
2. Paragraphs 2, and 4 of the Order of this Court dated 15<sup>th</sup> October 2007 are hereby stayed pending the hearing and determination of final leave to appeal and should such leave be granted such stay shall continue pending the disposal or determination of such appeal.
  3. The costs of and incidental to these Applications shall be costs in the appeal to Her Majesty in Council.

Reason:

1.) An applicant may obtain leave to appeal where the appeal does not lie as of right, when the question arising on the proposed appeal raises an issue of great general or public importance, or that there is some other good reason why leave should be granted.

**Martinus Francois v Attorney General Saint Lucia** Civil Appeal No. 37 of 2003 followed. **Attorney General of Trinidad and Tobago v Lennox Phillip et al** Civil Appeal No. 155 of 2006 approving dictum of Wolfe JA in **Olasemo v Barnett Ltd.** 51 WIR 191 applied.

2.) The court's discretion to grant leave must be exercised judicially which requires, as a general rule, that it act consistently in applying the test to grant leave so that it is in accordance with its own current practice, that of other courts of appeal whose discretion is exercised under equivalent rules and the practice adopted by the Privy Council in considering petitions for special leave.

3.) As a general rule, having regard to all relevant practice, where the proposed appeal raises questions which are imminently procedural, these are not suitable for review by the Privy Council, but are matters best left to the courts of the jurisdiction to decide.

**Attorney General of Trinidad and Tobago v Lennox Phillip et al** Civil Appeal No. 155 of 2006, **Mutual Life Ltd. v Evatt** [1971] AC 793 and **Isaacs v Robertson** 43 WIR 126, **Lewis v St. Hillaire** 48 WIR 134 applied.

4.) Where however a proposed appeal involves a procedural question of great general legal importance, leave may be granted to appeal to the Privy Council where the court considers that the guidance of the Privy Council would be appropriate in relation to the interpretation or application of the procedural rule, the local interpretation or application of which has a draconian effect, or, where there are some special circumstances that would render such guidance useful to the court.

**Barbuda Enterprises Ltd. v Attorney General of Antigua and Barbuda** 42 WIR 183, **Benoy Krishna Mukherjee et al v Satish Chandra Giri** (1927) LR Col LV 131, **Al-Sabah v Grupo Torras S.A.** (2000) (unreported) applied.

5.) The procedural issues raised by this appeal are of great general legal importance and the local interpretation accorded to these procedural rules has a

draconian effect. In these circumstances, the guidance of the Privy Council is desirable and leave ought to be granted. Alternatively, the desirability of some guidance on the interpretation of these rules amounts to good reason why leave should otherwise be granted.

**Addari v Addari** British Virgin Islands Civil Appeal No. 21 of 2005, **Montrose Investments Ltd. v Orion Nominees and Another** [2001] CP Rep 109 considered.

6.) An appeal to the Privy Council is considered to be pending from the date of grant of conditional leave. For the purpose of determining whether proceedings should be stayed, the test was whether the appeal would be rendered nugatory if the decision of the court is not stayed pending appeal. In the circumstances of this case, even without a trial of the claim, the time and resources expended in preparing for a trial would themselves render the appeal nugatory, if successful. **Reid v Charles** 39 WIR 313 applied.

**Loris James v The Attorney General of Saint Christopher and Nevis**  
**Civil Appeal No. 15 of 2007 --- Saint Christopher & Nevis**

**Appearances:**

**Appellant:-** Ms. Roxanne Knights holding for Mr. Anthony E. Gonsalves for the Appellant.  
**Respondent:-** Ms. Michelle Fife, Crown Counsel holding for Mr. Arudranauth Gossai for the Respondent.

**Issue:**

Civil Appeal – Constitutional law – Protection from deprivation of property without adequate compensation – Land Acquisition (Amendment) Act 1969 - Sections 19 (1) (1) and (c) – compatibility with paragraph 10 of Schedule 2 to the constitution order.

**Result:**

The appeal is allowed and the decision of the trial judge set aside with costs to the Appellant

**Reason:**

1.) Sections 19 (1)(a) and (c) of the amending Act were unconstitutional as they created a number of fetters which made the conditions governing entitlement to compensation or the amount thereof less favourable to the appellant contrary to paragraph 10 of Schedule 2 to the Constitution Order.  
2.) Sections 19(1)(a) and (c) were so intertwined or interrelated as to make severance inapplicable. What would remain after the impugned sections were declared invalid could not survive independently: **Attorney General of Alberta v Attorney General for Canada [1947] AC 503** applied.

**Imanagement Services Limited v Cukurova Holdings A.S. et al**  
**Civil Appeal No. 25 of 2007 --- British Virgin Islands**

**Appearances:**

**Appellant:-** Ms. Roxanne Knights holding for Mr. Michael Fay and Ms. Claire-Louise Whiley for the Appellant.  
**Respondent:-** Ms. Mira Commissiong holding for Mr. John Higham Q.C. and Mr. Christopher Young for the First Respondent.

