

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING

GRENADA

28th October to 1st November 2019

JUDGMENTS

Case Name:

Supervisory Authority

v

[1] Cresswell Overseas S.A.

[2] Meini Bank (Antigua) Ltd.

[ANUHCVP2017/0003]

(Antigua and Barbuda)

Date:

Wednesday, 30th October 2019

**Coram for
delivery:**

**The Hon. Mr. Davidson Kelvin Baptiste, Justice
of Appeal**

The Hon. Mde. Gertel Thom, Justice of Appeal

**The Hon. Mr. Humphrey Stollmeyer, Justice of
Appeal [Ag.]**

Appearances:

Appellant:

**Mr. Derick Sylvester holding papers for the
appellant**

Respondent:

**Mr. Ruggles Ferguson holding papers for Mr.
Frank Walwyn**

Issues:

**Application for conditional leave to appeal to
Her Majesty in Council – Antigua and Barbuda
Constitution Order – Section 122(1)(a) – Appeal
as of right – Whether the appeal lies as of right
pursuant to section 122(1)(a) of the Antigua and
Barbuda Constitution Order – Section 122(2)(a)
– Great general or public importance – Whether
the appeal involves some question of great
general or public importance or otherwise
pursuant to section 122(2)(a) of the Antigua and
Barbuda Constitution Order**

**Result and
Reasons:**

Held (Per Pereira CJ, Thom JA and Webster JA [Ag.]): dismissing the application and awarding costs on the application to the respondents to be assessed if not agreed within 21 days, that:

1. The value threshold under section 122(1)(a) of the Constitution must be considered in relation to the effect that the judgment on appeal has on the applicant's property or rights. In these proceedings, there was no question of the existence of a proprietary right held by the applicant or any question of the applicant's right of disposal over the money held in Meini Bank. Neither were there any confiscation or condemnation proceedings at play either in Brazil or in Antigua and Barbuda. The applicant's stake in these proceedings was merely to secure the registration of the Moro Order and nothing more. The applicant's proposed appeal is therefore automatically precluded from proceeding as an appeal as of right under section 122(1)(a) of the Constitution. In any event, there is no indication that the proposed appeal, relates directly or indirectly to the money purported to be frozen by the Moro Order. In all the circumstances, therefore, the grant of leave to appeal on the basis of section 122(1)(a) would not be appropriate.

ECCO Inc. v Mega-Plex Entertainment Corporation SLUHCVP2017/0032 (delivered 4th July 2019, unreported) distinguished; Bank Crozier Limited (In Liquidation) and another v Garvey Louison Liquidator of Bank Crozier Limited [2008] ECSCJ No.80 distinguished; Jacpot Ltd v Gambling Regulatory Authority [2018] UKPC 16 considered; Macfarlane et al v Leclair et al [1862] UKPC 22 applied.

2. The Court of Appeal's finding was not, as the applicant suggests, that the treaties relied upon were not ratified. Rather, the Court found that the treaties were, in fact, ratified, but not in a way that could confer jurisdiction to register the

Moro Order. The question of whether the treaties were ratified was strictly a matter of interpreting the Ratification of Treaties Act to determine whether the procedural requirements of the Act had been satisfied. By its very nature this question was eminently procedural and a simple matter of statutory interpretation, which does not give rise to an issue of great general or public importance.

Pacific Wire & Cable Company Limited v Texan Management Limited et al British Virgin Islands HCVAP2006/0019 (delivered 6th October 2008, unreported) followed; Barbuda Enterprises Ltd v Attorney General of Antigua and Barbuda (1993) 42 WIR 183 distinguished; Mutual Life and Citizens' Assurance Co. Ltd. And Anor v Evatt [1971] AC 793 considered.

3. The state's obligation to give legal assistance to foreign states is uncontroversial as it arises from the texts of treaties which have been signed, entered into force and ratified by resolutions of Antigua and Barbuda's sovereign parliament. The Court of Appeal did not in any way purport to comment on the state's obligations to non-Commonwealth countries, as these obligations were never in issue or dispute. Rather, the heart of the issue before the Court was whether the procedure contained in MACMA, for discharging those obligations, had been complied with. No question of great general or public importance can therefore arise in this regard as the Court of Appeal's decision raises no question on the existence of obligations on the part of the state to provide mutual legal assistance to non-Commonwealth countries – the issue was simply one of whether the procedure had been followed for that assistance to be given.

4. The failure of the Court of Appeal to expressly address the applicant's argument on comity of nations is, of itself, not sufficient basis for the referral of an appeal to the Privy Council. The applicant must go further to

demonstrate that the argument, which was not addressed, had some real possibility of changing the end-result of the appeal if it were considered by the Court of Appeal or the Privy Council. The applicant has not furnished the Court with any authority to the effect that comity of nations is a legal basis for the registration of the Moro Order, notwithstanding that the court's jurisdiction in this regard is very carefully regulated by legislation which does not permit the exercise of that jurisdiction in these circumstances. In the absence of such authorities, the ineluctable conclusion is that the applicant has failed to meet the threshold required by section 122(2)(a).

Pacific Wire & Cable Company Limited v Texan Management Limited et al British Virgin Islands HCVAP2006/019 (delivered 6th October 2008, unreported) considered; ECCO Inc. v Mega-Plex Entertainment Corporation SLUHCVAP2017/0032 (delivered 4th July 2019, unreported) considered.

Case Name:

**Geddes Meyer
v
Kehvin Dickinson**

**[ANUHCVAP2014/0005]
(Antigua and Barbuda)**

Date:

Thursday, 31st October 2019

**Coram for
delivery:**

**The Hon. Mde. Louise Esther Blenman, Justice
of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal
[Ag.]**

Appearances:

Appellant: Mrs. Celia Edwards, QC with her Mr. Zuriel Francique holding papers for Mr. George Lake

Respondent: Mr. Ruggles Ferguson holding papers for Roberts & Co.

Issues: Civil appeal – Contract – Breach of contract for sale of land – Specific performance – Whether time was of the essence in the contract – Frustration – Whether judge erred in concluding that the contract had been frustrated – Whether judge erred in refusing to order specific performance – Whether judge erred in not awarding mesne profits and costs

Result and Reasons: Held: (Per Blenman JA, Michel JA and Thom JA) allowing the appeal in part and awarding to Mr. Meyer nominal damages in the sum of \$40,000.00; allowing the counter appeal and ordering Mr. Meyer to pay Mr. Dickinson mesne profits in the sum of \$6,625.00 per year from 1st January 2011 to the end of Mr. Meyer's occupancy of the land; ordering Mr. Meyer to vacate the land within six months of the delivery of this judgment; and making the costs order stated at paragraph 66 of the judgment, that:

1. It is the law that a term or stipulation in a contract relating to the time of performance is not generally regarded as being 'of the essence'. Time is made of the essence where the parties have expressly stipulated in the contract that the time fixed must be met or that time is to be 'of the essence' In cases where time has not been made of the essence, the law requires that agreed obligations are to be performed within a reasonable time. Where there has been unreasonable delay by one party, the innocent party should give notice of an intention to terminate due to the breach or the failure to complete the contract. In this case,

there is no evidence from which it could be correctly concluded that time was to be of the essence. Indeed, it was not so stipulated in the contract and there was no notice issued to make it so.

D & B Trucking and Trailer Hauler Service Ltd v Caribbean Insurers Ltd BVIHCVAP2008/0025 (delivered 8th February 2010, unreported) followed; **Universal Cargo Carriers Corporation v Ciatati [1957] 2 All ER 70** applied.

