

CHAMBER HEARING

Tuesday, 24th July 2012

MATTERS DEALT WITH ON PAPER

Before: The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Case Name: Lambert Theodore
v
Ivan Howell

[High Court Civil Appeal No. 21 of 2010]
(Saint Lucia)

Date: Tuesday, 24th July 2012

On paper:

Appellant / Respondent:	Mr. Huggins Nicholas
Respondent / Applicant:	Ms. Esther Greene-Ernest (Greene Nelson & Associates)

Issues: Application for notice of appeal to be struck out for want of prosecution

Result / Order & Reason: IT IS HEREBY ORDERED THAT:
1. The application to strike out the notice of appeal is granted, and accordingly the notice of appeal filed on 10th August 2010 is struck out for want of prosecution.
2. Costs in the sum of \$500.00 are awarded to the respondent/applicant.

Case Name: Mago Estates Hotel Limited

v
Donald Mc. Kinnon

**[High Court Civil Appeal No. 20 of 2012]
(Saint Lucia)**

Date: Tuesday, 24th July 2012

On paper:

**Intended Appellant /
Applicant:** Mr. Gerard R Williams

Respondent: Charles & Daniel Chambers

Issue: Application for leave to appeal decision of the master – Whether master erred in not giving reasons

Result / Order:

IT IS HEREBY ORDERED THAT:
The application for leave to appeal the decision of Master Georgis Taylor-Alexander dated 22nd June 2012 is adjourned to the next chamber hearing scheduled for 25th September 2012.

Reason:

The Court was minded not to grant this application on the basis that the applicant did not apply to the master for the reasons for her decision. The matter was therefore adjourned for the appellant to show cause why the application should not be dismissed.

The Court held that when one is appealing a decision of a lower court, it is imperative that the appellate court be provided with the reasons for the decision being appealed.

Case Name:

**Brilla Capital Investment Fund SPC Limited (a
Cayman Island Segregated Portfolio
Company, for and on behalf of Brilla Cap**

**Juluca Segregated Portfolio M, a Segregated
Portfolio thereof)**

v

[1] Registrar of Companies

**[2] Leeward Isles Resorts Limited (In
Liquidation)**

**[3] Manudays Bay Management Limited (In
Liquidation)**

[4] William Tacon and Stuart Mackellar

**[5] Charles Hickox, Linda Hickox and Cap
Juluca L & C Limited**

**[High Court Civil Appeal No. 2 of 2012]
(Anguilla)**

Before: The Hon. Mde. Janice M. Pereira, Justice of Appeal
(this matter only)

Date: Thursday, 26th July 2012

On paper:

Applicant: Webster Dyrud Mitchell

Respondents: Alex Richardson & Associates

Issues: Application for solicitor to be removed from the
record as acting

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The firm of Webster Dyrud Mitchell be removed from the record as solicitors acting on behalf of Charles Hickox, Linda Hickox and Cap Juluca L & C Limited.**
- 2. Webster Dyrud Mitchell is required to serve a copy of this Order on all parties.**

Reason:

The 5th respondents (the clients of the firm making the application) were not opposed to having the firm removed from the record, as their solicitors.

Case Name:

Elfida Hughes
v
Clive Hodge
(as Administrator of the Estate of Rupert Hodge, deceased)

[High Court Civil Appeal No. 4 of 2012]
(Anguilla)

Appearances:

Applicant: Ms. Tara Ruan (Caribbean Juris Chambers)

Respondent: Ms. Jenny Lindsay (Jenny Lindsay & Associates)

Issue:

Application for leave to appeal costs order

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The application for leave to appeal is granted.**
- 2. The notice of appeal to be filed within 21 days of the date of this order.**
- 3. The application for stay of execution of the orders in paragraphs 72 and 73 (incorrectly numbered in Judgment as paragraph 72) of the Judgment of Master Lanns is granted.**
- 4. Thereafter Rules of Court and Practice Directions to apply.**

Reason:

The Court was of the view that there was some merit in the application.

Case Name:

Sundry Workers
v
Chevron West Indies Limited

**[High Court Civil Appeal No. 25 of 2011]
(Antigua and Barbuda)**

Date: Tuesday, 24th July 2012

On paper:

**Appellant /
Applicant:** Mr. Charlesworth O. D. Brown

Respondent: Mr. Clement EM Bird (The Bird Law Firm, Inc.)

