

Court of Appeal Sitting

GRENADA

May 3 to May 7, 2010

Date

Monday May 3 2010

Coram:

Hon. Hugh Rawlins

Chief Justice

Hon. Ola Mae Edwards

Justice of Appeal

Hon. Janice George-Creque

Justice of Appeal

JUDGMENTS

SAINT LUCIA

Case Name:

**Eastern Caribbean Insurance Ltd. v Edmund Bicar
[Civ. App. No. 14 of 2008]**

Appearances:

Appellant: Mr. Anselm Clouden holding for Appellant

Respondent: Mr. James Bristol holding for Respondent

Issues:

Civil Appeal – Insurance Law – insured person – person insured by the policy – permitted driver – authorised driver – right of indemnity – third party – right of recovery against the insurer where no finding of vicarious liability in respect of the policyholder – Motor Vehicles Insurance (Third-Party Risks) Act Cap. 8:02

Result & Reason:

Held: dismissing the appeal and allowing the counter-appeal with costs to the respondent:

1. An “insured person” or “person insured by the policy” under section 4(1)(b) of the Act includes not only the policyholder but any other person or class or persons as specified in the policy.
2. The policy of insurance between the Insurer and Mr. Noel extended to the policyholder, to any other person driving on the policyholder’s order (in essence, his servant or agent) and to any person driving with the policyholder’s permission (although not as his servant or agent). Notably, the policy contained no qualifying provisions to restrict the extension of cover to persons driving on the policyholder’s order or with his permission.

3. An “insured person” or “person insured by the policy” under Mr. Noel’s policy of insurance would accordingly include persons driving his motor vehicle with his permission as this was so specified in the policy, as evidenced by the certificate. There is no distinction in principle between a driver who is “permitted” and one who is “authorised”.

English and American Insurance Co. Ltd. v Stanley McDermott and Motor and General Insurance Co. Ltd. (1974) 22 WIR 451 (Court of Appeal, Jamaica), distinguished.

4. Section 4(7) of the Act requires the Insurer to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of those persons or classes of persons. Section 9(1) of the Act requires the Insurer to pay to the person(s) entitled to the benefit of the judgment any sum payable in respect of liability incurred “against any person who is insured by the policy”. Section 4(7) therefore establishes the connecting factor on which the liability of the Insurer in respect of an injured third party is grounded under section 9(1) of the Act.
5. Section 4(7) of the Act creates the statutory exception to the normal rules of privity so as to take account of a liability arising in respect of a person who was permitted or authorised to drive other than the policyholder. The section ensures that an authorised driver is in the same position as the policyholder in respect of the right to an indemnity from the insurer.
6. The grounding of liability of the Insurer to pay a judgment debt in respect of which the authorised driver has become legally liable to pay is not dependant on a finding of vicarious liability on the part of the policyholder. The obligations may arise, though connected, quite separately and independently of the other once it can be shown that the driver falls within the category of persons specified under the particular policy as being covered thereunder.
7. Mr. Monroe, being a permitted driver, fell within the class of persons specified under the policy as being a “person insured by the policy”. Accordingly, Mr. Monroe would be entitled to be indemnified by the Insurer in respect of the liability arising as against him in favour of Mr. Bicar in respect of the judgment debt, pursuant to section 4(7).
8. Section 9(1) of the Act gives fullest effect to the statutory exception to the rules of privity. Under section 9(1) of the Act, it is the right of the third party to recover from the Insurer in respect of a legal liability covered under the policy arising whether from the acts of the policyholder or from the policyholder’s authorised or permitted driver. Accordingly, Mr. Bicar (the third party) is entitled to invoke section 9(1) of the Act to recover from the Insurer the judgment in his favour against Mr. Monroe, who, as a “permitted” or “authorised” driver, was a “person insured by the policy of insurance”.

Matadeen v Caribbean Insurance Ltd. [2002] UKPC 69 (Trinidad and Tobago), followed.

