

# **COURT OF APPEAL SITTING**

**SAINT CHRISTOPHER & NEVIS**

**14<sup>th</sup> – 18<sup>th</sup> March 2011**

**SAINT  
CHRISTOPHER  
CIRCUIT**

## **JUDGMENTS**

**Case Name:** Gershon Robertson v Baldwin King et al  
[High Court Civil Appeal No. 20 of 2008]  
(Saint Vincent and the Grenadines)

**Date:** Monday 14<sup>th</sup> March 2011

**Coram:** The Hon. Mr. Hugh A. Rawlins, Chief Justice  
The Hon. Mde. Ola Mae Edwards, Justice of Appeal  
The Hon. Mr. Tyrone Chong, QC, Justice of Appeal [Ag.]

**Appearances:**

**Appellant:** Mr. John Cato

**Respondent:** Mr. Nassibou Butler holding papers for Mr. Andrew Cummings, QC

**Issues:** Civil Appeal – Unregistered land – Law governing Succession and Settlement under an 1856 will – Life interest in unregistered land to named children with gift over to named grandchildren for their heirs and assigns forever in fee tail – Whether great grandson of testator in possession of the land for over 40 years can lawfully dispose of all of the land by his will – Ss. 5(2) and 30 of the Administration of Estates Act Cap. 377 of the Laws of St Vincent and the Grenadines – Whether the surviving executor of this great grandson can validly sell all of the land to 1<sup>st</sup> respondent without a court order – Subsequent sale of a portion of the land to 2<sup>nd</sup> respondent – Purchasers having constructive notice – Whether appellant a great great great grandson of

**testator under the 1856 will can obtain equitable relief and recover the land from the purchasers – Section 19 and paragraph 9 of the Schedule Part 1 of the Limitation Act Cap. 90 of the Laws of St. Vincent and the Grenadines – Whether a beneficiary under a settlement can set up a claim for adverse possession against other beneficiaries – Defence of laches and acquiescence – Costs**

**Result and Reason:**

**Held: allowing the appeal and setting the decision of the trial judge aside with costs to the appellant on each of the claims in terms of the following order:**

**1. (i) It is hereby declared that lots 16, 17, 31, 32 and 33 situate at Little London, in the State of St. Vincent and the Grenadines are the property of the heirs/descendants and/or beneficiaries of William Roberts' named grandchildren Robert Alexander Robertson, Caroline Medicia, Charles Robert Sinclair, William Sinclair and Ann Robertson, under the will of William Robertson.**

**(ii) The respondent Baldwin King shall pay over to the Registrar of the High Court for the benefit of the heirs/ descendants and/or beneficiaries referred to at paragraph (i) of this order, the sum of \$27,070.00 less the stamp duty, transfer tax, and legal costs he paid in connection with the sale, representing the net proceeds together with interest thereon at 4% per annum from April 30<sup>th</sup> 2003.**

**(iii) Upon the Registrar receiving payment of the net proceeds together with the interest thereon the respondent Hariette Richardson may apply to the High Court for an order declaring her to be the lawful owner of the said land.**

**(iv) The respondent Baldwin King is entitled to be refunded the purchase price of \$57,000.00 which he paid for the said lots 16, 17, 31, 32 and 33 together with interest thereon at 4% per annum by the heirs/descendants and/or beneficiaries referred to at paragraph (i) of this order.**

**(v) The consolidated claims are remitted to the High**

**Court for the Court to give directions so as to ascertain and determine who are the persons who answer the description as heirs/descendants and/or beneficiaries referred to at paragraph (i).**

**(vi) The High Court shall give directions for the respondent Baldwin King to supply proper accounts to the court relating to his dealings with, expenditure on, developments of and improvements to the said lots 16, 17, 31, 32 and 33 since 18<sup>th</sup> March 1996, and the net proceeds of sale for any other mutated parcels sold from the said land shall be paid over to the Registrar of the High court for the benefit of the said heirs/descendants and/or beneficiaries.**

**(vii) The remaining land and the improvements done to the land are to be valued by an assessor appointed by the court, and the respondent Baldwin King is entitled to compensation approved by the court for any proven improvements to the land from the said heirs/descendants and/or beneficiaries.**

**(viii) It is hereby declared that the Deed of Conveyance registered as No. 982 of 1996 dated 18<sup>th</sup> March 1996 is null, void and of no effect.**

**(ix) The High Court is to determine and give directions concerning the respondent Baldwin King delivering up possession of the remaining portion of lots 16, 17, 31, 32 and 33 at Little London.**

**(x) The costs in the court below are to be prescribed costs to be agreed on or ordered to be paid pursuant to CPR 65.5(2)(a) in respect of each claim.**

**(xi) The costs in the appeal to be agreed on by each respondent and the appellant, otherwise to be two thirds of the prescribed costs in the court below on each claim.**

**2. That Edward Robertson was not an heir-at-law under the will of William Robertson. However, as Edward was the son of a grandson Robert Alexander Robertson who was a named beneficiary under the settlement in the will of William Robertson, Edward would have had an inheritance under the settlement.**

- 3. So far as entitlement to share in the estate of William Robertson is concerned, the appellant is not in a better position than Edward, neither was Edward in a better position than the appellant. Edward would not be entitled to all of the lots of land where there were other beneficiaries; therefore he was not competent to dispose of these lots as he did under his will.**
- 4. Further, there was no evidence that anyone apart from the Robertsons were in possession of the land before Mr. Crick executed the conveyance to the 1<sup>st</sup> respondent. A beneficiary, under a settlement cannot set up a claim for adverse possession against another beneficiary by virtue of paragraph 9 of the Schedule Part 1 of The Limitation Act Cap. 90.**
- 5. Edward had not lawfully barred the rights of the several other concurrent heirs in tail up to the time of his death in September 1947; neither would his executor Mr. Crick be able to do so in 1996 without a court order; despite sections 5(2) and 30 of the Administration of Estates Act which permits a surviving executor to convey land without an order of the Court.**
- 6. Consequently, the conveyance of the land by Mr. Joseph Crick to the 1<sup>st</sup> respondent Mr. Baldwin King was of no effect. No title passed to Mr. King and the sale to Mr. King was void. Mr. King therefore could not pass a valid title to the second respondent Ms. Hariette Richardson.**
- 7. Each respondent is fixed with constructive notice that the land was not lawfully conveyed under his/her respective Deed of Conveyance. The respondents are therefore not protected by their plea that they were bona fide purchasers for value without notice.**

**Applying principles in Halsbury's Laws of England (4<sup>th</sup> edition) Vol. 42 at paras 147 to 154 and Vol. 16 paras 3111, 1313, 1322.**

- 8. The defence of laches is not maintainable against the appellant on the facts; and in any event laches is**

only allowed where there is no statutory bar. The appellant is entitled to the 12 years statutory bar period under section 17 of the Limitation of Action Act Cap. 99 which would operate from the date the 1<sup>st</sup> respondent Mr. King acquired and entered into possession of the land.

9. Although the other elements to establish the plea of acquiescence have been proven, protection cannot be afforded to the respondents on grounds of acquiescence because there is no proof that the appellant stood by and did nothing after he became aware of Mr. King and Ms. Richardson's mistaken belief that they had a valid legal title to the land.

Applying principles in Halsbury's Laws of England (4<sup>th</sup> edition) Vol. 16 paras 1473 to 1476.

## APPLICATIONS AND APPEALS

**Case Name:** Jonathan D. Christenbury v Keithley F.T. Lake et al  
[High Court Civil Appeal No. 19 of 2010]

**Date:** Monday 14<sup>th</sup> March 2011

**Coram:** The Hon. Mr. Hugh A. Rawlins, Chief Justice  
The Hon. Mde. Ola Mae Edwards, Justice of Appeal  
The Hon. Mr. Tyrone Chong, QC, Justice of Appeal [Ag.]