- Issue:** Stay of proceedings – forum non conveniens – allocation of jurisdiction – BVI claim for tortious acts committed in Russia and elsewhere – jurisdiction established in BVI forum where defendants incorporated – arbitration proceedings brought in Russia under alleged arbitration agreement – jurisdiction of Russia over BVI claim – effect of defendants’ undertakings to submit to jurisdiction of Russian courts – proof of whether Russia is a more appropriate forum – burden and standard of proof – the governing law for the tortious acts and double – actionability rule - nature of proceedings pending elsewhere in Russia – the discretion of the judge.
- Result:** The appeal is dismissed with prescribed costs to the First Respondent under CPR 65.13 (b) which will await the determination of costs below under CPR 65.5 (2) unless the parties to the appeal agree otherwise.
- Reason:**
- 1.) The role of the appellate court in forum non conveniens matters is restricted to ensuring a correct approach in principle in the judge’s exercise of discretion. The circumstances in which this court will interfere with the judge’s exercise of discretion were stated by Lord Brandon in **Abidin Daver**<sup>1</sup> to be: (i) where the judge has misdirected himself/herself with regard to principles in accordance with which his/her discretion had to be exercised; (ii) where the judge in exercising his/her discretion had taken into account matters which he/she ought not to have taken into account or failed to take into account matters which he/she ought to have taken into account; (iii) where the judge’s decision is plainly wrong. **Abidin Daver** [1984] 1A.C. 398 at page 420 paras A to C applied.
  - 2.) Even if the learned judge was inconsistent in her findings concerning the jurisdiction of the Russian courts over the BVI claim and undecided as to where the action for fraud was committed, in relation to the alleged conspiracy and the guarantee agreement, it seems arguable on the pleadings that the injury took place in Turkey where Cukurova is incorporated; and pecuniary damage was suffered in Russia, Switzerland and the Dutch Antilles in defending the arbitration claim and enforcement proceedings. Although the most significant elements of the other tortious acts may have occurred in Russia it was not of much significance that the judge left undecided the matter as to whether the Russian courts would have jurisdiction if the injury occurred on the territory of the Russian Federation as she did go on to consider all the other circumstances of the case and apply the other forum non conveniens principles.
  - 3.) The learned judge did not err in concluding that the defendants’ undertakings were not sufficient to confer jurisdiction upon the Russian courts, as the Russian law required the agreement of Cukurova also.
  - 4.) In determining whether or not there is some other available forum having competent jurisdiction which is the appropriate forum for the trial of the action the authorities establish with clarity a burden of proof on the defendant and the nature and quality of what is to be proved; and it is doubtful that they have established any formulated standard of proof or any legal principle as to the degree of the standard of proof or the extent of the burden of proof. The learned judge’s use of the words “very heavy” to describe the burden of proof when considering that Cukurova had established jurisdiction in the forum of

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<sup>1</sup> [1984] 1 AC 398 at page 420 paras. A to C

Management's incorporation may be perceived as giving impermissible weight to Cukurova's right to sue in the BVI. **Spiliada Maritime Corporation v Cansulex Limited** [1987] 1 A.C. 460; **IPOC International Growth Fund Limited v L V Finance Group Limited others**: BVI Civil Appeal Nos. 20 of 2003 and 1 of 2004 (unreported) delivered 19/9/05, para 27 Per Gordon J.A applied. **Banco Atlantico S.A. v The British Bank of the Middle East** [1990] 2 Lloyd's Rep (C.A. 504, 510; **Bitech Downstream Ltd v Rinex Capital Inc. and another** BVHC 2002/0233: paras 26 – 27 Per Rawlins J (as he then was) considered.

5.) The burden of proof rests on the party asserting that foreign law differs from BVI law, or that the foreign law is complex or presents difficult issues, and in the absence of such proof there is a presumption that foreign law and BVI law are the same. The learned judge inaccurately stated that the governing law for these tortious acts is BVI law although she was entitled to conclude that any governing Russian law was no different from BVI law.

6.) In weighing the factors which fell in favour of a trial in Russia against the factors which fell in favour of a trial in the BVI the learned judge did not explicitly mention the factors concerning the familiarity of the Russian courts with the arbitration dispute but she implicitly took these factors into account at paragraphs 107 and 108 of her judgment. The main issues before the Arbitral Tribunal in Russia were whether there was an arbitration agreement and whether there was a breach of the agreement which is clearly different from the issues in the BVI claim. The learned judge cannot be faulted for concluding that the Moscow court had not ruled on the question of forgery after considering whether concurrent proceedings existed at the material time, and whether refusal of a stay would produce the undesirable consequences of two conflicting judgments of the Russian and BVI courts or create a situation of res judicata or issue estoppel in the latter case. Although the alleged tortious acts were committed in the course of alleged contractual relations the acts have a separate legal existence from the contractual obligations and breaches thereof. Accordingly there is no error of principle that would serve to vitiate the learned judge's ultimate conclusion that the BVI is the most natural and appropriate forum to try this claim in tort.