**SAINT VINCENT
AND THE
GRENADINES**

Case Name:

**Commissioner of Police v Jamal Grant
[Crim. App. No. 25 of 2009]**

Appearances:

Appellant: Mr. Anselm Clouden holding for Appellant

Respondent: Mr. James Bristol holding for Respondent

Issues:

Criminal Appeal - Drug Trafficking - Section 7 (3) Drugs (Prevention of Misuses) Act - Appeal against sentence – whether sentence is inappropriate, inadequate and insufficient - the correct approach to sentencing in drug cases - Sentencing guidelines - scope, intent and will of Parliament regarding drug trafficking cases - judge's discretion - mitigating factors - individualized approach - use of fines as opposed to custodial sentence - leniency - double jeopardy principle - suspended sentence -

Result & Reason:

Held: allowing the appeal, imposing a sentence of 3 years on the respondent, suspending this sentence for 18 months from the date the judgment is delivered, ordering that the remainder of the \$17,000.00 fine is to be paid by the respondent within six months from the date of delivery of the judgment and in default of payment the respondent to be imprisoned for 1 year –

1. That the Chief Magistrate did not take into account when exercising her discretion that an individualized approach is in sharp conflict with policy objectives of Parliament for controlled drug offences in Saint Vincent and the Grenadines where cultivation, possession, supplying and trafficking of cannabis pose serious threat to the society.
2. Such offences are treated by Parliament as serious crimes for which fines may not be a sufficient punishment, and the discretion to impose fines should not be used to give persons of means an opportunity of buying themselves out of being sent to prison.
3. That the sentencer has no jurisdiction to impose a term of imprisonment

exceeding the statutory maximum period prescribed for default of payment of a fine.

4. That the learned Chief Magistrate was unduly lenient in taking the view that only the imposition of a fine was desirable for this serious offence and she therefore erred in principle when she failed to reject the individualized approach and concluded that a term of imprisonment exceeding 12 months is appropriate in all circumstances.

Desmond Baptiste and The Queen Crim. App. No. 8 of 2003 and **Cosmus Bascombe and Commissioner of Police** Mag. Crim. App. No. 22 of 2003 followed.

5. That the practice of the Court of Appeal where an unduly lenient sentence was imposed and the sentence is increased is to take into account the distress and anxiety experienced by the offender in having to be re-sentenced, and discount the appropriate sentence on the basis of the "double jeopardy" principle. Since the respondent is a first time offender who committed this serious offence under circumstances of substantial mitigation, it is appropriate to suspend the 3 years term of imprisonment in light of the exceptional circumstance of double jeopardy.

The Practice stated in **Archibald Criminal Practice 2009** at paragraph 7-368 adopted and applied.

APPLICATIONS

Case Name: **Anthony Clyne v The Guyana and Trinidad Mutual Fire Insurance Company Limited**
[Civ. App. No. 11 of 2010]

Appearances:

Appellant: **Ms. Celia Edwards QC and with her Mrs. Sabrita Khan-Ramdhani**

Respondent: **Ms. Dia Forrester**

Issue: **Application for leave to appeal**

Result: **By consent application for leave to appeal granted with no order as to costs.**

Case Name: Nigel Abraham v The Queen
[Crim. App. No. 5 of 2008]

Appearances:
Appellant: Mr. Derick Sylvester
Respondent: Mr. Christopher Nelson Director of Public Prosecutions, Ms. Chrisan Greenidge

Issue: Murder

Result: Hearing of this Appeal is adjourned to the next sitting of the Court in Grenada during the week of the 22nd November 2010.

Reason: Counsel only recently served with Record.

Case Name: James Blackman et al v Dorset Mitchel
[Civ. App. No. 5 of 2009]

Appearances:
Appellant: Mr. Cajeton Hood holding for Mr. Lloyd Noel
Respondent: Ms. Celia Edwards QC and with her Mrs. Sabrita Khan-Ramdhani

Issues: Driving without due care and attention

Result: Hearing of this Appeal is adjourned to the next sitting of the Court in Grenada during the week of the 22nd November 2010.

