

COURT OF APPEAL SITTING

COMMONWEALTH OF DOMINICA

Monday, 19th March - Tuesday, 20th March 2018

APPLICATIONS AND APPEALS

Case Name:

Hilary Shillingford

v

Angel Peter Andrew

[DOMHCVAP2011/0032]

Date:

Monday, 19th March 2018

Coram:

The Hon. Mr. Davidson Baptiste, Justice of Appeal

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

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Applicant:

Ms. Cara Shillingford

Respondent:

Mr. Michael Bruney

Issues:

Application for leave to appeal to the Caribbean Court of Justice as of right pursuant to section 106(1)(a) of the Constitution of the Commonwealth of Dominica — Application for stay of execution — Provision of security for costs pursuant to rule 10.6(2) of the Caribbean Court of Justice (Appellate Jurisdiction) Rules 2017

**Type of Oral
Result / Order
Delivered
(if applicable):**

Oral Judgment or Decision

**Result /
Order:**

[Oral Delivery]

- 1. The applicant/intended appellant is granted leave to appeal to the Caribbean Court of Justice as of right pursuant to Section 106 (1)(a) of the Constitution of the Commonwealth of Dominica, against the decision of the Court of**

Appeal rendered on the following conditions:

(a) The applicant do lodge with the Registrar of the Supreme Court of the Commonwealth of Dominica, security for costs in the sum of \$15,000.00 within 90 days of the date hereof.

(b) The applicant/intended appellant within 90 days of the date hereof, shall furnish the Registrar of the Court with a list of the documents which he proposes should be included in the record of appeal.

- 2. A stay of execution of the judgment is granted with the consent of the parties.**
- 3. Upon compliance with the conditions herein stated, the Registrar of the Supreme Court shall issue a Certificate of Compliance in conformity with Form 2A, Schedule 3 of the Caribbean Court of Justice (Appellate Jurisdiction) Rules 2015 and shall serve copies of the said Certificate on the intended appellant and the intended respondents and shall notify the Registrar of the Caribbean Court of Justice.**
- 4. Costs of this application shall be costs in the appeal to the Caribbean Court of Justice.**

Reason:

The Court was satisfied that the applicant had met the threshold for leave to appeal to the Caribbean Court of Justice to be granted. There was no objection to the applications for leave to appeal and for a stay of execution of the judgment of the court below by the respondent. However, the respondent requested an order directing the applicant to comply with the provisions of rule 10.6(2) of the Caribbean Court of Justice (Appellate Jurisdiction) Rules 2017 in respect of the provision of security for costs.

Case Name:

Gloria Shillingford

v

Angel Peter Andrew

[DOMHCVAP2011/0033]

Date: Monday, 19th March 2018

Coram: The Hon. Mr. Davidson Baptiste, Justice of Appeal
The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Applicant: Mr. Lennox Lawrence

Respondent: Mr. Michael Bruney

Issues: Application for leave to appeal to the Caribbean Court of Justice as of right pursuant to section 106(1)(a) of the Constitution of the Commonwealth of Dominica — Application for stay of execution — Provision of security for costs pursuant to Rule 10.6(2) of the Caribbean Court of Justice (Appellate Jurisdiction) Rules 2017

Type of Oral Result / Order Delivered (if applicable): Oral Judgment or Decision

Result / Order: [Oral Delivery]

1. The applicant is granted leave to appeal the judgment of the Eastern Caribbean Supreme Court dated 24th November 2016 in Civil Appeal No. DOMHCVAP2011/0033 pursuant to Section 106 (1)(a) of the Constitution of the Commonwealth of Dominica.
2. The execution of the said judgment is stayed pending the hearing and determination of the appeal to the Caribbean Court of Justice pursuant to the Rule 10.8(1) of the said Rules, there being no objection by the respondent.
3. The applicant is to provide security for costs in the sum of fifteen thousand dollars (EC\$15,000.00) within 90 days of the date of this order.
4. The applicant is to comply with the Caribbean Court of Justice (Appellate Jurisdiction) Rules 2017, rule 10.6(2)(b) for leave to appeal.
5. Costs in this matter shall be costs in the appeal.