**Appearances:**

<b>Appellant:</b>	<b>Ms. Angela Cozier</b>
<b>Respondent:</b>	<b>Ms. Indira St. Jean</b>

**Issues:** Leave to appeal the decision of the learned master dated 28<sup>th</sup> October 2010 – Prospect of success – Delay

**Result / Order:** [Oral delivery]

1. Application for leave to appeal is granted and the respondent is to pay the sum of \$1,500.00 costs to the applicant in this application.
2. The notice of appeal shall be filed within 14 days of today's date.
3. The appeal is to be scheduled for hearing as a matter of urgency and in any event by the next sitting of the court in this jurisdiction, in July 2011.
4. The solicitor for the appellant shall file and serve the Record of Appeal after consultation with the solicitor for the respondent, on or before Monday 4<sup>th</sup> April 2011.
5. The Record of Appeal shall contain the Claim Form, Statement of Claim, Defence, Reply if any, essential affidavits and any other relevant document that will assist the Court of Appeal.
6. The solicitor for the appellant shall file and serve skeleton arguments on or before 25<sup>th</sup> April 2011.
7. The solicitor for the respondent shall file and serve skeleton arguments on or before 13<sup>th</sup> May 2011.
8. The solicitor for the appellant shall file and serve skeleton arguments in response, if necessary, on or before 27<sup>th</sup> May 2011.

**Reason:**

The proposed appeal raises an issue which the Court considers should be examined and determined by this Court.

**Case Name:**

**Luis Mills v Licensing Authority  
[Magisterial Criminal Appeal No. 4 of 2011]**

**Date:**

**Monday 14<sup>th</sup> March 2011**

**Coram:**

**The Hon. Mr. Hugh A. Rawlins, Chief Justice  
The Hon. Mde. Ola Mae Edwards, Justice of Appeal  
The Hon. Mr. Tyrone Chong, QC, Justice of Appeal [Ag.]**

**Appearances:**

**Appellant: Mr. John Cato**

**Respondent: Mrs. Pauline Hendrickson, Director of Public**

**Prosecutions**

**Issue:** Leave to enter into recognisance to prosecute appeal out of time

**Result / Order:** [Oral delivery]  
The application for leave is granted and accordingly time is extended for the appellant to enter into recognisance to prosecute the appeal before the magistrate on or before 18<sup>th</sup> March 2011.

**Reason:** There was no objection from the Director of Public Prosecutions. The Court was of the view that there is an arguable case to be heard on appeal.

**Case Name:** Susan Morrice et al v Maranco LLC  
[High Court Civil Appeal No. 22 of 2010]

**Date:** Monday 14<sup>th</sup> March 2011

**Coram:** The Hon. Mr. Hugh A. Rawlins, Chief Justice  
The Hon. Mde. Ola Mae Edwards, Justice of Appeal  
The Hon. Mr. Tyrone Chong, QC, Justice of Appeal [Ag.]

**Appearances:**

**Appellant:** Mr. John McDonald, with him, Mr. Oral Martin holding papers for the Nisbetts

**Respondent:** Mr. Frank Walwyn

**Issue:** Leave to appeal

**Result / Order:** [Oral delivery]  
The matter is adjourned to 15<sup>th</sup> March 2011.

**Reason:** At the request of the parties.

**Case Name:** International Natural Energy LLC v Maranco  
LLC  
[High Court Civil Appeal No. 1 of 2011]

**Date:** Monday 14<sup>th</sup> March 2011

**Coram:** The Hon. Mr. Hugh A. Rawlins, Chief Justice  
The Hon. Mde. Ola Mae Edwards, Justice of Appeal  
The Hon. Mr. Tyrone Chong, QC, Justice of Appeal [Ag.]

**Appearances:**

**Appellant:** Mr. John McDonald, with him, Mr. Oral Martin holding  
papers for the Nisbetts

**Respondent:** Mr. Frank Walwyn

**Issue:** Leave to appeal

**Result / Order:** [Oral delivery]  
The matter is adjourned to 15<sup>th</sup> March 2011.

**Reason:** At the request of the parties.

**Case Name:** Romeo Cannonier v The Director of Public  
Prosecutions  
[High Court Criminal Appeal No. 2 of 2008]

**Date:** Monday 14<sup>th</sup> March 2011

**Coram:** The Hon. Mr. Hugh A. Rawlins, Chief Justice  
The Hon. Mde. Ola Mae Edwards, Justice of Appeal  
The Hon. Mr. Tyrone Chong, QC, Justice of Appeal [Ag.]

**Appearances:**

**Appellant:** Mrs. Angela Inniss-Hodge

**Respondent:** Mrs. Pauline Hendrickson, Director of Public Prosecutions

**Issues:**

Application for an adjournment – Appeal against sentence – Murder

**Result / Order:**

**[Oral delivery]**

The matter is adjourned to the next sitting of the Court of Appeal in July 2011 for hearing after the following directions have been complied with:

- (a) The appellants are to serve any medical evidence (not already served) by 30<sup>th</sup> March 2011.
- (b) The Crown is to serve any medical evidence upon which it relies by 30<sup>th</sup> May 2011.
- (c) The parties are to notify the Court by 15<sup>th</sup> June 2011 whether any witnesses are required.
- (d) The Registrar is to consult with the Court and to notify the parties whether the Court requires the attendance of any witness by 22<sup>nd</sup> June 2011.
- (e) The appellant's skeleton argument and bundle in support of the appeal is to be served by 15<sup>th</sup> May 2011.
- (f) The Crown's skeleton argument and bundle in support of the appeal is to be served by 31<sup>st</sup> May 2011.

**Reason:**

Counsel for the appellant was not ready.

**Case Name:**

**Ruedeney Williams v The Director of Public Prosecutions  
[High Court Criminal Appeal No. 19 of 2008]**

**Date:**

Monday 14<sup>th</sup> March 2011

**Coram:**

The Hon. Mr. Hugh A. Rawlins, Chief Justice  
The Hon. Mde. Ola Mae Edwards, Justice of Appeal

The Hon. Mr. Tyrone Chong, QC, Justice of Appeal [Ag.]

**Appearances:**

**Appellant:** Mrs. Angela Inniss-Hodge

**Respondent:** Mrs. Pauline Hendrickson, Director of Public Prosecutions

**Issues:**

Application for an adjournment – Appeal against sentence – Murder

**Result / Order:**

[Oral delivery]

The matter is adjourned to the next sitting of the Court of Appeal in July 2011 for hearing after the following directions have been complied with:

- (a) The appellants are to serve any medical evidence (not already served) by 30<sup>th</sup> March 2011.
- (b) The Crown is to serve any medical evidence upon which it relies by 30<sup>th</sup> May 2011.
- (c) The parties are to notify the Court by 15<sup>th</sup> June 2011 whether any witnesses are required.
- (d) The Registrar is to consult with the Court and to notify the parties whether the Court requires the attendance of any witness by 22<sup>nd</sup> June 2011.
- (e) The appellant's skeleton argument and bundle in support of the appeal is to be served by 15<sup>th</sup> May 2011.
- (f) The Crown's skeleton argument and bundle in support of the appeal is to be served by 31<sup>st</sup> May 2011.

**Reason:**

Counsel for the appellant was not ready.

**Case Name:**

Sheldon Isaac v The DPP  
[High Court Criminal Appeal No. 20 of 2008]

**Date:**

Monday 14<sup>th</sup> March 2011

**Coram:**

The Hon. Mr. Hugh A. Rawlins, Chief Justice

**The Hon. Mde. Ola Mae Edwards, Justice of Appeal  
The Hon. Mr. Tyrone Chong, Justice of Appeal [Ag.]**

**Appearances:**

**Appellant: Mrs. Angela Inniss-Hodge**

**Respondent: Mrs. Pauline Hendrickson, Director of Public Prosecutions**

**Issues:**

**Application for an adjournment – Appeal against sentence – Murder**

**Result / Order:**

**[Oral delivery]**

**The matter is adjourned to the next sitting of the Court of Appeal in July 2011 for hearing after the following directions have been complied with:**

- (a) The appellants are to serve any medical evidence (not already served) by 30<sup>th</sup> March 2011.**
- (b) The Crown is to serve any medical evidence upon which it relies by 30<sup>th</sup> May 2011.**
- (c) The parties are to notify the Court by 15<sup>th</sup> June 2011 whether any witnesses are required.**
- (d) The Registrar is to consult with the Court and to notify the parties whether the Court requires the attendance of any witness by 22<sup>nd</sup> June 2011.**
- (e) The appellant’s skeleton argument and bundle in support of the appeal is to be served by 15<sup>th</sup> May 2011.**
- (f) The Crown’s skeleton argument and bundle in support of the appeal is to be served by 31<sup>st</sup> May 2011.**

**Reason:**

**Counsel for the appellant was not ready.**

**Case Name:**

**Romeo Cannonier v The DPP  
[High Court Criminal Appeal No. 21 of 2008]**

**Date:**

**Monday 14<sup>th</sup> March 2011**

**Coram:** The Hon. Mr. Hugh A. Rawlins, Chief Justice  
The Hon. Mde. Ola Mae Edwards, Justice of Appeal  
The Hon. Mr. Tyrone Chong, QC, Justice of Appeal [Ag.]

