

COURT OF APPEAL SITTING

**SAINT LUCIA
21st – 25th February 2011**

JUDGMENTS

Case Name: Saint Lucia Air and Sea Ports Authority v Leroy Mathurin et al
[High Court Civil Appeal No. 35 of 2008]
(Saint Lucia)

Date: Monday, 21st February 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. Alberton Richelieu

Respondent: Mrs. Wauneen Louis-Harris

Issues: Civil appeal – Compensation for assault, unlawful arrest and false imprisonment – Saint Lucia Air and Sea Ports Authority Act Cap. 8.13 (Revised Laws of Saint Lucia 2001) – Saint Lucia Airport Regulations – Interpretation of Regulation 27(1)(c) of the Saint Lucia Airport Regulations – The meanings of “plying for hire”, “soliciting”, and “carrying on business or trade” at the airport – Power of Port Police to arrest – Enforcing directions of the Authority’s General Manager – Whether Port Police can lawfully direct a transport driver collecting arriving passengers to depart from and not collect such passengers from the arrival lobby at the airport

Result and Reason: Held: dismissing the appeal, affirming the order of the court in relation to the damages and prescribed costs awarded to each respondent and awarding to the

respondents costs in the appeal, that being two thirds of the prescribed costs in the court below, that:

- 1. The learned judge erred in holding that the heading and marginal notes of an enactment are to be used in the interpretation of the enactment and also in determining that Regulation 27 of the Regulations deals with the prevention of destruction and damage to the airport. Further, the judge erred in holding that Regulation 27(1)(c) does not apply to the lobby or checking areas of the airport as Regulation 3 states that “These Regulations apply to all persons who are at any time in any part of an airport.” The scope and purpose of Regulation 27(1)(c) therefore should not be delimited to any particular category of offence.**
- 2. It is essential before one could say that a vehicle was “plying for hire”, first, that it should be exhibited, be on view to the public, and secondly, that it should, while on view, expressly or impliedly solicit customers in the sense of inviting the public to use it. The respondent’s presence at the airport in the arrival lobby area did not amount to soliciting arriving passengers within the ordinary meaning of the word “solicit”. The respondents by a previously booked arrangement were collecting the Sandals passengers in the arrival lobby at the airport so as to transport them to the Sandals Resort. Their vehicles clearly were not on view to the public expressly or impliedly for soliciting customers in the sense of inviting the public to use their vehicles.**

Cogley v Sherwood [1959] 2 All ER 313 applied.

- 3. Regulation 6 (carrying on trade or business) should be read in the context of section 73(1)(a) and (m) of the Saint Lucia Air and Sea Ports Authority Act Cap. 8:13 which speaks to business operations performed or provided at the airport; and/or connected with the airport. There is no evidence that the respondents were based or pegged at the airport to solicit fares, unlike the Southern Taxi Association members. Neither were the respondents looking for customers at the airport in order to do business or carry on any such trade therefrom.**

4. An offence under Regulation 27(1)(c) is an arrestable summary offence by virtue of section 570 of The Criminal Code Cap 3.01 which states that a police officer may arrest without a warrant anyone who is or whom he or she, with reasonable cause, suspects to be in the act of committing or about to commit the offence. However, The Port Police at the material time could only be carrying out their duties under section 74(3)(a) of the Act Cap 8.13. Their lawful duties under these provisions were to prevent crime and maintain order within the airport; and generally to assist in the enforcement of the provisions of the Act and the Regulations. However, collecting or picking up Sandals passengers arising from booked arrangements with Sandals and the respondents' employer was not prohibited by the Act or Regulations. There was therefore no evidence before the trial judge that would justify a lawful arrest of the respondents on the grounds that the Port Police were lawfully enforcing the provisions of the Act and its Regulations or that the respondents were committing or about to commit a crime, or were behaving disorderly.
5. Though the trial judge may have erred in her reasoning, her conclusions that the directions given to the respondents were unlawful, and that the Port Police had acted unlawfully by arresting the respondents cannot be faulted.