2. Frustration occurs when, without default of either party, a contractual obligation has become incapable of being performed because the circumstances in which performance is being called for would make the contract radically different from what was agreed. The effect of frustration in law is the immediate termination of the contract. In the present case, time was not of the essence in the contract and Mr. Dickinson had not issued a notice that time was of the essence. Therefore, in order for the contract to have been frustrated, the delay ought to have been a frustrating delay at the time Mr. Dickinson opted to treat the contract as at an end. There is no doubt that Mr. Meyer was not afforded a reasonable amount of time within which to complete the payment. A delay of a mere few days cannot be regarded in law as having frustrated the contract, bearing in mind that Mr. Meyer was in occupation of the land as a lessee for several years and the need to have the land evaluated for taxes in order for him to secure the loan. Accordingly, there was no frustration of the contract and the learned judge erred when he ruled that the contract had been terminated by frustration.

Lauritzen (J) AS v Wijsmuller BV, The Super Servant Two [1990] 1 Lloyd's Rep 1 applied; **Hirji Mulji and Others v Cheong Yue Steamship Co Ltd [1926] AC 497** applied; **Davis Contractors Ltd v Fareham Urban District Council [1956] 2 All ER 145** applied.

3. Specific performance is an equitable remedy to a cause of action for breach of contract. The remedy is not available where damages would be an adequate compensation to an innocent party. Further, where the parties have not made time of the essence, the courts would not usually grant the remedy of specific performance where the obligation to complete was not performed. In this case, since time was not of the essence in the contract, Mr. Meyer was required to prove that all of his contractual obligations had been fulfilled or that he was ready and willing to perform all of the obligations required by the contract. However, Mr. Meyer has not provided to this Court, or to the court below, any proof that he had performed or was able to perform his main obligation under the contract, namely the payment of the purchase price. Accordingly, specific performance is not an appropriate remedy in the circumstances. Damages would be an adequate remedy to compensate Mr. Meyer for any losses suffered as a result of Mr. Dickinson's breach.

Ramsbury Properties Limited v Ocean View Construction Limited SKBHCVAP2011/0020 (delivered 29th January 2019, unreported) followed; Beswick v Beswick [1968] AC 58 applied; Greer v Alston's Engineering [2003] UKPC 46 applied.

Case Name:

Cove Hotels (Antigua) Limited

v

**[1] The Hon. Gaston Browne,
Prime Minister of Antigua and Barbuda
[2] Konata Lee, Secretary of the Cabinet
of the Government of Antigua and
Barbuda**

[3] Ryan Johnson, Editor of the Antigua and Barbuda Official Gazette

[4] Ralph George, Antigua and Barbuda Government Printer

[5] The Attorney General of Antigua and Barbuda

**[ANUHCVPAP2018/0040]
(Antigua and Barbuda)**

Date: Thursday, 31st October 2019

**Coram for
delivery:** The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: Mrs. Winnifred Duncan-Phillip holding papers for Mr. John Carrington, QC

Respondent: Mrs. Melissa Modeste-Singh holding papers for Mr. Anthony Astaphan, SC

Issues: Civil appeal – Judicial Review – Legitimate expectation – Compulsory land acquisition – Land Acquisition Act – Whether there was a legitimate expectation that the government would not compulsorily acquire land while negotiations were ongoing – Whether there was a legitimate expectation that the Government would observe the terms of a lease – Bias – Whether learned judge failed to give effect to finding that the decision was tainted with bias – Judicial discretion – Irrationality – Procedural irregularities – Costs – CPR 56.13(6)

**Result and
Reasons:** Held: (Per Baptiste JA, Thom JA and Webster JA [Ag.]) allowing the appeal only to the extent of setting aside the order that appellant should pay the costs of the respondents, and in all other respects dismissing the appeal;

dismissing the counter notice of appeal; and ordering that the parties file written submissions on the issue of the costs of the appeal and the counter appeal by no later than 15th November 2019, that:

1. For a promise by a public official to amount to a legitimate expectation, the promise must be clear, unambiguous and devoid of relevant qualification. Once this is proven, the onus shifts to the public authority to justify the frustration of the legitimate expectation. The evidence does not disclose an unequivocal promise that the Government had abandoned its stated intention of acquiring the Property if Cove did not produce an acceptable proposal. Accordingly, Cove did not get past the first stage of the test and therefore the respondents did not need to justify the frustration of a non-existent legitimate expectation.

Francis Paponette and others v The Attorney General of Trinidad and Tobago [2010] UKPC 32 applied; HMB Holdings Ltd v Cabinet of Antigua and Barbuda [2007] UKPC 37 followed.

2. A purchaser of land agrees to the normal risks associated with the ownership of land including the risk of interference with the landowner's rights by the Crown. Therefore, an express covenant or promise contained in a lease must, by necessary implication, be read to exclude those measures taken by the Crown for the public good and cannot exclude the Crown's right to acquire the lease compulsorily for a public purpose, as enshrined in the provisions of the Land Acquisition Act and the Constitution. There was no legitimate expectation arising out of either the covenant for quiet enjoyment or the right of pre-emption.

Clunies-Ross v Commonwealth of Australia and others [1985] LRC [Const.] 292 considered; Commissioners of Crown Lands v Page [1960] QB 274 considered; The King v Dominion of Canada Postage Stamp Vending Co Limited

[1921] 3 KB 500 distinguished; Rederiaktiebolaget Amphitrite v The King [1921] 3 KB 500 considered; The Grenadian Hotel Limited v Beryl Isaac, Cabinet Secretary of Grenada and others GDAHCVAP2016/0066 (delivered 3rd August 2016, unreported) distinguished; H.M.B. Holdings Limited v The Cabinet of Antigua and Barbuda and another ANUHCVP2002/0016 (delivered 28th January 2003, unreported) applied; E. Johnson & Co. (Barbados) Limited v N.S.R. Limited [1997] A.C. 400 applied.

3. The decision of a public body is irrational where it is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who has applied his mind to the question to be decided, could have arrived at it. The judge's approach to the issue of irrationality cannot be faulted as she carefully considered the evidence and found that the Decision was not irrational owing to the fact that Cove failed to act in a timely manner and, in its conduct, shifted the goal post. She also rejected the claim for legitimate expectation and accepted the evidence that throughout negotiations, the Government reserved the right to acquire the property. Further, there is no evidence that the Decision was a sham or was politically driven.

Council of Civil Service Unions and others v Minister for the Civil Service [1985] AC 374 applied.

4. The law requires strict adherence to the procedures in the Land Acquisition Act and the landowner's rights under the Constitution. Even though there were procedural irregularities in the process to compulsorily acquire the Property, the Government had corrected the errors and the process of acquisition remains incomplete. The judge rightly refrained from making a declaration of procedural impropriety at this stage.

Land Acquisition Act Cap. 233, Revised Laws of Antigua and Barbuda 1992 considered; Constitution of Antigua and Barbuda Cap.23, Revised Laws of Antigua and Barbuda considered.

5. The discretion to refuse relief in judicial review proceedings where the claimant has made out a ground for relief is narrow. Where relief is refused, the reason for so doing should be stated. The learned judge made a finding of fact that the statements made by various Government officials pointed to bias or prejudice and there is no proper basis to interfere with this finding. The judge was entitled to rely on her assessment of the evidence to refuse relief, notwithstanding her finding of bias, and she provided good and adequate reasons for refusing to grant relief.

Beacon Insurance Co Ltd v Maharaj Bookstore Ltd. [2014] UKPC 21 applied; R (on the application of Bibi) v London Borough of Newham 2001] EWCA Civ 607 applied; R (on the application of Edwards) and another v Environmental Agency and others [2008] UKHL 22 considered; Nichol v Gateshead Metropolitan Borough Council (1988) 87 LGR 435 considered; The Judicial Review Handbook Michael Fordham QC, Judicial Review Handbook (6th edn, Hart Publishing 2008) pg. 271 at para 24.3 considered, Dufour v Helenair Corporation Limited (1996) 52 WIR applied.

