

COURT OF APPEAL SITTING

Monday 9th February, 2009

CORAM

**Hon. Mr. Hugh Rawlins, Chief Justice
Hon. Ms. Ola Mae Edwards, Justice of Appeal
Hon. Ms. Janice George-Creque, Justice of Appeal**

APPLICATIONS

Case Name

**Francis Chitolie v Theresa Chitolie et al
[Civil Appeal No. 15 of 2007]**

Appearances:

Appellant: Ms. Synther Chitolie

Respondent: Mr. Vern Gill

Issue:

Withdrawal of Application for Conditional Leave to Appeal to Her Majesty in Council

Result:

- 1. The Application for Conditional Leave to appeal to Her Majesty in Council is withdrawn and accordingly dismissed.**
- 2. The Applicant to pay the Respondent agreed costs in the sum of \$1500.00.**

Reason:

The Appellant decided to withdraw the application and the parties agreed on the costs.

Case Name

**Theresa Henry et al v Calixtus Henry
[Civil Appeal No. 27 of 2007]**

Appearances:

**Appellant/
Respondent: Mr. Alfred Alcide**

**Respondents/
Applicants: Mr. Collin Foster**

Issue:

Application for Conditional Leave to Appeal to Her Majesty in Council

Result:

1. The Application by the Respondents/Applicants for conditional leave to appeal to Her Majesty in Council against the decision of the Court of Appeal of the Eastern Caribbean Supreme Court, which was delivered on the 27th day of October, 2008 is hereby granted upon the following terms and conditions:
 - a. The Respondents/Applicants shall within 90 days of today's date enter into good and sufficient security to the satisfaction of the Registrar in the sum of 500 sterling for the due prosecution of the appeal to Her Majesty In Council and for the payment of the costs referred to in the said Statutory Instrument No. 224 of 1967.
 - b. Solicitors for the Respondents/Applicants shall take necessary steps to procure the preparation of the record of proceedings and the dispatch thereof to the Registrar of the Privy Council, in accordance with article 10 (2) of the West Indies Order, within 90 days of the date on which this judgment is delivered.
 - c. Solicitors for the Respondents/Applicants shall settle the records with Solicitors for the Appellant/Respondent for transmission to the Registrar of the Privy Council, such records shall be comprised of the record used at the hearing of the appeal, save documents of a formal nature and omitted by the consent of the parties; the judgments; the Orders of the Court of Appeal, and the Orders granting conditional and final leave to appeal to Her Majesty In Council.
 - d. The Respondents/Applicants shall bring before this Court an Application for final leave to Her Majesty In Council, supported by the Certificate of the Registrar certifying that the security for costs ordered herein was entered within the time prescribed by this order to the satisfaction of the Registrar and that the Appellant has otherwise complied with Order.

Reason:

The Appellant is entitled to appeal as of right to her Majesty in Council by virtue of section 108(1)(a) of the Constitution of St. Lucia.

Case Name

Royal Bank of Scotland trading as Natwest v Caribbean Destination Management Services Ltd.
[Civil Appeal No. 10 of 2008]

Appearances:

Appellant: Mrs. Candace Cadasse-Polius
Respondent: Mr. Mark Maragh

Issue:

Application for review of decision of single judge of the Court of Appeal in a

procedural appeal – whether the Full Court has such jurisdiction
Application for amendment of order of single judge of the Court of Appeal in
accordance with CPR 42.10 (“the slip rule”)

Result:

1. The decision is reserved pending further written submissions.
2. The Solicitors for the Appellant and Respondent shall file and serve submissions on the issue of the jurisdiction of the full court to review the decision of a single judge in this appeal within seven days of 9th February, 2009.

Reason: The decision is reserved pending further written submissions on whether the Full Court has jurisdiction to review the decision which was given by a Single Judge of the court of Appeal.

Case Name Frederick Prospere v Jennifer Remy
[Civil Appeal No. 42 of 2008]

Appearances:

Applicant/ Respondent:	Mrs. Kim St. Rose
Respondent/ Appellant:	In person

Issue: Application to dismiss appeal

Result & Reason:

1. The appeal is struck out as a nullity.
2. Costs in the sum of \$1,000.00 to be paid by the Respondent to the Applicant.

Reason:

Case Name Bryan Stephen v Joanne Rowan et al
[Civil Appeal No. 34 of 2008]

Appearances:

Appellant:	Mr. Alberton Richelieu
3 rd Respondent:	Mr. Dexter Theodore

Issue: Application for Stay of Execution
Application for Adjournment

Result: The matter is adjourned to Wednesday 11th February, 2009.

Reason: To permit documents to be served on the 3rd Respondent.