Reason: The Court was satisfied that the applicant had met the threshold for leave to appeal to the Caribbean Court of Justice to be granted. There was no objection to the applications for leave to appeal and for a stay of execution of the judgment of the court below by the respondent.

Case Name: Global Education Providers Inc.
V
[1] The Honourable Petter Saint Jean
[2] Minister of Education
[3] The Attorney General of Dominica

[DOMHCVAP2012/0009]

Date: Monday, 19th March 2018

Coram: The Hon. Mr. Davidson Baptiste, Justice of Appeal
The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:
Appellant: Mr. Dwight Horsford
Respondents: Ms. Tameka Hyacinth-Burton, with her Ms. Arthlyn Nesty

Issues: Civil appeal — Application for judicial review of Minister's decision refusing permission to establish medical school in Dominica — Section 96 of Education Act of Dominica — Interpretation of section 96(g) of Education Act — Whether learned judge erred in concluding that the Minister acted within section 96(g) in refusing permission — Whether Minister's decision was illegal, irrational and unreasonable — Whether Minister took into account irrelevant factors and acted ultra vires the Act in refusing permission

Type of Oral Result / Order N/A

**Delivered
(if applicable):**

**Result /
Order:**

Judgment reserved.

Case Name:

**David George
v
Albert Guye**

[DOMHCVAP2012/0013]

Date:

Tuesday, 20th March 2018

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Applicant: Ms. Gina Dyer-Munro

Respondent: Mr. Michael Bruney

Issues:

Application for leave to appeal to the Caribbean Court of Justice — Section 106(2) of the Constitution of the Commonwealth of Dominica — Whether appeal raises question of great general or public importance — Adverse possession — Proper procedure for claiming title to land acquired by prescription — Section 33 of Title by Registration Act — Whether respondent's title to disputed land superseded by appellant's title acquired under Real Property Limitation Act — Section 2 and 10 of the Real Property (Limitation) Act — Section 33 of the Title by Registration Act — Application for stay of execution — Application for leave to appeal to the Caribbean Court of Justice as a poor person

**Type of Oral
Result / Order**

Oral Judgment or Decision

**Delivered
(if applicable):**

**Result /
Order:**

[Oral Delivery]

- 1. All affidavits filed herein after the 2nd March 2018 are deemed properly filed.**
- 2. The applicant/intended appellant is granted leave to appeal the judgment of the Eastern Caribbean Supreme Court dated 12th June 2017 in Civil Appeal No. DOMHVCAP 2012/0013 pursuant to Section 106(2) of the Constitution of the Commonwealth of Dominica and Rule 10.3 of the Caribbean Court of Justice (Appellate Jurisdiction) Rules 2017.**
- 3. The applicant/intended appellant is granted leave to appeal as a poor person pursuant to Rule 10.17 of the Caribbean Court of Justice (Appellate Jurisdiction) Rules 2017 and accordingly the requirement for security for costs shall not be a consideration in the grant of leave to appeal to the Caribbean Court of Justice.**
- 4. The execution of the judgment of the Eastern Caribbean Supreme Court dated the 12th June 2017 in Civil Appeal No. DOMHCVAP2012/0013 is stayed pending the hearing and determination of the appeal to the Caribbean Court of Justice pursuant to the Rule 10.8 of the Caribbean Court of Justice (Appellate Jurisdiction) Rules 2017.**
- 5. The applicant is to comply with Rule 10.6 (2)(b) of the Caribbean Court of Justice (Appellate Jurisdiction) Rules 2017 for leave to appeal.**
- 6. Costs in this matter shall be costs in the appeal.**

Reason:

This is an application for leave to appeal to the Caribbean Court of Justice pursuant to section 106(2) of the Constitution of the Commonwealth of Dominica. The applicant says that the appeal raises matters of great general or public importance in that the decision in the appeal has in essence placed the law into dispute, or put another way, has placed the law in a state of flux having regard to other decisions of the Court treating with limitation and adverse possession and its relationship with the provisions under the Title by Registration Act. The Court is of the view that section 106(2) of the Constitution of the Commonwealth of Dominica has been satisfied and the Court repeats the pronouncements

made in the case of *Marinor Enterprises Limited and Michael Astaphan v First Caribbean International Bank (Barbados) Ltd* DOMHCVAP2013/0003 (delivered 6th July 2016, unreported). There, the Court said at paragraph 6:

“As to what may constitute a question of great general or public importance has been the subject of much judicial authority across the region.”