6. An award of costs against an unsuccessful applicant for judicial review may only be made where the court is satisfied that the applicant acted unreasonably in bringing the claim or in the conduct of the application. The judge did not make a finding that Cove acted unreasonably in bringing the claim or in the conduct of the application so as to justify departing from the general rule in 56.13(6). Accordingly, the judge's cost order must be set aside.

Rule 56.13(6) of the Civil Procedure Rules 2000 applied.

Case Name:

Sheldon Bain

v

The Queen

**[GDAHCRAP2016/0007]
(Grenada)**

Date:

Friday, 1st November 2019

**Coram for
delivery:**

**The Hon. Mr. Davidson Kelvin Baptiste, Justice
of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Humphrey Stollmeyer, Justice of
Appeal [Ag.]**

Appearances:

Appellant:

Mr. Benjamin Hood

Respondent:

**Mr. Howard Pinnock holding papers for
Christopher Nelson, QC**

Issues:

Criminal Appeal – Appeal against conviction and sentence – Discretion to order separate trial – Whether learned judge erred in refusing to order separate trial of jointly indicted accused – No case submission – Whether learned judge erred in dismissing no case submission – Whether inconsistencies in evidence rendered prosecution case tenuous – Directions to jury on drawing inferences – Directions on defences not raised by evidence – Whether judge erred in failing to direct jury on defence of manslaughter – Joint enterprise – Whether miscarriage of justice occasioned by judge’s failure to direct jury in accordance with R v Jogee and Ruddock v The Queen – Whether judge’s summation favoured the prosecution – Whether judge erred in allowing opinion evidence based on pathologist’s practical experience in ballistics – Whether sentence excessive – Time spent on remand – Whether period for which convict escaped from prison and was incarcerated in another jurisdiction should be counted as time spent on remand

**Result and
Reasons:**

Held: (Per Baptiste, Thom and Webster [Ag.] JJA) allowing the appeal in part; dismissing the appeal against conviction and affirming the conviction of the appellant for the offence of murder; allowing the appeal against sentence to the extent that the sentence of eighty years' imprisonment is varied to thirty-eight years, six months and nine days' imprisonment, that:

1. Section 126 of the Criminal Procedure Code provides the court with a discretion to order separate trials on the application of an accused or the Attorney-General. The appellant applied on the ground that the statements under caution of his co-accused contained evidence which was inadmissible and prejudicial to him. Though a critical factor to be taken into account, it must be weighed against the public interest that joint offenders should be tried jointly. In this case, the interest of justice and the fairness of the trial could be protected by editing the statements and giving explicit directions to the jury that the evidence in the statements is not evidence against the accused, which the learned judge did. Clear directions were also given to consider the evidence of each accused separately and that there were four separate cases. There were no exceptional circumstances in this case to justify separate trials. It follows then that there is no basis for this Court's interference with the exercise of the learned judge's discretion as it did not exceed the generous ambit within which reasonable decision makers may disagree. Furthermore, any possibility of prejudice suffered by the appellant would have been neutralised by the detailed directions the learned judge gave the jury on the inadmissibility of the evidence of the co-accused against the appellant and of which there has been no complaint by the appellant. Section 126 of the Criminal Procedure Code, Cap. 72B, Revised Laws of Grenada 2011 considered; Dufour and Others v Helenair Corporation Ltd and Others (1996) 52 WIR 188 applied; R v Lake (1976) 64 Cr App Rep 172 applied; R v Hayter [2005] UKHL 6; Lobban

(Dennis) v R (1995) 46 WIR 291 applied; 2. Where the prosecution's evidence is so tenuous that a jury properly directed could not properly convict on it, it is the duty of the judge, on a no case submission, to stop the case. The inconsistencies in Oliver's evidence, which formed the basis for the appellant's no case submission, related to peripheral issues which could not be said to undermine the prosecution's case. The prosecution's case was also not made tenuous by the fact that Oliver could be characterised as an accomplice or as a person with an interest to serve, as the learned judge gave adequate directions to the jury on evidence of an accomplice and emphasised that Oliver's evidence was uncorroborated. The appellant's argument that the judge ought to have upheld the no case submission, must fail.

R v Galbraith [1981] 2 All ER 1060 applied.

3. There was no direct evidence from the Crown against the appellant that he had provided the gun. This was an inference which the Crown was asking the jury to draw having regard to their evidence. When the conduct of the appellant is considered as a whole, it was open to the jury to draw such an inference. It is true that the learned judge could have told the jury that there was no direct evidence that the appellant provided the gun. However, the jury having heard all of the evidence would have known that no one testified that the appellant provided the gun, and they were adequately directed on the drawing of inferences.

4. A judge is required to direct the jury on any possible defences that arise on the evidence led at the trial, whether or not the evidence on those defences come from the defendant's case or from the prosecution's case. The judge is required to do so even where the defendant for tactical reasons does not rely on a defence. On the evidence at the trial, the issue of manslaughter in relation to the appellant did not arise. There was therefore no duty on the judge to leave the issue of manslaughter to the jury.

R v Hopper [1915] 2 KB 431 applied; Von Starck (Alexander) v R (2000) 56 WIR 424 considered.

5. The fact that the judge gave a Chang Wing-Siu direction, gives rise to the need to determine whether there was evidence that the appellant shared the common intention to kill or cause grievous bodily harm to the victim in accordance with Jogee and Ruddock. In all the circumstances of this case, it was appropriate to conclude that the appellant had the necessary conditional intent for the use of the gun to kill or cause grievous bodily harm if necessary in the course of the robbery. This was within the scope of the plan to rob to which the appellant agreed and gave his support to the very end. Accordingly, the judge's direction in relation to the mental element of joint enterprise did not occasion a miscarriage of justice.

R v Jogee and Ruddock v The Queen [2016] UKSC 8; [2016] UKPC 7 applied.

6. It is settled law that a judge has a duty to present the case to the jury in an impartial manner. The judge must put the case for both sides fairly. It is impermissible for a judge to give a jury the impression that he favours the prosecution's case over the defendant's case or vice versa. Upon a review of the summation as a whole, the judge treated both the evidence of the prosecution and defence in an even-handed manner. It is evident that the judge gave a balanced summing up, and that the appellant was not deprived of the substance of a fair trial. R v Nelson [1997] Crim LR 234 applied; Harewood (Vincent) v R (1994) 48 WIR 32 considered; Mears (Byfield) v R (1993) 42 WIR 284 considered.

7. It has long been recognised that experience and knowledge in an area is sufficient to make opinion evidence admissible even where a witness has no formal qualification in the area. While Professor Vigoa was a pathologist, and not a ballistic expert, as a result of his experience of over 34 years in the field of pathology, the learned judge was entitled to admit the evidence. The jury hearing his

evidence would have also taken both his formal qualification and experience into account when evaluating the weight of his evidence. In all the circumstances, the judge did not err in allowing Professor Vigoa's evidence. Furthermore, Professor Vigoa, having conducted the post-mortem examination, gave evidence which, in his expert opinion, was consistent with his finding that the deceased was in a lower position than the gun. This was within his purview as a pathologist. Accordingly, there is no merit in the contention that the evidence of Professor Vigoa was not within the limits of his expertise as a pathologist.

R v Robb (Robert McCheyne) (1991) 93 Cr. App. R. 161 considered; The State of Trinidad and Tobago v Boyce [2006] UKPC 1 considered; Myers v R [2015] UKPC 40 considered; R v Hodge (2010) 77 WIR 247 considered.

8. There is no duty on a judge to give the jury special directions on circumstantial evidence. A judge is however required to make clear to the jury that they must not convict unless they are satisfied of the accused's guilt beyond reasonable doubt. The judge did so on several occasions throughout the summation and therefore cannot be faulted in this regard.

McGreevy V Director of Public Prosecutions [1973] 1 All ER 503 applied.

