

# **COURT OF APPEAL SITTING**

**SAINT LUCIA**

**Monday 19<sup>th</sup> October, 2009**

**CORAM**

**Hon. Mde. Ola Mae Edwards, President of Appeal  
Hon. Mde. Janice George-Creque, Justice of Appeal  
Hon. Mr. Davidson Baptiste, Justice of Appeal (Ag.)**

## **JUDGMENTS**

**Case Name**

**Antigua Aggregates Limited v The Attorney General et al  
[HCVAP 2009/003] (Antigua and Barbuda)**

**Appearances:**

**Appellant: Mr. Thaddeus Antoine holding papers for Mr. Hugh C. Marshall Jr.**

**Respondents: Mrs. Georgis Taylor-Alexander, Solicitor General holding papers for The Attorney General of Antigua and Barbuda, the First Respondent  
Ms. Eugenia Dickson holding papers for Antigua Commercial Bank Limited, the Second Respondent**

**Issues:**

**Civil Appeal – Land Law – removal of restriction – whether application to be made to the Registrar of Lands or directly to the court – basis for removal of restriction - mandatory injunction – least risk of injustice Mortgage claim CPR Part 66 - claim for an account from chargee – whether mortgagee should be restrained from exercising power of sale – whether chargor should be permitted to sell charged property without chargee’s consent - whether there was a serious issue to be tried – adequacy of damages – balance of convenience – fetter of right of redemption – sections 67, 68 and 134 of the Registered Land Act Cap. 374 of the Revised Laws of Antigua and Barbuda (RLA)**

**Result:**

**The appeal was dismissed with costs to the Respondents.**

**Reason:**

**Delivered by George-Creque J.A.**  
**1. Section 134(1) of the RLA deals with the circumstances in which any person (other than the proprietor) interested in the land may apply to the Registrar for removal or variation of a restriction. Section 134(2) of the RLA however gives a free standing right to a registered proprietor to apply directly to the court for such removal or variation. The appellant, being the registered proprietor, was competent to invoke the court’s jurisdiction in**

seeking removal of the restriction. The trial judge accordingly erred in holding that the court lacked jurisdiction to entertain the application on the basis that the procedure laid down was for application to first be made to the Registrar of Lands.

2. No notice of the application was given to the Registrar of Lands as required by section 134(2) of the RLA. This lack of notice coupled with the fact that removal of the restriction was sought by way of interlocutory proceedings prevented a proper ventilation of the matter by way of a full trial on the merits. In essence, the appellant sought a final remedy by way of interlocutory proceedings which was wholly inappropriate. The learned judge accordingly properly refused the application.
3. Having regard to the purpose for which the restriction was placed on the Property, the three year delay before any step was taken by the appellant to remove the restriction and the reason now being advanced for its removal, the learned judge quite rightly determined that the least risk of injustice in the particular circumstances favoured the court declining to order the removal of the restriction. *Zockoll Group Ltd. v Mercury Communications Ltd. (No. 1)* [1998] FSR 354 applied.
4. Further, as the learned judge rightly found, it had not been shown that the restriction had been improperly placed or by inference, that there was a change of circumstances since the placement of the restriction. The fact that the appellant chose to enter into an agreement for sale of the Property some 3 years later, despite the restriction thereon and the bank charges, does not equate to a change of circumstances. *Christopher and DeCastro (Executor for O Flax) v The Registrar of Lands and The Attorney General BVIHCV 2002/0200* followed.
5. The fact that the appellant required an accounting from the Bank in terms of what was owed to the Bank did not give rise to an issue as to whether or not the Bank was entitled to exercise its power of sale. In essence, the appellant did not show how sale of the Property by the Bank in the exercise of its power of sale infringed any right of the appellant as chargor as it related to its entitlement to an accounting. The exercise of the power of sale does not hamper, diminish or infringe the appellant's right to an accounting from the Bank. The learned judge accordingly did not err in finding that there was no serious issue to be tried.
6. The learned judge did not err in holding that damages would be an adequate remedy or that the balance of convenience lay in favour of the Bank.
7. Having regard to the instruments of charge and sections 67(g) and 68 of the RLA, the learned judge correctly found that the appellant had no right to sell the Property and thereby fetter the chargee's (the Bank's) rights.

