

**IN THE COURT OF APPEAL OF THE
EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES
APPEAL RESULTS
[26TH TO 30TH JANUARY, 2009]**

Date: 26th January 2009

Before: **The Honourable Justice of Appeal Michael Gordon (Ag.)**

**APPLICATIONS
IN CHAMBERS**

Case Name: Cedric Samuel aka Cedric Johnson v Alma Johnson and La Fleur Johnson
Civil Appeal No. 21 of 2008

Appearances:

Appellant:- Mr. Sylvester Raymond-Cadette for the Appellant
Respondent:- Ms. Nicole Sylvester and Ms. Patina Knights for the Respondent

Issue: Application for extension of time to lodge appeal.

Result: Matter to be dealt with on paper by a single Judge. Argument on behalf of Applicant should be filed. Argument to be filed on or before 11-02-2009. Affidavit in response to the affidavit filed on behalf of the Appellant be filed on or before 17-02-2009; if they choose, skeleton arguments on behalf of the Respondent to be filed and served on or before 24-02-2009. Skeleton in reply if deemed necessary be filed and served on or before 07-03-2009.

Corniel Hendrickson Gerrick v Rock Alexander Punnett
Civil Appeal No. 22 of 2008

Appearances:

Appellant:- Mr. Richard Williams for the Appellant
Respondent:- Mr. Carlyle Dougan Q.C. for the Respondent

Issue: Application to strike out appeal.

Result: Application to strike out appeal not granted. Application for extension of time to file Notice of Appeal granted, Notice of Appeal filed on 3rd September 2008 to be deemed duly filed.
No order as to costs.

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

HIGH COURT CRIMINAL APPEALS AGAINST SENTENCE

Case Name: Kentish Campbell v The Queen
Criminal Appeal No. 14 of 2008

Appearances:

Appellant:- Miss Nicole Sylvester holding for Mr. Ronald Marks for the Appellant.
Respondent:- Mr. Colin Williams D.P.P. and Mr. Carl Williams Crown Counsel for the Respondent.

Issue: Robbery, rape, grievous bodily harm – Appeal against sentence of 5 years, 15 years and 12 years imprisonment to run concurrently.

Result: Traversed to the next sitting of the Court of Appeal in June 2009.
Reason: Counsel Mr Marks absent owing to the death of a family member.

HIGH COURT CIVIL APPEALS

Case Name: Earle Wilson v Stephanie Wilson
Civil Appeal No. 8 of 2008

Appearances:

Appellant:- Mr. S. Commissiong and Ms. S. Commissiong for the Appellant.
Respondent:- Ms. Nicole Sylvester and Ms. Patina Knights for the Respondent.

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

Result: By consent, the matter is traversed to the next sitting of the Court of Appeal in June 2009.
Reason: Counsel for the parties requested the adjournment to facilitate further discussions with a view to settlement.

Case Name: Julia L. Stowe v Berthia M. Stowe
Civil Appeal No. 19 of 2007

Appearances:

Appellant:- Mr. S. Commissiong holding for Mr. Perry Joseph for the Appellant.
Respondent:- Mr. Olin Dennie for the Respondent.

Issue: The Learned Trial Judge erred in law in his application of the principle adumbrated in **Stonich v Stonich and Green v Green**.

Result: Matter traversed to the next sitting of the Court of Appeal in June 2009.
Reason: Counsel Mr Perry Joseph unavoidably absent from the island and requested the adjournment.

Case Name: Ulric White v Agnes White nee St. Hillaire
Civil Appeal No. 25 of 2007

Appearances:

Appellant:- Mr. Olin Dennie for the Appellant.
Respondent:- Ms. Nicole Sylvester holding for Mr. Ronald Marks for the Respondent.

Issue: The Learned Master erred in his application of Section 34 of the Matrimonial Causes Act.

Result: The matter is traversed to the next sitting of the Court of Appeal in June 2009.

Reason: Counsel Mr Marks absent owing to death of family member.

HIGH COURT CRIMINAL APPEAL AGAINST SENTENCE

Case Name: David Roberts v The Queen
Criminal Appeal No. 8 of 2008

Appearances:

Appellant:- Appellant In Person.
Respondent:- Mr. Colin Williams D.P.P. and Mr. Carl Williams Crown Counsel for the Respondent.

