

COURT OF APPEAL SITTING

TERRITORY OF ANGUILLA

24th to 28th April 2017

		<u>JUDGMENTS</u>
Case Name:		The Director of Public Prosecutions et al And Roddy Felix et al [GDAHCVAP2013/0007] [GDAHCVAP2013/0008] [GDAHCVAP2013/0009]
Date:		Wednesday, 26th April 2017
Coram:		The Hon. Mde. Louise Blenman, Justice of Appeal The Hon. Mr. Mario Michel, Justice of Appeal The Hon. Mr. Paul Webster, Justice of Appeal (Ag)
Appearances:		
	Appellants:	Mr. Thomas Astaphan, QC
	Respondents:	Mr. John Carrington, QC holding papers for Dr. Francis Alexis, QC
Issues:		Civil Appeal – Preliminary inquiry – Coroner’s inquiry Section 71 of the Grenada Constitution Order, 1973 – Section 9 of the Coroners Act – Section 78 of the Police Act – Whether power of the Director of Public Prosecutions and/or the Commissioner of Police to initiate criminal proceedings is suspended pending outcome of a coroner’s inquiry when a person dies in circumstances that bring section 9 of the Coroners Act into play
Result and		This appeal arises out of the decision of the learned

Reason:	judge by which he quashed the decisions of the Commissioner of Police (“the Commissioner”) to charge Royal Grenada Police Force officers, Messrs. Roddy Felix, Edward Gibson, Shawn Ganness, Wendell Sylvester and Kenton Hazzard (“the respondents”) with the manslaughter of Mr. Peter Oscar Bartholomew (“Mr. Bartholomew”) and suspend them from duty, and prohibited the learned magistrate from proceeding with the preliminary inquiry into the charges of manslaughter against the respondents. On 26th December 2011, the respondents were on duty at the St. David’s Police Station when Mr. Bartholomew was taken into custody. It is alleged that he was being aggressive towards the police officers and they had to subdue him and place him under arrest. Mr. Bartholomew collapsed and was taken to the hospital where he died the following morning. The police carried out an investigation into Mr. Bartholomew’s death and subsequently detained, questioned and charged the respondents with the offence of manslaughter arising out of the death of Mr. Bartholomew. The respondents later received letters from the Commissioner notifying them that as a result of the charges of manslaughter they were suspended from duty on half month’s pay. The magistrate for the Eastern Magisterial District of Saint David (“the magistrate”) then commenced a preliminary inquiry into the manslaughter charges. The respondents’ counsel challenged the magistrate’s decision to proceed with the preliminary inquiry without holding a coroner’s inquiry or inquest. The Director of Public Prosecutions (“the DPP”) opposed the challenges. Consequently, the respondents commenced proceedings in the High Court seeking, inter alia, an order of certiorari quashing the Commissioner’s decision to lay manslaughter charges against them and to suspend them from duty with half month’s pay, and an order of prohibition prohibiting the magistrate from holding a preliminary inquiry into the manslaughter charges without first holding a coroner’s inquest into Mr. Bartholomew’s death in compliance with the provisions of the Coroners Act.
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		The learned judge determined that the two main issues for consideration were whether section 9 of the Coroners Act imposes on the coroner a mandatory requirement to conduct an inquest in the circumstances of this case and whether the Commissioner and the DPP had the power to charge the respondents with manslaughter without holding a coroner's inquiry and inquest pursuant to the provisions of the Coroners Act. The learned judge found that section 9 is mandatory and the coroner was duty bound to inquire into the cause of Mr. Bartholomew's death and to conduct a coroner's inquest. The learned judge further found that the holding and completion of such an inquest under section 9 was a condition precedent to the institution of criminal proceedings by the DPP or the Commissioner against the person or persons suspected of having caused the death. Consequently, the constitutional powers of the DPP to initiate criminal proceedings were suspended until after the completion of the coroner's inquest and the preferment of the manslaughter charges, the suspension of the respondents from duty and the reduction of their salaries by the Commissioner were