**Case Name**

**Citco Global Custody NV v Y2K Finance Inc.  
[HCVAP 20009/002] (Territory of the Virgin Islands)**

**Appearances:**

**Appellant:** Ms. Eugenia Dickson holding papers for Mr. Simon Browne-Wilkinson, QC

**Respondent:** Mr. David duBoulay holding papers for Ms. Barbara Dohmann, QC

**Issues:** Civil Appeal - whether judge applied correct principles for striking out amended statement of case under CPR26.3(1)(b) - assumption that facts stated in the pleadings are true - whether test for summary judgment under CPR 15.2 applicable - whether pleadings sufficiently disclosed that one of the claimants was beneficial owner of shares - whether judge erred in striking out the claimant who was beneficial owner of shares as having no locus standi to pursue a claim under section 1841 - whether pleadings disclose reasonable grounds for bringing unfair prejudice claim under section 1841 of the BVI Business Companies Act - whether the rule against reflective loss imposes a bar to the relief sought in paragraph 2 of the prayer - statutory interpretation of section 1841 - court's discretion to make different types of orders under section 1841 - whether judge erred in striking out paragraph 2 of the relief sought.

**Result:** The appeal was allowed, the counter-notice dismissed and the order of the learned judge made on 4<sup>th</sup> November, 2008, set aside. It was further ordered that the matter be remitted to the court below for case management and a trial date to be set; and that costs be awarded to the appellant in the court below to be agreed or otherwise assessed and costs in the appeal which is to be 2/3 of the costs below pursuant to CPR 65.13(b).

**Reason:** Delivered by Edwards J.A.

1. The application to strike out was obviously an application under CPR 26.3(1)(b) and the learned judge would be obliged to assume that the facts alleged in the amended statement of claim were true and she would not be entitled to make use of the powers contained in CPR 15.2 in the absence of any application for summary judgment before her. The summary judgment test - whether the claimants had any real prospect of succeeding on the claim was not an option in considering the respondent's application to strike out the amended statement of claim. *Morgan Crucible Co. plc v Hill Samuel & Co. Ltd* [1991] Ch 295; *Swain v Hillman and another* [2001] 1 All E.R. 91 followed.
2. That the judge erroneously concluded that the claimants had the burden to prove that the appellant was the nominee of Headstart, and she failed to apply the correct test and consider whether the relevant pleaded facts were primary facts or inferences. Paragraphs 2 and 13 of the amended statement of claim contain primary facts which should be taken at face value to be true for the purposes of the application and the judge erred in striking out Headstart as a claimant. *Diamantis Diamantides v JP Morgan Chase Bank* [2005] EWCA Civ. 1612 at paragraph 23 to 26 followed and distinguished.
3. An accurate summary of the case for the claimants as pleaded in paragraph 21 of the amended statement of claim is that by making certain redemptions in breach of its Memorandum and Articles of Association, Y2K's actions were unfairly prejudicial to the interests of the appellant, whose interests for these purposes include the interests of Headstart on whose behalf it holds the shares in Y2K; and had the judge applied the correct principles in considering the application, she should have concluded that the appellant and Headstart had pleaded reasonable grounds for bringing the claim. The learned judge therefore erred in striking out the claim brought by Headstart and Citco for the reasons that she gave.
4. Having regard to the law on reflective loss and the relief prescribed in

section 1841(2)(a) to (h) of the BVI Business Companies Act any decision of the court as to whether to grant relief under paragraph 2 of the prayer in the amended statement of claim depends on the view that a court will take of the appellant's case in light of the pleaded facts, the evidence and law; and the learned trial judge therefore acted prematurely and unreasonably in striking out paragraph 2 of the prayer. *Atlas Ltd & Others v Brightview & Others* [2004] BCC 542 at paras. 58 – 63 considered and followed.

## APPLICATIONS

**Case Name** Marius Wilson v Julienne James et al  
[Civil Appeal No. 6 of 2009]

**Appearances:**  
**Applicant:** Unrepresented  
**Respondents:** Ms. Diana Thomas holding papers for Mr. Hilford Deterville, QC

**Issue:** Application for Adjournment

**Result:** The hearing of the appeal was adjourned to the next sitting of the Court of Appeal in Saint Lucia in 2010.

  

**Case Name** Dorina Joseph et al v Nora St. Louis et al  
[Civil Appeal No. 25 of 2008]

**Appearances:**  
**Applicant:** Mr. Ermin Moise  
**Respondent:** Mrs. Petra Nelson

**Issue:** Application to withdraw application for leave to appeal to Her Majesty in Council

**Result:** Leave was hereby granted for the application for leave to appeal to the Privy Council to be withdrawn and accordingly it stands dismissed with no order as to costs.