**Appearances:**

**Appellant:** Mrs. Angela Inniss-Hodge

**Respondent:** Mrs. Pauline Hendrickson, Director of Public Prosecutions

**Issues:** Application for an adjournment – Appeal against sentence – Murder

**Result / Order:** [Oral delivery]  
The matter is adjourned to the next sitting of the Court of Appeal in July 2011 for hearing after the following directions have been complied with:

- (a) The appellants are to serve any medical evidence (not already served) by 30<sup>th</sup> March 2011.
- (b) The Crown is to serve any medical evidence upon which it relies by 30<sup>th</sup> May 2011.
- (c) The parties are to notify the Court by 15<sup>th</sup> June 2011 whether any witnesses are required.
- (d) The Registrar is to consult with the Court and to notify the parties whether the Court requires the attendance of any witness by 22<sup>nd</sup> June 2011.
- (e) The appellant’s skeleton argument and bundle in support of the appeal is to be served by 15<sup>th</sup> May 2011.
- (f) The Crown’s skeleton argument and bundle in support of the appeal is to be served by 31<sup>st</sup> May 2011.

**Reason:** Counsel for the appellant was not ready.

**Case Name:** Louis Gardener v The Director of Public Prosecutions  
[High Court Criminal Appeal No. 22 of 2008]

**Date:** Monday 14<sup>th</sup> March 2011

**Coram:** The Hon. Mr. Hugh A. Rawlins, Chief Justice  
The Hon. Mde. Ola Mae Edwards, Justice of Appeal  
The Hon. Mr. Tyrone Chong, QC, Justice of Appeal [Ag.]

**Appearances:**

**Appellant:** Mrs. Angela Inniss-Hodge

**Respondent:** Mrs. Pauline Hendrickson, Director of Public Prosecutions

**Issues:** Application for an adjournment – Appeal against sentence – Murder

**Result / Order:** [Oral delivery]  
The matter is adjourned to the next sitting of the Court of Appeal in July 2011 for hearing after directions have been complied with:

- (a) The appellants are to serve any medical evidence (not already served) by 30<sup>th</sup> March 2011.
- (b) The Crown is to serve any medical evidence upon which it relies by 30<sup>th</sup> May 2011.
- (c) The parties are to notify the Court by 15<sup>th</sup> June 2011 whether any witnesses are required.
- (d) The Registrar is to consult with the Court and to notify the parties whether the Court requires the attendance of any witness by 22<sup>nd</sup> June 2011.
- (e) The appellant’s skeleton argument and bundle in support of the appeal is to be served by 15<sup>th</sup> May 2011.
- (f) The Crown’s skeleton argument and bundle in support of the appeal is to be served by 31<sup>st</sup> May 2011.

**Reason:** Counsel for the appellant was not ready.

**Case Name:** Warrington Phillip v The Director of Public Prosecutions

**[High Court Criminal Appeal No. 2 of 2009]**

**Date:** Monday 14<sup>th</sup> March 2011

**Coram:** The Hon. Mr. Hugh A. Rawlins, Chief Justice  
The Hon. Mde. Ola Mae Edwards, Justice of Appeal  
The Hon. Mr. Tyrone Chong, QC, Justice of Appeal [Ag.]

**Appearances:**

**Appellant:** Dr. Henry Browne

**Respondent:** Mrs. Pauline Hendrickson, Director of Public Prosecutions

**Issues:** Application for an adjournment – Appeal against conviction – Murder

**Result / Order:** [Oral delivery]  
The hearing is adjourned to the next sitting of the court in July 2011.

**Reason:** The application was made by the DPP to allow Sir Richard Cheltenham, QC to represent the respondent.

**Case Name:** Sandra Roberts v The Chief of Police  
[Magisterial Criminal Appeal No. 4 of 2007]

**Date:** Monday 14<sup>th</sup> March 2011

**Coram:** The Hon. Mr. Hugh A. Rawlins, Chief Justice  
The Hon. Mde. Ola Mae Edwards, Justice of Appeal  
The Hon. Mr. Tyrone Chong, QC, Justice of Appeal [Ag.]

**Appearances:**

**Appellant:** Dr. Henry Browne

**Respondent:** Mrs. Pauline Hendrickson, Director of Public Prosecutions

**Issues:** **Appeal against conviction – Possession of an offensive weapon to commit a criminal act / beating**

**Result / Order & Reason:** **[Oral delivery]  
The appeal, having been withdrawn, is accordingly dismissed.**

**Case Name:** **Michael Caines v Nassibou Butler  
[Magisterial Civil Appeal No. 8 of 2010]**

**Date:** **Monday 14<sup>th</sup> March 2011**

**Coram:** **The Hon. Mr. Hugh A. Rawlins, Chief Justice  
The Hon. Mde. Ola Mae Edwards, Justice of Appeal  
The Hon. Mr. Tyrone Chong, QC, Justice of Appeal [Ag.]**

**Appearances:**

**Appellant:** **Dr. Henry Browne**

**Respondent:** **Mr. Butler (not present)**

**Issue:** **Leave to withdraw appeal**

**Result / Order:** **[Oral delivery]  
The appeal is withdrawn.**

**Reason:** **The parties have resolved the matter.**

**Case Name:** **Collis King v The Robelto Glasgow  
[Magisterial Civil Appeal No. 1 of 2011]**

**Date:** **Monday 14<sup>th</sup> March 2011**

**Coram:** The Hon. Mr. Hugh A. Rawlins, Chief Justice  
The Hon. Mde. Ola Mae Edwards, Justice of Appeal  
The Hon. Mr. Tyrone Chong, QC, Justice of Appeal [Ag.]

**Appearances:**  
**Appellant:** Mrs. Angela Inniss-Hodge  
**Respondent:** Mr. Anthony Gonsalves

**Issue:** Leave to withdraw appeal

**Result / Order & Reason:** [Oral delivery]  
The appeal, having been withdrawn, is accordingly dismissed, with no order made as to costs.

**Case Name:** Databank International Limited v Bank of Nevis International Limited  
[High Court Civil Appeal No. 13 of 2002]

**Date:** Monday 14<sup>th</sup> March 2011

**Coram:** The Hon. Mr. Hugh A. Rawlins, Chief Justice  
The Hon. Mde. Ola Mae Edwards, Justice of Appeal  
The Hon. Mr. Tyrone Chong, QC, Justice of Appeal [Ag.]

**Appearances:**  
**Appellant:** Mr. Anthony Gonsalves  
**Respondent:** Dr. Henry Browne

**Issue:** Status of matter

**Result / Order & Reason:** [Oral delivery]  
The matter is struck from the status hearing list, having been determined by the status hearing judge in 2010.

**Case Name:** **Calvert Doyling v The Director of Public Prosecutions**  
**[High Court Criminal Appeal No. 8 of 2010]**

**Date:** **Monday 14<sup>th</sup> March 2011**

**Coram:** **The Hon. Mr. Hugh A. Rawlins, Chief Justice**  
**The Hon. Mde. Ola Mae Edwards, Justice of Appeal**  
**The Hon. Mr. Tyrone Chong, QC, Justice of Appeal [Ag.]**

**Appearances:**

**Appellant:** **In person (unrepresented)**

**Respondent:** **Mrs. Pauline Hendrickson, Director of Public Prosecutions, with her, Mrs. Rhonda Nisbett-Browne, Mr. Garth Wilkin and Mr. O'Neil Simpson**

**Issues:** **Appeal against sentence of 16 years for unlawful carnal knowledge of an 8 year old girl – Severity of sentence**

**Result / Order:** **[Oral delivery]**  
**1. The appeal against sentence is dismissed.**  
**2. The appellant's sentence is affirmed to run from the date of conviction.**

**Reason:** **Having regard to all the circumstances of the case, the Court can see no ground for interfering with the sentence of the trial judge in the exercise of his discretion.**

**Case Name:** **Desi Williams v The Director of Public Prosecutions**  
**[High Court Criminal Appeal No. 9 of 2010]**

**Date:** **Monday 14<sup>th</sup> March 2011**

**Coram:** The Hon. Mr. Hugh A. Rawlins, Chief Justice  
The Hon. Mde. Ola Mae Edwards, Justice of Appeal  
The Hon. Mr. Tyrone Chong, QC, Justice of Appeal [Ag.]