Issue: Application for further directions to extend time for filing and serving skeleton arguments with accompanying affidavit in support

Result / Order: **IT IS HEREBY ORDERED THAT:**
The application for further directions to extend time for filing and serving skeleton arguments is referred to the Full Court for hearing at the next sitting in Antigua and Barbuda scheduled for the week of 29th October to 2nd November 2012 pursuant to CPR 62.2(5).

Reason: The Court noted that neither the application nor the affidavit in support appeared to have been served on the respondent. Additionally, the Court was not minded to grant the application.

Case Name: Samuel Winston James

v

[1] Just Catering Incorporated

[2] Wayne Gruden

**[High Court Civil Appeal No. 12 of 2012]
(Antigua and Barbuda)**

Date: Tuesday, 24th July 2012

The application for leave to appeal and stay of execution is referred to the Full Court for hearing at the next sitting in Antigua and Barbuda scheduled for the week of 29th October to 2nd November 2012, pursuant to CPR 62.2(5).

Reason: The Court was minded not to grant leave because it held the view that the principle of law on which applicant's case was based was not correct.

Case Name: **Arlene Winter**
v
Standford Development Company Ltd.
[High Court Civil Appeal No. 14 of 2012]
(Antigua and Barbuda)

Date: Tuesday, 24th July 2012

On paper:
Applicant: Dr. David Dorsett (Watt, Dorsett & Company)
Respondent: Mr. Hugh Marshall (Marshall & Co.)

Issues: Application for leave to appeal and stay of execution of order of master

Result / Order: **IT IS HEREBY ORDERED THAT:**
1. The application for leave to appeal is granted.
2. The notice of appeal to be filed within 21 days of the date of this order.
3. The order made on 13th June 2012 is stayed pending the determination of the appeal.

Reason: The Court was of the view that the application had a realistic prospect of success. Furthermore, the application was unopposed by the respondent.

Case Name:

Arnold Green
v
**[1] Attorney General of the Commonwealth of
Dominica**
[2] The Commissioner of Police
[High Court Civil Appeal No. 19 of 2009]
(Commonwealth of Dominica)

Date:

Tuesday, 24th July 2012

On paper:

**Appellant /
Respondent:**

Mr. Edward P. Alleyne (Alleyne Chambers)

**Respondents /
Applicants:**

The Attorney General's Chambers

Issues:

**Application (by respondents) for extension of time to
file submissions in reply and relief from sanctions**

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The application for extension of time to file the
submissions in reply and relief from sanctions is
granted.**
- 2. The submissions in reply filed on 6th June 2012
are deemed duly filed as of the date of this order.**
- 3. Thereafter, Rules of Court and Practice Directions
to apply.**

Reason:

The application was unopposed.

Case Name:

Mary Harper

v
Augustine Harper

[High Court Civil Appeal No. 6 of 2012]
(Commonwealth of Dominica)

Date:

On paper:

Intended Appellant / Applicant: Mr. Alix Boyd Knights

Respondent: Mrs. Zena Dyer (Dyer and Dyer Chambers)

Issues: Notice of motion for leave to appeal – Divorce proceedings

Result / Order: [This matter was listed for the next chamber hearing with directions from the judge for a letter to be issued to Registrar reminding her to confirm whether the parties had complied with an earlier order of the Court.]

Reason: There was no evidence that directions which had been previously issued to the parties had been complied with.

Case Name:

[1] Yoland Jno. Jules
[2] Valentine Joseph
[3] Anselm James Leblanc
[4] John Augustine

v

[1] Emmanuel Royer
[2] Mona Virginia Royer

[High Court Civil Appeal No. 26 of 2011]
(Commonwealth of Dominica)

Date: Tuesday, 24th July 2012

On paper:
Appellants / Applicants: Ms. Noelize N. Knight Didier

Respondents: In person

Issues: Application for stay of execution

Result / Order: **IT IS HEREBY ORDERED THAT:**
The application for stay of execution of the judgment of Matthew J dated 5th August 2011 is dismissed for failure to comply with the earlier given directions for service.

Reason: There was no evidence that the address to which the appellant posted the application was in fact the address of the respondent, nor was there any evidence that the appellant had reason to believe that it was the address of the respondent.