9. The general principle is that credit must be given for the time spent on remand in determining the period of sentence to be served by a convicted person. The appellant having escaped from Her Majesty's Prison on 8th April 2004, fled to Saint Vincent and the Grenadines where he spent time in custody for an offence unrelated to his murder conviction. The appellant cannot rely on his unlawful act of escaping custody to evade justice, which subsequently led to his incarceration in Saint Vincent and the Grenadines to gain a benefit for time spent in custody there nor is he entitled to any credit for the period he spent in custody between the date of his return to Grenada and the date he was sentenced by the learned judge

since during this period, he was serving his sentence for unlawfully escaping custody. He is however entitled to full credit for the time spent on remand in pre-trial custody which amounted to one year, five months and twenty-two days. Callachand v R [2008] UKPC 49 considered; Romeo Da Costa Hall v R [2011] CCJ 6 (AJ) considered; Gomes v The State of Trinidad and Tobago [2015] UKPC 8 applied.

10. The sentence of eighty years was manifestly excessive. In all the circumstances, having been given full credit for the time spent by the appellant on remand before his trial, the appropriate sentence is thirty-eight years, six months and nine days.

Case Name: **Lesleyan Otway**
v
Best of Grenada Limited
[GDAHCVAP2019/0004]
(Grenada)

Date: **Monday, 28th October 2019**

Coram: **The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal**
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:
Applicant: **Ms. Sheriba Lewis**
Respondent: **No appearance**

Issues: **Application for leave to appeal**

Type of Order: **Oral Decision**

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The application for leave to appeal against the costs order of Master Jan Drysdale is granted.
2. The applicant has 21 days in which to file the notice of appeal.

Reason:

The Court formed the view that the applicant had satisfied the threshold requirements for the grant of leave to appeal.

Case Name:

**Indra Williams
v
Casepak Company (Grenada) Ltd.**

**[GDAHCVAP2018/0008]
(Grenada)**

Date:

Monday, 28th October 2019

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Appellant:

Mr. Anselm Clouden holding papers for Mr. Ruggles Ferguson

Respondent:

Mr. Dickon Mitchell

Issue:

Application for final leave to appeal to Her Majesty in Council

Type of Order:

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

Final leave is granted to the applicant to appeal to Her Majesty in Council.

Reason:

The Court formed the view that the applicant had satisfied the necessary requirements for final leave to appeal to Her Majesty in Council.

Case Name:

Superfund Software Development Inc.

**[GDAHCVAP2019/0005]
(Grenada)**

Date:

Monday, 28th October 2019

Coram:

The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal

The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Applicant:

Mr. Benjamin Hood

Issue:

Application for an extension of time to apply for leave to appeal – Application for leave to appeal – International Companies Act Cap. 152 – Whether the tax under the Annual Stamp Tax Act amounted to income tax

Type of Order:

Oral judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The extension of time to apply for leave to appeal and leave to appeal are granted.**
- 2. The notice of appeal is deemed properly filed.**
- 3. The appeal is dismissed.**

Reason:

The Court was satisfied that the applicant had met the requirements for the grant of an extension of time for leave to appeal and leave to appeal. Having granted leave to appeal and with the consent of counsel for the applicant the Court treated the hearing as the substantive hearing of the appeal.

In considering the appeal, the Court formed the view that the learned judge did not err in ordering that the claim could not have proceeded as being properly constituted. The Court also formed the view that the claim did not require only a strict interpretation of the International Companies Act, Cap. 152 of the Revised Laws of Grenada but it also involved the issue on whether the tax under the Annual Stamp Tax Act amounted to income tax. Accordingly, the appeal failed.

Case Name:

Kade Richards

v

The Queen

**[GDAHCRAP2017/0010]
(Grenada)**

Date:

Monday, 28th October 2019

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice
of Appeal**

The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: Mrs. Sabrita Khan-Ramdhani

Respondent: Mr. Brendon La Touche

Issue: Application for an adjournment

Type of Order: Adjournment

Result / Order: IT IS HEREBY ORDERED THAT:

The application for an adjournment is granted and the matter is adjourned to the next sitting of the Court of Appeal in Grenada during the week commencing 27th April 2020.

Reason: Counsel for the appellant requested an adjournment for the matter. There was no opposition by the respondent.

Case Name:

Kevin Morris

v

The Queen

**[GDAHCRAP2016/0023]
(Grenada)**

Date: Monday, 28th October 2019

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: Mr. Benjamin Hood

Respondent: Mr. Howard Pinnock

Issue: Application for an adjournment

Type of Order: Adjournment

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

The hearing of the appeal is adjourned to the next sitting of the Court of Appeal in the State of Grenada, Carriacou and Petite Martinique during the week commencing 27th April 2020.

Reason: The Court granted the appellant an adjournment in order to settle legal representation. Counsel for the appellant also indicated an intention to amend the notice of appeal to include an appeal against conviction.

Case Name: Isaiah Jones
v
The Queen

[GDAHCRAP2016/0024]
(Grenada)

Date: Monday, 28th October 2019

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:
Appellant: Mr. Jerry Edwin

Respondent: Mr. Howard Pinnock

Issue: Application for an adjournment

Type of Order: **Adjournment**

Result / Order: IT IS HEREBY THAT:

1. The hearing of the appeal is adjourned to the next sitting of the Court of Appeal in Grenada during the week commencing 27th April 2020.
2. The appellant shall file and serve written submissions with authorities on or before 25th January 2020.
3. The respondent shall file and serve written submissions with authorities on or before 31st January 2020.

Reason: Counsel for the appellant had not been properly retained and accordingly sought time to so do.

Case Name: Dannel Bonaparte
v
The Queen

[GDAHCRAP2016/0025]
(Grenada)

Date: Monday, 28th October 2019

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: Mrs. Sabrita Khan-Ramdhani

Respondent: Mr. Brendon La Touche

Issue:	Application for an adjournment
Type of Order:	Adjournment
Result / Order:	IT IS HEREBY ORDERED THAT: The matter is adjourned to the next sitting of the Court of Appeal in Grenada during the week commencing 27th April 2020.
Reason:	Counsel for the appellant requested an adjournment to the next sitting of the Court in Grenada. There was no objection from the respondent.
Case Name:	Anderson Williams v The Queen [GDAHCRAP2018/0019] (Grenada)
Date:	Monday, 28th October 2019
Coram:	The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal The Hon. Mr. Mario Michel, Justice of Appeal The Hon. Mde. Gertel Thom, Justice of Appeal
Appearances:	
Appellant:	Mr. George Prime
Respondent:	Mr. Brendon La Touche
Issue:	Criminal appeal – Appeal against conviction and sentence – Whether the sentence was too excessive
Type of Order:	Oral judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The appeal against conviction is dismissed.
2. The appeal against sentence is allowed to the extent that the sentence is varied and a term of twelve (12) years imprisonment is instituted in place of the previous sentence of fifteen (15) years.

Reason:

Having examined the record of appeal, the Court was of the view that the learned judge did not err in arriving at the judgment in the Court below. The Court was also of the view that the judgment was clear and succinct. However, having reviewed the sentence, the Court found that the sentence was excessive and accordingly varied the sentence.