**Appearances:**

**Appellant:** In person

**Respondent:** Mrs. Pauline Hendrickson, Director of Public Prosecutions, with her, Mrs. Rhonda Nisbett-Browne, Mr. Garth Wilkin and Mr. O'Neil Simpson

**Issue:** Appeal against sentence of 12 years for the offence of burglary

**Result / Order:** [Oral delivery]  
1. The appeal is dismissed and the appellant's sentence is affirmed.  
2. Sentence of 12 years imprisonment is to run from the date of conviction and concurrent with any other sentence being served.

**Reason:** Having looked at the records the court can see no reason to depart from the sentence given. The appellant was serving a sentence for another offence and the trial judge did not state whether the sentence was to run consecutively or concurrently.

**Case Name:** Kevin Kelly v The Director of Public Prosecutions  
[High Court Criminal Appeal No. 14 of 2010]

**Date:** Monday 14<sup>th</sup> March 2011

**Coram:** The Hon. Mr. Hugh A. Rawlins, Chief Justice  
The Hon. Mde. Ola Mae Edwards, Justice of Appeal  
The Hon. Mr. Tyrone Chong, QC, Justice of Appeal [Ag.]

**Appearances:**

**Appellant:** In person

**Respondent:** Mrs. Pauline Hendrickson, Director of Public Prosecutions, with her, Mrs. Rhonda Nisbett-Browne, Mr. Garth Wilkin and Mr. O'Neil Simpson

**Issue:** Appeal against sentence of 6 years for rape

**Result / Order:** [Oral delivery]  
1. The appeal against sentence is dismissed.  
2. The sentence is to run from 16<sup>th</sup> October 2009, which is the date of remand.

**Reason:** Having regard to all the circumstances of the case, the Court found no reason to interfere with the sentence of the judge. The trial judge did not take into account the remand period from 16<sup>th</sup> October 2009 up to 10<sup>th</sup> June 2010, the date of conviction.

**Case Name:** Kinishi Lewis v The DPP  
[High Court Criminal Appeal No. 17 of 2010]

**Date:** Monday 14<sup>th</sup> March 2011

**Coram:** The Hon. Mr. Hugh A. Rawlins, Chief Justice  
The Hon. Mde. Ola Mae Edwards, Justice of Appeal  
The Hon. Mr. Tyrone Chong, QC, Justice of Appeal [Ag.]

**Appearances:**  
**Appellant:** In person (unrepresented)  
**Respondents:** Mrs. Pauline Hendrickson, Director of Public Prosecutions, with her, Mrs. Rhonda Nisbett-Browne, Mr. Garth Wilkin and Mr. O'Neil Simpson

**Issue:** Appeal against conviction and sentence of 5 years and 2 years for the offence of unlawful carnal knowledge (2 counts)

**Result / Order:** [Oral delivery]  
1. The appeals against sentences on the 2 counts are dismissed.  
2. The appellant's sentence is to run from the date of conviction.

**Reason:** The court could see no reason to disturb the sentence. The trial judge was quite reasonably within the ambit of his discretion when he sentenced the appellant, as the appellant who was 21 years old at the time of the offences had a previous conviction for a similar offence.

**Case Name:** Kevin Francis v The Director of Public Prosecutions  
[High Court Criminal Appeal No. 17 of 2009]

**Date:** Monday 14<sup>th</sup> March 2011

**Coram:** The Hon. Mr. Hugh A. Rawlins, Chief Justice  
The Hon. Mde. Ola Mae Edwards, Justice of Appeal  
The Hon. Mr. Tyrone Chong, QC, Justice of Appeal [Ag.]

**Appearances:**  
**Appellant:** In person (unrepresented)  
**Respondent:** Mrs. Pauline Hendrickson, Director of Public Prosecutions, with her, Mrs. Rhonda Nisbett-Browne, Mr. Garth Wilkin and Mr. O'Neil Simpson

**Issue:** Appeal against sentence of 6 years for wounding

**Result / Order:** [Oral delivery]  
1. The appeal against sentence is dismissed and the sentence is affirmed.  
2. The appellant's sentence of 6 years imprisonment shall be reduced by 4 months to take into consideration time spent on remand.

**Reason:** The Court could find no reason to interfere with the sentence of the learned trial judge having regard to all the aggravating circumstances of the case. However, the trial judge omitted to take into account the appellant's time of 4 months spent on remand.

**Case Name:** Ricky Ferlance v The Director of Public Prosecutions  
[High Court Criminal Appeal No. 24 of 2006]

**Date:** Monday 14<sup>th</sup> March 2011

**Coram:** The Hon. Mr. Hugh A. Rawlins, Chief Justice  
The Hon. Mde. Ola Mae Edwards, Justice of Appeal  
The Hon. Mr. Davidson Baptiste, Justice of Appeal

**Appearances:**

**Appellant:** In person

**Respondent:** Mrs. Rhonda Nisbett-Browne

**Issues:** Appeal against conviction and sentence – Whether the trial judge took into consideration matters which he ought not to in a case of unlawful carnal knowledge – Whether the trial judge erred in the summation to the jury – Whether the jury could have been confused on the direction given on the issue of corroboration

**Result / Order:** [Oral delivery]  
1. The appeal against conviction and sentence is dismissed; the conviction and sentence are affirmed;  
2. The sentence is to run from 11<sup>th</sup> October 2005 which is the date of remand, rather than from the date of sentence.

**Reason:** The Court does not agree with the appellant in relation to the evidence and the fact that the result from the swabs was not brought into court. The jury believed the

evidence of the virtual complainant as they had the liberty to do. There was enough evidence on which the conviction could have been based.

Although the summation on corroboration was not perfect, that in itself was not sufficient to vitiate the conviction.

In relation to the sentence of 20 years, the Court saw no reason to disturb that sentence, particularly as the appellant chose to go to a full trial, and has shown no evidence of remorse. However, since the appellant was on remand from 11<sup>th</sup> October 2005, the sentence should run from that date.

**Case Name:** Dean Boddie v The Director of Public Prosecutions  
[High Court Criminal Appeal No. 23A of 2008]

**Date:** Monday 14<sup>th</sup> March 2011

**Coram:** The Hon. Mr. Hugh A. Rawlins, Chief Justice  
The Hon. Mde. Ola Mae Edwards, Justice of Appeal  
The Hon. Mr. Davidson Baptiste, Justice of Appeal

**Appearances:**

**Appellant:** In person

**Respondent:** Mrs. Rhonda Nisbett-Browne

**Issue:** Appeal against conviction and sentence of 10 years imprisonment for housebreaking and larceny

**Result / Order:** [Oral delivery]

1. The appeal against conviction, having been withdrawn, is dismissed and the conviction is affirmed.
2. The appeal against sentence is allowed to the extent that the sentence of 10 years imprisonment is reduced to 7 years to run from 30<sup>th</sup> September 2008.

**Reason:** The Court noted that Mr. Boddie had a previous related conviction, for which he was fined. The Court was of the view however, that in all of the circumstances of the case the sentence of 10 years imprisonment was too high for a first prison sentence and thought that 7 years was a more reasonable term of imprisonment.

**Case Name:** **Philmore Matthew v The Director of Public Prosecutions**  
**[High Court Criminal Appeal No. 4 of 2008]**

**Date:** Monday 14<sup>th</sup> March 2011

**Coram:** The Hon. Mr. Hugh A. Rawlins, Chief Justice  
The Hon. Mde. Ola Mae Edwards, Justice of Appeal  
The Hon. Mr. Davidson Baptiste, Justice of Appeal

**Appearances:**

**Appellant:** In person

**Respondent:** Mrs. Pauline Hendrickson, Director of Public Prosecutions, with her, Mrs. Rhonda Nisbett-Browne and Mr. O'Neil Simpson

**Issues:** Appeal against conviction and sentence – Whether the sentence of 7 years imprisonment imposed in a case of indecent assault was too harsh

**Result / Order:** [Oral delivery]  
1. The appeal against conviction, having been withdrawn, is dismissed and the appellant's conviction is accordingly affirmed.  
2. The appeal against sentence is dismissed and the appellant's sentence is accordingly affirmed to run from 5<sup>th</sup> February 2008, the date of sentence.