Reason: Request for an adjournment sought by counsel with no objection.

MAGISTERIAL CRIMINAL APPEAL AGAINST CONVICTION

Case Name: Adrian Mc Burnie v Commissioner of Police
[Mag. Crim. App. No. 1 of 2010]

Appearances:
Appellant: Mrs. Daniella Williams Mitchell
Respondent: Mr. Christopher Nelson Director of Public Prosecutions, Ms. Chrisan Greenidge

Issues: Driving without due care and attention.

Result: Hearing of this Appeal is adjourned to the next sitting of the Court in Grenada

during the week of the 22nd November 2010.

Reason: Counsel only recently served with Record, therefore an adjournment was sought with no objection.

MAGISTERIAL CIVIL APPEAL

Case Name: Claudia Reuben v Mary Joseph
[Mag. Civ. App. No. 1 of 2009]

Appearances:
Appellant: Mr. Anselm Clouden
Respondent: Mrs. Yvette John

Issues: Application to withdraw the Appeal in furtherance of a settlement agreement with the Respondent with no order as to costs.

Result:
1. Matter withdrawn and is discontinued.
2. The parties have agreed that the money claimed by the respondent was legitimately paid into the account of the Chambers of Irvin I. Duncun prior to his death in December 2003.
3. No order as to costs.

STATUS HEARINGS

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

Case Name: Sydney Williams v Jessel Williams
[Civ. App. No. 3 of 2007]

Appearances:
Appellant: In Person
Respondent: Mr. Cajeton Hood holding for Mr. Lloyd Noel

Issues: Status of the matter

Result: Matter adjourned to be heard tomorrow 4th May 2010.

Case Name: St. George's University Limited v Demitrius Nurse et al

[Civ. App. No. 22 of 2007]

Appearances:

Appellant: Mr. Cajeton Hood holding for Mr. Lloyd Noel

Respondent: Mr. Ruggles Ferguson

Issues: For Mention

Result: ORDER:

1. The Transcript having been filed, all further proceedings shall be in accordance with the Rules.
2. The matter be listed for hearing at the next sitting of the Court in Grenada during the week of 22nd November 2010.

APPLICATIONS

Case Name: Eslee Carberry v Law Office of Raphael Baptiste
[Civ. App. No. 10 of 2009]

Appearances:

Appellant: Mr. Anselm Clouden as amicus

Respondent: Mr. Ruggles Ferguson holding for respondent counsel

Issues: Permission to oppose the appeal

Result: Matter adjourned to Wednesday May 5th 2010, Mr. Ferguson under took to contact the office of Mr. Baptiste

Reason: Parties are not present

Case Name: Hugh Dolland et al v Rita Joseph-Olivetti
[Civ. App. No. 3 of 2010]

Appearances:

Appellant: Mr. James Bristol and with him Ms. Dia Forrester

Respondent: Ms. Celia Edwards QC and with her Mrs. Sabrita Khan-Ramdhani

Issues: Application to strike out Notice of Appeal, Non compliance with law, Procedural Appeal, Application for Leave to Appeal, Extension of time, Relief from Sanctions

Result:

- Order:** 1. The Notice of Appeal filed herein on 5th February 2010 is withdrawn.
2. The Application of 22nd February 2010 to strike out the Notice of Appeal is also withdrawn.
3. Time is extended for the appellants to file their application for leave to appeal and the application for leave to appeal dated the 30th February 2010 is amended to include an application for leave to appeal the judgment of Justice Mario Michel and that the application is deemed to have been validly filed and is herein treated as the Appeal.
4. The appellants do have leave to appeal the judgments of Justice Mario Michel and Justice Price Findlay dated 22nd April 2009 and 2nd February 2010 respectively.
5. The judgment of Justice Price Findlay of 2nd February 2010 is set aside.
6. The judgment of Justice Mario Michel of 22nd April 2009 is also set aside and the application to strike out the Statement of case filed on the 22nd January 2010 is dismissed.
7. The substantive matter is referred to the High Court.
8. The parties shall attempt to settle the substantive matter through mediation, the proceedings in the High Court being stayed in the meantime pending the outcome of mediation.
9. Appellants shall pay \$4,500.00 to the respondent, the same to be met from the estate.

