

**Court of Appeal Sitting**

**Territory of the Virgin Islands**

**12<sup>th</sup> – 15<sup>th</sup> January 2009**

**12<sup>th</sup> January 2009**

**Coram:**

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

**HIGH COURT CRIMINAL APPEAL AGAINST  
CONVICTION**

**JERRY MARTIN v THE QUEEN  
[Criminal Appeal No. 3 of 2007]**

**Appearances:**

**Appellant: Mr. Thomas Theobalds**

**Respondent: Mr. Terrence Williams, Director of Public Prosecutions**

**Issues:**

**Murder – Appeal against conviction**

**Result:**

- 1. The hearing of this appeal is adjourned to the next sitting of the Court in this Territory in May 2009.**
- 2. Solicitors for the Appellant shall file and serve skeleton arguments on or before April 1, 2009.**
- 3. Solicitors for the Respondent shall file and serve reply on or before 14 April 2009.**

**Reason:**

## **MAGISTERIAL CIVIL APPEAL**

### **SATYAPRAKASH RAJMUNGAL v BRIAN PENN [Magisterial Civil Appeal No. 1 of 2008]**

**Appearances:**  
**Appellant:** Mr. Terrance Neale  
**Respondent:** Unrepresented

**Issue:** Application for withdrawal of appeal

**Result:** The Appellant was directed to file a Notice of Discontinuance.

## **HIGH COURT CIVIL APPEAL**

### **Thomas Townsend et al v Persistence Holdings Limited [Civil Appeal No. 8 of 2004]**

**Appearances:**  
**Appellants:** Mr. Sydney Bennett, QC with him Mr. Thomas Theobalds  
**Respondent:** Mr. Gerard Farara, QC with him Mrs. Tana'ania Small-Davis

**Issues:** Agreement for Sale - whether the Appellant/Claimants were estopped by Convention from enforcing their legal right to rescind the Agreement for Sale.

**Result:** The hearing of this appeal is adjourned to the next sitting of the Court in this Territory in May 2009.

**Reason:** To have Record and Skeleton available.

## JUDGMENTS

### **BYRON SMITH v BRITISH VIRGIN ISLANDS ELECTRICITY CORPORATION [Civil Appeal No. 10 of 2008]**

**Appearances:**

**Appellant:** Mr. Richard Arthur holding papers for Sir Richard Cheltenham, QC

**Respondent:** Ms. Willia Tavernier

**Issues:**

Civil Appeal – employment Law – remedy – unfair dismissal – right of access to the court – whether an employee can initiate an unfair dismissal claim for damages or compensation in the High Court – British Virgin Islands Labour Code Ordinance

**Result:**

The appeal was dismissed and costs awarded to the Respondent.

**Reason:**

It was held that:

(1) Unfair dismissal does not exist as a concept at common law but was created and introduced into the field of employment law by statute. Under the Labour Code, the only “remedy” available to an employee who has been unfairly dismissed is conciliation.

Ray George v British Virgin Islands Ports Authority British Virgin Islands Civil Appeal No. 28 of 2006, which considered and applied Burrill & Another v Schrader and Another (1995) 50 WIR 193, followed.

(2) The court cannot disregard the legislative intention to restrict a subject’s right of access to the court whether or not the new statutory procedures appear to be inadequate or unsatisfactory.

Kenneth Suratt v Attorney General of Trinidad & Tobago [2008] 1 AC 655 and Banks v Executive Airlines (1999) 60 WIR 227 followed.

### **ATTORNEY GENERAL and COMMISSIONER OF POLICE v GERALDINE CABEY [Civil Appeal No. 8 of 2008] - Montserrat**

**Appearances:**

**Applicant:** Mrs. Joanna Williams-Roberts holding papers for the Attorney

**General - Montserrat**

**Respondent:** Ms. Tamara Cameron holding papers for Kelsick and Kelsick

**Issues:** Civil Appeal – Claim of malicious prosecution – elements to satisfy such a claim – reasonable and probable cause - Part 26.3 (1) (b), (c) Civil Procedure Rules 2000 (CPR) – non disclosure of cause of action - abuse of process of the court – Failure to satisfy the requirements of Part 8.7 (1) CPR

**Result:** The appeal was dismissed and costs awarded to the Respondent.

**Reason:** It was held that:

1. That if the claimant was able to prove her allegations, there would be material for a court to determine whether malice existed on the part of the appellants and, if so, whether the threshold of reasonable and probable cause had been met..
2. That the learned master’s exercise of her discretion on the adequacy of the pleadings was in conformity with the decision of this court in East Caribbean Flour Mills Limited v Ormiston Ken Boyea and did not exceed the generous ambit within which reasonable disagreement is possible and therefore can not be said to be clearly or blatantly wrong.