Case Name: JSC BTA Bank v Fidelity Corporate Services Limited et al
[High Court Civil Appeal No. 35 of 2010]
(Territory of the Virgin Islands)

Date: Monday, 21st February 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. Alberton Richelieu holding papers for counsel for the appellant
- Respondent:** Mrs. Wauneen Louis-Harris holding papers for counsel for the respondent

Issues:

Civil Appeal – Commercial Law – Disclosure of information – Whether the disclosure sought is a necessary and proportionate response in all circumstances – Inherent jurisdiction of the court – Norwich Pharmacal – Equitable jurisdiction of the court to preserve a potential trust fund – Whether an innocent party can be said to have facilitated the wrongdoing to the extent an order for discovery maybe made against him – Elements of jurisdiction – Necessity – The exercise of discretion – Requirement of involvement or participation – Whether it has to be satisfied that the party is more than a bystander or witness – Rights of third parties – Application to adduce further evidence – Costs

Result and Reason:

Held: granting the application to admit further evidence, allowing the appeal and granting the reliefs sought. Awarding the 5th and 6th respondents their costs in the court below and awarding the 6th respondent costs in this court to be assessed if not agreed.

- 1. That the relief sought in this case is necessary and proportionate in all circumstances to permit the bank its undoubted right to proceed both in law and in equity against those who set up the companies and those that are presently in possession of the defrauded funds.**

Campaign Against Arms Trade v BAE Systems PLC [2007] EWHC 330 (QB) applied.

- 2. That the respondents, by virtue of their role in providing registered agent services to the companies, a role which is voluntary, cannot on any view be considered as mere onlookers. The companies that they formed and maintained facilitated, although innocently, the commission of**

the fraud and as such were involved in the fraud perpetuated against the bank. This renders the respondent under a duty to disclose information through Norwich Pharmacal type proceedings which may assist the bank as the injured party in discovering the true wrongdoers.

Norwich Pharmacal Co v Commissioners of Customs & Excise [1974] AC 133, Ashworth Hospital Authority v MGN Ltd [2002] 4 All ER 193, Banker's Trust Co v Shapira [1980] 1 WLR 1274 applied.

3. That the further evidence sought to be introduced by the appellant which comprises the defence of the 2nd defendant in the English Proceedings becomes relevant. It is clear that both individual defendants in the English proceedings have taken the position of lack of any knowledge or control over or having any relationship with these entities and thus it may reasonably be expected that no information will be forthcoming from them as to who are the instructing or controlling minds behind these entities. The respondents by virtue of the services they render coupled with the due diligence duties they are obliged to perform in their capacity as registered agents would be expected to have such information and in all probability information pertaining to banking mandates and resolutions passed by these entities for operating bank accounts in their possession.
4. That all of the respondents are entitled to be paid by the bank their reasonable costs of providing discovery as the court recognises the fact that innocent third parties become embroiled in proceedings through no fault on their part.

Case Name:

**Casanki Quow et al v Commissioner of Police
[Magisterial Criminal Appeal No. 22 of 2010]
(Saint Vincent and the Grenadines)**

Date:

Monday, 21st February 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. Alberton Richelieu holding papers for Sir Richard Cheltenham and Mr. Stephen Williams

Respondent: Mrs. Victoria Charles-Clarke, Director of Public Prosecutions (Saint Lucia) holding papers for Mr. Colin Williams, Director of Public Prosecutions (Saint Vincent and the Grenadines)

Issues: Criminal Appeal – assault causing actual bodily harm – section 193 of the Criminal Code – Appellants jointly charged – Summary trial by magistrate – Appellants convicted – Appeal against conviction – Whether reasons given for convictions were inadequate amounting to an error of law and accordingly fatal to conviction

Result and Reason: Held: dismissing the appeals and affirming the convictions and sentences:

1. The reasons given by an adjudicator for a decision should show an awareness of the salient issues, an appreciation of the relevant law, and an assessment of the material evidence particularly where credibility is at issue. Whether an adjudicator's reasons for decision are adequate depends on the circumstances of each case.

Dicta in *Aqui v Pooran Maharaj* (1981) 34 W.I.R. 282, applied.

2. The general rule is that in giving reasons for a decision, an adjudicator should identify and explain each factor which was weighed in his or her appraisal of the evidence and was vital to the conclusion and the manner in which he or she resolved them. It is not possible to lay down firm guidelines for this process. If the critical issue is one of fact, it may be enough to say that one witness was

preferred to another because the one manifestly had a clearer recollection of the material facts or the other gave answers which demonstrated that his recollection could not be relied upon. Reasons may be set out briefly in a judgment. The duty of the adjudicator is to give a clear explanation for a decision. However, an unsuccessful party should not seek to upset a decision on the ground of inadequacy of reasons unless, despite the advantage of considering the decision with knowledge of the evidence given and submissions made at the trial, that party is unable to understand why it is that the adjudicator reached an adverse decision. Given the evidence that was adduced at the trial and the reasons that the magistrate gave in the present case, it should not be difficult for the appellants to understand why they were convicted.