Tuesday 10th February, 2009

Hon. Mr. Hugh Rawlins, Chief Justice
Hon. Ms. Ola Mae Edwards, Justice of Appeal
Hon. Ms. Janice George-Creque, Justice of Appeal

HIGH COURT CIVIL APPEALS

Case Name Carosello Establishment et al v Caribbean Ventures International Ltd.
[Civil Appeal No. 35 of 2007]

Appearances:

Appellant: Mr. Marcus Foster on record

Respondent: Mr. Bota McNamara

Issue: Application to dismiss the appeal

Result & Reasons:

1. The appeal is struck out for failure by the Appellants to prosecute this appeal, and, in particular, for their non-compliance with directions to file and serve skeleton arguments within the time stipulated (12th January 2009) and seeking no relief by way of application for an extension time.
2. The Stay of Execution which was granted by a single judge of this court on 24th October 2008 pending the determination of this appeal is hereby lifted.
3. The Appellants shall pay \$2,000.00 costs thrown away on this Application to the Respondents.
4. Solicitors for the Respondents shall file and serve a costs claim with bill of the costs to which they are entitled in this appeal proceedings within seven (7) days of today's date.
5. The costs claim shall be listed for hearing before a single judge of this court who will determine the quantum of costs to which the Respondents are entitled in the appeal proceedings.
6. The total costs in the appeal proceedings shall be deducted from the

amount that is held as security for costs and paid to the Respondents, the balance on the account shall then be returned to the Appellants.

Case Name Carosello Establishment et al v Caribbean Ventures International Ltd.
[Civil Appeal No. 33 of 2008]

Appearances:
Appellant: Mr. Marcus Foster on record
Respondent: Mr. Bota McNamara

Issue: Application to dismiss the appeal

Result & Reasons:

1. The appeal is struck out for failure by the Appellants to prosecute this appeal, and, in particular, for their non-compliance with directions to file and serve skeleton arguments within the time stipulated (12th January 2009) and seeking no relief by way of application for an extension time.
2. The Stay of Execution which was granted by a single judge of this court on 24th October 2008 pending the determination of this appeal is hereby lifted.
3. The Appellants shall pay \$2,000.00 costs thrown away on this Application to the Respondents.
4. Solicitors for the Respondents shall file and serve a costs claim with bill of the costs to which they are entitled in this appeal proceedings within seven (7) days of today's date.
5. The costs claim shall be listed for hearing before a single judge of this court who will determine the quantum of costs to which the Respondents are entitled in the appeal proceedings.

Case Name Grenada Building & Loan Association v Grenada Cooperative Bank Ltd.
[Civil Appeal No. 18 of 2008] Grenada

Appearances:
Appellant: Mr. Leslie Haynes, QC with Ms. Dia Forrester
Respondent: Mr. Ruggles Ferguson with Ms. Anyka Johnson

Issue: Appeal from order discharging the ex parte injunction granted on 7th November, 2008 and referring the matter to arbitration

Result:

1. The appeal is dismissed.
2. Costs as agreed to be paid by the Appellant in the sum of \$5000.00 plus disbursements to the Respondents.

Reason: The appeal has no merit. This is because although the High Court Judge who issued the injunction did not follow the provisions of Part 17 of CPR 2000, the

appellant failed to convince the Court that an injunction should be granted given the present circumstances of the case.

CORAM

Hon. Ms. Janice George-Creque, Justice of Appeal
Hon. Ms. Rita Olivetti, Justice of Appeal (Ag.)
Hon. Mr. Michael Gordon, QC, Justice of Appeal (Ag.)

HIGH COURT CIVIL APPEALS

Case Name

Giovanni James v Minister of Education, Human Resource Development,
Youth & Sports
[Civil Appeal No. 10 of 2007]

Appearances:

Appellant: Mr. Horace Fraser

Respondents: Ms. Jan Drysdale

Issue:

Appeal against decision in judicial review proceedings

Result:

1. The matter is remitted to the High Court for trial before another judge.
2. Costs to the Appellant as agreed in the sum of \$1500.00 in this Court. .

Reason:

Case Name

The Firm of Savitar Enterprising v The Attorney General
[Civil Appeal No. 28A of 2008]

Appearances:

Appellant: Mr. Anthony Estwick in person

Respondent: Mrs. Georgis Taylor-Alexander

Issue:

Whether appellant was entitled, by virtue of partnership business, to a share in the estate of deceased partner.

Result:

The matter is stood down.

Reason:

For Mr. Estwick to be called.

Wednesday 11th February, 2009

CORAM

**Hon. Ms. Janice George-Creque, Justice of Appeal
Hon. Ms. Rita Joseph-Olivetti, Justice of Appeal (Ag.)
Hon. Mr. Michael Gordon, QC, Justice of Appeal (Ag.)**

HIGH COURT CIVIL APPEAL

Case Name

**The Firm of Savitar Enterprises v The Attorney General
[Civil Appeal No. 28A of 2008]**

Appearances:

Appellant: Mr. Anthony Estwick

Respondent: Ms. Jan Drysdale with Ms. Dara Modeste

Issue:

**Whether appellant was entitled, by virtue of partnership business, to a share in the estate of deceased partner.
Whether the Attorney General was a party to the proceedings**

Result:

- 1. The appeal is dismissed.**
- 2. No order as to costs.**

Reason:

There is no other party to the appeal.