Michael Dufour et al v Helen Air Corporation Ltd et al SLU Civil Appeal No. 4 of 1995 delivered Feb. 12, 1996 followed.

**ASOT MICHAEL v ATTORNEY GENERAL, DIRECTOR OF ONDCP  
THE COMMISSIONER OF POLICE  
[Civil Appeal No. 19 of 2008] - Antigua**

**Appearances:**

**Appellant** Mr. Paul Webster, QC holding papers for Mr. Anthony Astaphan, SC

**Respondent** Mrs. Joann Williams-Roberts holding papers for the Attorney General of Antigua and Barbuda

**Issue:** Civil Appeal – Judicial Review – disclosure of financial information - interim relief – injunctions – stay of proceedings

**Result:** (a) The appeal was allowed with costs both in the Court of Appeal and the High Court to the Appellant (b) The injunctions are granted in favour of the Appellant but not Bellwood Services S.A. (c) The Order of Thomas J dated 2<sup>nd</sup> December 2004 granting the

**Appellant leave for Judicial Review in this action shall operate as a stay of proceedings pending the determination of the appeal.**

**Reason:**

**It was held that:**

- 1. Once there is disclosure of the information sought, that information would be broadcast to an audience wider than that presently having access to it. Therefore the appeal is allowed to maintain the status quo.**
- 2. Bellwood Services S.A. is not a party to these proceedings, nor is there any evidence of who or what Bellwood is, nor of its relationship to the parties or issues in this action. In light of this, this court is not clothed with any jurisdiction in respect of making orders that affect Bellwood.  
American Cyanamid Co v Ethicon Ltd [1975] AC 396 followed.**

**OCEAN CONVERSION LIMITED v ATTORNEY GENERAL  
of VIRGIN ISLANDS  
[Civil Appeal No. 30 of 2007]**

**Appearances:**

**Appellant: Ms. Anthea Smith**

**Respondent: Ms. Vareen Vanterpool**

**Issues:**

**Arbitration agreement – application to stay proceedings pending arbitration – whether the judge erred in finding that one issue in the claim is properly within the scope of the agreement while the other is not – whether in any event the judge erred in refusing to stay the proceedings – s. 6(1) of the Arbitration Act Cap. 6 of the 1990 Revised Laws of the Virgin Islands**

**Result:**

**The appeal was dismissed with costs to be paid to the Government by Ocean Conversion.**

**Reason:**

**It was held that:**

- 1. The judge properly exercised her discretion when she found that the issues, which relate to Ocean Conversion's entitlement to an equitable or restitutionary right and compensation were not properly within the scope of arbitration under the agreement.  
Government of Gibraltar v Kenney [1956] 2 QB 410 distinguished.**
- 2. The judge properly exercised her discretion when she refused to grant the stay on the ground that it would be more**

convenient, just and economical for the dispute to be determined by the court.

Statement by Pearson LJ in *Taunton-Collins v Cromie and Another*, [1964] 2 All ER 332, at page 334J-335A adopted.

**HAMILTON RICHARDS v COMMISSIONER OF POLICE  
[Magisterial Criminal Appeal No. 24 of 2008] – St. Vincent**

**Appearances:**

Appellant - Mr. Paul Webster QC holding for Mr. Stephen Williams

Respondent - Ms. Vareen Vanterpool holding for Mr. Colin Williams, Director of Public Prosecutions, St. Vincent and the Grenadines

**Issues:**

Magisterial Criminal Appeal - damage to property - appeal against compensation award - appeal against sentence - ownership of property - delivering up possession of property - failure to vacate premises - unlawful occupation of property - compensation award where property not owned by virtual complainant.

**Result:**

1. The Appellant was ordered to pay to the virtual complainant compensation in the reduced sum of \$1,800 representing the value of the property, such sum to be paid within three months of today's date in default of which he shall serve one month in prison.
2. The appeal against excessiveness of sentence was dismissed as the sentence imposed was within the magistrate's discretion and learned counsel for the Appellant had not advanced any reason to show why this court should interfere with the exercise of that judicial discretion. The order of the learned magistrate that the appellant be fined \$1,000 to be paid within one month in default of which he shall serve three months in prison was confirmed.