English v Emery Reimbold & Strick Ltd.; DJ & C Withers (Farms) Ltd v Ambic Equipment Ltd.; Verrechia (Trading as Freighmasters Commercials) v Commissioner of Police of Metropolis [2002] 3 All E.R. 385 (CA), applied.

STATUS HEARING

Date: Monday, 21st February 2011

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

Case Name: Jascinta Bevan v The Queen
[High Court Criminal Appeal No. 2 of 2007]

Appearances:

Appellant:	Mr. Marcus Peter Foster
Respondent:	Mrs. Victoria Charles-Clarke, Director of Public Prosecutions

Issue: Matter to be prosecuted

Result: Unless deposit required for transcript is paid by 15th March 2011, the matter shall stand dismissed.

Reason: Although transcripts are available, awaiting payment of transcript fee for matter to proceed further.

Case Name: Chester King & Marlon Harris v The Queen
[High Court Criminal Appeal No. 4 of 2007]

Appearances:

Appellant: Both in person (counsel on record is Mr. Colin Foster)

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

Issue: Status of matter

Result: Matter is stood down.

Reason: For determination of whether transcript fee has been paid.

Case Name: Ezekiel Joseph v The Queen
[High Court Criminal Appeal No. 6 of 2007]

Appearances:

Appellant: Mrs. Wauneen Louis-Harris

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

Issue: Status of matter

Result: Hearing of the appeal is fixed for the next sitting of the court in Saint Lucia during the week commencing 18th July 2011.

Reason: Order made at last hearing of matter for appellant to be relieved from requirement to pay for the transcript. Transcript forwarded to the High Court but not yet received by counsel for the appellant.

Case Name: Justin Thomas v The Queen
[High Court Criminal Appeal No. 1 of 2008]

Appearances:

Appellant: Mr. Marcus Peter Foster

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

Issue: Status of matter

Result: Hearing of the appeal is set down for the next sitting of the court in Saint Lucia during the week commencing 18th July 2011.

Reason: To facilitate the payment of the transcript fee for the proceedings. Hurricane Tomas impeded attempts to do so before the previous deadline of 19th November 2010.

Case Name: Alban Albert v The Queen
[High Court Criminal Appeal No. 3 of 2008]

Appearances:
Appellant: In person (counsel on record not present)
Respondent: Mrs. Victoria Charles-Clarke, Director of Public Prosecutions

Issue: Status of matter

Result / Order: Matter is stood down until counsel for the respondent can get more information on the transcript and record.

Reason: To make further enquiries about the transcript and record.

Case name: Francis Mathurin et al v The Queen
[High Court Criminal Appeal No. 4 of 2008]

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

Issue: Status of matter

Result / Order: Matter to remain on the list for report at the next status hearing in Saint Lucia.

Reason: To determine where things are at with regard to the transcript.

Case name: Theresa Ann Marie Justin v The Queen
[High Court Criminal Appeal No. 5 of 2008]

Appearances:

Appellant: In person (Mr. Stanley Felix is counsel on record)

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

Issue: Status of matter

Result / Order: Matter is to be placed on the hearing list for the next sitting of the court in Saint Lucia.

Reason: Matter should be ready for the next sitting since notification of availability of transcript has already been sent to the High Court (on 17th January 2011) in accordance with the order of Gordon JA [Ag.] dated 25th October 2010.

Case name: Christopher Jn Paul v The Queen
[High Court Criminal Appeal No. 6 of 2008]

Appearances:

Appellant: In person (Mr. Colin Foster is counsel on record)

Respondent: Mrs. Victoria Charles Clarke, Director of Public Prosecutions

Issue: Status of matter

Result / Order: Matter is to be placed on the list of the next sitting of the Court of Appeal in Saint Lucia for mention only.

Reason: The transcript may not be complete because five trial dates have been omitted from it.

