

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL

CHAMBER HEARING

14th December 2022

MATTERS DEALT WITH ON PAPER

Before: The Hon. Mr. Paul Webster, Justice of Appeal
[Ag.]

Case Name: Lindon Panchoo
v
The King
[GDAHCRAP2022/0016]
(Grenada)

Date: Tuesday, 14th December 2022

On paper:

Applicant: In person
Respondent: No appearance

Issue: Application for leave to appeal against sentence

Result / Order: IT IS HEREBY ORDERED THAT:

1. The application for leave to appeal against sentence is granted.
2. The notice of application for leave to appeal against sentence filed on 10th November 2022 is deemed to be the notice of appeal.

3. The Registrar of the High Court shall serve a copy of this order on the applicant and on the Office of the Director of Public Prosecutions within 21 days of the date of this order and shall provide proof of service thereof.

Reason: The Court was of the view that the applicant should be granted leave to appeal against sentence.

Case Name: Roy Jones
v
The King
[GDAHCRAP2022/0014]
(Grenada)

Date: Tuesday, 14th December 2022

On paper:

Applicant: In person
Respondent: No appearance

Issues: Application for leave to appeal against sentence

Result / Order: IT IS HEREBY ORDERED THAT:

1. The application for leave to appeal against sentence is granted.
2. The notice of application for leave to appeal against sentence filed on 17th October 2022 is deemed to be the notice of appeal.
3. The Registrar of the High Court shall serve a copy of this order on the applicant and on the Office of the Director of Public Prosecutions within 21 days of the date of this order and shall provide proof of service thereof.

Reason: The Court was of the view that the applicant should be granted leave to appeal against sentence.

Case Name: **Jerrol Licorish**
v
The King
[GDAHCRAP2022/0017]
(Grenada)

Date: Tuesday, 14th December 2022

On paper:

Applicant: In person
Respondent: No appearance

Issue: Application for leave to appeal against sentence

Result / Order: IT IS HEREBY ORDERED THAT:

1. The application for leave to appeal against sentence is granted.
2. The notice of application for leave to appeal against sentence filed on 21st November 2022 is deemed to be the notice of appeal.
3. The Registrar of the High Court shall serve a copy of this order on the applicant and on the Office of the Director of Public Prosecutions within 21 days of the date of this order and shall provide proof of service thereof.

Reason: The Court was of the view that the applicant met the threshold for the grant of leave to appeal against sentence.

Case Name: **The National Lotteries Authority**
v
Jerome De Roche
[GDAHCVAP2021/0025]
(Grenada)

Date: **Tuesday, 14th December 2022**

Appearances:
Applicant: **Mrs. Melissa Modeste-Singh**
Respondent: **Mr. Ruggles Ferguson**

Issues: **Application for security for costs to be paid out of Court**

Result / **IT IS HEREBY ORDERED THAT:**
Order: **The application filed on 22nd November 2022 seeking an order that the sum of \$540,000.00 paid into Court by the appellant as security for costs, be paid out of Court to the appellant's attorneys-at-law is granted.**

Reason: **The Court noted the notice of no objection filed by the respondent on 14th December 2022.**

Case Name: **Donna Marcelle Lusan**
v
[1]The Cabinet of Ministers
[2]The Minister of Finance
[3]The Attorney General of Grenada
[GDAHCVAP2022/0024]
(Grenada)

Date: **Tuesday, 14th December 2022**

Appearances:

Applicants: Mrs. Chevaughn Spencer Joseph

Respondent: Mr. Benjamin Hood

Issues:

Application for extension of time to file written submissions

**Result /
Order:**

IT IS HEREBY ORDERED THAT:

1. The applicant is granted an extension of time to file the submissions lodged on 28th November 2022 and filed on 29th November 2022 and the supplementary submissions filed on 29th November 2022, both in response to the notice of interlocutory appeal.
2. The said written submissions lodged on 28th November 2022 but filed on 29th November 2022 and the supplementary written submissions filed on 29th November 2022, are deemed properly filed.
3. There is no order as to costs.

Reason:

The Court noted the skeleton submissions filed on 9th December 2022 together with a bundle of authorities in support of the notice of application for an extension of time and also noted that there is no evidence opposing the application by the respondent.

Case Name:

Paul Amade

v

The King

**[GDAHCRAP2022/0018]
(Grenada)**

Date:

Tuesday, 14th December 2022

Appearances:

Applicant: In person

Respondent: No appearance

Issues: Application for leave to appeal against sentence

**Result /
Order:** IT IS HEREBY ORDERED:

1. The applicant is granted leave to appeal against his sentence.
2. The notice of application for leave to appeal against sentence filed on 29th November 2022 is deemed to be the notice of appeal.
3. The Registrar of the High Court shall serve a copy of this order on the applicant and on the Office of the Director of Public Prosecutions within 21 days of the date of this order and shall provide proof of service thereof.