**APPLICATIONS**

**TORTOLA YACHT SERVICES LIMITED v DENROY  
BAPTISTE**

**[Civil Appeal No. 16 of 2008]**

**Appearances:**  
Appellant **Mrs. Tana'ania Small-Davis**  
Respondent: **Mr. John Carrington**

**Issues:** **Application by Appellants for execution of the Judgment dated 25/5/08 to be stayed pending the hearing of the appeal.**

**Result:**  
**1. By consent, execution of the judgment in BVIHCV 2006/130 made on 28<sup>th</sup> May 2008 is stayed pending determination of the appeal herein.**  
**2. No order as to costs.**

**Reason:** **Draft consent order approved.**

**PACIFIC ELECTRIC WIRE AND CABLE COMPANY  
LIMITED v TEXAN MANAGEMENT LIMITED  
[Civil Appeal No. 19 of 2006]**

**Appearances:**  
Appellant: **Mrs. Tana'ania Small-Davis**  
Respondent: **Mr. Paul Webster, QC for 3<sup>rd</sup> & 4<sup>th</sup> Respondents**  
**Mr. Jack Husbands of 1<sup>st</sup> & 2<sup>nd</sup> Respondents**

**Issues:** **Application for final leave to Appeal to Her Majesty in Council**

**Result:** **The Court hereby deems valid the provision of the full security by the 1<sup>st</sup> and 2<sup>nd</sup> Applicants on 10<sup>th</sup> December 2008 for prosecuting this appeal to Her Majesty in Council.**  
**Costs of this application be costs on the appeal to Her Majesty in Council. Certificate of Registrar to be filed.**

**Reasons:** **Draft order approved as amended.**

**Coram:** **Hon. Chief Justice Mr. Hugh A. Rawlins**  
**Hon. Justice of Appeal Ms. Ola Mae Edwards**  
**Hon. Justice of Appeal (Ag.) Mr. Michael Gordon, QC**

**THE ATTORNEY GENERAL OF THE VIRGIN ISLANDS v  
DAPHNE ALVES  
[CIVIL APPEAL No. 20 of 2008]**

**Appearances:**

**Appellant: Ms. Kaidia Edwards holding papers for Mr. Baba Aziz**

**Respondent: Mr. John Carrington**

**Issue: Application for leave to appeal**

**Result:**

- 1. The hearing of this application for leave to appeal is traversed to the next sitting of the Court in this Territory in May 2009.**
- 2. By Consent, the Applicant shall pay \$1500.00 to the Respondent, such costs to be paid within 21 days.**

**Reason: Counsel for the Appellant is out of the jurisdiction.**

**MAGISTERIAL CRIMINAL APPEAL AGAINST  
CONVICTION**

**CALVERT WELCOME v THE QUEEN  
[Magisterial Criminal Appeal No. 4 of 2007]**

**Appearances:**

**Appellant: Mr. Herbert McKenzie**

**Respondent: Ms. Tiffany Scatliffe**

**Issues: Appeal against conviction and sentence - summary charges in Magistrates' Court on Driving Motor Vehicle without Driver's Licence - Assaulting a police officer - reckless and negligent act**

**Result:**

- 1. Conviction and sentence confirmed on charge of Driving Motor Vehicle without driver's licence.**
- 2. On charge of reckless and negligent acts, the conviction, and accordingly the fine and sentence, are quashed.**
- 3. Conviction confirmed on charge of assaulting police officer – sentence of 4 months imprisonment substituted for 6 months**

**Reasons: 1. There was an offence committed and since no objection was**

- taken at the trial, appeal would not be allowed on that ground.
2. Reckless and negligent acts and assaulting police officer are alternative counts.
  3. Magistrate exceeded her jurisdiction in respect of sentence.

13<sup>th</sup> January 2009

**Coram:** Hon. Chief Justice Mr. Hugh A. Rawlins  
Hon. Justice of Appeal (Ag.) Mrs. Rita Joseph-Olivetti  
Hon. Justice of Appeal (Ag.) Mr. Michael Gordon, QC

### **HIGH COURT CIVIL APPEAL**

**AMAZING GLOBAL TECHNOLOGIES v PRUDENTIAL  
TRUSTEE COMPANY LIMITED  
[Civil Appeal No. 8 of 2008] – St. Kitts**

**Appearances:**  
**Applicant:** Mr. Keithley Lake with Ms. Jean Dyer and Ms. Michelle Smith  
**Respondent:** Mr. Gerhard Wallbank with him Ms. Camille Cato

**Issues:** Appeal against order appointing receivers and freezing order - whether the Court had jurisdiction and was the proper forum for hearing the Respondent's ex parte application - whether the trial judge exercised her discretion properly in granting leave to serve out of the jurisdiction - whether the learned judge misunderstood the legal authorities and accordingly erred in her determination that the issue of jurisdiction could not be considered at the inter partes hearing - whether there was failure in the Application for leave to provide material disclosure.

**Result:**  
1. The decision is reserved.  
2. Solicitors for the parties shall file and serve Skeleton Arguments on costs within 14 days of today's date.