Issue: Murder – Appeal against sentence of life imprisonment.

Result: The hearing of this appeal is traversed to the next sitting of the Court of Appeal in June 2009. The Registrar to provide legal representation for this appellant to prosecute the appeal at the next sitting.

Reason: The unrepresented appellant requested legal aid and the matter was traversed in order to facilitate the appointment of counsel in accordance with the Court of Appeal Rules 1968.

Case Name: Myron Brazel v The Queen
Criminal Appeal No. 16 of 2008

Appearances:

Appellant:- Appellant In Person.
Respondent:- Mr. Colin Williams D.P.P. and Mr. Carl Williams Crown Counsel for the Respondent.

Issue: Abduction – Appeal against sentence of 4 years 9 months imprisonment.

Result: The appeal against sentence is allowed but only to the extent that it is reduced from 4 years 9 months to 4 years imprisonment sentence to commence from the date of first incarceration.

Reason: Appellant pleaded guilty at first opportunity and no discount for guilty plea appears to have been given by the learned magistrate

Case Name: Julius John v The Queen
Criminal Appeal No. 2 of 2007

Appearances:

Appellant:- Miss Nicole Sylvester and Ms. Patina Knights for the Appellant.
Respondent:- Mr. Colin Williams D.P.P. and Mr. Carl Williams Crown Counsel for the Respondent.

Issue:

Murder – By amended Notice of Appeal the appellant appealed against conviction and sentence of life imprisonment.

The issue was whether the learned trial judge had erred in law by failing to give a proper direction on lies and or false alibi.

Result:

Appeal against sentence withdrawn and dismissed. Appeal against conviction is dismissed and the sentence of life imprisonment is affirmed.

Reason:

.There were clear directions on alibi, and although the summation did not deal with how to treat lies in terms of R v Lesley [1996] 1 Cr.App.R. 39, CA, the evidence that was before the jury was overwhelming and the misdirection was not such as to affect the verdict and the proviso would be applied

HIGH COURT CIVIL APPEALS

Case Name:

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

Appearances:

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

Issue:

The trial judge erred in law when he decided who was in actual possession of the land.

Result:

- (1) The Registrar shall forthwith take the necessary to have the Notes of Evidence for the trial of this case reproduced from the Judge's notebook.
- (2) The hearing of this appeal shall be adjourned to the next sitting of the Court of Appeal in June 2009.
- (3) Solicitors for the parties shall file the evidence that is reproduced from the Judge's notebook in a supplementary record on or before the 31st day of March 2009.

Reason:

The notes of evidence for the trial proceedings have not been available to date due to staff shortage.

Case Name:

Rosalind Williams v Lennox Creese
Civil Appeal No. 1 of 2007

Appearances:

Appellant:- Mr. Emery Robertson Snr. for the Appellant.
Respondent:- Dr. Linton Lewis for the Respondent.

Issue:

The Learned Master erred in law when (1) he struck out Suit 162 of 2006 and (2) held that the issues raised in Suit 415 of 2006 was res judicata.

Result: (1) Leave is hereby granted to the Respondent to file skeleton arguments later today; and
(2) The hearing of the appeal is adjourned to Tuesday 27th day of January 2009

Case Name: The Attorney General of Saint Vincent & the Grenadines v Claude Leach
Civil Appeal No. 7 of 2007

Appearances:
Appellant:- Mr. Joseph Delves holding for Mr. Grahame Bollers for the Appellant.
Respondent:- Mr. Samuel Commissiong and Ms. Suzanne Commissiong for the Respondent.

Issue: The Learned Trial Judge erred in holding that in the absence of an expressed contractual provision the Claimant was owed money for vacation upon the termination of his employment.

Result: Appeal withdrawn and dismissed. No order as to costs.

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

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

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

Result: **The following Order was made : The hearing is adjourned to 27th January 2009 for cogent skeleton arguments to be filed and served by 10:00 am on the 27th January, 2009.**

: **MAGISTERIAL CRIMINAL APPEAL AGAINST SENTENCE**

Case Name: Patrick Nero v The Commissioner of Police
Magisterial Criminal Appeal No. 33 of 2008

Appearances:
Appellant:- Appellant In Person.
Respondent:- Mr. Colin Williams D.P.P. and Mr. Carl Williams Crown Counsel for the Respondent.

