

**IN THE COURT OF APPEAL
EASTERN CARIBBEAN SUPREME COURT
GRENADA
APPEAL RESULTS 20th – 24th April, 2009**

Date **Monday 20th April 2009**

Coram: **Hon. Ola Mae Edwards Chief Justice [Ag]
Hon. Janice George-Creque Justice of Appeal
Hon. Michael Gordon Justice of Appeal [Ag]
Hon. Davidson Baptiste Justice of Appeal [Ag]**

APPLICATIONS

Coram: **Hon. Ola Mae Edwards Chief Justice [Ag]
Hon. Davidson Baptiste Justice of Appeal [Ag]
Hon. Michael Gordon Justice of Appeal [Ag]**

Case Name: **Eslee Carberry v. Chris-Ann Wildman
[Civ. App. No. 12 of 2008]**

Appearances:

Appellant: In Person

Respondent: Mr. Raphael Baptiste

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

Result: **Adjourned to tomorrow, Tuesday 21st April 2009.
It was directed that:
1. Respondent to file and serve a notice in opposition to the application along with
an affidavit opposing the application by 3:00 pm today, Monday 20th April 2009.

2. The Respondent to file and serve skeleton arguments in opposition to the
application with authorities by 3:00 pm today, Monday 20th April 2009.**

Reason:

Case Name: **Eslee Carberry v Philbert Bros. Co. Ltd.**
[Civ. App. No. 13 of 2008]

Appearances:

Appellant: In Person

Respondent: Mr. Raphael Baptiste

Issue: Application for extension of time to appeal

Result: Adjourned to tomorrow, Tuesday 21st April 2009.
It was directed that:

1. Respondent to file and serve a notice in opposition to the application along with an affidavit opposing the application by 3:00 pm today, Monday 20th April 2009.
2. The Respondent to file and serve skeleton arguments in opposition to the application with authorities by 3:00 pm today, Monday 20th April 2009.

Case Name: **Sydney Williams v Jessel Williams**
[Civ. App. N. 3 of 2007]

Appearances:

Appellant: Mrs. Avril Anande Trotman-Joseph appearing amicus

Respondent: No appearance

Issue: Application for relief from sanctions

Result: Application is dismissed.

Reason: By order dated the 29th August 2007 Justice of Appeal Rawlins gave permission to file Notice of Appeal which was to be filed within seven days of the Applicant becoming aware of the order. By his own admission in his affidavit he became aware at least in November 2007. Nothing was done until 2008. The Order of Justice of Appeal Rawlins states that failure to file Notice of Appeal within seven days of the date he received the order would result in the order for extension being of no effect. The Court sees no reason to extend the ambit of the order.

HIGH COURT CRIMINAL APPEALS AGAINST CONVICTION

Case Name: **Floyd Shears v The Queen**
[Crim. App. No. 10 of 2008]

Appearances:

Appellant: Derick Sylvester appearing amicus

Respondent: Mr. Darshan Ramdhani

Issues: Grievous harm, application to withdraw appeal against conviction, application to vary the terms of payment of the fine

Result: Appeal against conviction withdrawn and dismissed.
Application to vary fine granted.
The sum of \$9,000.00 to be paid by monthly installments of \$500.00 for a period of eighteen months commencing 30th April 2009 and in default of any installment the balance of fine remaining unpaid becomes payable or eighteen months imprisonment.

Reason: Appeal against sentence is to vary the terms regarding payment of the fine. Appellant has paid \$9,000.00 of \$18,000.00 and at present has \$9,000.00 unpaid and as a result of impecuniosities and economic reality of his situation court grants request to vary terms of payment.
The terms of sentence did not impose a period of incarceration in default of payment of fine. Section 61 of the Interpretation Act was referred to the court and the same was taken into consideration as being applicable.

Case Name: **Dameion Joseph v The Queen**
[Crim. App. No. 12 of 2006]

Appearances:

Appellant: Mr. Derick Sylvester

Respondent: Mr. Christopher Nelson Director of Public Prosecutions

Issues: Rape, miscarriage of justice, unfair trial, Lucas direction, sentence severe

Result: The hearing of the appeal is adjourned to 23rd November 2009. Registrar to prepare and serve whole copy of proceedings excluding the summation by 30th September 2009.