**Reason:** The Court considered the fact that the appellant had a

previous conviction for indecent assault and was sentenced to 7 years imprisonment in 2001. This offence was committed in 2007. In the circumstances, the Court saw no ground for reducing the sentence, as the appellant's conduct left no room for such consideration.

**Case Name:** Harsha Elliot v The Director of Public Prosecutions  
Chad Elliot v The Director of Public Prosecutions  
[High Court Criminal Appeal Nos. 15 and 16 of 2009]

**Date:** Monday 14<sup>th</sup> March 2011

**Coram:** The Hon. Mr. Hugh A. Rawlins, Chief Justice  
The Hon. Mde. Ola Mae Edwards, Justice of Appeal  
The Hon. Mr. Davidson Baptiste, Justice of Appeal

**Appearances:**

<b>Appellant:</b>	In person
<b>Respondent:</b>	Mrs. Rhonda Nisbett-Browne

**Issues:** Appeal against conviction and sentence – Whether the identity of the appellants was mistaken – Whether the judge misdirected the jury – Whether the sentence imposed was too harsh having regard to the evidence in a case of armed robbery

**Result / Order:** [Oral delivery]  
1. The appeals against conviction and sentence are dismissed and the appellants' convictions and sentences are affirmed.  
2. The appellants' sentences are to run from 6<sup>th</sup> August 2008, the date of remand, rather than 24<sup>th</sup> September 2009.

**Reason:**

The Court found that sufficient evidence was given at the trial on identification. That evidence, described the appellant's voice, his build, complexion and tattoo. In terms of lighting, there was evidence of lighting and it was agreed that the lighting was good.

The trial judge looked at the evidence on identification in its totality. He looked at the length of time that the virtual complainant had indicated that the appellants were in view.

The Court also found that the trial judge gave adequate directions on identification both on the law and on the evidence. The Court was further of the view that the jury could have convicted and they were entitled to convict on the evidence.

The trial judge gave detailed and adequate directions on alibi which the appellants based their case. The Court therefore found that the convictions were safe and the appellants suffered no injustice or prejudice in their trial.

The Court saw no reason to disturb the sentences given by the trial judge.

**Case Name:**

**Jamoy Warner v The Director of Public Prosecutions  
Evan Daniel v The Director of Public Prosecutions  
[High Court Criminal Appeal Nos. 21 and 22 of 2009]**

**Date:**

**Monday 14<sup>th</sup> March 2011**

**Coram:**

**The Hon. Mr. Hugh A. Rawlins, Chief Justice  
The Hon. Mde. Ola Mae Edwards, Justice of Appeal  
The Hon. Mr. Davidson Baptiste, Justice of Appeal**

**Appearances:**

**Appellant:** In person  
**Respondent:** Mrs. Pauline Hendrickson, Director of Public Prosecutions

**Issues:** Appeal against conviction – Whether the conviction was unsafe based on the fact that the evidence was inconsistent and insufficient – Whether the issue of joint enterprise was adequately dealt with by the trial Judge in circumstances where only the appellant was armed with the gun when the offence of shooting with intent was committed

**Result / Order:** The matter is adjourned to Thursday 17<sup>th</sup> March 2011.

**Reason:** Adjourned for the day.

## **STATUS HEARING**

**Case Name:** Hesketh T. Chapman v Nevis Co-operative Bank Co. Ltd. (now called RBTT Bank (SKN) Limited [High Court Civil Appeal No. 32 of 2003]

**Date:** Monday 14<sup>th</sup> March 2011

**Before:** The Hon. Mr. Hugh A. Rawlins, Chief Justice  
The Hon. Mde. Ola Mae Edwards, Justice of Appeal  
The Hon. Mr. Davidson Baptiste, Justice of Appeal

**Appearances:**  
**Appellant:** Mr. Geoffrey Romany  
**Respondent:** No appearances

**Issue:** Status of matter

**Result / Order:** [Oral delivery]  
The matter is adjourned to the chamber hearing date in April 2011 and is to be heard via teleconference.

**Reason:** The Court is of the opinion that by adjourning the matter for case management, the parties can be apprised and will be able to participate in the making of directions.

## **APPLICATIONS AND APPEALS**

**Case Name:** Susan Morrice et al v Maranco LLC  
International Natural Energy LLC v Maranco LLC  
[High Court Civil Appeal Nos. 22 of 2010 and 1 of 2011 ]

**Date:** Tuesday 15<sup>th</sup> March 2011

**Coram:** The Hon. Mde. Janice Pereira, Justice of Appeal  
The Hon. Mr. Davidson Baptiste, Justice of Appeal  
The Hon. Mr. Tyrone Chong, QC, Justice of Appeal [Ag.]

**Appearances:**

<b>Appellant:</b>	Mr. John MacDonald, QC, with him, Mr. Oral Martin
<b>Respondent:</b>	Mr. Frank Walwyn, with him, Ms. Myrna Walwyn

**Issues:** Application for leave to appeal against the order of Justice Henry Moe, made on 13<sup>th</sup> December 2010 – Application for leave to appeal against the order of Justice Redhead, made on 11<sup>th</sup> January 2011 – Whether the order of Justice Moe was clear and unambiguous – Whether the order of Justice Redhead ought to have been made – Whether the order was disproportionate

**Result / Order:** [Oral delivery]

- 1. Leave to appeal is granted in both applications and the applications are treated as appeals.**
- 2. The court further orders that:**
  - i) The order of Justice Redhead made on 11<sup>th</sup> January 2011 be set aside.**
  - ii) Paragraph 5 of the order of Justice Moe dated 13<sup>th</sup> December 2010 be set aside.**
  - iii) Paragraphs 2, 3 & 4 of the order of Justice Moe are to continue, but should be varied to the following extent:- with regard to paragraph 2, the order should read: "INE through its directors, officers, servants or agents shall provide written notice to the applicant's solicitor with respect to any contracts relating to new projects, the hiring of non-clerical employees or consultants, or any extra ordinary commitments or expenditures on behalf of International Natural Energy LLC (INE) or Belize Natural Energy Limited (BNE), within three days of the contract being entered into."**

**Similarly, paragraph 3 should read "INE through its directors, officers, servants or agents shall provide written notice to the applicant's solicitors with respect to the acceptance of new liability by INE or BNE in excess of US \$50,000 within three days of any such liability being incurred."**

**Paragraph 4 is to read "INE through its directors, officers, servants or agents are prohibited from issuing any further loans pursuant to the Loan Release Program without the applicant's express consent."**
  - iv) Paragraph 6 should remain: "and the parties should strive to expedite the matter."**
  - v) Paragraphs 2, 3, and 4 of the orders shall remain in place pending the hearing and determination of Maranco's interlocutory application.**
- 3. The interlocutory application is to be heard no later than Friday 15<sup>th</sup> April 2011.**
- 4. The appellants are disallowed costs on the appeals.**
- 5. No order is made as to costs with respect to the respondent's requests, on the appeals.**
- 6. No order is made as to costs on the application for a stay.**

**Reason:**

On the order of Justice Moe dated 13<sup>th</sup> December 2010, the Court is of the view that paragraph 5 of the order lacked clarity and accordingly should be set aside. It follows therefore that the order of Justice Redhead of 11<sup>th</sup> January 2011, striking out the 3<sup>rd</sup> defendant – that is INE’s statement of case for failing to comply with the order of Justice Moe ought to be set aside. In any event, even if the order was clear (the Court having found it is not), the striking out of INE’s statement of case was on all accounts a disproportionate response to the alleged non-compliance, having regard to the fact that the respondent Maranco did not utilize as a first measure the “unless order” provisions of CPR 2000 which had it so done would no doubt have brought the issue of the clarity of the order into focus at that stage.

The Court must register its strong disapproval of the applicant’s conduct in these matters which have been most unsatisfactory in disregarding the rules of court. When taken in its totality, it can only be taken as a total disregard of the Court itself and accordingly, notwithstanding that both appeals are allowed, the applicants’ / appellants’ costs on both appeals are disallowed.