premature. The judge therefore granted the relief prayed for by the respondents. The appellants appealed against the learned judge's decision on the grounds that he erred in holding that the power of the magistrate <i>qua</i> coroner under the Coroners Act had to be exercised before those imposed on the magistrate under sections 94, 95, 97 - 99 of the Criminal Procedure Code which deal with preliminary enquiries; that the order of certiorari had the effect of subjecting the DPP to a direction that is contrary to the provisions of section 71 of the Grenada Constitution; and in the alternative if necessary, that the Coroners Act is an existing law which must be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with the provisions of section 71 of the Constitution. The appellants therefore sought to have the orders and declarations contained in the learned judge's decision set aside; a stay of those orders pending the
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		determination of the appeal and that the respondents pay the appellants' costs of the appeal and in the court below. Held: allowing the appeal and setting aside the orders and declarations made by the learned judge in paragraphs 47, 48 and 49 of his judgment, that: 1. Both the DPP and the Commissioner have the power to initiate criminal proceedings and there is nothing in the Coroners Act that postpones or takes away that right. If these officials have to await the outcome of a coroner's inquest before they can initiate criminal proceedings, it would be a restriction on their powers, and, in the case of the DPP, a breach of section 71 of the Constitution. The Coroners Act contains one of the two ways of initiating criminal proceedings in the case of a suspicious death of a person in custody. It does not shut out or postpone the alternative route of the Commissioner or the DPP exercising their independent power to initiate murder or manslaughter proceedings in the Magistrate's Court. The learned judge therefore erred when he decided that the preferment of criminal charges for manslaughter against the respondents by the Commissioner was premature and had to await the outcome of the mandatory inquest to be conducted by the coroner. The charges were not premature and were properly laid by the Commissioner. Grenada Constitution Order, 1973, section 71 applied; Police Act, Cap. 244, Act No. 8 of 2006, section 78 applied; Coroners Act, Cap. 69, Act No. 10 of 1990, Revised Laws of Grenada, section 9 applied; Commissioner of Police and another v Steadroy C. O. Benjamin [2014] UKPC 8 applied; Re Cook (1845) 7 QB 653 distinguished; Batary v AG for Saskatchewan [1965] SCR 465 distinguished. 2. The DPP's powers to initiate, take over and continue, or discontinue criminal proceedings
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		at such times as the DDP sees fit are clearly defined in section 71 of the Constitution. Restricting the DPP's constitutional power to prosecute criminal offences by an existing law, namely, section 9 of the Coroners Act would be an improper, if not contrary use of the existing law principle. Section 9 should not be construed by reading into the section a limit on the DPP's constitutional powers. If anything, the coroner's mandatory duty under section 9 should be construed as being subject to the DPP's overarching constitutional power to control criminal proceedings. The power to prevent the DPP and the Commissioner from commencing criminal proceedings was not included in the Coroners Act and that power should not be implied into the Act. Even if the power could be implied into section 9, it would be inconsistent with section 71 of the Constitution and to that extent would be void, or, as an existing law, would be required to be read with such modification as to yield to the provisions of section 71 of the Constitution. Grenada Constitution Order, 1973, section 71 applied; Police Act, Cap. 244, Act No. 8 of 2006, section 78 applied; Coroners Act, Cap. 69, Act No. 10 of 1990, Revised Laws of Grenada, section 9 applied; Commissioner of Police and another v Steadroy C. O. Benjamin [2014] UKPC 8 applied; Re Cook (1845) 7 QB 653 distinguished; Batary v AG for Saskatchewan [1965] SCR 465 distinguished.
		<u>STATUS HEARING</u>
Case Name:		Bernard Richardson Lorna Gumbs Scott v Andrea Lisandro [AXAHCVAP2015/0001]