Case Name: Alban Albert v The Queen
[High Court Criminal Appeal No. 3 of 2008]

Appearances:
Appellant: In person (counsel on record not present)
Respondent: Mrs. Victoria Charles-Clarke, Director of Public Prosecutions

Issue: Status of matter

Result / Order: Appeal to be heard at the next sitting of the court in Saint Lucia during the week commencing 18th July 2011.

Reason: Transcript should be available shortly.

Case Name: Chester King & Marlon Harris v The Queen
[High Court Criminal Appeal No. 4 of 2007]

Appearances:
Appellants: Both in person (counsel on record is Mr. Colin Foster)
Respondent: Mrs. Victoria Charles-Clarke, Director of Public Prosecutions

Issue: Fees to be paid for transcript of proceedings

Result / Order: The appeal stands dismissed.

Reason: By order of Gordon JA [Ag.] dated 25th October 2010, since transcript fees remain unpaid.

Case Name: **Simon Marius v The Queen**
[High Court Criminal Appeal No. 7 of 2008]

Appearances:

Appellant: In person (no appearance of counsel on record)

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

Issue: Status of matter

Result / Order: Matter to be placed on the list for the next sitting of the Court of Appeal in Saint Lucia during the week commencing 18th July 2011 for mention.

Reason: Counsel for the appellant was unwell and therefore unable to attend the hearing.

Case Name: **Jude Biscette v O'Neil Greene PC # 127**
[Magisterial Criminal Appeal No. 3A of 2004]

Appearances:

Appellant: No appearance

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

Issue: Status of matter

Result / Order: The matter is stood down to Thursday 24th February 2011.

Reason: Time is needed for counsel for the respondent to obtain information on the appellant's sentence.

Case Name: Earnie Severin v The Police
[Magisterial Criminal Appeal No. 8 of 2004]

Appearances:

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

Issue: Status of matter

Result / Order: Matter is stood down to Thursday 24th February 2011.

Reason: Further information required on the appellant's sentence.

Case Name: Jerome Alexander v CPL # 416 Norville
[Magisterial Criminal Appeal No. 9 of 2004]

Appearances:

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

Issue: Status of matter

Result / Order: The matter is set down to the next sitting of the Court of Appeal in Saint Lucia during the week commencing 18th

July 2011 for mention.

Reason: At the last hearing, there were certain anomalies which needed to be rectified – unsure whether things have proceeded any further. Counsel for the appellant not present to indicate progress.

Case Name: Eabran George v Commissioner of Police
[Magisterial Criminal Appeal No. 10 of 2004]

Appearances:

Appellant: No appearance

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

Issue: Status of matter

Result / Order: The matter is stood down to Thursday 24th February 2011 in order to allow enquiries to be made on the status of the matter.

Reason: More information is required for the matter to proceed further – current position unclear.

Case Name: Nicholas Marcellin v Egbert S. Felix PC # 592
[Magisterial Criminal Appeal No. 8 of 2005]

Appearances:

Appellant: No appearance

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

Issue: Status of matter

Result / Order: The matter is to be removed from the court's list.

Reason: Appeal was dismissed by order dated 25th October 2010.

Case Name: Christopher Alsace et al v Choc Estates Limited
[High Court Civil Appeal No. 25 of 2001]

Appearances:

Appellant: No appearance

Respondent: No appearance

Issue: Status of matter

Result / Order: The matter is adjourned to the next status hearing in Saint Lucia.

Reason: No appearance by counsel for either party.

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

Appearances:

Appellant: No appearance

Respondent: Mr. Alberton Richelieu

Issue: Status of matter

Result / Order: The matter is stood over to the next status hearing in Saint Lucia.

Reason: To allow further enquires to be made.

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

Appearances:

Appellant:	No appearance
Respondent:	No appearance

Issue: Status of matter

Result / Order: The matter is adjourned to the next status hearing date in Saint Lucia.

Reason: No appearance of counsel for either party.

Case Name: Gundolph Calderon v St. Lucia Electricity Services Limited
[High Court Civil Appeal No. 34 of 2006]

Appearances:

Appellant:	No appearance
Respondent:	No appearance

Issue: Status of matter

Result / Order: The appeal stands dismissed.

Reason: Order of Gordon JA [Ag.] dated 25th October 2010 to take effect, since no application made to reinstate the appeal within the 30 day period given.

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

Appearances:

Appellants:	No appearance
Respondent:	No appearance

Issue: Status of matter

Result / Order: The appeal stands dismissed.