Case Name: **Desmond Williams**
v
Rosemarie Williams

[Magisterial Civil Appeal No. 4 of 2010]
(Commonwealth of Dominica)

Date: Tuesday, 24th July 2012

On paper:
Applicant: Ms. Dawn Yearwood Stewart (Dawn Yearwood Chambers)

Respondent: Ms. Zara Lewis (Emanuel and Associates)

Issues: Application for extension of time to file notice of appeal against orders of magistrate – Maintenance

Result / Order: IT IS HEREBY ORDERED THAT:
1. The application for extension of time to file the notice of appeal is granted.
2. The notice of appeal is to be refiled within 21 days of the date of this order.
3. Thereafter the relevant Rules and Practice Directions are to apply.

Reason: The Court accepted that the applicant had given a sufficiently good reason for his delay in filing the notice of appeal. It was further noted that there was no objection to the application being granted.

Case Name: [1] Alice Daniel
[2] Lorden Bardouille
[3] Bertha Peltier, as Administrator of the Estate of Alexander Phito Charles, deceased
v
[1] Jeanne Peltier
[2] Mally Peltier
[High Court Civil Appeal No. 17 of 2009]
(Commonwealth of Dominica)

Date: Tuesday, 24th July 2012

On paper:
Appellants / Respondents: Ms. Noelize N. Knight (Gerald D. Burton’s Chambers)
2nd Respondent / Applicant: Mr. David Bruney

Issues: Application for notice of appeal to be dismissed for

want of prosecution

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The application of 26th June 2012 is granted.
2. The notice of appeal filed on 5th October 2009 is dismissed.
3. Costs of the application are awarded to the 2nd respondent in the sum of \$750.00.

Reason:

There was no evidence of service of the affidavit in response (by the respondents to the application). Furthermore, the Court was not satisfied with the explanation given by the respondents in the said affidavit of response.

Case Name:

**Attorney General of the Commonwealth of
Dominica
v
Samuel Raphael**

**[High Court Civil Appeal No. 24 of 2011]
(Commonwealth of Dominica)**

Date:

Tuesday, 24th July 2012

On paper:

Applicant: Ms. Sherma Dalrymple

Respondent: Chambers of Singoalla Blomqvist-Williams

Issues:

Application for an extension of time to file notice of appeal, submissions and appeal bundles

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The application of 2nd July 2012 for an extension of time to file the notice of appeal, submissions and appeal bundles is refused.

2. Counsel for the appellant to show cause within 14 days of the making of this order why the notice of appeal filed on 29th June 2012 should not be struck out.
3. The matter is adjourned to the next chamber sitting on 25th September 2012.

Reason:

The respondent had not been served with the application. Additionally, the Court was not satisfied with the explanation given by the appellant for the failure to comply with an earlier order dated 26th July 2011, or for the non-service of the application for an extension of time on the legal practitioner for the respondent.

Case Name:

[1] Gloria Burnette nee Shillingford

[2] Rashida Pierre

v

Angel Peter Andrew

**[High Court Civil Appeal No. 33 of 2011]
(Commonwealth of Dominica)**

Date:

Tuesday, 24th July 2012

On paper:

Applicants:

Mr. Lennox Lawrence

Respondent:

Mr. Michael E. Bruney (Dupigny, Bruney & Associates)

Issue:

Application for stay of proceedings and/or enforcement of judgment below

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The application for a stay of proceedings and/or enforcement of the judgment of Justice Brian Cottle dated 10th October 2011 until the

determination of the appeal is refused for failure to serve it.

2. Counsel for the appellant to show cause within 21 days of the date of this Order why the Notice of Appeal filed on 19th October 2011 should not be dismissed for failure to comply with the Rules.
3. Matter adjourned to the next Chambers sitting on 25th September 2012.

Reason:

The applicants had not complied with several Rules of Court in bringing their application for a stay: the notice of appeal was served on the legal practitioner for the respondent and not on the respondent personally; no copy of the order being appealed against was provided despite it being specifically requested by the Chief Registrar; and there was no evidence of proof of service of the application on the respondent.