14<sup>th</sup> January 2009

**Coram:** Hon. Justice of Appeal Ola Mae Edwards (President)  
Hon. Justice of Appeal Ms. Janice George-Creque  
Hon. Justice of Appeal (Ag) Mr. Michael Gordon, QC

## **HIGH COURT CIVIL APPEAL**

**ALFA TELECOM TURKEY LIMITED v TELIASONERA  
FINLAND OYJ  
[Civil Appeal No. 12 of 2008]**

**Appearances:**

**Applicant:** Mr. Steven Smith, QC with him Mr. Robert Levy and Mr. Oliver Clifton

**Respondent:** Mr. Bankim Thanki, QC with him Mr. Ben Valentin

**Issues:** Appeal against award of an interlocutory injunction – whether Respondents have proprietary interest in the shares - whether there was an imminent risk of harm.

**Result:** Decision reserved.

**Coram:** The Hon. Chief Justice, Mr. Hugh A Rawlins

## **APPLICATION**

**EMPLOYERS INTERNATIONAL AND OTHERS v BOSTON  
LIFE AND ANNUITY COMPANY LTD. (IN LIQUIDATION)  
[CIVIL APPEAL NO. 5 OF 2007]**

**Appearances:**

**Appellant:** Mr. Martin Kennedy with Mr. Andrew Blackburn for the 47 JSA Appellants

**Respondent:** Mr. Andrew Williams for Boston Life and Annuity Company in Liquidation

**Issue:** Amendment of order under rule 42.10 of CPR 2000

**Result:**

1. The order that was made in the judgment which was issued by this Court in this matter on 21<sup>st</sup> October, 2008 and re-issued on the 6<sup>th</sup> day of November, 2008 is hereby amended under rule 42.10 of CPR 2000 by adding as paragraphs 6 and 7 the following:  
“6. The order made by the Hon. Justice Hariprashad-Charles on 14<sup>th</sup> May, 2007 granting summary judgment to the Respondent, Boston Life and Annuity Company Limited, is hereby set aside against the 54 JSA defendants, except the costs order that the judge made.  
“7. The costs in the summary judgment order of 14<sup>th</sup> May, 2007 is to be assessed under rule 65.12 of CPR 2000.”
2. There is no order as to costs today,

15<sup>th</sup> January 2009

**Coram:**

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

**HIGH COURT CIVIL APPEAL**

**TORTOLA YACHT SERVICES LIMITED v DENROY  
BAPTISTE  
[Civil Appeal No. 16 of 2008]**

**Appearances:**

**Appellant:** Ms. Tana’ania Small-Davis

**Respondent:** Mr. John Carrington

**Issues:** Personal Injuries - application to strike out counter-notice of appeal - appeal against order for damage and costs for personal injuries - whether the learned judge erred in assessing the extent and severity of Claimant's injuries

**Result:** Decision reserved.

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

## **MAGISTERIAL CIVIL APPEAL**

**SHARADA SHAW & MATTHEW OWENS v DAVID PENN & MYRLA-MAY PENN**  
**[Magisterial Civil Appeal No. 2 of 2008]**

**Appearances:**

**Appellants:** Mr. Ian Mann

**Respondents:** Mr. Patrick Thompson

**Issue:** Landlord and tenant – lease – breach – whether magistrate has exceeded jurisdiction as to costs.

**Result:**

1. The hearing of this appeal is adjourned to the next sitting of this court in the Territory in May 2009.
2. Counsel for the Appellants is given leave to amend the Notice of Appeal in accordance with section 158 of the Magistrates Code of Procedure Act Cap. 44 and Rule 62.4 of the CPR 2000 within 1 month of today's date.
3. Counsel for the Appellants shall file and serve Skeleton Arguments within 1 month of service of Amended Notice of Appeal.
4. Counsel for the Respondents shall file and serve Skeleton Arguments within 21 days of service of Skeleton Arguments by the Appellants.

**5. The Appellants shall pay costs for today to the Respondents in the sum of \$200.00.**

**HIGH COURT CIVIL APPEAL**

**CITCO GLOBAL CUSTODY NV v Y2K FINANCE  
[Civil Appeal No. 22 of 2008]**

**Appearances:**

**Appellant: Mr. Simon Brown Wilkinson, QC with him Mr. Jeffrey Chapman**

**Respondent: Ms. Barbara Dowman, QC with Mr. Robert Weekes**

**Issues:**

**Commercial Law – appeal against decision striking out the entirety of the Appellant’s claim against the Respondent for unfair prejudice – whether or not the Appellant was a nominee shareholder**

**Result:**

**Decision reserved.**