Date:		Monday, 24th April 2017
Before:		The Hon. Madam. Gertel Thom, Justice of Appeal
Appearances:		
	Appellants:	Ms. Tara Carter, instructed by Carter & Associates
	Respondent:	Mrs. Keesha Carty, instructed by KCW et al
Issues:		Status of the matter
Type of Oral Result / Order Delivered:		Directions
Result / Order:		[Oral Delivery]: 1. The appellants shall file and serve written submissions on or before the 28th day of July 2017. 2. The respondent shall file and serve written submissions on or before the 29th day of September 2017. 3. The appellant shall file and serve submissions in reply, if necessary on or before the 10th day of October 2017. 4. The hearing of the appeal is scheduled for the week commencing the 30th day of October 2017.
Reason:		The Record of Appeal was filed on 17th March 2017. The parties are currently engaged in settlement discussions. However, the parties requested leave to file submissions should those settlement discussions prove unsuccessful. The Court was inclined to grant the leave which the parties sought.
Case Name:		Deloris Antoinette Hodge-Griffith (aka Deloris Antoinette Hodge)

		V
		Charles Griffith
		[AXAHCVAP2015/0008]
Date:		Monday, 24th April 2017
Before:		The Hon. Madam. Gertel Thom, Justice of Appeal
Appearances:		
	Appellant:	Ms. Samantha Wright, instructed by Wright & Co
	Respondent:	Mrs. Jacinth Jeffers, instructed by Caribbean Juris Chambers
Issues:		Status of the matter
Type of Oral Result / Order Delivered:		Oral Judgment or Decision
Result / Order:		[Oral Delivery] 1. Leave is granted to Ms. Samantha Wright to withdraw the application to be removed as legal practitioner on record for the appellant. 2. The application to withdraw the appeal is granted and the appeal is accordingly dismissed. 3. Costs as agreed to the respondent in the sum of US\$2,000.00 to be paid on or before the 29th day of May 2017.
Reason:		Counsel for the appellant made applications to withdraw the application to be removed as counsel and to withdraw the appeal. The Court was minded to grant the applications.
Case Name:		Jamila William

		v Commissioner of Police [AXAMCRAP2015/0002]
Date:		Monday, 24th April 2017
Before:		The Hon. Madam. Gertel Thom, Justice of Appeal
Appearances:		
	Appellant:	Ms. Navine Fleming holding for Mr. Kenny Kentish instructed by Libran Chambers
	Respondent:	Ms. Erica Edwards, Crown Counsel for the Attorney General's Chambers
Issue:		Whether the learned magistrate exceeded her jurisdiction in the trial of the matter and sentencing
Type of Oral Result / Order Delivered:		Directions
Result / Order:		[Oral Delivery] UPON the Court noting that the complete record would be ready by the end of June 2017: 1. Upon the receipt of the complete record, including the exhibits, the appellant shall file and serve written submissions within thirty (30) days. 2. Upon receipt of the submissions of the appellant, the respondent shall file and serve submissions within thirty (30) days. 3. The hearing of the appeal is set down for the next sitting of the Court of Appeal in the territory of Anguilla during the week commencing the 30th day of October 2017.

Reason:		The Record of Appeal was prepared but the exhibits were not attached. Accordingly, the Court gave directions.
		<u>APPLICATIONS AND APPEALS</u>
Case Name:		Erica Liana Percelle Edwards v Attorney General [AXAHCVAP2015/0005]
Date:		Monday, 24 th April 2016
Before:		The Hon. Dame Janice M. Pereira, DBE, Chief Justice The Hon. Mario Michel, Justice of Appeal The Hon. Gertel Thom, Justice of Appeal
Appearances:		
	Appellant:	Mr. Thomas Astaphan, QC, with him Mrs. Keesha Carty instructed by Astaphan's Chambers
	Respondent:	Mr. Ivor Greene, Senior Crown Counsel for the Attorney General's Chambers
Issues:		Civil appeal – Whether the learned judge failed to give the appellant an opportunity to be heard on her application to be called to the bar but dismissed it without a hearing – Whether learned judge misdirected herself in law in finding that the appellant's application is in contravention of section 64 of the Eastern Caribbean Supreme Court Anguilla Act – Whether the learned trial judge misdirected herself in law, inferentially, in finding that section 64 of the Eastern Caribbean Supreme Court Anguilla Act prohibits a suitably qualified person who is an ex officio barrister of the Supreme Court by virtue of section 64 itself from applying to be enrolled as a barrister in her own right pursuant to section 65 of the Act – Whether the learned judge misdirected