Reason: The court is concerned as Rule 48 of the Court of Appeal Rules 1968 CAP 336 has not been complied with as it relates to the transcript of the evidence and proceedings before the court. The transcriptionist has not certified the correctness/accuracy of the transcript.

Coram: Hon. Ola Mae Edwards Chief Justice [Ag]

Hon. Janice George-Creque Justice of Appeal
Hon. Michael Gordon Justice of Appeal [Ag]

**Case Name: Royston Stafford v The Queen
[Crim. App. No. 4 of 2007]**

Appearances:
Appellant: Mr. Derick Sylvester
Respondent: Mr. Darshan Ramdhani

Issues: Murder, verdict unsafe, intention, Lucas direction, excessive sentence, social inquiry report, miscarriage of justice

Result: Judgment reserved.

Reason:

**Coram: Hon. Janice George-Creque Presiding
Hon. Davidson Baptiste Justice of Appeal [Ag]
Hon. Michael Gordon Justice of Appeal [Ag]**

**Case Name: Frederick Noel v The Queen
[Crim. App. No. 7 of 2007]**

Appearances:
Appellant: Dr. Francis Alexis QC appearing amicus
Respondent: Mr. Christopher Nelson Director of Public Prosecutions

Issues: Grievous harm, verdict unreasonable in light of evidence, inadequate direction on defence, prejudicial comments, inadequate direction on published article, failure to leave alternative verdict to jury

Result: Appeal has no merit and is accordingly dismissed.

Reason: It is clear that the Trial Judge put quite adequately the case of the Defence to the jury. The fact that she did not say that the Appellant was consistent in his statements, when considering that against the summation as a whole, does not vitiate the summation. The jury was made aware that the Appellant was consistent in what he said.

**Case Name: Carlyle Charles v The Queen
[Crim. App. No. 8 of 2007]**

Appearances:
Appellant: Mr. Derick Sylvester
Respondent: Mr. Christopher Nelson Director of Public Prosecutions

Issue: Application to withdraw appeal

Result: Leave to withdraw Notice of Appeal granted and the appeal stands dismissed.

HIGH COURT CIVIL APPEALS

Case Name: In the matter of Patricia Agnes John to be admitted to practice as an attorney at law [Civ. App. No. 23 of 2003]

Appearances:
Appellant: Mr. Anselm Clouden
Respondent: No appearance

Issues: Admission to practice as an attorney at law, certificate issued by Council of Legal Education of London, England, proof of membership of English Bar

Result: Appellant having met the requirements with regard to qualifications it is accordingly ordered that she be admitted to practice as an attorney at law of the Eastern Caribbean Supreme Court of Grenada subject to her meeting the other requirements as prescribed by Section 77 (2) (a),(b),(c) & (d) of the Eastern Caribbean Supreme Court (Grenada) Act CAP 336

Reason: Requirements of Act with regard to qualifications have now been complied with.

Case Name: Grenada Board of Tourism v Ann Marie Marecheau [Civ. App. No.12 of 2007]

Appearances:
Appellant: Mrs. Avril Anande Trotman-Joseph holding for Ms. Leslie Ann Seon
Respondent: Ms. Sabrita Khan

Issues: Judgment against weight of evidence, inconsistency of findings, failure to consider documentary evidence of Appellant, incorrect assessment of special damages, incorrect measure of damages, reliance on uncorroborated oral evidence

Result: Notice of withdrawal having been filed on the 14th January 2009 and the Notice of no objection having been filed on the 10th March 2009, the appeal stands dismissed.

Reason: Notice of withdrawal filed. No objection thereto.

**Case Name: Grenada Breweries Limited v Roy Alexander
[Civ. App. No.16 of 2008]**

Appearances:
Appellant: Ms. Cindy John
Respondent: Mr. Anselm Clouden

Issues: Assessment of damages, excessive award for pain and suffering

Result: It is ordered that the order of \$15,000.00 for Pain and Suffering is set aside and the Court awards the sum of \$7,500.00 for Pain and Suffering. Costs below to be adjusted in accordance with Prescribed costs regime as set out in CPR 2000. Costs to the Appellant to be two thirds of that adjusted sum.