...

“Leave under this ground is normally granted when there is a difficult question of law involved. In construing the phrase ‘great general or public importance’, the Court usually looks for matters that involve a serious issue of law; a constitutional provision that has not been settled; an area of law in dispute, or, a legal question the resolution of which poses dire consequences for the public.”

That decision also went on to say that the principle which guides the court in deciding whether to grant leave is that it is not enough that a difficult question of law arose, it must be an important question of law and it must be one not merely affecting the rights of the particular litigants, but a decision which would guide and bind others in their commercial and domestic relations.

The Court is satisfied that the question here is not merely one affecting the particular applicant, but will clearly guide and bind others in their commercial relations as it relates to the protection afforded to an adverse possessor under the Real Property (Limitation) Act. It is therefore properly a matter which should be referred to the Caribbean Court of Justice so that it may be finally settled. Accordingly, conditional leave to appeal to the Caribbean Court of Justice will be granted.

The applicant has also met the conditions to be granted leave to pursue his appeal to the Caribbean Court of Justice as a poor person pursuant to rule 10.17 of the Caribbean Court of Justice (Appellate Jurisdiction) Rules 2017, in that he has satisfied the Court that his net worth is less than \$10,000 and that he is unable to provide sureties, and that he has an arguable ground of appeal. Accordingly, the requirement for providing security for costs of the appeal to the Caribbean Court of Justice shall not be a condition of the grant of leave.

Having considered the matter as it relates to a stay of execution of the judgment, the Court is satisfied that greater harm will be caused to the applicant were a stay not granted. Accordingly, the Court orders a stay of execution of the judgment pending the hearing and determination of the appeal before the Caribbean Court of Justice.

Case Name:

**[1] Windward Islands Banana Development
& Exporting Co. Ltd
[2] National Fair Trade Organisation of
Dominica**

v

Felix Christmas

[DOMHCVAP2011/0005]

Date: Tuesday, 20th March 2018

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Applicant/ Respondent:	Mr. Ronald Charles, with him Mr. Benjamin Drakes
Respondents/ Appellants:	Mr. Michael Bruney holding papers for Mr. Kondwani Williams

Issues: Application for costs upon discontinuance of the appeal

**Type of Oral
Result / Order
Delivered
(if applicable):**

Oral Judgment or Decision

Result /

[Oral Delivery]

Order: The respondent is awarded prescribed costs in the sum of \$11,325.00 with two-thirds on appeal at \$7,542.40 for a total of \$18,867.40.

Reason: This is an application for costs of an appeal following the discontinuance of the appeal filed on 15th September 2017. Rule 62.25 of the Civil Procedure Rules 2000 (“CPR”) deals with costs on a discontinuance which basically provides that notwithstanding that the appeal stands dismissed, the appellant shall be liable for the costs incurred by the respondent.

CPR 62.26 is in these terms: unless the parties agree or the court orders otherwise, an appellant who discontinues is liable for the costs incurred by the respondent against whom the claim is discontinued, on or before the date on which the notice of discontinuance was served. What that entails is that costs will be given up to the point of the filing of the notice of discontinuance.

Quantification of costs on withdrawal is governed by CPR 62.27. That rule states that the general rule is that unless an order is made for budgeted costs, which is not the case here, under CPR 65.8, the costs are to be determined in accordance with the scale of prescribed costs contained in Part 65, Appendices B and C of the CPR. The Court, unless there is good reason for departing from that provision, will assess those costs in relation to Part 65, Appendices B and C.

Further, CPR 65.13 provides that the costs of any appeal must be determined in accordance with CPR 65.5, 65.6 and 65.7 and the costs must be limited to two-thirds of the amount that would otherwise be allowed.

So, taking the conjoint provisions of 65.13 as well as 62.25, 62.26, and 62.27, then what the court is guided by would be those Appendices B and C depending on the stage that the appeal has reached. In the appeal here, the notice of appeal was filed. There is nothing further that appears to have happened in respect of the appeal, other than the transcript being prepared and various letters and correspondence between the parties.