Reason: The Court was satisfied that leave should be granted to the applicant to appeal against his sentence.

Case Name: Augustin Stephen
v
Sabrina Butcher
[SLUHCMAP2022/0007]
(Saint Lucia)

Date: Tuesday, 14th December 2022

Appearances:

Applicant: Mr. Horace Fraser

Respondent: Ms. Britney Barnard

Issues: Application for an extension of time to file record of appeal

**Result /
Order:** IT IS HEREBY ORDERED:

1. The application for an extension of time within which to file the record of appeal is granted.
2. The applicant shall file and serve the record of appeal within 14 days of the date of this order.

Reason: The Court was satisfied that the applicant has met the threshold for the grant of an extension of time within which to file the record of appeal.

Case Name: Flavia Cherry
v
Ezekiel Mason
[SLUMCVAP2021/0004]
(Saint Lucia)

Date: Tuesday, 14th December 2022

Appearances:
Applicant: Mr. Dexter Theodore
Respondent: Ms. Mary Francis

Issues: Application for an extension of time to file skeleton arguments

Result / Order: IT IS HEREBY ORDERED THAT:

The application for an extension of time to file skeleton arguments is adjourned to a date to be fixed by the Chief Registrar after the determination of the strike out application.

Reason: The Court noted that the application to strike out the notice of appeal filed by the respondent on 27th July 2022 is scheduled for hearing at the next sitting of the Court for the state of Saint Lucia scheduled for the week commencing 20th March 2023 and was of the view that the strike out application should be heard and disposed of before the extension application.

Case Name: [1]Peter Toussaint
[2]Terentia Nigel Toussaint- Carroll
[3]The Heirs of Thelma Toussaint
v

Peter Barnard

**[SLUHCVAP2022/0017]
(Saint Lucia)**

Date: Tuesday, 14th December 2022

Appearances:

Applicants: In person

Respondent: No appearance

Issues: Application for leave to appeal

**Result /
Order:** IT IS HEREBY ORDERED THAT:

The application for leave to appeal the order of the Honourable Justice Kimberly Cenac-Phulgence is referred for hearing before the Full Court on a date to be fixed by the Chief Registrar.

Reason: The Court considered the principles for the grant of leave to appeal as stated in *Othneil Sylvester v Faelleseje* Civil Appeal No. 5 of 2005 (delivered 20th February 2006, unreported) and having regard to Rule 62.2(5) of the Civil Procedure Rules 2000, referred the matter to be heard by the Full Court.

Case Name: Magavon Toby
v
Barrow Toby

**[SVGHCVAP2020/0005]
(Saint Vincent and the Grenadines)**

Date: Tuesday, 14th December 2022

Appearances:

Applicant: Ms. Vynette Frederick holding for Mr. Michael Wyllie

Respondent: Mr. Duane Daniel

Issues: Application for an extension of time to file written submissions

Result / Order: IT IS HEREBY ORDERED THAT:

1. The application for an extension of time to file written submissions is granted.
2. The applicant/respondent shall file and serve written submissions with authorities on or before 16th January 2023.
3. The respondent/appellant is at liberty to file and serve written submissions in reply on or before 28th February 2023.

Reason: The Court noted that there was no opposition by the respondent/appellant to the application for an extension of time within which to file written submissions.

Case Name: Alex Cupid
v
The Commissioner of Police
[SVGMCRAP2022/0021]
(Saint Vincent and the Grenadines)

Date: Tuesday, 14th December 2022

Appearances:
Applicant: In person
Respondent: No appearance

Issues: Application for an extension of time within which to appeal against conviction and sentence

Result / Order: IT IS HEREBY ORDERED THAT:

1. The Registrar of the High Court shall provide an affidavit of service evidencing service of the notice

of application for extension of time within which to appeal, the notice of appeal, recognizance to prosecute appeal and authorisation code on the respondent.

2. The application for an extension of time within which to appeal against conviction and sentence filed on 11th November 2022 is adjourned to the next Chamber Hearing of the Court scheduled for 31st January 2023.

Reason: The Court noted that the return of service evidencing service of the notice of application for extension of time within which to appeal, the notice of appeal, recognizance to prosecute appeal and authorisation code does not clearly indicate who effected service and on whom service was effected.

Case Name: Emerson Delpleche
v
The King
[SVGHCRA2018/0006]
(Saint Vincent and the Grenadines)

Date: Tuesday, 14th December 2022

Appearances:

Applicant: In person

Respondent: The Director of Public Prosecutions

Issues: Application for bail

Result / Order: IT IS HEREBY ORDERED THAT:

The application for bail pending the hearing and determination of appeal is refused.