HIGH COURT CRIMINAL APPEAL AGAINST SENTENCE

Case Name:

**McDonald Thomas v The Queen
[Crim. App. No. 3 of 2008]**

Appearances:

Appellant: In Person

Respondent: Mr. Christopher Nelson Director of Public Prosecutions, Ms. Chrisan Greenidge

Issues:

Robbery & Rape, Application for remand time to be taken into consideration in sentencing

Result:

**Appeal is dismissed, except however, the appeal against the sentence of administering six strokes to the Appellant which is stayed pending the determination of a case on the constitutionality of such sentence that is presently in the High Court.
The case will be brought up again after determination of case.**

HIGH COURT CRIMINAL APPEALS AGAINST CONVICTION

Case Name:

**Kester Noel v The Queen
[Crim. App. No. 9 of 2007]**

Appearances:

Appellant: In Person
Respondent: Mr. Christopher Nelson Director of Public Prosecutions, Ms. Chrisan Greenidge

Issues: Unlawful Carnal Knowledge, Application for further adjournment, No objection thereto

Result: Matter traversed to the next sitting of the Court during the week of 22nd November 2010.

Reason: Application for adjournment sought because the appellant encountering difficulties in retaining counsel.

Case Name: Roger Gelliseau v The Queen
[Crim. App. No. 4 of 2008]

Appearances:

Appellant: Mr. Anselm Clouden
Respondent: Mrs. Dion Lawrence Pivotte

Issues: Robbery with violence - inadmissible evidence - conviction unsafe and unsatisfactory - no case submission - unsigned indictment - sentence excessive

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

Reason: The signed indictment was shown to the Court and the grounds of appeal argued by counsel for the appellant in relation to the appeal against conviction failed. Sentence not outside the discretion of the trial judge. Court of Appeal cannot substitute its own sentence for that of the trial judge. No error shown to have been made by the trial judge. Trial judge took all considerations into account.

Date: Tuesday May 4 2010

Coram: Hon. Hugh Rawlins Chief Justice
Hon. Janice George-Creque Justice of Appeal
Hon. Clare Henry Justice of Appeal[Ag]

Case Name: Arthur Noel v Frederick Noel et al
[Civ. App. No. 14 of 2006]

Appearances:

Appellant: Mr. Cajeton Hood
Respondent: No Appearance

Result: This case shall be listed on the Court of Appeal's case Management List for the month of May 2010. The hearing to be conducted by teleconference by the Chief Justice. Mr. Frederick Noel to be notified accordingly.

Reason: Counsel for the respondent is currently overseas seeking medical attention.

Case Name: **SGL Holdings Inc. v Aiham Shammas**
[Civ. App. No. 2 of 2010]

Appearances:
Appellant: Ms. Celia Edwards QC and with her Ms. Karina Johnson
Respondent: Dr. Francis Alexis QC and with him Mr. Anselm Clouden

Issues: Application for leave to appeal

Result: Application for leave to appeal is granted.

Case Name: **SGL Holdings Inc. v Aiham Shammas**
[Civ. App. No. 2 of 2010]

Appearances:
Appellant: Ms. Celia Edwards QC and with her Ms. Karina Johnson
Respondent: Dr. Francis Alexis QC and with him Mr. Anselm Clouden

Issues: Breach of Contract - summary judgment - limitation of liability clause

Result: Decision is reserved.