Therefore, having regard to the prescribed costs order in the court below which was based on Appendices B and C and the fact that the matter was one where there was a default judgment and damages were assessed, that prescribed costs order would have been based on the amount of the damages assessed following the default judgment and that fell to be computed under Appendix C.

Appendix C essentially provides that ordinary costs would be, up to the default judgment and including assessment of damages, 60% of what the overall costs would have been on the claim on the prescribed basis. The applicant has quite rightly set that out in the computation in the Bill of Costs which shows that the amount of the damages awarded by the court was \$131,000, so that the total costs on the claim would have been \$18,875 and then applying Appendix C through the stage of the claim which shows that the matter was a default judgment with an assessment of damages, it would have been reduced by 60%, which brings the costs to a total amount of prescribed costs on the claim below of \$11,325.

Having adjusted the total costs by 60%, applying 65.13 on appeal, that is, the two-thirds rule in relation to the costs, that amount would amount to two-thirds of \$11,325 which on my computation amounts to \$7,542.40. Therefore, in adding the amount of costs below to the two-thirds of those costs on appeal, that amount totals \$18,867.40. That is the amount of costs that the Court will award in relation to the costs of the respondent in the court below and on the discontinued appeal.

When one wishes to depart from the general rule, there must be good reason shown for departing from the general rule. The explanation given in this instance does not amount to a sufficient reason in our view for departing from the general rule. One would seek to look at some sort of positive conduct which takes certain steps and which basically seeks to pursue some unmeritorious or totally lacking in merit position. This is not the case here. What is here is that a party has simply not really taken any action in pursuing this appeal. That does not amount to the kind of the conduct that the court will look at and consider whether to visit a party to the claim with some additional sum in relation to costs in the

circumstances.

For those reasons, the order of the Court will be prescribed costs as worked out for the court below on the claim of \$11,325 with two-thirds on appeal worked out at \$7,542.40, amounting to a total of \$18,867.40.

Case Name:

**[1] Michael Coipel
[2] Oscar Coipel
[3] Maximin Powell
v
Simeon Albert**

[DOMHCVAP2015/0015]

Date:

Tuesday, 20th March 2018

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Appellant:

**Ms. Cara Shillingford for the first and second appellants
Ms. Gina Dyer-Munro holding papers for Ms. Zena Moore
Dyer for the third appellant**

Respondent:

Mr. Lennox Lawrence

Issues:

Interlocutory appeal — Defamation — Application to strike out part of appellant's witness statement — Whether the learned trial judge erred in ordering that an allegation of \$600 or cheque in relation thereto , cheque No. 956 or an unqualified reference to the cheque be struck out of the witness statements of witnesses on behalf of the appellants in the circumstances where the appellants are seeking to rely on the allegation in support of their defence of justification — Whether the reference to the cheque is relevant to and probative of the issues as pleaded

**Type of Oral
Result / Order
Delivered
(if applicable):**

Oral Judgment or Decision

**Result /
Order:**

[Oral Delivery]

- 1. The appeal is allowed.**
- 2. The statement in the witness statement of witnesses on behalf of the defendant which reference an allegation of \$600.00 or a cheque in relation thereto or an unqualified reference to cheque no. 956 are hereby reinstated, the order of the trial judge having struck such statements out being hereby set aside.**
- 3. The respondent shall bear the costs of the appellants in the sum of \$1,000.00 to each counsel to be paid by 20th April 2018.**

Reason:

The Court was satisfied that the cheque of \$600 and the reference to the payment of \$600 by cheque no. 956 in the witness statements of the witnesses on behalf of the appellants is relevant to and admissible in relation to the appellants' pleaded defences on justification and it also relevant to the very matters in issue between the claimant and the defendants whose claim is for defamation, where he asserts that the statements in relation to a money transaction was intended to convey and were understood to mean that he had engaged in a corrupt enterprise to defraud the Canefield Urban Council and that he had utilized his office to perpetuate a crime on the Canefield Urban Council.

The respondent set out what those words were intended to mean when the appellants made those statements. In their defence, the appellants have said that they have said these things and consider what was said to be true and are justified in saying so and the cheque is part of the factual matrix in that exercise which will be tested at trial and it is for the trial judge to determine whether or not that defence is made out. It clearly shows that the reference to the cheque is relevant to the transaction of which they spoke and in respect of which the claimant brought his claim for defamation.