Reason: The Court was of the view that the application for bail did not disclose any exceptional circumstances for the grant of bail pending the hearing and determination of the appeal in the sense contemplated by the authorities of R v Watton

(1979) 68 Cr. App.R. 293 and Scantlebury v The State (1976)
27 WIR 103.

Case Name: [1]Metrocint General Insurance Co. Ltd.
[2]Samuel De Roche
v
Mercedes Delphesche
[SVGHCVAP2019/0019]
(Saint Vincent and the Grenadines)

Date: Tuesday, 14th December 2022

Appearances:
Appellants: Ms. Chante Francis holding papers for Mr. Duane Daniel
for the first appellant
No appearance for the second appellant
Respondent: Mr. Cecil Blazer Williams

Issues: Application for an extension of time to file written
submissions

**Result /
Order:** IT IS HEREBY ORDERED THAT:
1. The application for an extension of time to file
written submissions is granted.
2. The submissions filed on 30th November 2022 are
deemed properly filed.
3. The respondent shall file and serve written
submissions and authorities in response on or
before 13th January 2023.
4. The applicant is at liberty to file and serve written
submissions and authorities in response on or
before 30th January 2023.

Reason: The Court was of the view that the application for an
extension of time to file written submissions ought to be
granted.

Case Name: Terrance Abdulah Charles
v

The King
[BVIHC RAP2022/0004]
(Territory of the Virgin Islands)

Date: Tuesday, 14th December 2022

Appearances:

Applicant: In person

Respondent: Ms. Tiffany Scatliffe Esprit, Office of the Director of Public Prosecutions

Issues: Application for an extension of time to appeal – Application to deem appeal properly filed – Application for bail

Result / Order: IT IS HEREBY ORDERED THAT:

The Application filed on 8th September 2022 is dismissed.

Reason: The Court was of the view that the applicant did not meet the requisite threshold for the grant of an extension of time to appeal. Upon being mindful that the applicant cannot be granted bail pending appeal in the absence of a properly filed notice of appeal, and that in any event the application did not disclose exceptional circumstances why the applicant should be granted bail, the Court dismissed the application.

Case Name: Xin Gang Power Investments Limited
v
Kensworth Industrial Limited

[BVIHC MAP2022/0067]
(Territory of the Virgin Islands)

Date: Tuesday, 14th December 2022

Appearances:

Applicant: Mr. Christopher Bromilow

Respondent: No appearance

Issues: Application for leave to appeal

Result / Order: IT IS HEREBY ORDERED THAT:

1. The application for leave to appeal against the judgment and order of the Honourable Justice Jack dated 11th November 2022 is granted on grounds 2-5 of the draft notice of appeal.
2. The applicant shall file the notice of appeal containing the five grounds of appeal in this appeal BVIHCMAP2022/0067 within 7 days of the date of this order and the appeal shall proceed as appeal BVIHCMAP2022/0067 in accordance with the Civil Procedure Rules 2000.
3. Appeal No. BVIHCMAP2022/0069 is deemed discontinued with no order as to costs or otherwise.
4. Costs of this application shall be costs in the appeal.

Reason: The Court noted that on 5th December 2022, the applicant filed a notice of appeal in BVIHCMAP2022/0069 which is duplicitous of the notice of appeal in BVIHCMAP2022/0067. The Court considered the principles for the grant of leave to appeal and was satisfied that grounds 2 to 5 of the draft notice of appeal have reasonable prospects of succeeding and that the applicant met the threshold for a grant of leave to appeal.

Case Name: Betetto Frett
v
First Bank Puerto Rico

[BVIHCMAP2022/0066]
(Territory of the Virgin Islands)

Date: Tuesday, 14th December 2022

Appearances:
Applicant: Ms. Carmilita Jamieson
Respondent: Ms. Jhneil Stewart

Issues: Application for a stay pending determination of appeal

**Result /
Order:**

IT IS HEREBY ORDERED THAT:

The application for a stay of the judgment of Jack J dated 4th November 2022 pending the determination of the appeal is dismissed.

Reason:

The Court considered that the starting point on an application for a stay of execution pending the determination of an appeal is that the party who was successful in the lower court is entitled to the fruits of victory and an appeal does not operate as a stay and noted that the general principles on which a stay pending appeal is granted are set out in the case of C Mobile Services Ltd v Huawei Technologies Co. Ltd BVIHCMAP2014/0017 (delivered 2nd October 2014, unreported). Additionally, the court has a discretion in an appropriate case to grant a stay if refusing it would result in injustice to either party or ruination of the applicant, and the appeal has good prospects of success. The evidence of injustice or ruination must be cogent – bald assertions are not enough.

The Court was of the view that the appellant has arguable grounds of appeal but he did not provide cogent evidence that he will be financially ruined if a stay is not granted or that the appeal will be stifled or rendered nugatory.