## **STATUS HEARING**

**Case Name:**

**Louis Richards v The DPP  
[High Court Criminal Appeal No. 30 of 2008]**

**Date:**

**Tuesday 15<sup>th</sup> March 2011**

**Coram:**

**The Hon. Mr. Hugh A. Rawlins, Chief Justice  
The Hon. Mde. Ola Mae Edwards, Justice of Appeal  
The Hon. Mde. Janice Pereira, Justice of Appeal**

**Appearances:**

**Appellant: Mr. Jason Hamilton**

**Respondent:** Mrs. Pauline Hendrickson, Director of Public Prosecutions

**Issue:** Status of matter

**Result / Order:** [Oral delivery]  
The matter is adjourned to the next sitting of the Court of Appeal in July 2011.

**Reason:** The record was received late and counsel was therefore not in a position to proceed this sitting.

**Case Name:** Wilson Jones v The DPP  
[High Court Criminal Appeal No. 36 of 2008]

**Date:** Tuesday 15<sup>th</sup> March 2011

**Coram:** The Hon. Mr. Hugh A. Rawlins, Chief Justice  
The Hon. Mde. Ola Mae Edwards, Justice of Appeal  
The Hon. Mde. Janice Pereira, Justice of Appeal

**Appearances:**

**Appellant:** Mr. Chesley Hamilton

**Respondent:** Mrs. Pauline Hendrickson, Director of Public Prosecutions

**Issue:** Status of matter

**Result / Order:** [Oral delivery]  
The Registrar shall take such steps as are necessary to ensure that the notes and the transcripts of the proceedings are prepared, and that notice is given to the parties on or before 29<sup>th</sup> April 2011.

**Reason:** The record has not been completed.

**Case Name:** Averil Francis-Archibald v St. Kitts-Nevis-Anguilla National Bank Limited  
[High Court Civil Appeal No. 5 of 2005]

**Date:** Tuesday 15<sup>th</sup> March 2011

**Coram:** The Hon. Mr. Hugh A. Rawlins, Chief Justice  
The Hon. Mde. Ola Mae Edwards, Justice of Appeal  
The Hon. Mde. Janice Pereira, Justice of Appeal

**Appearances:**

<b>Appellant:</b>	No appearance
<b>Respondent:</b>	No appearance

**Issue:** Status of matter

**Result / Order:** [Oral delivery]  
1. The Registrar shall make contact with a representative of the St. Kitts-Nevis-Anguilla National Bank and also seek to locate Mrs. Archibald.  
2. The matter is adjourned to Thursday 17<sup>th</sup> March 2011.

**Reason:** To allow the Registrar to get in touch with the parties so that they appear in court on the scheduled date.

**Case Name:** Jerome Herbert v Shermel Stapleton  
[High Court Civil Appeal No. 20 of 2007]

**Date:** Tuesday 15<sup>th</sup> March 2011

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

The Hon. Mde. Ola Mae Edwards, Justice of Appeal  
The Hon. Mde. Janice Pereira, Justice of Appeal

**Appearances:**

**Appellant:** Mrs. Angela Inniss-Hodge

**Respondent:** Mrs. Miselle O'Brien-Norton

**Issues:**

Application to list matter for July sitting of the Court of Appeal

**Result / Order:**

[Oral delivery]

The application to list the matter for the July sitting is granted by consent.

**Reason:**

The Court is of the view that this would allow the solicitor for the appellant to have sufficient time to complete the record of appeal.

## **APPLICATIONS AND APPEALS**

**Case Name:**

**Morris Bennette et al v Sandra Roberts  
[Magisterial Civil Appeal No. 4 of 2010]**

**Date:**

**Tuesday 15<sup>th</sup> March 2011**

**Coram:**

**The Hon. Mr. Hugh A. Rawlins, Chief Justice  
The Hon. Mde. Ola Mae Edwards, Justice of Appeal  
The Hon. Mde. Janice Pereira, Justice of Appeal**

**Appearances:**

**Appellant:** No appearance (unrepresented)

**Respondent:** Mr. Nassibou Butler

**Issues:**

**Vehicular accident – Whether the magistrate erred in her decision given on 18<sup>th</sup> February 2009**

**Result / Order:** [Oral delivery]  
The matter is stood down.

**Reason:** In order to allow the parties to appear.

**Case Name:** **Petronella Eddy v N.R. Sales & Services Inc**  
**[Magisterial Civil Appeal No. 5 of 2010]**

**Date:** Tuesday 15<sup>th</sup> March 2011

**Coram:** The Hon. Mr. Hugh A. Rawlins, Chief Justice  
The Hon. Mde. Ola Mae Edwards, Justice of Appeal  
The Hon. Mde. Janice Pereira, Justice of Appeal

**Appearances:**  
**Appellant:** Mr. Karlweis Liburd  
**Respondent:** In person (unrepresented)

**Result / Order & Reason:** [Oral delivery]  
The appeal, having been withdrawn, is accordingly dismissed.

**Case Name:** **Irvin Hughes et al v Yannie Reynolds-Aaron**  
**[Magisterial Civil Appeal No. 7 of 2010]**

**Date:** Tuesday 15<sup>th</sup> March 2011

**Coram:** The Hon. Mr. Hugh A. Rawlins, Chief Justice  
The Hon. Mde. Ola Mae Edwards, Justice of Appeal  
The Hon. Mde. Janice Pereira, Justice of Appeal

**Appearances:**  
**Appellant:** Mr. Jason Hamilton

**Respondent:** Ms. Marsha Henderson

**Result / Order &  
Reason:**

[Oral delivery]  
The appeal is withdrawn and accordingly dismissed with \$530.00 agreed costs to the appellant.

**Case Name:**

**Dave Esdaille v Licensing Authority  
[Magisterial Criminal Appeal No. 8 of 2010]**

**Date:**

Tuesday 15<sup>th</sup> March 2011

**Coram:**

The Hon. Mr. Hugh A. Rawlins, Chief Justice  
The Hon. Mde. Ola Mae Edwards, Justice of Appeal  
The Hon. Mde. Janice Pereira, Justice of Appeal

**Appearances:**

**Appellant:** Mr. Jason Hamilton

**Respondent:** Mrs. Pauline Hendrickson, Director of Public Prosecutions

**Issue:**

Driving without due care and attention

**Result / Order &  
Reason:**

[Oral delivery]  
The appeal is withdrawn and accordingly dismissed.

**Case Name:**

**Orlando Huggins v Chief of Police  
[Magisterial Criminal Appeal No. 10 of 2010]**

**Date:**

Tuesday 15<sup>th</sup> March 2011

**Coram:**

The Hon. Mr. Hugh A. Rawlins, Chief Justice  
The Hon. Mde. Ola Mae Edwards, Justice of Appeal  
The Hon. Mde. Janice Pereira, Justice of Appeal

**Appearances:**  
**Appellant:** In person  
**Respondent:** Mrs. Pauline Hendrickson, Director of Public Prosecutions

**Issues:** Appeal against sentence for cultivation and possession of a controlled drug

**Result / Order:** [Oral delivery]  
The appeal is dismissed and the appellant's sentence is affirmed.

**Reason:** The Court can find no reason to disturb the decision of the learned magistrate.

**Case Name:** Winston Farrell v The Chief of Police  
[Magisterial Criminal Appeal No. 9 of 2010]

**Date:** Tuesday 15<sup>th</sup> March 2011

**Coram:** The Hon. Mr. Hugh A. Rawlins, Chief Justice  
The Hon. Mde. Ola Mae Edwards, Justice of Appeal  
The Hon. Mde. Janice Pereira, Justice of Appeal

**Appearances:**  
**Appellant:** Mr. Chesley Hamilton  
**Respondent:** Mrs. Rhonda Nisbett-Browne

**Issues:** Appeal against conviction and sentence – Possession of firearm and ammunition without a licence – Whether the sentence was too harsh – Whether the magistrate was duty bound to put the appellant to his election

**Result / Order:** [Judgment reserved]

The decision on sentence is reserved until 17<sup>th</sup> March 2011.