Case Name:

**Leewards Media Group Limited
v
A. Michael Perkins**

**[High Court Civil Appeal No. 11 of 2012]
(Saint Christopher and Nevis)**

Date:

Tuesday, 24th July 2012

On paper:

**Appellant /
Applicant:**

Ms. M. Angela Cozier (Cozier and Associates)

Respondent:

Theodore L Hobson & Associates

Issues:

Application for stay of execution and proceedings

**Result / Order
& Reason:**

IT IS HEREBY ORDERED THAT:

The application for stay of execution and

proceedings under the order of Justice Albert Redhead in the judgment dated 2nd May 2012 and the application to abridge time is adjourned to the next chamber hearing scheduled for Tuesday, 25th September 2012 for short service.

Case Name:

**Naomi Darren
also known as Naomi Darabaner
v
[1] Intrust Trustees (Nevis) Limited
[2] In-Trust Limited
[3] Steven Slom**

**[High Court Civil Appeal No. 12 of 2012]
(Saint Christopher and Nevis)**

Date:

Tuesday, 24th July 2012

On paper:

Appellant: Ms. M. Angela Cozier (Cozier and Associates)

Respondent: Ms. Myrna R. Walwyn (Myrna R. Walwyn & Associates)

Issues:

Application for leave to appeal and stay of execution

Result / Order:

[No order was made for this matter on this occasion since it had already been dealt with at a previous sitting of the Court]

Case Name:

**[1] Edward Drew
[2] The Attorney General of Saint Christopher
and Nevis
v**

Jason Hamilton

**[High Court Civil Appeal No. 10 of 2012]
(Saint Christopher and Nevis)**

Date: Tuesday, 24th July 2012

On paper:

Intended Appellants / Applicants: Mr. Leon Charles (Attorney General's Chambers)

Respondent: Mr. Glenford Hamilton

Issues: Application for leave to appeal

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The application for leave to appeal is granted.
2. The notice of appeal is to be filed and served within 21 days of today's date.
3. Thereafter the relevant Rules and Practice Directions are to be complied with.

Reason:

The Court was of the view that the appeal did have a realistic prospect of success.

Case Name:

Jamal Smith

v

Violet Thomas Gaul

**[High Court Civil Appeal No. 15 of 2012]
(Territory of the Virgin Islands)**

Date: Tuesday, 24th July 2012

On paper:

Applicant: Mr. Jamal S. Smith (Thornton Smith)

Respondent: Farara Kerins

Issues: Application for an extension of time to file notice of appeal – Appeal of costs order

Result / Order: IT IS HEREBY ORDERED THAT:
The application is adjourned to the next chamber hearing scheduled for 25th September 2012 for the applicant to show cause why the application for extension of time to file the notice of appeal and the notice of appeal should not be struck out as being in contravention of the Rules.

Reason: The applicant did not apply for leave to appeal the costs order made by the master as was required by the Rules.

Case Name: Thomas Browne
v
The Commissioner of Police

[Magisterial Criminal Appeal No. 29 of 2012]
(Saint Vincent and the Grenadines)

Date: Tuesday, 24th July 2012

On paper:

Applicant: In person

Respondent: The Director of Public Prosecutions

Issues: Application for an extension of time to appeal – Cultivation and possession of marijuana with intent to supply

Result / Order: IT IS HEREBY ORDERED THAT:
1. The application for extension of time is granted.

2. The notice of appeal filed on 27th June 2012 is deemed properly filed as of the date of this order.
3. Rules of Court and Practice Directions to apply as of the date of this Order.

Reason:

Though there did not appear to be any merit in the appeal, the Court was of the view that it was not appropriate to dismiss it at this stage as the appellant was unrepresented.

Case Name:

**Cyril Matthews
v
The Commissioner of Police**

**[Magisterial Criminal Appeal No. 30 of 2012]
(Saint Vincent and the Grenadines)**

Date:

Tuesday, 24th July 2012

On paper:

Applicant:

In person

Respondent:

The Director of Public Prosecutions

Issues:

Application for an extension of time within which to appeal

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The application for extension of time is granted.
2. The notice of appeal filed on 27th June 2012 is deemed properly filed as of the date of this order.
3. Thereafter, Rules of Court and Practice Directions to apply.

Reason:

Though there did not appear to be any merit in the appeal, the Court was of the view that it was not appropriate to dismiss it at this stage as the

appellant was unrepresented.