**Coram:** The Honourable Chief Justice Mr. Hugh Rawlins  
The Honourable Justice of Appeal Mr. Denys Barrow, SC  
The Honourable Justice of Appeal (Ag.) Mr. Michael Gordon, QC

#### APPLICATIONS

**Othneil R. Sylvester v Justice Frederick Bruce-Lyle et al**  
**Civil Appeal No. 17 of 2007**

#### **Appearances:**

**Applicant:-** Mr. James Guthrie Q.C., Mr. Emery Robertson and Ms. Nicole Sylvester for the Appellant.  
**Respondent:-** Mr. Stanley Marcus S.C., Mr. Bertram Commissiong Q.C. and Ms. Mira Commissiong for the Respondent.

**Issue:** Application for extension of time to file skeleton arguments and authorities.

**Result:** By consent, application for extension of time to file arguments and authorities granted. Matter adjourned to 7th October 2008.

**J.T. Yachting (SVG) Limited et al v Nollie Alexander  
Civil Appeal No. 10 of 2007**

**Appearances:**

**Applicant:-** Mr. Al Elliot for the Applicant/Respondent  
**Respondent:-** Mr. Emery Robertson for the Respondent/Appellant.

**Issue:** Application to set aside order of a single judge.

**Result:** Matter stood down.

**Eucharist Gilchrist et al v Florence Gilchrist  
Civil Appeal No. 27 of 2007**

**Appearances:**

**Applicant:-** Mr. Olin Dennie for the Respondent/Appellant.  
**Respondent:-** Ms. Roxanne Knights holding for Williams & Williams for the Applicant/Respondent.

**Issue:** Application to strike out appeal.

**Result:** The Application to dismiss appeal for want of prosecution is withdrawn and accordingly dismissed with no order as to costs.

**Reason:** Record of Appeal has been filed by the Appellant.

**Ronnie Frederick v Cecil Wardrobe  
Civil Appeal No. 3 of 2007**

**Appearances:**

**Applicant:-** Ms. Roxanne Knights holding for Williams & Williams for the Applicant/Respondent.  
**Respondent:-** Mr. Olin Dennie for the Respondent/Appellant.

**Issue:** Application to strike out appeal.

**Result:**

- (1) The Application to dismiss appeal for want of prosecution is withdrawn and accordingly dismissed with no order as to costs.
- (2) The oral application on behalf of the Appellant to withdraw the appeal is allowed with \$1,500.00 to the Respondent.

**Reason:** Appellant no longer wishes to prosecute the appeal.

**The Attorney General v Claude Leach  
Civil Appeal No. 7 of 2007**

**Appearances:**

**Applicant:-** Mr. Samuel Commissiong for the Applicant/Respondent.  
**Respondent:-** Mr. Perry Joseph for the Respondent/Appellant.

**Issue:** Application to dismiss appeal.

**Result:** Stood down to later in the morning.

**Romano Durham v Commissioner of Police  
Magisterial Criminal Appeal No. 82 of 2007**

**Appearances:**

**Appellant:-** Appellant in Person.  
**Respondent:-** Mr. Colin Williams Director of Public Prosecutions and Mr. Carl Williams Crown Counsel for the Respondent.

**Issue:** Application for extension of time.

**Result:** Appeal is withdrawn by the Appellant and is accordingly dismissed.

**Hans King v Frank Da Silva  
Civil Appeal No. 6 of 2008**

**Appearances:**

**Appellant:-** Mr. Ronald Marks for the Appellant.  
**Respondent:-** Dr. Linton A. Lewis and Mr. Andreas Coombs for the Respondent.

**Issue:** The learned Master erred in law when she revoked the decision of the learned trial judge and ordered costs at a Case Management Conference.

**Result:** The appeal against the order of the Master that the Defendant amend his defence to include particulars is withdrawn and accordingly dismissed. The appeal against the costs order awarded by the Master against the Defendant is allowed by the operation of Rule 65.7(1)(d) of CPR 2000. There is no order as to costs.

**Reason:** Rule 65.7 (1)(d) is clear that prescribed costs includes the cost of attendance and advocacy and the Case Management Conference.

**Beatrice Antoine v Edward Dewitt John  
Civil Appeal No. 12 of 2008**

**Appearances:**

**Appellant:-** Mr. Emery Robertson for the Appellant.  
**Respondent:-** No appearance

**Issue:** Application for extension of time to file appeal.

**Result:** The application is adjourned for service of the Application on the Respondent to be effected and for listing of the matter for hearing subsequent to this service.

**Reason:** This is adjourned to give Counsel the opportunity to serve the Respondent in person.

**Anthony W.R. Quow v Onicka N. Quow nee Pierre  
Civil Appeal No 13 of 2008**

**Appearances:**

**Appellant:-** Mr. Sylvester Raymond-Cadette for the Appellant.  
**Respondent:-** Ms. Kay Bacchus-Browne for the Respondent.

**Issue:** Application for extension of time to file appeal.

**Result:** The Application is withdrawn and accordingly dismissed with no order as to costs. The matter is remitted to the Master for further consideration of maintenance in the event that the Applicant makes such an application.

**Reason:** The Court was of the view that the order of the Master had given the Appellant "liberty to apply" to the Court to vary the order. The Appellant had not taken advantage of that opportunity so the Court felt it necessary to remit the matter to the Master for consideration.