Case Name:

Ernest Sanderson

v

[1] Prem Chandiramani

[2] Rekha Mahtani

[3] Mohandas Mirpuri

**[GDAHCVAP2018/0012]
(Grenada)**

Date:

Monday, 28th October 2019

Coram:

The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal

The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant:

Mr. Anselm Clouden

Respondents:

Mr. John Carrington, QC with him Mrs. Winnifred Duncan-Phillip

Issue:	Civil appeal – Application for an adjournment
Type of Order:	Adjournment
Result / Order:	IT IS HEREBY ORDERED THAT: The matter is adjourned to the next sitting of the Court of Appeal in Grenada during the week commencing 27th April 2020 to enable the parties to mediate the issues in dispute between them.
Reason:	Upon noting the agreement between the parties to have the matter referred to mediation given the nature and circumstances of the agreement, the Court allowed the request for an adjournment to facilitate the mediation.
Case Name:	Barbara Langainge v [1] Geraldine Christopher [2] Jeremy Christopher [GDAHCVAP2019/0003] (Grenada)
Date:	Monday, 28th October 2019
Coram:	The Hon. Mde. Louise Esther Blenman, Justice of Appeal The Hon. Mr. Paul Webster, Justice of Appeal [Ag.] The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal [Ag.]
Appearances:	
Appellant:	Mr. Ruggles Ferguson with him Mr. Patrick Superville

Respondents:	Mr. Raphael Baptiste
Issue:	Application to revoke decision of single judge on a stay of execution – Application for leave to withdraw application
Type of Order:	Oral decision
Result / Order:	IT IS HEREBY ORDERED THAT: 1. Leave to withdraw the appeal against the decision of a single judge is granted and the appeal is dismissed. 2. By consent of the parties, there is no order as to costs.
Reason:	Counsel for the appellant withdrew his application to revoke the decision of a single judge and accordingly the appeal was dismissed.
Case Name:	Terrence Joseph v RBTT Bank (Grenada) Limited [GDAHCVAP2017/0021] [GDAHCVAP2018/0004] (Grenada)
Date:	Monday, 28th October 2019
Coram:	The Hon. Mde. Louise Esther Blenman, Justice of Appeal The Hon. Mr. Paul Webster, Justice of Appeal [Ag.] The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal [Ag.]
Appearances:	
Appellant:	Ms. Gennilyn Ettienne

Respondent: Ms. Shireen Wilkinson and Ms. Rosana John

Issue: Interlocutory Appeal – Fixed date claim –
Whether claim ought to have proceeded by way
of fixed date claim form

Type of Order : Oral judgment

Result / Order: IT IS HEREBY ORDERED AS FOLLOWS:

1. The matter is remitted to a master of the High Court to case manage the claim as a regular claim form on the basis that a defence has not been properly filed.
2. The Registrar of the High Court is directed to list the matter before the master as soon as possible.
3. Each party shall bear its own costs.

Reason: The Court noted that the matter should not have proceeded by way of fixed date claim form, but by way of a regular claim form. Acc remitted the matter to the High Court for case management.

Case Name: [1] Leonard St. Bernard
[2] Recia Charles
v
Teamwork Construction
[GDAHCVAP2015/0019]
(Grenada)

Date: Monday, 28th October 2019

Coram: The Hon. Mde. Louise Esther Blenman, Justice
of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal
[Ag.]

The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Anthony C. K. Hood

Respondent: Ms. Sheriba Lewis

Issue: Civil appeal – Application to set aside judgment of learned judge – Consent order

Type of Order: Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:

By consent, the order of Her Ladyship Justice Paula Gilford dated 11th June 2015 be set aside with no order as to costs.

Reason: The parties arrived at a consent position and requested that the consent position be made into an order of the Court.

Case Name:

Godfrey John

v

The Queen

**[GDAHCRAP2016/0002]
(Grenada)**

Date: Tuesday, 29th October 2019

**Coram: The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag]**

Appearances:

Appellant: Mrs. Sabrita Khan-Ramdhani

Respondent: Mr. Howard Pinnock

Issue: Criminal Appeal – Appeal against sentence

Type of Order: Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:

The appeal against sentence is allowed and the sentence of 8 years five months is varied to the extent of time served.

Reason: The Court having noted that counsel for respondent quite professionally conceded the appeal and having taken into consideration the Crown's submissions, formed the view that the appeal against sentence ought to be allowed.

Case Name: Carriacou Development Corporation
The Attorney General of Grenada
v
Margaret Corion
Nellie Edwards
(the personal representative in the Estate of Samuel Corion)

**[GDAHCVAP2018/0014]
(Grenada)**

Date: Tuesday, 29th October 2019

Coram: The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal
[Ag.]

Appearances:

Appellant:	Mr. Ramesh Maharaj SC, Ms. Kim George and Ms. Sheriba Lewis
Intervener/Second Respondent:	Ms. Dia Forrester with her Mr. Darshan Ramdhani
Respondents:	Mr. Rohan A. Phillip and Mr. Nazim Burke

Issue:

Civil appeal – Property – Land Law – Crown Lands Act Cap. 78 Revised Laws of Grenada 2010 – Crown’s prerogative right of ownership of foreshore and swamp lands – Establishing title to land – Whether the Crown is required to prove ownership or title in the same way as a private person – Whether respondents have paper title – Whether learned judge erred in finding that the appellants owned the property – Approach of appellate court to judge’s finding of fact

Type of Order:

N/A

Result / Order:

Judgment is reserved.

Case Name:

**Elizabeth Halley
v
Devon Smith
[GDAHCVAP2019/0013]
(Grenada)**

Date:

Wednesday, 30th October 2019

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal [Ag.]

Appearances:
Appellant: Mr. Derick Sylvester with him Ms. Hazel Hopkin
Respondent: Ms. Celia Edwards, QC with her Ms. Celene Edwards and Mr. Zuriel Francique

Issue: Civil appeal – Whether the learned judge erred in finding that there was no common intention between the parties to share in the subject property

Type of Order: N/A

Result / Order: Judgment is reserved.

Case Name: Peter Peake
v
Tellica Clouden
[GDAHCVAP2019/0007]
(Grenada)

Date: Wednesday, 30th October 2019

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal [Ag.]

Appearances:
Appellant: Mrs. Linda Dolland

Interested party:	Ms. Shireen Wilkinson for Club Caribe (The Interested Party and Ancillary Defendant in court below)
Respondent:	Mr. Rohan Phillip
Issue:	Civil appeal – Possession of land – Refusal to strike out claim – Application for extension of time – Relief from sanctions – Whether the learned judge erred in finding that there was a cause of action and no abuse of process – Exercise of discretion afresh
Type of Order:	Oral judgment
Result:	IT IS HEREBY ORDERED THAT: 1. An extension of time is granted to the respondents and relief from sanctions. 2. No order as to costs.
Reason:	The Court formed the view that the learned judge correctly identified and applied the principles of law relevant to a striking out a notice of application on the basis of no cause of action. The Court also took into consideration that striking out is a last resort remedy. The Court also noted that where a respondent does not specify the particulars of the area of land on which the claim is based, this defect can be cured and in those circumstances it would not be appropriate for the Court to strike out claim. The Court noted that an appropriate order for costs and an order for an amendment would be most suitable in those circumstances. In those circumstances, the Court agreed that the learned judge was correct in not striking out the claim. The Court also noted that where a defendant alleges that a claim is statute barred, the law acknowledges that a defendant can either plea that defence and seek to try it as a preliminary

issue or where it is very clear that the claim is statute barred, he can seek to strike out the claim on the ground of abuse of process. In this case, the issue of limitation relates to possession of land at particular times by various persons.

Based on the documents before the Court, the Court was of the opinion that the judge was correct in finding that this was not an appropriate case to strike out the claim. The Court noted that there were factual issues to be determined and this was more suitable for trial as opposed to being tried as a preliminary issue.

This Court determined that the threshold upon which a claimant has to meet when faced with an application to strike out on the ground of the claim being statute barred is relatively low in that the claimant has to prove that he or she has a real prospect of countering the limitation event and not that he or she is bound to overcome it.

In relation to the appeal against the granting of an extension of time and relief from sanctions, the appellant contends that the learned judge arrived at her decision without hearing oral arguments notwithstanding that she had promised to do so and on this basis alone the appeal should be allowed. The Court noted that the learned judge stated that she notes the submissions by the appellants opposing the application, but there were no such submissions by the respondents.