**Case Name** St. Lucia Chamber of Commerce Industry and Agriculture v Vela Samuel  
[Civil Appeal No. 12 of 2008]

**Appearances:**  
**Appellant:** Mr. Mark Maragh  
**Respondent:** Mrs. Lydia Faisal

**Issue:** Application to set aside decision of a single judge on a procedural appeal – whether learned judge in the court below erred in refusing to set aside default judgment – whether correction to name of a party was an amendment in the statement of case – whether it was necessary to serve the statement of case once the correction or amendment was made

**Result:** The decision was reserved.

**Case Name** Jada Construction Caribbean Ltd. v The Landing Ltd.  
[Civil Appeal No. 11 of 2009]

**Appearances:**  
**Applicant/  
Appellant:** Mr. Peter Foster with Ms. Diana Thomas  
**Respondent:** Ms. Natalie Augustin with Ms. Vanessa William

**Issue:** Application to adduce fresh evidence

**Result:** The application was granted with costs in the appeal.

**Reason:** The Court was satisfied that the Ladd v Marshall principles had been met.

**Case Name** The Landing Limited v Jada Construction Caribbean Ltd.  
[Civil Appeal No. 29 of 2009]

**Appearances:**  
**Applicant:** Ms. Natalie Augustin with Ms. Vanessa William

**Respondent:** Mr. Peter Foster with Ms. Diana Thomas

**Issue:** Application for leave to file Notice of Appeal, Application for extension of time to file Notice of Appeal and relief from sanction

**Result:** The applications were dismissed with costs to the respondent to this application in the sum of \$4,000.00

**Reason:** The Court held that the applicant had not met the conditions under CPR 26.8. Having regard to the lateness of the application (one year) and the fact that adherence to the order was initially contemplated and a deliberate decision was taken not to appeal, the application must fail. *Dominica Agricultural and Industrial Development Bank v Mavis Williams Civil Appeal No. 20 of 2005* followed. The Court was further satisfied that there was no prejudice to the applicant and was of the view that any necessary "clarification" of the order should have been sought from the court below. The Court observed further that if subsequent orders were in contention, those orders, and not the 8<sup>th</sup> November order, should have been appealed.

**Case Name** The Landing Limited v Jada Construction Caribbean Ltd.  
[Civil Appeal No. 11 of 2009]

**Appearances:**

**Applicant:** Ms. Natalie Augustin with Ms. Vanessa William

**Respondent:** Mr. Peter Foster with Ms. Diana Thomas

**Issue:** Application to adduce fresh evidence

**Result:** The application was dismissed with costs to the respondent in the sum of \$1500.00.

**Reason:** The application was not supported by affidavit. The *Ladd v Marshall* principles were not satisfied.

**Case Name** Urban Dolor v The Board of Governors of the Sir Arthur Lewis Community College  
[Civil Appeal No. 30 of 2009]

**Appearances:**

**Applicant:** Mr. Horace Fraser

**Respondents:** Mrs. Petra Nelson

**Issue:** Application for leave to appeal refusal of leave for judicial review given on 10<sup>th</sup> August 2009 – whether there was unnecessary delay

**Result:** The decision was reserved.

**Tuesday 20<sup>th</sup> October, 2009**

**CORAM**

Hon. Mr. Hugh Rawlins, Chief Justice  
Hon. Mr. Michael Gordon, QC, Justice of Appeal (Ag.)  
Hon. Mr. Davidson Baptiste, Justice of Appeal (Ag.)

## **HIGH COURT CIVIL APPEALS**

**Case Name** Vernantius James v Ferguson John trading as Chambers of John & John (a Firm)  
[Civil Appeal No. 25 of 2007]

**Appearances:**

**Appellant:** In person

**Respondent:** In person

**Issue:** Whether there was a unilateral discontinuance of claim by legal practitioner – whether the learned judge erred in findings of fact

**Result:** The decision was reserved.

**Case Name** John Baptiste Mathurin et al v Rosemita Valon  
[Civil Appeal No. 47 of 2007]

**Appearances:**

**Appellant:** Mr. Horace Fraser  
**Respondent:** Mr. Wilkinson Larcher

**Issue:** Land Law – Land Registration Act – Civil Code – actual occupation – overriding interest – prescription – articles 1515 and 1560 of the Civil Code on notice for purpose of termination of lease or tenancy at sufferance

**Result:** The appeal was allowed and the judgment of the learned judge set aside with costs to the appellant in the court below in the sum of \$7000.00 and in this court at 2/3 of that amount.

**Reason:** The appellant has been in occupation of the land for over 30 years and no attempt has been made to dispossess her since the 1930s. There was no logical basis for the conclusion that the appellant was a tenant at sufferance as found by the learned judge.