**Eldreta Williams et al v Beresford Williams  
Civil Appeal No. 14 of 2008**

**Appearances:**

**Appellant:-** Ms. Nicole Sylvester and Ms. Patina Knights for the Appellant.  
**Respondent:-** Mr. Stephen Huggins for the Respondent.

**Issue:** Application for stay of execution.

**Result:** Matter stood down to Tuesday 7<sup>th</sup> October 2008 to give Counsel an opportunity to prepare consent order.

**Enrico Johnny v Commissioner of Police  
Magisterial Criminal Appeal No. 4 of 2008**

**Appearances:**

**Appellant:-** Appellant in Person.  
**Respondent:-** Mr. Colin Williams, Director of Public Prosecutions and Mr. Carl Williams Crown Counsel, for the Respondent.

**Issue:** Application for extension of time.

**Result:** (1) The Application to extend time to appeal is granted.  
(2) The appeal against sentence is allowed to the extent that the sentence of 6 months imprisonment for possession of ammunition on Suit No. SOC 549 of 2007 shall run concurrently with the sentence of two years on Suit No. SOC 547 of 2007, instead of consecutively.

**Reason:** The Court was of the view that it is the practice that sentences are normally made to run concurrently except in extraordinary circumstances where they are made to run consecutively. There were no extraordinary circumstances in this case to justify the imposition of consecutive sentences.

**Luella Mitchell et al v Maurice Jones  
Civil Appeal No. 16 of 2006**

**Appearances:**

**Applicant:-** Mr. Joseph Delves for Applicant/Respondent.  
**Respondent:-** Mr. Emery Robertson for the Respondent/Appellant.

**Issue:** Application for appointment of a representative.

**Result:** 1. By consent the Application by Cleo Huggins to be appointed as representative of the estate of Maurice Jones the deceased the named Respondent in these proceedings is granted.  
2. Cleo Huggins shall consequently be added as the Respondent in these proceedings in the place of Maurice Jones in all further proceedings until or unless further ordered.  
3. There is no order as to costs on this Application.  
4. This matter is traversed to the next sitting of the Court in Saint Vincent and the Grenadines.

**Reason:** The Respondent is deceased and was deceased at date of judgment. No Letters of Administration have been filed so a representative is needed.

**Julius John v The Queen  
Criminal Appeal No. 2 of 2007**

**Appearances:**

**Appellant:-** Ms. Nicole Sylvester and Ms. Patina Knights for the Appellant.  
**Respondent:-** Mr. Colin Williams, Director of Public Prosecutions and Mr. Carl Williams, Crown Counsel for the Respondent.

**Issue:** Application for adjournment.

**Result:** By consent, hearing of the appeal is traversed to next sitting of this Court.

**The Attorney General v Claude Leach  
Civil Appeal No. 7 of 2007**

**Appearances:**

**Applicant:-** Mr. Samuel Commissiong for the Applicant/Respondent.  
**Respondent:-** Mr. Perry Joseph for the Respondent/Appellant.

**Issue:** Application to dismiss appeal.

**Result:** By consent, the Appellant shall file the Record of Appeal within 2 weeks of today's date. Appellant will pay costs in the sum of \$2,000 for the Application.

**HIGH COURT CIVIL APPEALS  
Everard Gellizeau v Ulric Hutchinson  
Criminal Appeal No. 9 of 2007**

**Appearances:**

**Appellant:-** Mr. Carlyle Dougan Q.C. for the Appellant.  
**Respondent:-** Mr. Emery Robertson for the Respondent.

**Issue:** The trial Judge erred in law in holding, by implication, that the Deed of Exchange was valid.

**Result:** Matter adjourned to Wednesday 8<sup>th</sup> October 2008.

**Lloyd Samuel v Beatrix Gumbs  
Civil Appeal No. 7 of 2008**

**Appearances:**

**Appellant:-** Mr. Emery Robertson for the Appellant.  
**Respondent:-** Mr. S.E. Commissiong for the Respondent.

**Issue:** The trial Judge erred in law and misdirected himself on the principle regarding possession and title.

**Result:** Matter adjourned to Wednesday 8<sup>th</sup> October 2008.

**Coram:** The Honourable Chief Justice Mr. Hugh Rawlins  
The Honourable Justice of Appeal (Ag.) Mr. Michael Gordon, QC  
The Honourable Justice of Appeal (Ag.) Ms. Indra Hariprashad-Charles

**APPLICATIONS:**

**J.T. Yachting (SVG) Limited et al v Nollie Alexander  
Civil Appeal No. 10 of 2007**

**Appearances:**

**Appellant:-** Mr. Al Elliot for the Applicant/Respondent  
**Respondent:-** Mr. Emery Robertson for the Respondent/Applicant.

**Issue:** Application to set aside order of a single judge.

**Result:**

1. The Application to review the order of the single judge is granted.
2. The Notice of Appeal is however struck out as it is a nullity.
3. In the circumstances of this appeal and this order there is no order as to costs.