Issue: Possession of Controlled Drug – Appeal against sentence of 6 months imprisonment.

Result: The appeal is withdrawn and accordingly dismissed. The conviction and sentence is affirmed.

Date: 27th January 2009

Coram: **Honourable President Ola Mae Edwards**
Honourable Justice of Appeal Rita Joseph-Olivetti (Ag.)
Honourable Justice of Appeal Michael Gordon (Ag.)

HIGH COURT CIVIL APPEAL

Case Name: Rosalind Williams v Lennox Creese
Civil Appeal No. 1 of 2007

Appearances:

Appellant:- No appearance of Mr. Emery Robertson Snr. for the Appellant.

Respondent:- Dr. Linton Lewis for the Respondent.

Issue: The Learned Master erred in law when (1)he struck out Suit 162 of 2006 and (2)held that the issues raised in Suit 415 of 2006 was res judicata.

Result: Matter stood down until later in the day.

MAGISTERIAL CRIMINAL APPEALS AGAINST SENTENCE

Case Name: Arron Rose v Commissioner of Police
Magisterial Criminal Appeal No. 12 of 2008

Appearances:

Appellant:- Appellant In Person.

Respondent:- Mr. Colin Williams D.P.P. and Mr. Carl Williams Crown Counsel for the Respondent.

Issue: **Appeal against sentences for 2 counts of Possession of Firearms and 2 counts of possession of Ammunition without licence with sentences on counts 1 and 2 – 1 year imprisonment and 1 ½ years imprisonment, both sentences to run concurrently. On counts 3 and 4 – 3 years imprisonment each, both sentences to run concurrently but consecutively after expiration of sentences on counts 1 and 2.**

Result: Matter stood down until later in the day.

Case Name: Wendell O'neil v The Commissioner of Police
Magisterial Criminal Appeal No. 32 of 2008

Appearances:

Appellant:- Appellant In Person.

Respondent:- Mr. Colin Williams D.P.P. and Mr. Carl Williams Crown Counsel for the Respondent.

Issue: Possession of a firearm without Licence – Appeal against sentence of 28 months imprisonment.

Result: Appeal withdrawn and is dismissed. Conviction and sentence affirmed.

MAGISTERIAL CRIMINAL APPEALS AGAINST CONVICTION

Case Name: Josiah Williams v The Commissioner of Police
Magisterial Criminal Appeal No. 26 of 2008

Appearances:

Appellant:- Appellant In Person.
Respondent:- Mr. Colin Williams D.P.P. and Mr. Carl Williams Crown Counsel for the Respondent.

Issue: Unlawful and Malicious Wounding – Appeal against conviction and sentence of 2 years imprisonment - whether the identification evidence was sufficient to ground conviction and whether sentence was excessive.

Result: The appeal against conviction and sentence is dismissed and the sentence of two (2) years imprisonment is varied by increasing it to three (3) years imprisonment.

Reason: The Court was of the view that having regard to the number of gunshot wounds and the seriousness of the injuries those aggravating factors were not sufficiently taken into account by the learned Magistrate in all the circumstances and should serve to increase the sentence.

APPLICATIONS

Case Name: Kerry Charles v The Commissioner of Police
Magisterial Criminal Appeal No. 1 of 2009

Appearances:

Appellant:- Appellant In Person.
Respondent:- Mr. Colin Williams D.P.P. and Mr. Carl Williams Crown Counsel for the Respondent.

Issue: Application for extension of time to appeal.

Results: The application and notice of appeal is withdrawn and so dismissed.

Reason: Appeal is withdrawn.

Case Name: Cleroy Pinder v The Commissioner of Police
Magisterial Criminal Appeal No. 2 of 2009

Appearances:

Appellant:- Appellant In Person.
Respondent:- Mr. Colin Williams D.P.P. and Mr. Carl Williams Crown Counsel for the Respondent.

Issue: Application for extension of time to appeal.

Result: Application granted. Matter adjourned to the next sitting of the Court of Appeal in June 2009 for the record of the proceedings in the Magistrate’s Court and the reasons for decision to be filed

Case Name: Bernard Prescott v The Commissioner of Police

Magisterial Criminal Appeal No. 3 of 2009

Appearances:

Appellant:- Appellant In Person.
Respondent:- Mr. Colin Williams D.P.P. and Mr. Carl Williams Crown Counsel for the Respondent.