**Case Name** Huggins Neal Nicholas v The Honourable Attorney General et al  
[Civil Appeal No. 18 of 2008]

**Appearances:**  
**Appellant:** Mr. Horace Fraser  
**Respondent:** Mrs. Brender Portland-Reynolds

**Issue:** Whether action was prescribed – whether the learned judge was wrong in concluding that the appellant abandoned or resigned his office when issue was not raised in the pleadings

**Result:** The decision was reserved.

**Case Name** Modeste Joseph et al v Priscilla Durancy et al  
[Civil Appeal No. 16 of 2009]

**Appearances:**  
**Appellant:** Mr. Horace Fraser  
**Respondent:** Mr. Alberton Richelieu

**Issue:** Unregistered lease – possession of land

**Result:** The appeal was dismissed with costs in the appeal to be costs in the cause in the High Court.

**CORAM** Hon. Mde. Ola Mae Edwards, President of Appeal  
Hon. Mde. Janice George-Creque, Justice of Appeal  
Hon. Mr. Davidson Baptiste, Justice of Appeal (Ag.)

## HIGH COURT CIVIL APPEALS

**Case Name** Ross Bowring v Keith Noel  
[Civil Appeal No. 13 of 2008]

**Appearances:**  
**Appellant:** Mr. Gerald Williams  
**Respondent:** Mr. Alvin St. Clair

**Issue:** Contract – breach of contract – variation – costs

**Result:** The decision was reserved.

**Case Name** Michel Magloire aka Michael Magloire v The Attorney General et al  
[Civil Appeal Nos. 19 & 20 of 2008]

**Appearances:**  
**Appellant:** Mr. Horace Fraser  
**Respondent:** Mrs. Georgis Taylor-Alexander, Solicitor General

**Issue:** Contract – breach of implied contract – damages in lieu of notice

**Result:** The appeal was adjourned to Friday 23<sup>rd</sup> October, 2009.

**Wednesday 21<sup>st</sup> October, 2009**

**CORAM** Hon. Mde. Ola Mae Edwards, President of Appeal  
Hon. Mde. Janice George-Creque, Justice of Appeal  
Hon. Mr. Davidson Baptiste, Justice of Appeal (Ag.)

## **HIGH COURT CIVIL APPEALS**

**Case Name** Ross Bowring v Keith Noel  
[Civil Appeal No. 13 of 2008]

**Appearances:**  
**Appellant:** Mr. Horace Fraser holding papers for Mr. Gerald Williams  
**Respondent:** Mr. Alvin St. Clair

**Issue:** Contract – breach of contract – variation – costs

**Result:** Oral Judgment delivered by Edwards J.A. (Subsequently Published)

1. The appeal was dismissed.
2. The respondent's counter-appeal was allowed.
3. The award of damages made by Cottle J. was affirmed.
4. The prescribed costs award of \$37,507.49 was set aside. The appellant/defendant shall pay the sum of \$45,101.88 as prescribed costs to the respondent/claimant.
5. The appellant/defendant shall pay to the respondent/claimant the sum of \$26,928.45 on the counter-claim as prescribed costs.
6. Costs on the appeal being two-thirds of the total costs prescribed in the court below.

**Case Name** Saint Lucia Air & Sea Ports Authority v Leroy Mathurin et al  
[Civil Appeal No. 35 of 2008]

**Appearances:**  
**Appellant:** Mr. Mark Maragh

**Respondent:** Mr. Horace Fraser

**Issue:** Administrative Law – whether port officers have power of arrest – whether arrests were lawful – sections 15 and 27(1)(c) of the Airport Regulations – section 75 of Saint Lucia Air & Sea Ports Authority Act which imports article 573 of the Criminal Code – sections 55 and 64 of the Motor Vehicle & Road Traffic Act

**Result:** The decision was reserved.

**Case Name** Saint Lucia Motor & General Insurance Co. Ltd. v Peterson Modeste  
[Civil Appeal No. 8 of 2009]

**Appearances:**

**Appellant:** Mr. Dexter Theodore

**Respondent:** Mrs. Carol Gideon-Clovis

**Issue:** Illegality – the principle of ex turpi causa – whether the non-statutory defence of illegality could be pleaded in the instant case - whether the master failed to consider or consider adequately the defence of illegality – fraud – whether particulars of fraud must be set out in pleadings – purpose of pleadings – summary judgment – whether defence had a real prospect of success – Motor Vehicles Insurance (Third Party Rights) Act Cap. 8.02 of the Revised Laws of Saint Lucia – Civil Procedure Rules 2000

**Result:** The decision was reserved.

**CORAM**

Hon. Mde. Janice George-Creque, President of the Court  
Hon. Mr. Michael Gordon, QC, Justice of Appeal (Ag.)  
Hon. Mr. Davidson Baptiste, Justice of Appeal (Ag.)