**Reasons:**

1. The decision of the single Judge was made on the premise that the Application was unopposed. The Application had however not been served.
2. The Court was of the view that the appeal is a nullity as: (i) this is a procedural appeal and (ii) the notice of appeal was filed out of time and without leave being sought.

**Coram:** The Honourable Chief Justice Mr. Hugh Rawlins  
The Honourable Justice of Appeal Mr. Denys Barrow, SC  
The Honourable Justice of Appeal (Ag.) Ms. Indra Hariprashad-Charles

**HIGH COURT CRIMINAL APPEALS AGAINST SENTENCE**

**Turnley Francois v The Queen  
Criminal Appeal No. 2 of 2008**

**Appearances:**

**Appellant:-** Ms. Kay Bacchus-Browne for the Appellant.  
**Respondent:-** Mr. Colin Williams, Director of Public Prosecutions and Mr. Carl Williams, Crown Counsel for the Respondent.

**Issue:** Manslaughter – Appeal against sentence of eight (8) years imprisonment.

**Result:** Appeal is dismissed. Sentence imposed by trial Judge is affirmed.

**Reason:** The Court was of the view that the sentence was reasonable in the circumstances

**Everton Tannis v The Queen  
Criminal Appeal No. 11 of 2008**

**Appearances:**

**Appellant:-** Appellant In Person.  
**Respondent:-** Mr. Colin Williams, Director of Public Prosecutions and Mr. Carl Williams, Crown Counsel for the Respondent.

**Issue:** Wounding – Appeal against sentence of six (6) years imprisonment.

**Result:** Appeal is dismissed. Sentence imposed by the trial Judge is affirmed.

**Reason:** The Court was of the view that the sentence was reasonable in the circumstances

**Adonijah Caine v The Queen  
Criminal Appeal No. 12 of 2008**

**Appearances:**

**Appellant:-** Ms. Nicole Sylvester and Ms. Patina Knights for the Appellant.  
**Respondent:-** Mr. Colin Williams, Director of Public Prosecutions and Mr. Carl Williams, Crown Counsel for the Respondent.

**Issue:** Wounding with intent and discharge of a firearm – Appeal against sentence of two seven-year terms of imprisonment to run concurrently.

**Result:** Appeal allowed. Conviction and sentence set aside. Re-trial is ordered.

**Reason:** The Court was of the view that the Judge went overboard in the circumstances where he instilled fear in the Appellant and as a result the Appellant pleaded guilty. The Appellant on two occasions insisted that his lawyer had informed him to plead not guilty but the Judge insisted on a plea and indicated if there was a trial and he was found guilty, the penalty would be stiffer. The Court felt that a reasonable person in those circumstances would have pleaded guilty not on the basis of choice but on the basis that they were being pressured by the adjudicator to plead guilty.

**Junior Garfield Morgan v The Queen  
Criminal Appeal No. 14 of 2007**

**Nyron Morgan v The Queen  
Criminal Appeal No. 17 of 2007**

**Appearances:**

**Appellants:-** Appellants In Person.  
**Respondent:-** Mr. Colin Williams, Director of Public Prosecutions and Mr. Carl Williams, Crown Counsel for the Respondent.

**Issue:** Junior Garfield Morgan: Rape, wounding, inflicting grievous bodily harm - Appeal against sentence of 20 years imprisonment.

Nyron Morgan: Rape (2 counts), assault, wounding – Appeal against sentence of 2 x 20 yrs., 5 yrs. and 5 yrs. to run concurrently

**Result:** The appeals are allowed but only to the extent that the sentences of 20 years for rape on the first and second counts of both appellants are reduced from 20 years on each count to 13 years imprisonment. The sentences of 5 years for each appellant on the counts of wounding and inflicting grievous bodily harm are affirmed. The sentences are to run concurrently and take effect as the judge decided from the date of arrest which was the 31<sup>st</sup> day of May 2006.

**Reason:** The Court was of the view that the guidelines set out for rape offences by Sir Dennis Byron in Winston Joseph and others was not used. Having regard to those guidelines, it was reasonable to reduce the sentences.

**Kentish Campbell v The Queen  
Criminal Appeal No. 14 of 2008**

**Appearances:**

**Appellant:-** Appellant In Person.  
**Respondent:-** Mr. Colin Williams, Director of Public Prosecutions and Mr. Carl Williams, Crown Counsel for the Respondent.

**Issue:** Robbery, rape and robbery – Appeal against sentence of 5 years, 15 years and 12 years to run concurrently.

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

**HIGH COURT CRIMINAL APPEALS AGAINST CONVICTION  
AND SENTENCE**

**Julius John v The Queen  
Criminal Appeal No. 2 of 2007**

**Appearances:**

**Appellant:-** Ms. Nicole Sylvester and Ms. Patina Knights for the Appellant.  
**Respondent:-** Mr. Colin Williams, Director of Public Prosecutions and Mr. Carl Williams, Crown Counsel for the Respondent.