Reason: Order of Gordon JA [Ag.] dated 25th October 2010 to take effect, since no application made to reinstate the appeal within the 30 day period given.

Case Name: Juliana Felix et al v Marie Edward et al
[Magisterial Civil Appeal No 1 of 2003]

Appearances:

Appellants:	No appearance
Respondents:	No appearance

Issue: Status of matter

Result / Order: The matter is traversed to the next status hearing in Saint Lucia.

Reason: No appearance of counsel for either party.

Case Name: Thomas Matty Bray v Monica Maximin
[Magisterial Civil Appeal No. 34 of 2003]

Appearances:

Appellant:	No appearance
Respondent:	No appearance

Issue: Status of matter

Result / Order:

1. The matter is adjourned to the next status hearing date in Saint Lucia.
2. Notice of the next status hearing date to be served on both parties.

Reason: It does not appear that there was service of notification of the status hearing effected on either party.

Case Name: Earl Cenac et al v Angela Amedee
[Magisterial Civil Appeal No.1 of 2005]

Appearances:

Appellants:	No appearance
Respondent:	No appearance

Issue: Status of matter

Result / Order: Matter adjourned to the next status hearing date in Saint Lucia.

Reason: No appearance of counsel for either party.

APPLICATIONS AND APPEALS

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

Date: Monday 21st February 2011

Coram: The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mr. Davidson Baptiste, Justice of Appeal
The Hon. Mr. Paul Webster QC, Justice of Appeal [Ag.]

Appearances:

Appellant: No appearance

Respondent: Mr. Raulston Glasgow, Solicitor General (for 1st Respondent – Attorney General)
Mrs. Grace Ward-Glasgow (for 2nd Respondent – Public Service Commission)

Issues: Application for order dismissing appeal to be set aside

Result / Order: The application is adjourned to the Court of Appeal chamber hearing on 19th April 2011 which will be heard by Rawlins CJ.

Reason: To allow applicant to be informed of the date of the hearing.

Case Name: Huggins Neal Nicholas v The Attorney General
[High Court Civil Appeal No. 18 of 2008]

Date: Monday, 21st February 2011

Coram: The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mr. Davidson Baptiste, Justice of Appeal
The Hon. Mr. Paul Webster QC, Justice of Appeal [Ag.]

Appearances:

Appellant: No appearance (counsel on record is Mr. Horace Fraser)

Respondent: Mrs. Brender Portland-Reynolds, Crown Counsel (1st Respondent)

Issues: Application for an extension of time to file application to Her Majesty in Council

Result / Order:

1. Matter is adjourned to the next sitting of this Court in Saint Lucia;
2. Solicitors for the applicant shall file and serve skeleton arguments on or before 14th March 2011;
3. Solicitors for the respondent shall file and serve skeleton arguments on or before 4th April 2011.

Reason: Application is incomplete since counsel for the appellant, Mr. Fraser, has not yet filed his submissions. Further, Mr. Fraser was not present at the hearing.

Case Name: Claude Schoulette v The Attorney General
[High Court Civil Appeal No. 37 of 2010]

Date: Monday, 21st February 2011

Coram: The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mr. Davidson Baptiste, Justice of Appeal
The Hon. Mr. Paul Webster QC, Justice of Appeal [Ag.]

Appearances:

Applicant / Appellant: Ms. Isabella Shillingford

Respondent: Mrs. Brender Portland-Reynolds, Crown Counsel

Issues: Reconsideration by full Court – Application for leave to extend time to file notice of appeal

Result / Order:

1. The hearing of this appeal is adjourned to the next sitting of the court in Saint Lucia;
2. Solicitors for the applicant shall file and serve the necessary hearing bundles after consultation with solicitors for the respondent, the said bundle to be filed and served on or before 7th March 2011;
3. Solicitors for the applicant shall serve skeleton arguments on or before 14th March 2011;
4. Solicitors for the respondent to file and serve their skeleton arguments on or before 28th March 2011.

Reason: Counsel for the appellant requests an adjournment as the bundles have not been prepared as yet. Submissions of the appellant have not been served, nor have they been received by the respondent. Further, the application is unopposed by counsel for the respondent.

Case Name: Mark Goddard as personal representative of the estate of John Bertram Goddard v Paula Calderon
[High Court Civil Appeal No. 40 of 2010]

Date: Monday, 21st February 2011

Coram: The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mr. Davidson Baptiste, Justice of Appeal
The Hon. Mr. Paul Webster QC, Justice of Appeal [Ag.]