## **HIGH COURT CIVIL APPEALS**

**Case Name**

Bryan Stephen v Justice Ephraim Georges  
[Civil Appeal No. 34 of 2008]

**Appearances:**  
**Appellant:** No appearance  
**Respondent:** No appearance  
**Amicus:** Mrs. Georgis Taylor-Alexander, Solicitor General

**Issue:** Notice in disciplinary proceedings

**Result:** The matter was remitted to the court below.

**Thursday 22<sup>nd</sup> October, 2009**

**CORAM**  
Hon. Mr. Hugh Rawlins, Chief Justice  
Hon. Mde. Ola Mae Edwards, Justice of Appeal  
Hon. Mr. Davidson Baptiste, Justice of Appeal (Ag.)

## **APPLICATIONS**

**Case Name** St. Lucia Chamber of Commerce Industry and Agriculture v Vela Samuel  
[Civil Appeal No. 12 of 2008]

**Appearances:**  
**Appellant:** Mr. Mark Maragh  
**Respondent:** Mrs. Carol Gideon-Clovis holding papers for Mrs. Lydia Faisal

**Issue:** Application to discharge order of single judge – whether entry of default judgment was irregular by virtue of the fact that amended statement of claim correcting the name of the defendant was not served

**Result:** The application was dismissed, the decision of the single judge affirmed and the matter remitted to the High Court to be continued. Costs to the respondent in the sum of \$2000.00.

**Reason:**  
1. ‘Changes to Statements of Case’ in Part 20 refer to substantial changes, not as in this case, where changes are made to correct a misnomer (an incorrect name). Part 20 does not apply.  
2. Service of the amended/corrected claim form would have been helpful but was not required.

**Case Name** Urban Dolor v The Board of Governors of the Sir Arthur Lewis Community College  
[Civil Appeal No. 30 of 2009]

**Appearances:**  
**Applicant:** Mr. Horace Fraser  
**Respondents:** Mrs. Petra Nelson

**Issue:** Application for leave to appeal refusal of leave for judicial review given on 10<sup>th</sup> August 2009 – whether there was unnecessary delay

**Result:**  
1. The application was granted.  
2. The applicant shall have leave only on the issues of unfairness and damages.  
3. The applicant shall have costs in the sum of \$800.00

**Reason:** There was no unreasonable delay having regard to the circumstances of the case.

**Case Name** Jada Construction Caribbean Ltd. v The Landing Ltd.  
[Civil Appeal No. 11 of 2009]

**Appearances:**  
**Appellant:** Mr. Peter Foster with Ms. Diana Thomas  
**Respondent:** Ms. Natalie Augustin with Ms. Carol Gideon-Clovis and Ms. Vanessa William

**Issue:** Preliminary issue – whether there is an appeal before the court as Record of Appeal and skeleton arguments filed out of time with no application for extension of time or relief from sanction

**Result:** It was ordered that:  
1. The oral application made on behalf of the respondent is dismissed.  
2. The hearing of the appeal is adjourned to Tuesday 10<sup>th</sup> November, 2009.  
3. The parties shall agree additional material to be included in the Record of Appeal by Friday 30<sup>th</sup> October, 2009.  
4. Solicitors for the respondent shall file and serve skeleton arguments on or

before Monday 2<sup>nd</sup> November, 2009.

5. Solicitors for the appellant shall, on or before 4<sup>th</sup> November 2009, file and serve an updated and agreed Record containing any further material, loose material given today and further evidence for which permission was given on Monday 19<sup>th</sup> October, 2009.

**Reason:**

1. The respondent's oral application was dismissed on the grounds that:
  - (i) notice of application must be given as required by CPR62.9(b);
  - (ii) an application must be made in writing and supported by an affidavit. Parties are estopped from raising preliminary issues at trial.
  - (iii) failure to file skeleton arguments is not fatal as established in previous decisions of the Court (See. Craig Reeves v Platinum Trading Management Ltd. HCVAP 2007/022 (delivered 25 February, 2008).
2. The matter was adjourned to allow corrections to be made to the Record of Appeal.

**Case Name**

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

**Appearances:**

**Appellant/  
Respondent:**

Ms. Eugenia Dickson holding papers for Mrs. Candace Cadasse-Polius

**Respondent/  
Applicant:**

Ms. Diana Thomas holding papers for Mr. Mark Maragh

**Issue:**

Application for leave to appeal to Her Majesty in Council against decision of the full Court dismissing appeal against decision of single judge on a procedural appeal

**Result:**

The application was dismissed with costs to the appellant/respondent in the sum of \$2500.00.