**Issue:** Murder – Appeal against sentence of life imprisonment.

**Result:** Matter dealt with in Applications.

Date Tuesday 7<sup>th</sup> October 2008

Coram: The Honourable Justice of Appeal Mr. Denys Barrow, SC – President  
The Honourable Justice of Appeal (Ag.) Ms. Ola Mae Edwards  
The Honourable Justice of Appeal (Ag.) Ms. Indra Hariprashad-Charles

**HIGH COURT CIVIL APPEALS**  
**Luella Mitchell v Maurice Jones**  
**Civil Appeal No. 16 of 2006**

Appearances:

**Appellant:-** Mr. Emery Robertson for the Appellant.  
**Respondent:-** Mr. Joseph Delves for the Respondent.

Issue: The trial Judge erred when he decided who was in actual possession of the land.

Result: Matter dealt with under Applications on 6<sup>th</sup> October 2008. (Traversed to the next sitting of this Court.)

**Ronnie Frederick v Cecil Wardrobe**  
**Civil Appeal No. 3 of 2007**

Appearances:

**Appellant:-** Mr. Olin Dennie for the Appellant.  
**Respondent:-** Ms. Roxanne Knights holding for Williams & Williams for the Respondent.

Issue: The trial Judge erred in law when she found that the Appellant's house was destroyed in the execution of a warrant of possession issued by the Senior Magistrate.

Result: Matter dealt with under Applications on 6<sup>th</sup> October 2008. (Appeal withdrawn.)

**Everard Gellizeau v Ulric Hutchinson**  
**Civil Appeal No. 9 of 2007**

Appearances:

**Appellant:-** Mr. Carlyle Dougan Q.C. for the Appellant.  
**Respondent:-** Mr. Emery Robertson for the Respondent.

Issue: The learned trial Judge erred in law in holding, by implication, that the Deed of Exchange was valid.

Result: Matter adjourned to Wednesday 8<sup>th</sup> October 2008.

**Othneil Sylvester v Frederick Bruce-Lyle et al  
Civil Appeal No. 17 of 2007**

**Appearances:**

**Appellant:-** Mr. James Guthrie Q.C., Ms. Nicole Sylvester and Mr. Emery Robertson for the Appellant.  
**Respondent:-** Mr. Stanley Marcus, SC Mr. Bertram Commissong Q.C. and Ms. Mira Commissong for the Interested Parties.

**Issue:** Appeal against an order of a disciplinary tribunal to disbar the Appellant and order him to pay compensation.

**Result:** Decision reserved.

**Eucharist Gilchrist et al v Florence Gilchrist  
Civil Appeal No. 27 of 2007**

**Appearances:**

**Appellant:-** Mr. Olin Dennie for the Appellant.  
**Respondent:-** Mr. Stephen Williams and Ms. Roxanne Knights for the Respondent.

**Issue:** The trial Judge erred in her decision that service on the Appellant was Proper, and, further, that false imprisonment of the Appellant which arose out of the determination of effective service.

**Result:** The appeal is withdrawn and stands dismissed. Costs to the Respondent agreed at \$2,500.00.

**Carl Ollivierre v Wilbert Lewis  
Civil Appeal No. 4 of 2008**

**Appearances:**

**Appellant:-** Mr. Stanley John with Mr. Julian Jack and Mr. Akin John for the Appellant.  
**Respondent:-** Mr. Parnell R. Campbell Q.C. with Mr. Moet Malcolm for the Respondent.

**Issue:** The trial Judge erred in law when he granted the Respondent title of the land by adverse possession.

**Result:** Appeal is dismissed. Costs to the Respondent in the sum of \$7,500.00.

**Reason:** The Court was of the view that the Respondent was given possession of this land by way of a gift although not done by deed. Further, when the Respondent took possession of the property he took possession as owner.

**Lloyd Samuel v Beatrix Gumbs  
Civil Appeal No. 7 of 2008**

**Appearances:**

**Appellant:-** Mr. Emery Robertson for the Appellant.  
**Respondent:-** Mr. S.E. Commissioning for the Respondent.

**Issue:** The trial Judge erred in law when he misdirected himself on the principle regarding possession and title.

**Result:** Adjourned to Wednesday 8<sup>th</sup> October 2008.

**Earle Wilson v Stephanie Wilson  
Civil Appeal No. 8 of 2008**

**Appearances:**

**Appellant:-** Mr. Samuel Commissioning and Ms. Suzanne Commissioning for the Appellant.  
**Respondent:-** Ms. Nicole Sylvester and Ms. Patina Knights for the Respondent.

**Issue:** The trial Judge erred when he awarded a life interest in the disputed property to the Respondent.

**Result:** Stood down to Wednesday 8<sup>th</sup> October 2008.

**MAGISTERIAL CRIMINAL APPEALS AGAINST SENTENCE**

**Jeremy St. Hillaire v Commissioner of Police  
Magisterial Criminal Appeal No. 18 of 2008**

**Appearances:**

**Appellant:-** Appellant In Person.  
**Respondent:-** Mr. Colin Williams, Director of Public Prosecutions and Mr. Carl Williams, Crown Counsel for the Respondent.

**Issue:** Possession of a firearm without a licence – Appeal against sentence of two (2) Years and three (3) months imprisonment to run concurrently.