**Case Name:** The Nevis Island Administration et al v Denzel Moving  
[Magisterial Civil Appeal No. 2 of 2011]

**Date:** Tuesday 15<sup>th</sup> March 2011

**Coram:** The Hon. Mr. Hugh A. Rawlins, Chief Justice  
The Hon. Mde. Ola Mae Edwards, Justice of Appeal  
The Hon. Mde. Janice Pereira, Justice of Appeal

**Appearances:**

<b>Appellant:</b>	Mr. E. Leroy Jones
<b>Respondent:</b>	Ms. Indira St. Jean

**Issues:** Damages for negligence as a result of a vehicular accident – Whether the magistrate erred in the quantum of damages awarded for loss of use

**Result / Order:** [Oral delivery]  
1. The appeal is allowed only to the extent that damages awarded for loss of use be reduced from \$5880.00 to \$4860.00.  
2. No order is made as to costs.

**Reason:** The Court was of the view that where, as a result of a vehicular accident, a person is granted gratuitous use of a vehicle from someone other than the tortfeasor for part of the period for which he suffers loss of use, then, nominal damages should be awarded for that period of gratuitous use.

**Case Name:** Carlton Tyson Jr. v The Chief of Police  
[Magisterial Criminal Appeal No. 3 of 2011]

**Date:** Tuesday 15<sup>th</sup> March 2011

**Coram:** The Hon. Mr. Hugh A. Rawlins, Chief Justice  
The Hon. Mde. Ola Mae Edwards, Justice of Appeal  
The Hon. Mde. Janice Pereira, Justice of Appeal

**Appearances:**

**Appellant:** In person

**Respondent:** Mrs. Pauline Hendrickson, Director of Public Prosecutions

**Issues:** Appeal against conviction – Stealing – Application for an adjournment

**Result / Order:** [Oral delivery]  
The hearing of this appeal is adjourned to the next sitting of the Court of Appeal in this jurisdiction at the request of the appellant.

**Reason:** In order to allow the appellant to retain counsel.

**Case Name:** Samuel Barrett v The Chief of Police  
[Magisterial Criminal Appeal No. 2 of 2011]

**Date:** Tuesday 15<sup>th</sup> March 2011

**Coram:** The Hon. Mr. Hugh A. Rawlins, Chief Justice  
The Hon. Mde. Ola Mae Edwards, Justice of Appeal  
The Hon. Mde. Janice Pereira, Justice of Appeal

**Appearances:**

**Appellant:** Dr. Henry Browne, with him, Mr. Terance Byron

**Respondent:** Mrs. Pauline Hendrickson, Director of Public Prosecutions

**Issue:** Appeal against conviction and sentence for firearm offence

**Result / Order:** [Oral delivery]  
The appeal is allowed. The appellant's conviction and sentence are quashed. The trial is a nullity.

**Reason:** The failure of the magistrate to put the election to the appellant pursuant to section 76 of the Magistrate's Code of Procedure Act.

**Case Name:** Orville Edwards v Jennifer Hazel  
[Magisterial Criminal Appeal No. 4 of 2010]

**Date:** Tuesday 15<sup>th</sup> March 2011

**Coram:** The Hon. Mr. Hugh A. Rawlins, Chief Justice  
The Hon. Mde. Ola Mae Edwards, Justice of Appeal  
The Hon. Mde. Janice Pereira, Justice of Appeal

**Appearances:**

<b>Appellant:</b>	In person
<b>Respondent:</b>	Mr. Jonel Powell

**Issues:** Appeal against conviction and sentence – Failure to pay maintenance of child / whether obligation ceased

**Result / Order & Reason:** [Oral delivery]  
The appeal, having been withdrawn, is accordingly dismissed.

**Case Name:** Dr. George Bridgewater v G.A. Dwyer Astaphan  
[Magisterial Civil Appeal No. 1 of 2010]

**Date:** Tuesday 15<sup>th</sup> March 2011

**Coram:** The Hon. Mr. Hugh A. Rawlins, Chief Justice  
The Hon. Mde. Ola Mae Edwards, Justice of Appeal  
The Hon. Mde. Janice Pereira, Justice of Appeal

**Appearances:**

**Appellant:** Mr. Nassibou Butler

**Respondent:** Mr. Jason Hamilton

**Issues:** Regaining possession of premises being rented by the appellant – Payment of arrears for rent due to the respondent

**Result / Order & Reason:** [Oral delivery]  
The appeal, having been withdrawn, is accordingly dismissed.

**Case Name:** Cedric Liburd v Eugene Hamilton et al  
[High Court Civil Appeal No. 17 of 2010]

Hon. Attorney General of St. Christopher and Nevis v Cedric Liburd et al  
[High Court Civil Appeal No. 18 of 2010]

**Date:** Wednesday 16<sup>th</sup> March 2011

**Coram:** The Hon. Mde. Janice Pereira, Justice of Appeal  
The Hon. Mr. Davidson Baptiste, Justice of Appeal  
The Hon. Mr. Tyrone Chong, QC, Justice of Appeal [Ag.]

**Appearances:**

**Appellant:** Dr. Henry Browne, with him, Mr. Sylvester Anthony for Cedric Liburd (Civil Appeal No. 17 of 2010)  
Dr. Lloyd Barnett, with him, Mr. Arudranath Gossai for

**the Attorney General (Civil Appeal No. 18 of 2010)**

**Respondent: Mr. Terance Byron for Eugene Hamilton (Civil Appeal Nos. 17 & 18 of 2010)  
Mr. DeLara McClure Taylor, with him, Mr. Vincent Byron Jr. and Mr. Arudranath Gossai for Leroy Benjamin and Andy Blanchette (Civil Appeal Nos. 17 & 18 of 2010)**

**Issues: Appeal against the decision of Her Ladyship Mde. Indra Hariprashad Charles contained in the judgment dated 13<sup>th</sup> October 2010**

**Result / Order:**

**[Oral delivery]**

- 1. The Court, having been placed in a position of unreadiness due to the late filings of skeleton arguments by the 1<sup>st</sup> respondent in Civil Appeal No. 18 of 2010 and by the appellant in Civil Appeal No. 17 of 2010, considers that it is in the interest of justice to adjourn the appeals to the next sitting of the Court in this state (during the month of July) in the week commencing 4<sup>th</sup> July 2011, or to such earlier date as may be practicable and convenient to all the parties.**
- 2. Costs thrown away are awarded in Civil Appeal No. 17 of 2010 as against the appellant to the 1<sup>st</sup> respondent to be assessed unless agreed within 14 days.**
- 3. Costs thrown away in respect of Civil Appeal No. 18 of 2010 shall be borne by the 1<sup>st</sup> respondent in favour of the Attorney General, such costs to be assessed unless agreed within 14 days.**

**It is further ordered and directed that:**

- 4. Counsel for the appellant in Civil Appeal No. 18 of 2010, is allowed 1 ½ hrs for his oral submissions.**
- 5. Counsel for the appellant in Civil Appeal No. 17 of 2010, is allowed 2 hrs for his oral submissions.**
- 6. Counsel for the 1<sup>st</sup> respondent, is allowed 2 hrs for his oral submissions in Civil Appeal Nos. 17 and 18 of 2010.**
- 7. 20 minutes are allowed for reply submissions, if any.**
- 8. The order of addresses shall be:**
  - i. The appellant in Civil Appeal No. 17 of 2010.**
  - ii. The appellant in Civil Appeal No. 18 of**

2010.

iii. The 1<sup>st</sup> respondent addressing both appeals.

iv. Replies, if any, in the same order.

**Reason:** The Court expresses its total dissatisfaction of the parties' utter disregard for the rules of the Court (save for the Attorney General), which made the adjournment necessary.

**Case Name:** Damien Nisbett v The Chief of Police  
[Magisterial Criminal Appeal No. 1 of 2011]

**Date:** Wednesday 16<sup>th</sup> March 2011

**Coram:** The Hon. Mde. Janice Pereira, Justice of Appeal  
The Hon. Mr. Davidson Baptiste, Justice of Appeal  
The Hon. Mr. Tyrone Chong, QC, Justice of Appeal [Ag.]

**Appearances:**

<b>Appellant:</b>	Mr. Karlweis Liburd
<b>Respondent:</b>	Mr. Garth Wilkin

**Issues:** Appeal against sentence – Possession of ammunition without a licence – Possession of controlled drug

**Result / Order:** [Oral delivery]  
1. The appeal is allowed.  
2. The sentence for the possession of cannabis is reduced from 2 years to 1 year.  
3. The sentence for the possession of 3 rounds of ammunition is reduced to 6 months from 5 years.  
4. The sentences of 6 months and one year are to run concurrently.