Reason: The Court is of the view that the sum of \$15,000.00 awarded for Pain and Suffering is out of proportion to awards made in similar cases. The Court recognizes the need for certainty in such awards. The Court also recognizes that the injuries sustained were more serious than injuries in cases relied on by the Master and accordingly requires an upward revision from awards made in those cases. The sum of \$15,000.00 is however a quantum leap with no justifiable basis.

Date: Tuesday 21st April 2009

Special Sitting of the Court in honour of the appointment of Hon. Madam Justice Ola Mae Edwards and Hon. Madam Justice Janice George-Creque to the Court of Appeal and the acting appointment of Hon. Justice Davidson Baptiste and to welcome Hon. Justice Mario Michel to the jurisdiction of Grenada

Order of Addresses

**Mr. James Bristol - Attorney General
Mr. Christopher Nelson – Director of Public Prosecutions
Ms. Celia Edwards, Q.C. – Inner Bar
Mr. Ashley Bernardine – President of the Bar**

RESPONSES

**Hon. Justice Michael Gordon – Justice of Appeal [Ag]
Hon. Justice Clare Henry – High Court Judge
Hon. Justice Mario Michel – High Court Judge
Hon. Justice Davidson Baptiste – Justice of Appeal [Ag]
Hon. Justice Janice George-Creque – Justice of Appeal
Hon. Justice Ola Mae Edwards – Chief Justice [Ag]**

**Coram: Hon. Justice Ola Mae Edwards – Chief Justice [Ag]
Hon. Justice Janice George-Creque – Justice of Appeal
Hon. Justice Davidson Baptiste – Justice of Appeal [Ag]**

**Case Name: Royston Stafford v The Queen
[Crim. App. No. 4 of 2007]**

Appearances:
Appellant: Mr. Derick Sylvester
Respondent: Mr. Darshan Ramdhani

Issues: Murder, verdict unsafe, intention, Lucas direction, excessive sentence, social inquiry report, miscarriage of justice

Result: Appeal against conviction and sentence dismissed and the conviction of murder and sentence of eighteen years affirmed. THE ORAL JUDGMENT DELIVERED WILL BE FORMATTED AND PUBLISHED.

Reason: Simplicity is to be preferred to complexity in any direction on intent. There was an over simplification of the statute law of intention to the jury. The omission with regard to section 12(2) (3) of the Criminal Code resulted in a misdirection. The contention of counsel that the conviction is unsafe and unsatisfactory fails. The Court finds no merit in the ground that a Lucas direction ought to have been given to the jury. Proviso applied.

**Case Name: Eslee Carberry v.Chris-Ann Wildman
[Civ. App. No. 12 of 2008]**

Appearances:
Appellant: In Person
Respondent: Mr. Raphael Baptiste

Issue: Application for extension of time to appeal

Result: Application dismissed. No order as to costs.

Reason: Applicant failed the test under the Magistrates Judgments Appeal Act for granting special leave to appeal.

**Case Name: Eslee Carberry v.Philbert Bros. Co. Ltd.
[Civ. App. No. 13 of 2008]**

Appearances:
Appellant: In Person

Respondent: Mr. Raphael Baptiste

Issue: Application for extension of time to appeal

Result: Application dismissed. No order as to costs.

Reason: Applicant failed the test under the Magistrates Judgments Appeal Act for granting special leave to appeal.

MAGISTERIAL CRIMINAL APPEALS AGAINST SENTENCE

Case Name: Anthony N. St. Bernard v Commissioner of Police
[Mag. Crim. App. No. 1 of 2009]

Appearances:

Appellant: In Person

Respondent: Ms. Crisan Greenidge

Issues: Stealing, damage to property, sentence excessive

Result: Appeal dismissed. Sentence affirmed.

Reason: Magistrate has discretion to decide whether sentences should run consecutively. Court can find nothing she did wrong in doing so.

Case Name: Keith Frank v Commissioner of Police
[Mag. Crim. App. No. 2 of 2009]

Appearances:

Appellant: In Person

Respondent: Ms. Crisan Greenidge

Issues: Praedial larceny, armed vagrancy, sentence severe

Result: Appeal against sentence dismissed and sentence affirmed.

Reason: Having regard to the circumstances and prevalence of the offence of Praedial larceny in Grenada the Magistrate was entitled to take that into account in deciding what kind of sentence to impose. The Magistrate exercised her discretion and the Court of Appeal cannot substitute its discretion for that of the Magistrate.