**Result:** Appeal allowed. Sentence varied from 2 years imprisonment to 1 ½ years imprisonment.

**Reason:** The Court considered the peculiar circumstances and felt that the fact that the Appellant had previously been shot and that he armed himself in response is not to be treated as a mitigating factor so the Magistrate was correct that that was not a mitigating factor. They further reiterated that no-one is entitled to carry a firearm without a licence. However, they considered the fact that the Appellant having previously been shot reduced the moral culpability of his possession of an unlicensed weapon so it means that the criminal characteristic of that unlawful possession is diminished somewhat by the fact that he had been shot.

**Romano Durham v Commissioner of Police  
Magisterial Criminal Appeal No. 82 of 2007**

**Appearances:**

**Appellant:-** Appellant in Person.  
**Respondent:-** Mr. Colin Williams, Director of Public Prosecutions and Mr. Carl Williams Crown Counsel for the Respondent.

**Issue:** Possession of firearm and ammunition without a licence – Appeal against sentence of five years six months imprisonment to run concurrently.

**Result:** Matter dealt with on 6<sup>th</sup> October 2008. (Matter withdrawn.)

**Angelo Lewis v Commissioner of Police  
Magisterial Criminal Appeal No. 23 of 2008**

**Appearances:**

**Appellant:-** Ms. Niara Fraser holding for Mr. Ronald Marks for the Appellant.  
**Respondent:-** Mr. Colin Williams, Director of Public Prosecutions and Mr. Carl Williams Crown Counsel for the Respondent.

**Issue:** Assault – Appeal against sentence of two months imprisonment suspended for 6 months.

**Result:** Appeal is withdrawn.

**Leron Samuel v Commissioner of Police  
Magisterial Criminal Appeal No. 25 of 2008**

**Appearances:**

**Appellant:-** Mr. Stephen Williams for the Appellant.  
**Respondent:-** Mr. Colin Williams, Director of Public Prosecutions and Mr. Carl Williams Crown Counsel for the Respondent.

**Issue:** Possession of controlled drug – Appeal against sentence of 1 year imprisonment.

**Result:** Appeal is dismissed.

**Reason:** The Court found the sentence was reasonable in the circumstances.

**MAGISTERIAL CRIMINAL APPEALS AGAINST CONVICTION**

**Enrico Johnny v Commissioner of Police  
Magisterial Criminal Appeal No. 4 of 2008**

**Appearances:**

**Appellant:-** Appellant In Person.  
**Respondent:-** Mr. Colin Williams, Director of Public Prosecutions and Mr. Carl Williams Crown Counsel for the Respondent.

**Issue:** Possession of a firearm and ammunition without licence – Appeal against conviction and sentence respectively on both counts to two (2) years and six (6) months to run consecutively.

**Result:** Matter dealt with on 6<sup>th</sup> October 2008.

**Gidal Toney v Commissioner of Police  
Magisterial Criminal Appeal No. 10 of 2008**

**Appearances:**

**Appellant:-** Mr. Olin Dennie for the Appellant.  
**Respondent:-** Mr. Colin Williams, Director of Public Prosecutions and Mr. Carl Williams Crown Counsel for the Respondent.

**Issue:** Possession of a firearm without licence – Appeal against conviction and sentence of one (1) year imprisonment.

**Result:** Appeal dismissed.

**Reason:** The Court was of the view that the conviction was safe and the sentence reasonable in the circumstances.

**Bernard Henry v Commissioner of Police  
Magisterial Criminal Appeal No. 13 of 2008**

**Appearances:**

**Appellant:-** Mr. Richard Williams for the Appellant.  
**Respondent:-** Mr. Colin Williams, Director of Public Prosecutions and Mr. Carl Williams Crown Counsel for the Respondent.

**Issue:** Possession of drugs with intent to supply – Appeal against conviction and sentence of two years imprisonment and \$2,500.00 in two months or one year imprisonment respectively. Both sentences to run concurrently.

**Result:** Appeal against conviction is dismissed. Appeal against sentence is allowed. Sentence of 2 years imprisonment is set aside and 18 months substituted.

**Reason:** The Court has no jurisdiction to interfere with the guilty plea and the fact that it was entered by mistake cannot avail. However, the Court felt that the sentence was not in keeping with the sentence laid down by legislation.

**Ivan Cain v Commissioner of Police  
Magisterial Criminal Appeal No. 16 of 2008**

**Appearances:**

**Appellant:-** Mr. Richard Williams for the Appellant.  
**Respondent:-** Mr. Colin Williams, Director of Public Prosecutions and Mr. Carl Williams Crown Counsel for the Respondent.

**Issue:** Possession of drugs with intent to supply – Appeal against conviction and sentence of two years imprisonment.

**Result:** Appeal against conviction withdrawn. Appeal against sentence is allowed. Sentence of 2 years imprisonment is set aside and 18 months substituted.

**Reason:** The Court was of the view that the sentence was not in keeping with the sentence laid down in legislation.

**Date:** **Wednesday 8th October 2008**

**Coram:** The Honourable Chief Justice Hugh Rawlins  
The Honourable Justice of Appeal Michael Gordon (Ag.)  
The Honourable Justice of Appeal Indra Hariprashad-Charles (Ag.)