APPLICATIONS

Case Name

**Bank of Commerce (St. Christopher and Nevis) Trust & Savings Association Ltd. v E. A. Ross
[Civil Appeal No. 1 of 2008] St. Christopher and Nevis**

Appearances:

Appellant: Mr. Sylvester Anthony

Respondent: Mr. Courtney Abel

Issue:

Application to vary or discharge order of single judge in accordance with CPR 28.13 – Application for leave to extend time to file Record of Appeal

**Result and
Reasons:**

1. The Court is satisfied that the single judge of the Court had no power to make an order directing the filing of a supplemental record as applied for by the Respondent.
2. Further, the documents sought to be filed as the Supplemental Record admittedly were not part of the Trial Bundle. If it is that the Appellant is raising arguments in the appeal which were not raised at trial, then this is a matter which can be dealt with at the substantive hearing of the appeal. Accordingly, save for the two documents listed at items 4 and 5 of Schedule A, namely the letter of June 1985 and the letter of October 3rd 1985, (which shall be added or included in the Record by the Appellant by Monday 16th February, 2009), the documents contained in the Schedule A shall not form part of the Record.
3. It is further directed that:
 - (a) Time is granted to the Respondent to file and serve supplemental skeleton arguments no later than Friday 27th February, 2009
 - (b) The Appellant shall be at liberty to file and serve Reply Skeleton Arguments no later than Friday, 13th March, 2009.
4. Costs shall be costs in the appeal.

Case Name

**Bryan Stephen v Joanne Rowan et al
[Civil Appeal No. 34 of 2008]**

Appearances:

Appellant: Mr. Alberton Richelieu
**3rd
Respondent:** Mr. Dexter Theodore

Issue:

**Application for Stay of Execution; the proper parties in respect of appeal
Application for Adjournment so as to join sentencing judge as a Respondent**

Result:

1. The matter is adjourned with agreed costs in the sum of \$1000.00 to the Third Respondent to allow application to be made for joining party to appeal.
2. Leave is granted to the Appellant/Applicant to withdraw the appeal against Defendants 1 and 2.

Reason:

The 3rd Respondent does not oppose the Application for Adjournment.

CORAM

**Hon. Mr. Hugh Rawlins, Chief Justice
Hon. Ms. Ola Mae Edwards, Justice of Appeal
Hon. Ms. Rita Joseph-Olivetti, Justice of Appeal (Ag.)**

**HIGH COURT CRIMINAL APPEAL
AGAINST CONVICTION**

Case Name

**Kyon Frederick v The Queen
[Criminal Appeal No. 8 of 2006]**

Appearances:

Appellant: Mr. Alfred Alcide

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

Issue:

Unlawful carnal knowledge

Result:

The matter is stood down.

Reason:

To permit Counsel to read the Respondent's Skeleton Arguments.

**MAGISTERIAL CRIMINAL APPEALS
AGAINST CONVICTION**

Case Name

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

Appearances:

Appellant: Mr. Nicholas Jn. Baptiste

Respondent: Mrs. Janine Samuel-Kisner with Mr. Seryozha Cenac

Issue:

Use of insulting words – whether Magistrate erred in exercise of her discretion

Result:

- 1. The appeal is allowed.**
- 2. The conviction and sentence are quashed.**

3. The case is remitted to the Magistrates' Court for retrial observing the proper procedure.

Reason: There was no proper proof of service of summons on the accused (by oath in accordance with article 690 of the 2004 Criminal Code of St. Lucia).

Case Name Eardan George v Neil Stanislas PC 100
[Magisterial Criminal Appeal No. 3 of 2007]

Appearances:
Appellant: No appearance
Respondent: Mr. Seryozha Cenac with Mrs. Janine Kisner

Issue: Unlawful assault

Result: The matter is traversed to the next sitting of the Court of Appeal in St. Lucia.

Reason: In order that the Appellant may be notified.

HIGH COURT CRIMINAL APPEAL AGAINST CONVICTION

Case Name Kyon Frederick v The Queen
[Criminal Appeal No. 8 of 2006]

Appearances:
Appellant: Mr. Alfred Alcide
Respondent: Mrs. Victoria Charles-Clarke with Mrs. Janine Samuel-Kisner

Issue: Appeal against conviction for unlawful carnal knowledge – whether the judge erred in directing the jury on the Standard and Burden of Proof – whether the judge erred in directing the jury on corroboration – whether the judge erred in directing the jury on credibility/truthfulness of witnesses – whether the judge failed properly to refer the law to the facts

Result: The decision is reserved.