Appearances:

Appellant: No appearance
Respondent: No appearance

Issues: Application for leave to appeal

Result / Order: Matter is adjourned to be heard at the next sitting of this Court in Saint Lucia during the week commencing 18th July 2011.

Reason: No appearance of counsel for either party.

Case Name: Josaphat A. Small v Thomas Ambrose
[High Court Civil Appeal No. 1 of 2011]

Date: Monday, 21st February 2011

Coram: The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mr. Davidson Baptiste, Justice of Appeal
The Hon. Mr. Paul Webster QC, Justice of Appeal [Ag.]

Appearances:
Appellant: No appearance
Respondent: No appearance

Issues: Application to withdraw appeal

Result / Order: Appeal having been withdrawn is accordingly dismissed, the matter to be listed at the request of the respondent on the Court of Appeal's chambers list for any incidental considerations.

Reason: Appeal has been withdrawn.

Case Name: **Jesse St. Cyr v The Queen**
[High Court Criminal Appeal No. 2 of 2008]

Date: **Monday, 21st February 2011**

Coram: **The Hon. Mr. Hugh A. Rawlins, Chief Justice**
The Hon. Mr. Davidson Baptiste, Justice of Appeal
The Hon. Mr. Paul Webster QC, Justice of Appeal [Ag.]

Appearances:

Appellant: **In person (Mr. Lorne Theophilus on record as counsel for the appellant)**

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

Issues: **Appeal against conviction – Murder**

Result / Order:

- 1. The hearing of this appeal is adjourned to the next sitting of this court in Saint Lucia;**
- 2. Solicitors for the appellant shall file and serve skeleton arguments on or before Monday 21st March 2011;**
- 3. Solicitors for the respondent shall file and serve skeleton arguments on or before Tuesday 26th April 2011.**

Reason: **No skeleton arguments filed by counsel for the appellant. Further, counsel for the appellant is unwell.**

Case Name: **Frederick Augustus v Mayor & Citizens of Castries**
[High Court Civil Appeal No. 25 of 2009]

Date: **Monday, 21st February 2011**

Coram: The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mr. Davidson Baptiste, Justice of Appeal
The Hon. Mr. Paul Webster QC, Justice of Appeal [Ag.]

Appearances:

Appellant: Mrs. Cynthia Hinkson-Ouhla

Respondent: No appearance (Mrs. Esther Greene-Ernest on record as counsel for the respondent)

Issues: Appeal against the decision of the learned judge dismissing the appellant's claim for Constitutional Redress for wrongful seizure of goods under a law which does not contain any corollary provision for the compensation contrary to s. 6 of the Saint Lucia Constitution

Result / Order:

1. Solicitors for the appellant shall serve and file skeleton arguments within 14 days of today's date;
2. Solicitors for the respondent shall serve and file skeleton arguments within 28 days of today's date;
3. The hearing of the matter is adjourned to the next sitting of the Court in Saint Lucia during the week commencing 18th July 2011.

Reason: Submissions were filed at the High Court Registry by counsel for the appellant but have since gone missing.

Case Name: Sylvia Francois Richard v The Commissioner of Crown Lands
[High Court Civil Appeal No. 17 of 2010]

Date: Monday 21st February 2011

Coram: The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mr. Davidson Baptiste, Justice of Appeal
The Hon. Mr. Paul Webster QC, Justice of Appeal [Ag.]

Appearances:

Appellant: No appearance (Mr. Fraser as counsel on record)
Respondent: Ms. Jan Drysdale, Crown Counsel

Issues: Appeal against the decision of the learned judge dated 4th June 2010 dismissing the appellant's petition and awarding the respondent costs in the sum of \$1,500.00

Result / Order: Hearing of the matter is adjourned to the next sitting of the court in Saint Lucia during the week commencing 18th July 2011.

Reason: Counsel for the appellant not present.

Case Name: Evariste Ambrose v Antoine Baptiste
[High Court Civil Appeal No. 19 of 2010]

Date: Monday 21st February 2011

Coram: The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mr. Davidson Baptiste, Justice of Appeal
The Hon. Mr. Paul Webster QC, Justice of Appeal [Ag.]