The learned judge, in her decision, indicated that she had considered the submissions of the respondent and that she gave no reasons for her decisions. In those circumstances, the Court agrees with learned counsel for the appellant that the learned judge fell into error in so doing. Therefore, based on the above circumstances, this Court is entitled to exercise

its discretion afresh, as invited to do by both parties.

The appellant contends that the respondent had not met the requirement of rule 26.8 of the Civil Procedure Rules 2000 and therefore the learned judge could not have exercised her discretion. Having viewed submissions both written and oral and the record, the Court was of the view that the failure to comply with the Court's order was not intentional. There is evidence that the respondent was lax in filing its witness statement, but this, in the Court's view this does not amount to an intentional failure to comply. The Court was also of the view that there was a good explanation for the failure to comply as outlined in the affidavit in support of the application. It must be noted however that counsel for the respondent conceded that the respondent had not complied with some of the provisions of the order.

The Court also noted that although there was a trial window, a trial date was not fixed and therefore there was no issue of the trial date being vacated. In view of the all the circumstances and given the fact that the learned judge granted relief from sanctions and extended the time for the ancillary defendant to file its witness statement out of time and that this order has not been appealed.

The Court found that it cannot be said that the learned judge's decision was so plainly wrong so as to be regarded as falling outside the generous ambit within which reasonable decision makers may disagree. Given the circumstances and in the exercise of its discretion, this Court arrived at the same view as the learned judge that an extension of time should be granted and relief from sanctions should be granted to the respondents. Accordingly, in the exercise of that discretion, the Court granted the extension of time and

relief from sanctions and deemed the witness statements properly filed.

Case Name:

**Carriacou Development Corporation
The Attorney General of Grenada**

v

**Margaret Corion
Nellie Edwards**

**(the personal representative in the Estate of
Samuel Corion)**

**[GDAHCVAP2018/0014]
(Grenada)**

Date:

Thursday, 31st October 2019

Coram:

**The Hon. Mde. Louise Esther Blenman, Justice
of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

Ms. Sheriba Lewis

Intervener

Ms. Dia Forrester

Respondent:

Mr. Rohan Phillip with him Mr. Nazim Burke

Issue:

**Civil appeal – Property – Land Law – Crown
Lands Act Cap. 78 Revised Laws of Grenada
2010 – Crown’s prerogative right of ownership
of foreshore and swamp lands – Establishing
title to land – Whether the Crown is required to
prove ownership or title in the same way as a
private person – Whether respondents have
paper title – Whether learned judge erred in
finding that the appellants owned the property**

– Approach of appellate court to judge’s finding of fact

Type of Order:

Oral judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

The appeal is dismissed with costs to the respondents, such costs to be two-thirds of the costs awarded in the court below.

Reason:

The Court noted that there was no evidence led by the appellant to indicate the high-water mark in the area of the disputed land. In the absence of such evidence, the Court cannot determine how much, if any, of the disputed land is below mean high-water mark and is to be presumed Crown lands. The Court determined that swamp lands or land covered by sea water is not the test. Rather, there must be evidence of the technical issues related to high water mark and the foreshore in the area and how they relate to the disputed land.

In relation to the respondents’ paper title, the Court noted that the deed was executed in 1914 and the respondents could not properly deduce evidence from anybody who was around when it was executed. The Court formed the view that the trial judge was in a better position and had the advantage of seeing the witness give their evidence and observe their demeanour when they gave their testimony. Accordingly, the trial judge was far better placed than the appellate court to assess the witnesses and their credibility. An appellate court will interfere with the decision of trial judge only if it is satisfied that the trial judge did not take proper advantage of having seen and heard the witnesses.

In this case, the judge was faced with conflicting evidence and heavily disputed factual issues. The judge resolved the issues by

accepting the evidence presented by the respondents that the disputed lands are part of the estate. Therefore, there is no basis for this Court to interfere with the judge's findings.

Case Name:

**[1] Sarah Tannis-Joseph
(Executrix of the Estate of Theresa Joseph)
[2] Agatha De Coteau**

v

Dorothy Abraham

**[GDAHCVAP2018/0016]
(Grenada)**

Date:

Thursday, 31st October 2019

Coram:

**The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal
[Ag.]**

Appearances:

Appellants:

Mr. Alban John with him Ms. Alicia Lawrence

Respondent:

Mr. Ruggles Ferguson

Issues:

Civil appeal — Adverse possession – Whether judge erred in not treating case as one based on adverse possession— Whether judge erred in not finding that respondent's claim was based on fraudulent documents and setting aside the documents – Whether judge erred in dismissing appellants' claim to be declared as owners of the disputed properties

Type of Order:

N/A

Result / Order:

Judgment is reserved.

Case Name:

Leroi Andrew

V

**[1] Albert Michael Martineau
(in his capacity as personal
representative of the Estate of Agnes
Elsa Martineau et al)**

[2] Dominic Emmanuel Martineau

[3] Albert Michael Martineau

**[GDAHCVAP2019/0001]
(Grenada)**

Date:

Thursday, 31st October 2019

Coram:

**The Hon. Mde. Louise Esther Blenman, Justice
of Appeal**

The Hon. Mr. Mario Michel, Justice of Appeal

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

Appearances:

Appellant:

Mr. Alban John with him Ms. Alicia Lawrence

Respondent:

**Mr. Nigel Stewart with him Ms. Georgelle
George**

Issue:

**Civil appeal – Whether the learned judge erred
as a matter of law in striking out the relevant
parts of the witness statements – Costs –
Whether judge erred in ordering costs in the
circumstances**

Type of Order:

Oral judgment

Result / Order:

IT IS HEREBY ORDERED AS FOLLOWS:

- 1. The appeal against the judgment of the
learned judge which is reflected order of
6th December 2018 is allowed in its**

entirety and all orders made by the learned judge are set aside.

2. The costs order in the sum of \$1,000.00 is specifically set aside.
3. The costs in the lower court are awarded to the respondent/claimant in the sum of \$1,000.00 and on this appeal two-thirds (2/3) of the costs being the sum of \$600.00.

Reason:

The Court was of the view that the learned judge erred as a matter of law in striking out the relevant parts of the witness statements. The Court also formed the view that the learned judge did not deal effectively with the claim in concluding erroneously that there was an attempt to change the cause of action. The Court also determined that the learned judge was wrong to award costs to the defendant in the circumstances of the matter.

Case Name:

Wendy Ann Farray

v

Junior Farray

**[GDAHCVAP2014/0009]
(Grenada)**

Date:

Thursday, 31st October 2019

Coram:

**The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

Mr. Alban John with him Ms. Alicia Lawrence

Respondent:

Mrs. Celia Edwards, QC with her Mr. Zuriel Francique

Issue:	Civil appeal – Divorce – Division of matrimonial assets – Property adjustment – Ancillary relief – Section 25 of the of Matrimonial Causes Act 1973 - Division of matrimonial assets between the parties – Challenge to findings of fact made by judge – Whether judge erred in failing to award maintenance to the appellant
Type of Order:	Oral judgment
Result / Order:	IT IS HEREBY ORDERED THAT: 1. The appeal is allowed to the extent that the twenty percent (20%) share of the matrimonial assets awarded to the appellant is varied to a forty percent (40%) share of the matrimonial assets. 2. The respondent shall pay the appellant. The sum of \$237,404.80 representing forty percent (40%) of the net asset value in instalments of \$118,702.40 each payable on 30th November 2019 and 31st January 2020. 3. The parties shall each bear their own costs.
Reason:	The Court was of the view that the learned judge erred in not applying sufficient weight to the appellant’s contributions, not only to the business, but more specifically her contribution to the care and maintenance of the home and family. Having regard to the fact that the parties were married for fourteen years, since the appellant was 21 years old, the Court considers that it would be very unfair to the appellant were she to walk away from her marriage with two young children and with twenty percent (20%) of the net value of the matrimonial assets.