**Case Name: Paul Cadette v Commissioner of Police
[Mag. Crim. App. No. 3 of 2009]**

Appearances:
Appellant: In Person
Respondent: Mrs. Dionne Lawrence-Pivotte

Issues: Stealing, sentence excessive

Result: Appeal dismissed. Sentence affirmed.

Reason:

**Case Name: Michael Levine v Commissioner of Police
[Mag. Crim. App. No. 4 of 2009]**

Appearances:
Appellant: Mr. Anselm Clouden appearing amicus
Respondent: Mrs. Dionne Lawrence-Pivotte

Issues: Possession of a controlled drug, variation of sentence, sentence severe

Result: Appeal dismissed. Sentence affirmed.

Reason: The Magistrate was generous beyond reason having regard to the sentencing guidelines established by the Court of Appeal in these matters.

**Case Name: Michael Bernard v Commissioner of Police
[Mag. Crim. App. No. 6 of 2009]**

Appearances:
Appellant: In Person
Respondent: Mrs. Dionne Lawrence-Pivotte

Issues: Stealing, sentence excessive,

Result: Appeal dismissed. Sentence affirmed.

Reason: Court of the view that section 80 of the Criminal Code does not apply, however section 79 does apply. Given antecedents even if the Court only considers the more recent convictions it will not disturb the sentence imposed by the Magistrate.

MAGISTERIAL CRIMINAL APPEALS AGAINST CONVICTION

**Case Name: Curtis Cyrus & Allan Fraser v Commissioner of Police
Mag. Crim. App. No. 4 of 2008**

Appearances:
Appellant: No appearance
Respondent: `

Issue: Whether the Magistrate erred in holding that the Appellants were guilty based on the evidence in court.

Result: Appeal dismissed for want of prosecution.

Reason: Having regard to the pattern of non appearance in this matter.

**Case Name: Asad Georges v Commissioner of Police
Mag. Crim. App. No. 6 of 2008**

Appearances:
Appellant: Mr. Anselm Clouden appearing amicus
Respondent: Mrs. Dionne Lawrence-Pivotte

Issue: Application to withdraw appeal

Result: Leave granted to withdraw the appeal. Appeal accordingly dismissed.

Reason: Appellant has left the jurisdiction.

**Case Name: Asad Georges v Commissioner of Police
Mag. Crim. App. No. 7 of 2008**

Appearances:
Appellant: Mr. Anselm Clouden appearing amicus
Respondent: Mrs. Dionne Lawrence-Pivotte

Issue: Application to withdraw appeal

Result: Leave granted to withdraw the appeal. Appeal accordingly dismissed.

Reason: Appellant has left the jurisdiction.

Case Name: **Janarius Livingston v Commissioner of Police
Mag. Crim. App. No. 5 of 2009**

Appearances:

Appellant: No appearance

Respondent: Mrs. Dionne Lawrence-Pivotte

Issues: Vagrancy, damage to property. Sentence excessive

Result: Traversed to next sitting of the court.
Notice of hearing and record to be served on the appellant and an affidavit of service to be filed.

Reason: Inadequacy of evidence of service.

Case Name: **Leroy Joseph v Commissioner of Police
Mag. Crim. App. No. 7 of 2009**

Appearances:

Appellant: In person

Respondent: Mrs. Dionne Lawrence-Pivotte

Issue: Stealing from a dwelling house

Result: Appeal against conviction dismissed. Conviction and sentence affirmed.

Reason: Magistrate saw witnesses and had the opportunity that the Court of Appeal does not have to determine or assess the credibility of the witnesses. There is no evidence to show that the Magistrate erred.

MAGISTERIAL CIVIL APPEAL

Case Name: **Michael Sylvester v Donna Mitchell
[Mag. Civ. App. No. 2 of 2008]**

Appearances:

Appellant: In Person

Respondent: Mr. Ashley Bernardine appearing amicus

Issues:

Maintenance, whether Magistrate failed to appreciate the evidence and the welfare of the child, Whether Magistrate erred in law on the custody application of the applicant

Result:

Leave granted for Notice of Appeal to be withdrawn and it accordingly stands dismissed.

Reason:

Application to withdraw appeal.