Issue: Application for extension of time to appeal.

Result: Application granted. Matter adjourned to the next sitting of the Court of Appeal in June 2009 for the record of the proceedings in the Magistrate's Court and the reasons for decision to be filed

MAGISTERIAL CRIMINAL APPEAL AGAINST SENTENCE

Case Name: Arron Rose v Commissioner of Police
Magisterial Criminal Appeal No. 12 of 2008

Appearances:

Appellant:- Appellant In Person.
Respondent:- Mr. Colin Williams D.P.P. and Mr. Carl Williams Crown Counsel for the Respondent.

Issue: **Appeal against sentences for 2 counts of Possession of Firearm and 2 counts of possession of Ammunition without licence with sentences on counts 1 and 2 – 1 year imprisonment and 1 ½ years imprisonment, both sentences to run concurrently. On counts 3 and 4 – 3 years imprisonment each, both sentences to run concurrently but consecutively after expiration of sentences on counts 1 and 2.**

Result: Appeal against sentence allowed to the extent that the sentence is varied to 1 ½ years each on counts 3 and 4 to run consecutively. The sentences on counts 1 and 2 are affirmed and the sentences on counts 3 and 4 are to run concurrently with the sentence on counts 1 and 2 thus resulting in a total sentence of 3 years instead of 4 ½ years.

Reason: The Court was of the view that this was a case where a single incident gave rise to more than one charge and in the circumstances the total sentence of imprisonment that was imposed was excessive and should be reduced.

HIGH COURT CIVIL APPEAL

Case Name: Rosalind Williams v Lennox Creese
Civil Appeal No. 1 of 2007

Appearances:

Appellant:- Mr. Emery Robertson Snr. for the Appellant.
Respondent:- Dr. Linton Lewis for the Respondent.

Issue: The Learned Master erred in law when he(1) struck out Suit 162 of 2006 and(2)held that the issues raised in Suit 415 of 2006 was res judicata.

Result: Upon Counsel Mr Robertson Snr. giving an undertaking to get the appellant to cease construction on the premises in question the following Order is made:

- (1) The hearing of this appeal is adjourned to the next sitting of the Court of Appeal in June 2009.
- (2) Unless the Appellant files her skeleton arguments by the 30th April 2009 this appeal stands dismissed with costs to be assessed.
- (3) The undertaking of counsel for the Appellant to cease construction on the premises in question is to be filed and served by counsel by 6th February 2009.
- (4) Costs for today of \$750.00 to be paid by the Appellant to the Respondent.

Reason: Counsel Mr Robertson Snr requests adjournment owing to health concerns and no submissions have been filed by the appellant.

MAGISTERIAL CIVIL APPEAL

Case Name: Sterling Butcher v Rudolph Foye
Magisterial Civil Appeal No. 3 of 2008

Appearances:

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| Appellant:- | Appellant in Person. |
| Respondent:- | Respondent in Person. |

Issue: Quantum of Damages.

Result: Appeal allowed to the extent that Appellant is ordered to pay \$300.00 today to the Respondent and thereafter \$950.00 per month, the final payment in July 2009 in satisfaction of the debt of \$6,062.00, inclusive of costs.

Reason: The court must take into account the means of the debtor when ordering compensation.

27th JANUARY, 2009

Corum: Hon. Chief Justice Mr. Hugh Rawlins
Hon. Justice of Appeal Ola Mae Edwards
Hon. Justice of Appeal Rita Joseph-Olivetti (Ag.)

HIGH COURT CIVIL APPEAL

Case Name: Lloyd Samuel v Beatrix Gumbs
Civil Appeal No. 7 of 2008

Appearances:

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

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

Result: Appeal allowed. Matter remitted to the High Court for retrial. However, prior to the trial there must be a survey done by a licensed surveyor to determine whether and to what extent the land contained in Deed No. 2031 of 2001 is a part of the land contained in Deed No. 983 of 1990 with each party standing $\frac{1}{2}$ of the surveyor's costs. . Each party to bear his/her own costs in the court below and in this court.

Reason: The Court had concerns about the counterclaim and how it was disposed of by the learned trial judge as the judge made no decision on it. Also the Court felt that there was no clear declaration. Further, the Court was of the view that the exact boundaries of the disputed land must be established.