Appearances:
Appellant: No appearance (counsel on record is Ms. Leandra Verneuil)

Respondent: Mrs. Wauneen Louis-Harris

Issues: Procedural appeal

Result / Order: The hearing of this appeal is adjourned to the next sitting of the court in Saint Lucia during the week commencing 18th July 2011.

Reason: Counsel for the appellant is unwell.

Case Name: Quality Motors Limited v Clarke Investments Limited et al
[High Court Civil Appeal No. 16 of 2010]

Date: Monday 21st February 2011

Coram: The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mr. Davidson Baptiste, Justice of Appeal
The Hon. Mr. Paul Webster QC, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Goddard Darcheville, managing director of the appellant company, in person (no appearance of counsel on record)

Respondent: No appearance

Issues: For mention

Result / Order: Matter is stood down to Wednesday 23rd February 2011.

Reason: To facilitate the arrival of counsel for the appellant.

Case Name: Bernard Auguste v Ian Joseph
[High Court Civil Appeal No. 27 of 2009]

Date: Monday 21st February 2011

Coram: The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mr. Davidson Baptiste, Justice of Appeal
The Hon. Mr. Paul Webster QC, Justice of Appeal [Ag.]

Appearances:

Appellant: No appearance

Respondent: No appearance

Issues: Appeal challenging the findings of the learned judge with regard to the evidence – whether the trial judge misdirected himself and erred in law by taking irrelevant matters into consideration in arriving at his decision – Breach of duty of care owed to the appellant by the respondent

Result / Order: Hearing of the appeal is adjourned to the next sitting of this court in Saint Lucia during the week commencing 18th July 2011.

Reason: No appearance of counsel involved in the matter.

Case Name: White Construction Company Limited v DCG Properties Limited
[High Court Civil Appeal No. 22 of 2010]

Date: Monday 21st February 2011

Coram: The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mr. Davidson Baptiste, Justice of Appeal
The Hon. Mr. Paul Webster QC, Justice of Appeal [Ag.]

Appearances:

Appellant:	No appearance
Respondent:	No appearance

Issues: Civil appeal – Contract law – Limitation period / Prescription

Result / Order: Hearing of the appeal is adjourned to the next sitting of this court in Saint Lucia during the week commencing 18th July 2011.

Reason: No appearance of counsel or parties involved in the matter.

Case Name: **Imbert Simon v Charles Anthony**
[High Court Civil Appeal No. 30 of 2010]

Date: Monday 21st February 2011

Coram: The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mr. Davidson Baptiste, Justice of Appeal
The Hon. Mr. Paul Webster QC, Justice of Appeal [Ag.]

Appearances:

Appellant:	No appearance
Respondent:	No appearance

Issues: Civil appeal – Whether the court ought to be guided by CPR 16.3 in assessing damages – The meaning and effect of the ruling that the court is guided by CPR 16.3, in the absence of a ruling on the claimant’s objection to the defendant’s affidavit – Whether the defendant’s affidavit ought to be allowed – Whether the defendant ought to be allowed to make submissions on the evidence in addition to the law on the assessment of damages – Whether the order of 17th February 2010 was obtained by mistake and ought to be set aside, varied or clarified

Result / Order: Hearing of the appeal is adjourned to the next sitting of this court in Saint Lucia during the week commencing 18th July 2011.

Reason: No appearance of counsel or parties involved in the matter.

Case Name: Gregory Fevrier v Luciana May Fevrier (nee Jn Jacques)
[High Court Civil Appeal No. 31 of 2010]

Date: Monday 21st February 2011

Coram: The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mr. Davidson Baptiste, Justice of Appeal
The Hon. Mr. Paul Webster QC, Justice of Appeal [Ag.]

Appearances:

Appellant: No appearance

Respondent: No appearance

Issues: Civil appeal – Matrimonial property – Whether the matrimonial home is community property – Costs

Result / Order: Hearing of the appeal is adjourned to the next sitting of this court in Saint Lucia during the week commencing 18th July 2011.

Reason: No appearance of counsel or parties involved in the matter.

Case Name: Samora Johnson v Pancrace Eleza
[High Court Civil Appeal No. 33 of 2010]

Date: Monday 21st February 2011

Coram: The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mr. Davidson Baptiste, Justice of Appeal
The Hon. Mr. Paul Webster QC, Justice of Appeal [Ag.]