The Court found that in keeping with the provisions of section 25 of Matrimonial Causes Act 1973 and with the modern approach to the equality in the division of matrimonial assets following the dissolution of the marriage, the appellant should have been awarded a greater share in the matrimonial assets.

The Court determined that the respondent should pay to the appellant the forty percent (40%) value of her share in the matrimonial assets which totals \$237,404.80.

As to the appellant's complaint that the learned judge failed to make any award of maintenance to the children of the marriage, the Court did not find fault in the learned judge's reasoning since no application was made for child maintenance and no application was made out for the needs of the children and the expenses.

Case Name:

Elizabeth Halley

v

Devon Smith

**[GDAHCVAP2019/0013]
(Grenada)**

Date:

Friday, 1st November 2019

Coram:

The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal

The Hon. Mde. Gertel Thom, Justice of Appeal

The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal [Ag.]

Appearances:

Appellant:

Mr. Derick Sylvester with him Ms. Hazel Hopkin

Respondent:

Ms. Celia Edwards, QC with her Ms. Celene Edwards and Mr. Zuriel Francique

Issue:	Civil appeal – Possession of land – Whether the judge erred in his finding that there was no common intention between the parties to share in the subject property
Type of Order:	Oral judgment
Result / Order:	IT IS HEREBY ORDERED AS FOLLOWS: 1. The appeal is allowed and the learned trial judge's order is set aside. 2. A declaration that the appellant is entitled to an undivided fifteen percent (15%) share of the property in St. Patrick, Grenada comprising two parcels of land being 15,236 square feet and 622 square feet respectively together with the dwelling house thereon and the appurtenances thereto. 3. The property is to be valued by a Valuator agreed upon by the parties on or before 30th November 2019 in default of such agreement, one is to be appointed by the High Court on application by either party. 4. The Valuation to be of the property as at 31st December 2016. 5. Copies of the Valuation is to be delivered to each of the parties within sixty (60) days of the appointment of the Valuator. 6. The respondent is to pay the costs of the Valuation within thirty (30) days of the Valuation being delivered. 7. The respondent is to pay to the appellant fifteen percent (15%) of the value of the property less one third the costs of Valuation within ninety (90) days of the Valuation. 8. Liberty to apply. 9. The respondent is to pay to the appellant the costs of the appeal in amount of \$1,000.00 as well as \$1,500.00 being the costs below.
Reason:	This is an appeal against the judgment of the trial judge wherein the judge in considering the

evidence before him found that the appellant had not met the threshold necessary to show that there was a common intention between the parties to share a beneficial interest in a dwelling house and land (“the property”) and granted an order for possession of land in favour of the respondent.

On the facts and circumstances of the case, this Court was of the view that there was in fact a common intention that appellant would have acquired an interest in the property. The Court also formed that view that the proper approach in arriving at the parties intention is to look at the evidence holistically. Accordingly, the learned judge fell into error when he treated the financial and non-financial contributions of the appellant individually and not as a whole. The Court was satisfied that it was clear from the evidence that the parties intended to live together, marry, have a family and do all this on the subject property.

Case Name:

**Prickly Bay Waterside Limited
v
British American Insurance Company
Limited
(Under Judicial Management)**

**[GDAHCVAP2015/0026]
Motion 2 of 2018
(Grenada)**

Date:

Friday, 1st November 2019

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice
of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Humphrey Stollmeyer, Justice of
Appeal [Ag.]**

Appearances:

Appellant: Ms. Claudette Joseph and Mr. Ian Sandy

Respondent: Ms. Melissa Modeste-Singh

Issue: Application for final leave to appeal to her Majesty in Council

Type of Order: Oral decision

Result / Order: IT IS HEREBY ORDERED THAT:

Final leave to appeal is granted to the applicant.

Reason: The Court was of the view that the conditions for final leave to appeal had been satisfied.

Case Name: Kenny Cadoo
v
The Queen

[GDAHCRAP2016/0016]

Date: Friday, 1st November 2019

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Jerry Edwin

Respondent: Ms. Crisan Greenidge

Issue: Criminal Appeal – Sexual offences – Rape -
Appeal against sentence – Computation of sentence

Type of Order: Oral judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

The appeal is dismissed and the sentence is affirmed.

Reason:

This was an appeal against the appellant's sentence of 10 years imprisonment for the offences of rape and sexual assault on minors. The Court in considering the submissions of the appellant, formed the view that the learned judge did not err in his computation of the sentence. The Court was therefore of the view that the appellant was not entitled to an early release from prison.

Case Name:

Finton De Bourg

v

The Queen

**[GDAHCRAP2016/0027]
(Grenada)**

Date:

Friday, 1st November 2019

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Mr. Jerry Edwin

Respondent:

Mr. Howard Pinnock

Issue:

Civil appeal – Withdrawal of application for bail pending appeal

Type of Order:

Oral decision

Result / Order:

IT IS HEREBY ORDERED THAT:

Leave is granted to the applicant to withdraw the application for bail pending appeal.

Reason:

The Court was of the view that no exceptional circumstances had been made out in the application. The Court also was of the view that the medical certificate of the doctor did not state that the applicant cannot receive medical treatment while in prison. Upon noting the Court's preliminary view, counsel for the applicant withdrew the application for bail pending appeal.

Case Name:

**Shadel Gill
v
The Commissioner of Police
[GDAMCRAP2019/0013]
(Grenada)**

Date:

Friday, 1st November 2019

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Mr. Derick Sylvester

Respondent:

Mr. Howard Pinnock

Issue:

Magisterial Criminal Appeal – Appeal against sentence

Type of Order:

Oral judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

The sentence is varied to the extent that the fine of \$25,000.00 is to be paid in 18 months commencing 1st November 2019.

Reason:

Upon noting the submissions of counsel for the appellant, the Court formed the view that the fine was not excessive given the serious nature of the offence. However, the Court being mindful of the appellant's financial means extended the time to pay the fine to 18 months from 1st November 2019.

Case Name:

**Shane Williams
v
The Commissioner of Police
[GDAMCRAP2018/0020]
(Grenada)**

Date:

Friday, 1st November 2019

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal [Ag.]**

Appearances:

**Appellant: Mr. Anselm Clouden
Respondent: Mr. Howard Pinnock**

Issue:

Magisterial criminal appeal against sentence

Type of Order:

Oral judgment

Result / Order:

**IT IS HEREBY ORDERED THAT:
The appeal against sentence is allowed to the extent that the order for compensation is varied to \$5,000.00 and is to be paid by the appellant**

to the virtual complainant in 18 months in default 1 year imprisonment.

Reason:

The Court was of the view that the learned magistrate had no jurisdiction to order for compensation in the sum of \$11,470.00. The Court agreed that the learned magistrate's jurisdiction exceeded the sum of \$5,000.00. Further, upon noting the submissions of both counsel, the Court varied the order for compensation to \$5,000.00 which is to be paid by the appellant to the virtual complainant.

Case Name:

Ian Moses Scott

v

The Queen

**[GDAHCRAP2019/0003]
(Grenada)**

Date:

Friday, 1st November 2019

Coram:

The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal

The Hon. Mde. Gertel Thom, Justice of Appeal

The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal [Ag.]

Appearances:

Appellant:

Mr. George Prime

Respondent:

Mr. Brendon La Touche

Issue:

Criminal appeal – Appeal against sentence – Whether the sentence was too excessive

Type of Order:

Oral judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

The appeal is allowed to the extent that the sentence of three (3) years three (3) months is varied to three (3) years.