		herself in law in finding that the appellant's application was inappropriate in view of section 64 of the Act
Type of Oral Result / Order Delivered:		Oral Judgment or Decision
Result / Order:		[Oral Delivery] 1. The learned judge erred in principle in having regard to section 64 of the Eastern Caribbean Supreme Court (Anguilla) Act R.S.A c. E15 and should have been guided by section 65 of said Act. 2. The decision of the trial judge is accordingly set aside and the appellant is to be enrolled as a barrister of the Eastern Caribbean Supreme Court. 3. The appellant shall take the oath before the Chief Justice sitting as judge of the High Court on 24th April 2017. 4. The call will be effective from the date of the taking of the oath. 5. There is no order as to costs.
Reason:		The Court read the notice of appeal, the submissions and noted the agreement or concession by the respondent to the appeal and considered that the appeal ought to be allowed and the order requested made. The Court further considered that the learned judge erred in principle in having regard to section 64 of the Eastern Caribbean Supreme Court Act and that she ought to have been guided in relation to the application for admission of the appellant by section 65 of that Act. Accordingly, the appeal was allowed and the order and the decision of the trial judge was hereby set aside. It was further ordered that the appellant be enrolled as a barrister pursuant to section 65 of the Eastern Caribbean Supreme Court Anguilla Act.

		A question then arose as to whether the oath that necessary ought to be taken before the trial judge or whether it is an oath that can be given by the Chief Justice sitting as a judge of the High Court. In the circumstances, the Court resolved that the appellant should take the oath before the Chief Justice sitting as a judge of the High Court.
Case Name:		Barnes Bay Development Ltd. (In Liquidation) (acting by its joint liquidators Hadley Chilton and John Greenwood) v SOF-VIII HOTEL II Anguilla Holdings, LLC [AXAHCVAP2016/0006]
Date:		Monday, 24th April 2017
Before:		The Hon. Dame Janice M. Pereira, DBE, Chief Justice The Hon. Mario Michel, Justice of Appeal The Hon. Gertel Thom, Justice of Appeal
Appearances:		
	Appellant:	Mr. William Hare, with him Ms. Lauri Smikle instructed by Alex Richardson & Associates
	Respondent:	Mr. D. Michael Bourne, with him Ms. Dana Campbell, instructed by Keithley Lake & Associates
Issues:		Civil appeal – Application for an extension of time to file an Appeal
Type of Oral Result / Order Delivered:		Oral Judgment or Decision
Result / Order:		[Oral Delivery] 1. The hearing of the application for an extension

		of time to file the notice of appeal is hereby granted and the hearing of the application for the extension of time is, treated by the consent of the parties, as the appeal. 2. The appeal is allowed, the matter is remitted to the court below for a directions hearing to take place. 3. Counsel shall seek to agree proposed directions for the hearing of the application and in any event, on failure of agreement, either party shall file and serve with the court proposed directions for the hearing of the application no later than 10th May, 2017. 4. The directions hearing shall be listed by the court office before a High Court Judge following the filing of the proposed directions. 5. There shall be no order for costs inter partes on the application to extend or be appealed or on the application to strike out the appeal filed by the respondent. 6. The liquidators' reasonable costs shall be borne by the liquidation estate.
Case Name:		Keithley Lake et al v Richard Vento et al [AXAHCVAP2016/0012]
Date:		Monday, 24th April 2017
Before:		The Hon. Dame Janice M. Pereira, DBE, Chief Justice The Hon. Mario Michel, Justice of Appeal The Hon. Gertel Thom, Justice of Appeal