Case Name: **Sydney Williams v Jessel Williams**
[Civ. App. No. 3 of 2007]

Appearances:
Appellant: In Person
Respondent: Mr. Anselm Clouden holding for Mr. Lloyd Noel

Issues: **Status Hearing**

Result:

1. The Notice of Appeal filed herein on 5th September 2007 is deemed to have been validly filed.
2. The appellant shall meet with counsel for the respondent and settle documents that are to be included in the Record of Appeal within 14 days of today's date.
3. The appellant shall with the assistance of the Court Office file and seven copies of the Record of Appeal on or before 11th June 2010.
4. All subsequent proceedings shall be in accordance with the Rules.
5. The appeal shall be scheduled for hearing at the next sitting of this Court in Grenada which will be held during the week of 22nd November 2010.

Coram:

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|---------------------------|-------------------|
| H on. Hugh Rawlins | Chief Justice |
| Hon. Ola Mae Edwards | Justice of Appeal |
| Hon. Janice George-Creque | Justice of Appeal |

Case Name: **Januarius Livingston v The Queen**
[Crim. App. No. 1 of 2008]

Appearances:

Appellant: In Person

Respondent: Mr. Christopher Nelson Director of Public Prosecutions

Issues: Appeal against sentence of \$7500.00 payable in 60 days and in default 3 years imprisonment . - Fine excessive - violation of constitutional rights to be tried within a reasonable time- trial occurring after 10 yeas of offence.

Result: Appeal against sentence allowed so that time spent on remand from 23rd October 1998 or on any warrants in relation to this matter replaces the sentence handed down by the trial judge on 11th February 2008.

Reason: Director of Public Prosecution concedes that imposition of fine was unusual and excessive.

Date: **Wednesday May 5 2010**

Coram:

| | |
|---------------------------|-------------------------------|
| Hon. Ola Mae Edwards | Justice of Appeal [President] |
| Hon. Janice George-Creque | Justice of Appeal |
| Hon. Clare Henry | Justice of Appeal [Ag] |

Case Name: **Eslee Carberry v Law Office of Raphael Baptiste**
[Civ. App. No. 10 of 2009]

Appearances:

Appellant: No Appearance

Respondent: No Appearance

Issues: Permission to oppose the appeal

Result: Matter traversed to the next sitting of the Court in Grenada during the week of 22nd November 2010. The Registrar to serve a notice on the parties personally and proof of service by way of affidavit must be available for the Court.

Reason: Court in receipt of Medical Certificate from appellant.

Case Name: Anthony Clyne v The Guyana and Trinidad Mutual Fire Insurance Company Limited
[Civ. App. No. 11 of 2010]

Appearances:

Appellant: Ms. Celia Edwards QC and with her Ms. Karina Johnson

Respondent: Ms. Dia Forrester

Issues: Insurance Law - indemnity - CPR 2000 - relief from sanctions - prejudice - exercise of discretion - whether granting of relief prejudicial - whether party ought to be allowed to change evidence after witness statements and submissions have been exchanged

Result: Appeal allowed. Decision of trial judge set aside with costs of \$1500.00 to the appellant and further reasons for Court's decision will be delivered in writing.

Reason: Court found that learned trial judge erred.

Case Name: Garvey Louison, Liquidator of Bank Crozier Limited v Daryl Sands, Controller of Bank Crozier Limited (In Liquidation) et al
[Civ. App. No. 1 of 2007]

Appearances:

Appellant: Mr. Clement Lashley QC and with him Mr. Sean Lewis

Respondent: Mr. Stephen Singh instructed by Mrs. Leslie-Ann Seon

Issues: Leave to appeal - assessment of costs - bills of costs - exercise of inherent jurisdiction

Result: Application dismissed with costs of \$1,500.00 to the Respondent.

Reason: Application for leave does not establish any reasonable prospect of success.