Reason:

The Court formed the view that the trial judge erred in performing the sentencing exercise in that the deduction for the guilty plea of one-sixth (1/6) was low. Accordingly, the Court was of the view that a deduction of twenty-five percent (25%) in the sentencing was more appropriate.

Case Name:

**Solomon Buckmire
v
The Commissioner of Police
[GDAMCRAP2019/0006]
(Grenada)**

Date:

Friday, 1st November 2019

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal [Ag.]**

Appearances:

**Appellant: Mr. Jerry Edwin
Respondent: Mr. Howard Pinnock**

Issue:

Application to withdraw appeal

Type of Order:

Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

The appeal having been withdrawn is accordingly dismissed.

Reason: Counsel for the appellant withdrew his appeal, accordingly the appeal was dismissed.

Case Name: Devon Peters
v
The Commissioner of Police
[GDAMCRAP2019/0016]
(Grenada)

Date: Friday, 1st November 2019

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal [Ag.]

Appearances:
Appellant: Mr. Jerry Edwin holding papers for Ms. Sherrine Francis Hackett
Respondent: Mr. Howard Pinnock

Issue: Application for an adjournment

Type of Order: Adjournment

Result / Order: The application for an adjournment by the appellant is granted. The hearing of the appeal is adjourned to the next sitting of the Court of Appeal in the State of Grenada during the week commencing 27th April 2020.

Reason: Counsel for the appellant was unavoidably out of State on the date set for hearing of the matter and therefore required an adjournment.

Case Name: Alister Neptune
v

The Commissioner of Police

**[GDAMCRAP2019/0005]
(Grenada)**

Date: Friday, 1st November 2019

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal [Ag.]

Appearances:

Appellant: No appearance

Respondent: Mr. Howard Pinnock

Issue: Magisterial criminal appeal against sentence

Type of Order: Oral Judgment

Result / Order: The notice of appeal is dismissed for want of prosecution.

Reason: The Court noted that the appellant was served with notice of hearing on 2nd April 2019, but failed to appear before the Court to prosecute his appeal.

Case Name: Nigel Telesford
v
The Commissioner of Police

**[GDAMCRAP2019/0007]
(Grenada)**

Date: Friday, 1st November 2019

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal

The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal [Ag.]

Appearances:

Appellant: No appearance

Respondent: Mr. Howard Pinnock

Issue: Magisterial criminal appeal - Appeal against sentence

Type of Order: Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:

The notice of appeal is struck out for want of prosecution.

Reason: The Court noted that although the appellant was served with notice of hearing on 4th June 2019, he did not appear before the Court to prosecute his appeal.

Case Name: Travis De Roche
V
The Commissioner of Police
[GDAMCRAP2019/0001]
(Grenada)

Date: Friday, 1st November 2019

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal [Ag.]

Appearances:

Appellant: No appearance

Respondent:	Mr. Howard Pinnock
Issue:	Magisterial criminal appeal – Appeal against sentence
Type of Order:	Direction
Result / Order:	IT IS HEREBY ORDERED THAT: The hearing of the appeal is adjourned to the next sitting of the Court of Appeal in Grenada during the week commencing 27th April 2020.
Reason:	The Court noted that there is no affidavit of service to indicate whether the appellant was served with the notice of hearing.
Case Name:	Daniel Charles v The Commissioner of Police [GDAMCRAP2019/0015] (Grenada)
Date:	Friday, 1st November 2019
Coram:	The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal The Hon. Mde. Gertel Thom, Justice of Appeal The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal [Ag.]
Appearances:	
Appellant:	Ms. Sabina Gibbs
Respondent:	Mr. Howard Pinnock
Issue:	Application for an adjournment

Type of Order:

Adjournment

Result / Order:

IT IS HEREBY ORDERED AS FOLLOWS:

1. That the application for an adjournment for hearing of the appeal is granted.
2. The appellant shall file and serve written submissions with authorities on or before 15th January 2020.
3. The respondent has leave to file written submissions in reply if necessary.
4. The hearing of the appeal is set down to the next sitting of the Court of Appeal in the State of Grenada during the week commencing 27th April 2020.

Reason:

Counsel for the appellant was only recently retained in the matter and therefore made an application for an adjournment of the matter. There was no objection to the application.

Case Name:

**Kent Lewis
v
The Commissioner of Police
[GDAMCRAP2019/0014]
(Grenada)**

Date:

Friday, 1st November 2019

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal [Ag.]**

Appearances:

Appellant:

In person

Respondent:

Mr. Howard Pinnock

Issue:

Notice of withdrawal of appeal

Type of Order:	Oral Decision
Result / Order:	IT IS HEREBY ORDERED THAT: The appeal having been withdrawn is accordingly dismissed.
Reason:	The appellant withdrew his appeal and the matter was accordingly dismissed.
Case Name:	Omar Mc Gillivary v The Commissioner of Police [GDAMCRAP2019/0012] (Grenada)
Date:	Friday, 1st November 2019
Coram:	The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal The Hon. Mde. Gertel Thom, Justice of Appeal The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal [Ag.]
Appearances:	
Appellant:	In person
Respondent:	Mr. Howard Pinnock
Issue:	Magisterial criminal appeal – Appeal against sentence – Whether sentence too excessive
Type of Order:	Oral Judgment
Result / Order:	IT IS HEREBY ORDERED THAT: The appeal is dismissed and the sentence of the learned magistrate is affirmed.

Reason: The Court was of the view that the sentence was appropriate given the sentencing guidelines.

Case Name: Justin Thomas
V
The Commissioner of Police
[GDAMCRAP2019/0018]
[GDAMCRAP2019/0019]
[GDAMCRAP2019/0020]
(Grenada)

Date: Friday, 1st November 2019

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal [Ag.]

Appearances:
Appellant: In person
Respondent: Mr. Howard Pinnock

Issue: Magisterial criminal appeal – Appeal against sentence – Whether sentence too excessive

Type of Order: Oral Judgment

Result / Order: IT IS HEREBY ORDERED AS FOLLOWS THAT:

The sentence is varied to the extent that the time to pay the fines:

1. In relation to magisterial criminal appeal #18 of 2019, \$1,000.00 fine to be paid within six months and in default six months imprisonment.

2. In relation to magisterial criminal appeal #19 of 2019, \$ 750.00 fine to be paid within six months and in default six months imprisonment.
3. In relation to magisterial criminal appeal #20 of 2019, \$1,000.00 fine to be paid within six months and in default six months imprisonment.

Reason:

There being no objection to consolidation by the appellant, the appeals were consolidated and heard together. The appellant orally requested more time to pay the fines to which the Court obliged.

Case Name:

**Winston Smith
v
The Commissioner of Police
[GDAMCRAP2019/0008]
[GDAMCRAP2019/0009]
(Grenada)**

Date:

Friday, 1st November 2019

Coram:

The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal [Ag.]

Appearances:

Appellant:	No appearance
Respondent:	Mr. Howard Pinnock

Issue:

Magisterial criminal appeal against sentence

Type of Order:

Adjournment

Result / Order:

IT IS HEREBY ORDERED THAT:

The appeal is adjourned to the next sitting of the Court in Grenada during the week commencing 27th April 2020.

Reason:

A medical certificate was presented to the Court, submitted by the applicant, indicating his unavailability to be present at the hearing of the appeal.

Case Name:

**Justin Thomas
V
The Commissioner of Police
[GDAMCRAP2019/0010]
(Grenada)**

Date:

Friday, 1st November 2019

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal [Ag.]**

Appearances:

Appellant:

In person

Respondent:

Mr. Howard Pinnock

Issue:

Magisterial criminal appeal – Appeal against sentence – whether sentence was too excessive

Type of Order:

Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

The appeal is dismissed and the sentence of the learned magistrate is affirmed.

Reason:

The Court having reviewed the record formed the view that the sentence of the learned magistrate was appropriate.