**Reason:**

- The Court noted that even at the time of hearing, no application for extension of time or relief from sanction had been made. There was accordingly no application upon which the Court could make an order.
1. There was no appeal as of right because the appeal was in respect of a procedural decision and not a final decision. The Court has previously held that matters which are imminently procedural are not suitable for appeal to the Privy Council. See Nam Tai Electronics British Virgin Islands Civil Appeal No. 12 of 2003 and Pacific Electric v Texan Management British Virgin Islands Civil Appeal No. 19 of 2006.

2. Under section 108(2)(a) of the Constitution, a decision in any civil proceeding may be appealed where it is of great general public importance. It was held in *Martinus Francois v The Attorney General* that leave will only be granted where a difficult or serious issue of law is involved. There was no complex issue of law raised in the instant case. The Appellant merely failed to take steps which were required simpliciter. The Application is therefore fatally flawed.
3. R4 of the Appeals to Privy Council Rules provides that application to be made by motion or petition. The applicant however made the application by Form 6 of the Civil Procedure Rules 2000.

**Case Name** Vernantius James v Ferguson John trading as Chambers of John & John (a Firm)  
[Civil Appeal No. 25 of 2007]

**Appearances:**

**Appellant:** In person  
**Respondent:** Ms. Eugenia Dickson holding papers for Mr. Ferguson John

**Issue:** Whether there was a unilateral discontinuance of claim by legal practitioner – whether the learned judge erred in findings of fact

**Result:** The appeal was allowed with no order as to costs.

**Friday 23<sup>rd</sup> October, 2009**

**CORAM** Hon. Mde. Ola Mae Edwards, Justice of Appeal  
Hon. Mde. Janice George-Creque, Justice of Appeal  
Hon. Mr. Davidson Baptiste, Justice of Appeal (Ag.)

**APPLICATIONS**

**Case Name** Michel Magloire aka Michael Magloire v The Attorney General et al  
[Civil Appeal Nos. 19& 20 of 2008]

**Appearances:**

**Appellant:** Mr. Horace Fraser  
**Respondent:** Mrs. Georgis Taylor–Alexander, Solicitor General

**Issue:** Contract – breach of implied contract – damages in lieu of notice - costs

**Result:** The hearing of the appeal was part heard and it was ordered and directed that:

1. The parties are to calculate and agree on the total damages and prescribed costs in the court below that the appellant is entitled to having regard to the decision of the Privy Council in Angela Innis v The Attorney General of St Christopher and Nevis Privy Council Appeal No. 290 of 2007 delivered on the 30<sup>th</sup> July, 2008.
2. The agreed calculations with computations are to be submitted to the court by the 13<sup>th</sup> November 2009 by the parties.
3. The hearing of this appeal is adjourned to the 20<sup>th</sup> November, 2009 at a sitting in Saint Lucia.

## **STATUS HEARINGS SAINT LUCIA**

**Monday 19<sup>th</sup> October 2009**

**BEFORE:** The Hon. Mde. Janice George-Creque, Justice of Appeal

## **HIGH COURT CRIMINAL APPEALS**

**Case Name:** Duan Fred v The Queen  
[Criminal Appeal No. 11 of 2006]

**Appearances:**

**Appellant:** Mrs. Victoria Charles-Clarke, Director of Public Prosecutions

**Respondent:** Mr. Ramon Raveneau

**Issue:** Application to waive transcript fee of \$364.00

**Result:** It was ordered that:

1. The transcript of proceedings be furnished to the Appellant free of charge.
2. The matter is to be heard at the next sitting of the Court in Saint Lucia during the week of March 22<sup>nd</sup> 2010.

**Reason:** The Court to dispense with the cost of obtaining transcript of proceedings pursuant to r. 48(10) of the Court of Appeal Rules.

**Case Name:** Earle Hunte v The Queen  
[Criminal Appeal No. 12 of 2006]

**Appearances:**  
**Appellant:** No appearance  
**Respondent:** Mrs. Victoria Charles-Clarke, Director of Public Prosecutions

**Issue:** Application for leave to appeal filed in 2006

**Result:** It was ordered that:  
1. The Appellant to contact his attorney who is on record.  
2. The appeal will be left on the list.  
3. The Appellant is instructed that the transcript of proceedings is ready.