Appearances:

Appellant: No appearance

Respondent: In person

Issues: Civil appeal – Whether the trial judge erred in law by purporting to take judicial notice of a private contract as the basis for denying the award of \$14,600.00 to the appellant – Whether the trial judge erred in law when he ruled that the appellant was not entitled to general damages for distress and inconvenience

Result / Order: Hearing of the appeal is adjourned to the next sitting of this court in Saint Lucia during the week commencing 18th July 2011.

Reason: No appearance of counsel for the appellant.

Case Name: Carlos Anthony Augustin v Uni-v (St. Lucia) Ltd. trading as Unique Vacations of Choc Bay Castries
[High Court Civil Appeal No. 44 of 2010]

Date: Monday 21st February 2011

Coram: The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mr. Davidson Baptiste, Justice of Appeal
The Hon. Mr. Paul Webster QC, Justice of Appeal [Ag.]

Appearances:

Appellant:	No appearance
Respondent:	No appearance

Issues: Procedural appeal on order made by the learned master dismissing the applicant's application to set aside a judgment in default obtained against the applicant by the respondent

Result / Order: Hearing of the appeal is adjourned to the next sitting of

this court in Saint Lucia during the week commencing 18th July 2011.

Reason: **No appearance of counsel or parties involved in the matter.**

Case Name: **Warren Cassell et al v The Magistrate et al
[High Court Civil Appeal No. 1 of 2010]
(Montserrat)**

Date: **Wednesday 23rd February 2011**

Coram: **The Hon. Mde. Ola Mae Edwards, Justice of Appeal
The Hon. Mde. Janice George Creque, Justice of Appeal
The Hon. Mr. Paul Webster QC, Justice of Appeal [Ag.]**

Appearances:

Appellant: **Mr. Leon Chaku Symister**

Respondent: **Mr. James Wood (for 1st Respondent)**

Issues: **Civil appeal – Availability of Judicial Review with reference to the magistrate’s committal proceedings – Whether the trial judge erred in upholding the magistrate’s committal order made at the preliminary inquiry and refusing certiorari**

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

Reason: **1. The availability of certiorari in judicial review proceedings to quash a committal order on grounds that there was an error depends in this case on whether the committal order was made without any admissible evidence of guilt.**

2. The question is whether or not there was substantial error leading to manifest injustice, and/or any

irregularity having substantial adverse consequences for the appellant (*Regina v Bedwellty ex parte Williams* [1997] A.C. 225 at page 233 (H.L.)).

3. It cannot be said that there was such substantial injustice caused by the committal order of the magistrate as a result of the technical errors in the eight complaints and the evidence taken at the preliminary inquiry.
4. Sections 84 and 182 of the Criminal Procedure Code Cap. 4.01 of Montserrat states that no objection to a charge for defect in substance, or for variance between the complaints and the evidence for the prosecution shall be allowed at a preliminary inquiry; and the appellant made no application at the preliminary inquiry to have witnesses recalled for cross examination on grounds that he was deceived or misled by the charges or any variance between the charges and the evidence as section 84 permitted him to do.
5. There was sufficient evidence by way of the documentary evidence in the ancillary agreement along with the depositions and other exhibits to substantiate the committal order.
6. The appellant's challenge to the committal order in the circumstances is therefore premature; as he is to be tried on an indictment to be drawn up by the Attorney General; and section 103(3) of the Criminal Procedure Code states that the Attorney General "may charge the accused person with any offence, which, in his opinion is disclosed by the depositions either in addition to or in substitution for the offence upon which the accused person has been committed for trial."
7. Though the trial judge may have erred in his reasoning and findings in refusing to quash the committal order, his decision which upheld the committal order and refused certiorari was the correct decision in all the circumstances.

Case Name: Quality Motors Limited v Clarke Investments Limited et al
[High Court Civil Appeal No. 16 of 2010]

Date: Wednesday 23rd February 2011

Coram: The Hon. Mde. Ola Mae Edwards, Justice of Appeal
The Hon. Mde. Janice George Creque, Justice of Appeal
The Hon. Mr. Paul Webster QC, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Stanley K. John

Respondents: No appearance

Issues: For mention – Preparation of approved consent order

Result / Order: [Oral delivery]
The matter is adjourned to the Court of Appeal chamber hearing on 22nd March 2011 for counsel for the parties to attend at the Court of Appeal with the settled consent order signed by all parties.

Reason: Draft consent order has not yet been settled.