**APPLICATIONS**

**Eldreta Williams et al v Beresford Williams  
Civil Appeal No. 14 of 2008**

**Appearances:**

**Appellant:-** Ms. Nicole Sylvester and Ms. Patina Knights for the Appellant.  
**Respondent:-** Mr. Stephen Huggins for the Respondent.

**Issue:** Application for stay of execution.

**Result:** By consent:  
1. The Application for a stay of execution filed herein is disallowed.  
2. The Respondents, the Administrators of the Estate of Neil Williams deceased undertake to hold all of the assets of the said Estate until the final outcome of this appeal or until further order.  
3. Any rents and or mesne profits collected in the interim shall be held in a special account in the name of the Administrators and shall not be disbursed (save and except reasonable expenses) until the outcome of the said appeal.

## HIGH COURT CIVIL APPEALS

### **Earle Wilson v Stephanie Wilson Civil Appeal No. 8 of 2008**

**Appearances:**

**Appellant:-** Mr. Samuel. Commissiong and Ms. Suzanne Commissiong for the Appellant.  
**Respondent:-** Ms. Nicole Sylvester and Ms. Patina Knights for the Respondent.

**Issue:** The trial Judge erred when he awarded a life interest in the disputed property to the Respondent.

**Result:** Traversed to next sitting of the Court to facilitate settlement.

**Date** 8th October 2008

### **Everard Gellizeau v Ulric Hutchinson Civil Appeal No. 9 of 2007**

**Appearances:**

**Appellant:-** Mr. Carlyle Dougan Q.C. for the Appellant.  
**Respondent:-** Mr. Emery Robertson for the Respondent.

**Issue:** The trial Judge erred in law in holding, by implication, that the Deed of Exchange was valid.

**Result:** Decision reserved.

### **Lloyd Samuel v Beatrix Gumbs Civil Appeal No. 7 of 2008**

**Appearances:**

**Appellant:-** Mr. Emery Robertson for the Appellant.  
**Respondent:-** Mr. Samuel Commissiong and Ms. Suzanne Commissiong for the Respondent.

**Issue:** The trial Judge erred in law when he misdirected himself on the principle regarding possession and title.

**Result:** Traversed at the request of Counsel for the Appellant. Counsel for the Appellant directed to file and serve skeleton arguments with authorities within 21 days.

## MAGISTERIAL CRIMINAL APPEAL AGAINST CONVICTION AND SENTENCE

### **Uroy Robinson v Commissioner of Police Magisterial Criminal Appeal No. 20 of 2008**

**Appearances:**

**Appellant:-** Appellant In Person.  
**Respondent:-** Mr. Colin Williams Director of Public Prosecutions for the Respondent.

**Issue:** Discharge of firearm in a public place – Appeal against conviction and sentence of two (2) years imprisonment.

**Result:** Appeal against conviction is dismissed. Appeal against sentence is allowed to the extent that the sentence of 2 years is substituted for 1 year imprisonment.

**Reason:** The Magistrate sentenced under the Criminal Code but the Appellant was charged under the Firearms Act No. 12 of 1995 where the maximum sentence is 1 year.

**Elwardo Lynch v Commissioner of Police  
Magisterial Criminal Appeal No. 22 of 2008**

**Appearances:**

**Appellant:-** Ms. Kay Bacchus-Browne for the Appellant.  
**Respondent:-** Mr. Colin Williams, Director of Public Prosecutions for the Respondent.

**Issue:** Publishing of false statement – Appeal against matter being tried in the Magistrates Court. Application made by Defendant to be put to the election.

**Result:** Appeal is withdrawn and accordingly dismissed.

**Reason:** Matter was not brought before the Court by the correct procedure.

**Hamilton Richards v Commissioner of Police  
Magisterial Criminal Appeal No. 24 of 2008**

**Appearances:**

**Appellant:-** Mr. Stephen Williams for the Appellant.  
**Respondent:-** Mr. Colin Williams Director of Public Prosecutions for the Respondent.

**Issue:** Damage to Property – Appeal against conviction and sentence of fine of one thousand dollars to be paid in one month in default three months in jail. Compensation of three thousand six hundred and eighty (\$3,680) in one month in default five months in prison.

**Result:** Decision reserved.

**MAGISTERIAL CIVIL APPEAL**

**Cecil Boatswain v Financial Intelligence Unit  
Magisterial Civil Appeal No. 2 of 2008**

**Appearances:**

**Appellant:-** Dr. Linton Lewis and Mr. Andreas Coombs for the Appellant.  
**Respondent:-** Mr. Joseph Delves for the Respondent.

**Issue:**

Whether the definition of the words "Police Officer" under the Proceeds of Crime and Money Laundering (Prevention) Act No. 39 of 2001 is to be given to the technical meaning of "Officer" under the Police Act Chapter 280 of 1990.

**Result:**

Appeal withdrawn and accordingly dismissed with no order as to costs.