**Reason:** There had been difficulty in contacting counsel for the Appellant to inform him of the status hearing.

**Case Name:** Francis Mathurin et al v The Queen  
[Criminal Appeal No. 4 of 2008]

**Appearances:**  
**Appellants:** Mrs. Wauneen Louis-Harris  
**Respondent:** Mrs. Victoria Charles-Clarke, Director of Public Prosecutions

**Issue:** For Report

**Result:** It was ordered that:  
The appeal shall remain on the status hearing list.

## HIGH COURT CIVIL APPEALS

**Case Name:** Kenneth Louison v Ann Marie Daniel et al  
[Civil Appeal No. 3 of 2001]

**Appearances:**  
**Appellant:** Mrs. Esther Greene-Ernest holding papers for Mrs. Petra Nelson  
**Respondents:** No appearance

**Issue:** For Report

**Result:** The appeal has been concluded and the judgment rendered.

**Case Name:** SM Jaleel & Company Limited v Duboulay Bottling Company Limited  
[Civil Appeal No. 18 of 2001]

**Appearances:**  
**Appellant:** Mrs. Cynthia Combie-Martyr holding papers for Mr. Wilkinson Larcher  
**Respondent:** No appearance

**Issue:** For Report

**Result:** It was ordered that:  
The appeal is dismissed.

**Reason:** The Appellant has no further interest in the appeal.

**Case Name:** Saint Lucia National Corporation formerly Housing and Urban Development  
Corporation v Eddred Percy Ellis et al  
[Civil Appeal No. 26 of 2003]

**Appearances:**  
**Appellant:** Mr. Dexter Theodore holding papers for Ms. Cybelle Cenac  
**Respondent:** No appearance

**Issue:** For Report

**Result:** It was ordered that:  
The matter shall remain on the list.

**Reason:** Counsel for the Respondent, Mr. Hilford Deterville, QC, wrote to the Court requesting an adjournment as he is out of island.

**Case Name:** Theresa Husbands et al v James Kyle  
[Civil Appeal No. 38 of 2003]

**Appearances:**

**Appellants:** Mrs. Lydia Faisal

**Respondent:** No appearance

**Issue:** For Report

**Result:** It was ordered that:  
The appeal is dismissed.

**Reason:** The Appellant has no further interest in pursuing the appeal.

**Case Name:** Parry Husbands v Herbert Jn. Baptiste et al  
[Civil Appeal No. 40 of 2003]

**Appearances:**

**Appellant:** Deceased

**Respondents:** Mr. Alberton Richelieu

**Issue:** For Report

**Result:** It was ordered that:  
The matter shall remain on the list.

**Reason:** For counsel for the Respondent to make enquires.

**Case Name:** Smart Duah v The Commissioner of Police  
[Civil Appeal No. 7 of 2004]

**Appearances:**

**Appellant:** Mrs. Cynthia Combie-Martyr

**Respondent:** Mrs. Georgis Taylor-Alexander, Solicitor General

**Issue:** Application to strike out appeal

**Result:** It was ordered that:  
The appeal is dismissed.

**Reason:** For want of prosecution.  
The Appellant did not oppose the Application.

**Case Name:** Christopher Alsace v Choc Estates Limited C/O Ferrel Charles  
[Civil Appeal No. 25 of 2001]

**Appearances:**

**Appellant:** Mrs. Cynthia Combie-Martyr holding papers for Mr. Collin Foster

**Respondent:** No appearance

**Issue:** For Report

**Result:** It was ordered that:  
The Appellant to enquire of the Registrar of the High Court of the status of transcript/notes of proceedings within 14 days.

**Reason:** The Appellant has not been able to obtain the judge's notes.

**Case Name:** Eagles Inn Company Limited v Registrar of Lands et al  
[Civil Appeal No. 46 of 2007]

**Appearances:**

**Appellant:** Mr. Ermin Moise

**Respondents:** Mrs. Georgis Taylor-Alexander, Solicitor General holding papers for the 1<sup>st</sup>  
Respondent  
Mrs. Cynthia Combie-Martyr for 2<sup>nd</sup> and 3<sup>rd</sup> Respondent

**Issue:** Application to withdraw appeal

**Result:** It was ordered that:  
The appeal is withdrawn and accordingly stands dismissed.

**Reason:** The Application was not opposed.

**Case Name:** First Caribbean International Bank (Barbados) Limited v Jacob Morille  
[Civil Appeal No. 13 of 2004]

**Appearances:**

**Appellant:** Ms. Clemar Hippolyte

**Respondent:** No appearance

**Issue:** For Report

**Result:** The matter has been concluded.

**Case Name:** Vincent Palmer v Barclays Bank Plc  
[Civil Appeal No. 4 Of 2005]

**Appearances:**

**Appellant:** In Person

**Respondent:** No appearance

**Issue:** For Report

**Result:** It was ordered that:  
The matter shall remain on the list.

**Reason:** The transcript of proceedings has not been made available.

**Case Name:** Robert Auguste et al v Alexander George et al  
[Civil Appeal No. 30 Of 2005]

**Appearances:**

**Appellants:** Mr. Dexter Theodore

**Respondents:** Mrs. Lydia Faisal

**Issue:** For Report

**Result:** It was ordered that:  
The matter shall remain on the list and both parties to seek to determine the status of the matter within 7 days.