**Reason:** The Court has considered the representation made by counsel for the appellant and also the fact that the

appellant appears to have been gainfully employed. The Court also considered the fact that the appellant had a previous conviction for possession of cannabis for which he was fined, but considers that the 2 year sentence imposed by the learned magistrate was unduly harsh.

**Case Name:** Kelroy Hazel v The Chief of Police  
[Magisterial Criminal Appeal No. 11 of 2010]

**Date:** Wednesday 16<sup>th</sup> March 2011

**Coram:** The Hon. Mde. Janice Pereira, Justice of Appeal  
The Hon. Mr. Davidson Baptiste, Justice of Appeal  
The Hon. Mr. Tyrone Chong, QC, Justice of Appeal [Ag.]

**Appearances:**

Appellant: Mr. John Cato

Respondent: Mr. Garth Wilkin

**Issues:** Appeal against sentence – Possession of an offensive weapon – Whether the learned magistrate exceeded her jurisdiction in sentencing the appellant

**Result / Order:** [Oral delivery]

1. The appeal against sentence is allowed, the learned magistrate having exceeded her jurisdiction.
2. In terms of sentencing, the sentence imposed by the magistrate is quashed and this Court substitutes a fine of \$75.00 to be paid within 1 month, in default of which the penalty will be 1 month imprisonment.

**Reason:** The magistrate exceeded her jurisdiction on sentencing under the Small Charges Act.

**Case Name:** **Morris Bennette et al v Sandra Roberts  
[Magisterial Civil Appeal No. 4 of 2010]**

**Date:** **Wednesday 16<sup>th</sup> March 2011**

**Coram:** **The Hon. Mde. Janice Pereira, Justice of Appeal  
The Hon. Mr. Davidson Baptiste, Justice of Appeal  
The Hon. Mr. Tyrone Chong, QC, Justice of Appeal [Ag.]**

**Appearances:**

**Appellant:** **Mr. Nassibou Butler**

**Respondent:** **Dr. Henry Browne**

**Issues:** **Adjournment**

**Result / Order:** **[Oral delivery]  
The hearing of this matter is adjourned to the next sitting of the Court of Appeal in July 2011.**

**Reason:** **The respondent was only served on 15<sup>th</sup> March 2011, and as a result has not had sufficient time to prepare for the hearing of the matter.**

**Case Name:** **Eldora Hodge v St. Kitts-Nevis-Anguilla Trading and Development Company Limited  
[Magisterial Civil Appeal No. 6 of 2010]**

**Date:** **Wednesday 16<sup>th</sup> March 2011**

**Coram:** **The Hon. Mde. Janice Pereira, Justice of Appeal  
The Hon. Mr. Davidson Baptiste, Justice of Appeal  
The Hon. Mr. Tyrone Chong, QC, Justice of Appeal [Ag.]**

**Appearances:**

**Appellant:** **Mr. John Cato**

**Respondent:** **Ms. Keisha Spence with Mr. Damien Kelsick**

**Issues:** No notice of appeal served

**Result / Order:** [Oral delivery]  
1. It is ordered and directed that the hearing be adjourned, the notice of appeal not having been served on the respondent.  
2. The appellant shall serve the notice of appeal on the respondent by 4:00 pm today, Wednesday 16<sup>th</sup> March 2011, and thereafter, the matter is to proceed in accordance with CPR 2000.

**Reason:** The appellant failed to serve the notice of appeal on the respondent in accordance with the rules.

**Case Name:** Jamoy Warner v The Director of Public Prosecutions  
Evan Daniel v The Director of Public Prosecutions  
[High Court Criminal Appeal Nos. 21 & 22 of 2009]

**Date:** Thursday 17<sup>th</sup> March 2011

**Coram:** The Hon. Mr. Hugh A. Rawlins, Chief Justice  
The Hon. Mde. Ola Mae Edwards, Justice of Appeal  
The Hon. Mr. Davidson Baptiste, Justice of Appeal

**Appearances:**

**Appellant:** Both in person

**Respondent:** Mrs. Pauline Hendrickson, Director of Public Prosecutions, with her, Mrs. Rhonda Nisbett-Browne, Mr. O'Neil Simpson and Mr. Garth Wilkin

**Issues:** Appeal against conviction and sentence – Alibi – Joint enterprise – Identification – Severity of sentence of 10

years imprisonment for Evan Daniel and 6 years imprisonment for Jamoy Warner for shooting with intent

**Result / Order:**

**[Oral delivery]**

- 1. The appeal against the appellants' convictions and sentences is dismissed and their convictions and sentences are affirmed.**
- 2. The sentence of each appellant is to commence from the date of remand, that being 6<sup>th</sup> November 2008.**

**Reason:**

The Court heard the submissions, considered the evidence and the trial judge's summation contained in the record of appeal and found that there was no ground for holding that the conviction was unsafe or unsatisfactory. The Court also found no reason to interfere with the sentences imposed by the trial judge. (Oral judgment to be published.)

**Case Name:**

**Winston Farrell v The Chief of Police  
[Magisterial Criminal Appeal No. 9 of 2010]**

**Date:**

**Thursday 17<sup>th</sup> March 2011**

**Coram:**

**The Hon. Mr. Hugh A. Rawlins, Chief Justice  
The Hon. Mde. Ola Mae Edwards, Justice of Appeal  
The Hon. Mr. Davidson Baptiste, Justice of Appeal**

**Appearances:**

**Appellant:**

**Mr. Chesley Hamilton**

**Respondent:**

**Mrs. Pauline Hendrickson, Director of Public Prosecutions, with her, Mrs. Rhonda Nisbett-Browne, Mr. O'Neil Simpson and Mr. Garth Wilkin**

**Issues:**

**Appeal against conviction and sentence – Possession of firearm and ammunition without licence – Section 76 of the Magistrate's Code of Procedure Act – Stay of proceedings – Section 165 of the Magistrate's Code of Procedure Act – Sentencing**

**Result / Order:** [Oral delivery]  
1. The appeal against conviction and sentence is dismissed and the appellant's conviction and sentence are affirmed.  
2. The appellant shall commence his sentence from 3<sup>rd</sup> September 2010.  
3. The appellant shall resume serving his sentence immediately.

**Reason:** The Court looked at the record and the magistrate's reasons for her findings and found no reason to interfere with the decision of the magistrate.

## **STATUS HEARING**

**Case Name:** Averil Francis-Archibald v St. Kitts-Nevis-Anguilla National Bank Limited  
[High Court Civil Appeal No. 5 of 2005]

**Date:** Thursday 17<sup>th</sup> March 2011

**Coram:** The Hon. Mr. Hugh A. Rawlins, Chief Justice  
The Hon. Mde. Ola Mae Edwards, Justice of Appeal  
The Hon. Mr. Davidson Baptiste, Justice of Appeal

**Appearances:**  
**Appellant:** In person  
**Respondent:** Mrs. Ermerlin Sebastian-Bobb

**Issue:** Status of matter

**Result / Order & Reason:** [Oral delivery]  
The appeal is withdrawn and accordingly dismissed with no order made as to costs.

## APPLICATIONS AND APPEALS

**Case Name:** echinaCash Inc. v Light Year Partners LLC et al  
[High Court Civil Appeal No. 32 of 2010]

**Date:** Thursday 17<sup>th</sup> March 2011

**Coram:** The Hon. Mr. Hugh A. Rawlins, Chief Justice  
The Hon. Mde. Ola Mae Edwards, Justice of Appeal  
The Hon. Mde. Janice Pereira, Justice of Appeal

**Appearances:**

**Appellant:** Mr. Stephen Moverley-Smith, QC

**Respondent:** Mr. Andrew Lennon, QC, with him, Mrs. Tana'ania Small Davis

**Issues:** Whether the decision of Mr. Justice Bannister, QC, dated 18<sup>th</sup> October 2010 in which he dismissed echinaCash Inc.'s claim to be beneficially entitled to the entirety of the issued share capital of the 1<sup>st</sup> respondent, Light Year Partners LLC, the BVI that has been registered in the name of the 2<sup>nd</sup> respondent, Elliot Friedman, was correct – Whether the learned trial judge was right at the time of the issue of shares that Light Year Partners LLC was the legal owner – Whether the learned trial judge was right to dismiss the estoppel plea

**Result / Order:** [Judgment reserved]  
The parties will be notified of the date of delivery.