**Reason:** Counsel to jointly seek to ascertain Justice Shanks' reasons for the decision.

**Case Name:** Andre Edgar t/a A&M Holdings Ltd. v Saint Lucia Air and Sea Ports Authority  
[Civil Appeal No. 1 of 2006]

**Appearances:**

**Appellant:** No appearance

**Respondent:** No appearance

**Issue:** For Report

**Result:** A Notice of discontinuance was filed.

**Case Name:** Headley Felicien v Rosalie Sylvester  
[Civil Appeal No. 16 of 2006]

**Appearances:**

**Appellant:** No appearance

**Respondent:** No appearance

**Issue:** For Report

**Result:** It was ordered that:  
The matter shall remain on the list.

**Case Name:** St. Lucia Helicopters Ltd. v Saint Lucia Air and Sea Ports Authority  
[Civil Appeal No. 20 of 2006]

**Appearances:**

**Appellant:** No appearance

**Respondent:** No appearance

**Issue:** Application for Adjournment by Respondent

**Result:** It was ordered that:  
The matter is placed on the next status hearing list.

**Case Name:** Gundolph Calderon v Saint Lucia Electricity Services Ltd.  
[Civil Appeal No. 34 of 2006]

**Appearances:**

**Appellant:** No appearance  
**Respondent:** Mrs. Esther Greene-Ernest

**Issue:** For Report

**Result:** It was ordered that:  
The matter shall remain on the list.

**Case Name:** Neville Cenac v The Attorney General of Saint Lucia  
[Civil Appeal No. 1 of 2007]

**Appearances:**

**Appellant:** Mr. Dexter Theodore holding papers for Ms. Cybelle Cenac  
**Respondent:** Mrs. Georgis Taylor-Alexander, Solicitor General

**Issue:** For Report

**Result:** It was ordered that:  
The appeal is withdrawn and accordingly stands dismissed.

**Reason:** The matter has been settled out of court.

**Case Name:** Kinga Joseph v The Attorney General et al  
[Civil Appeal No. 11 of 2007]

**Appearances:**

**Appellant:** No appearance  
**Respondents:** Mr. Raulston Glasgow

**Issue:** Whether Respondent should pay unpaid balance to Applicant

**Result:** It was ordered that:  
The appeal is dismissed.

**Reason:** For want of prosecution

**Case Name:** Maintenance Free Building Products Inc. v The Attorney General of Saint Lucia  
[Civil Appeal No. 18 of 2007]

**Appearances:**  
**Appellant:** Ms. Andra Gokool-Foster holding papers for Mr. Alberton Richelieu  
**Respondent:** Mr. Raulston Glasgow

**Issue:** For Report

**Result:** It was ordered that:  
The matter is withdrawn and accordingly stands dismissed.

**Reason:** There are ongoing negotiations.

**Case Name:** Francisca Mathurin et al v Gabriel Mathurin et al  
[Civil Appeal No. 31 of 2007]

**Appearances:**  
**Appellants:** No appearance  
**Respondents:** Ms. Andra Gokool-Foster

**Issue:** Application to strike out Notice of Appeal

**Result:** It was ordered that:  
The appeal is dismissed with costs to the Respondent in the sum of \$1000.00

**Reason:** For want of prosecution

**Case Name:** Felicia Harry v Clifton E. Charles  
[Civil Appeal No. 32 of 2007]

**Appearances:**

**Appellant:** Ms. Andra Gokool-Foster

**Respondent:** No appearance

**Issue:** For Report

**Result:** It was ordered that:  
The appeal is withdrawn and accordingly stands dismissed.

**Reason:** The Appellant has no interest in pursuing the matter.

**Case Name:** Jean Lloyd Lindsay Jean v Caren L. Jean nee Auguste  
[Civil Appeal No. 44 of 2007]

**Appearances:**

**Appellant:** No appearance

**Respondent:** Ms. Andra Gokool-Foster

**Issue:** Application to strike out Notice of Appeal

**Result:** It was ordered that:  
The appeal is dismissed and costs awarded to the respondent in the sum of \$1000.00

**Reason:** For want of prosecution

**Case Name:** Moncherry Car & Jeep Rental Limited et al v Joseph Cox  
[Civil Appeal No. 5 of 2008]

**Appearances:**

**Appellants:** No appearance

**Respondent:** No appearance

**Issue:**

**For Report**

**Result:**

**It was ordered that:  
The matter is adjourned to the next status hearing.**