Appearances:		
	Appellant:	Ms. Shameica Hodge, instructed by WEBSTER
	Respondent:	Mr. Brian Barnes, instructed by Daniel Brantley for 1st respondent
	Interested Party, Marilyn Harewood	Mrs. Dia Forrester
Issue:		Civil appeal – Application to vary the order of a single judge
Type of Oral Result / Order Delivered:		Oral Judgment or Decision
Result / Order:		[Oral Delivery] 1. The Court on the application to vary the order of the single judge, made on 24th January 2017 hereby varies the same so that Parcel 52, Block 78914B of the South East Registration Section is not the subject of the order for stay and may be sold in accordance with the order of the master made on 5th December 2016. 2. The costs of the application for variation of the order for stay is fixed by the court in the sum of US\$1,000.00, to be paid within twenty-one (21) days.
Reason:		This is an application to vary the order of a single judge of the Court of Appeal made on the 24th January 2017. The application is to vary the stay therein made in relation to four parcels of land on the basis that at least three of those parcels of land include the interests of third parties which, it is contended, that the learned master did not deal with appropriately in the making of his order for sale pursuant to applications for sale of the lands in furtherance of the enforcement of an arbitral award which has been recorded as a judgment of the court and therefore subject to enforcement procedures as a

		judgment of the court. The application and the evidence show that parcel 52, Block 78914B of the South East Registration Section caught by the stay is not subject to third party interests and no good reason has been shown as to why this parcel ought to be caught by the stay granted by the single judge on the 24th of January 2017. Accordingly, the Court, on the application to vary the order of the single judge, hereby varies the same so that Parcel 52, Block 78914B of the South East Registration Section is not the subject of the order for stay and may be sold in accordance with the order of the master made on 5th of December 2016. And so, Parcel 52 is removed from the order granting the stay, that is the order of the judge made on the 24th of January 2017, and Parcel 52 is to proceed to a sale in accordance with the master's order made on the 5th of December 2016. The cost of the application to vary the stay is fixed in the sum of US\$1,000.00 to be paid within 21 days.
Case Name:		Collins Richardson et al v Benjamin Wilson Richardson et al [AXAHCVAP2016/0002]
Date:		Tuesday, 25th April 2017
Before:		The Hon. Dame Janice M. Pereira, DBE, Chief Justice The Hon. Mde. Gertel Thom, Justice of Appeal The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
Appearances:		
	Appellants:	Mr. Clyde Williams, with him Ms. Lauri Smikle instructed by Alex Richardson & Associates

	Respondents:	Mr. Kerith Kentish for the 1st to 5th respondents, instructed by Joyce Kentish & Associates Mr. John Wigley of Wigley Chambers instructed by Chancery Lane Chambers for the 7th respondent Mr. Ivor Greene, Senior Crown Counsel, Attorney General's Chambers
Issue:		Civil appeal - Amended application for discharge or revocation of order by single judge
Type of Oral Result / Order Delivered:		Oral Judgment or Decision
Result / Order:		[Oral Delivery] 1. The decision of the single judge be set aside and that the record of appeal which was lodged on the 4th of July, 2016 and the skeleton arguments lodged on the 10th of June, 2016 be deemed to be duly filed. 2. The applicants shall bear the cost of the application for extension fixed in the sum of US\$1,500.00 in respect of the 1st to 5th respondents and US\$750.00 in respect of the 7th respondent. 3. The court also hereby dismisses the application for dismissal of the appeal with no order as to costs.
Reason:		This is an application by the appellants to discharge or vary the order of a single judge of the Court of Appeal made on 27th May, 2016, in which the single judge refused to grant to the appellants an extension of time for filing the record of appeal and skeleton arguments. It is not disputed that the time for filing the record of appeal would have expired on the 28th of April, 2016 and the skeleton arguments on the 9th of May, 2016. The appellants, by application made before the

		deadline namely on the 22nd of April, 2016, sought an extension of time to 30th June, 2016 for filing the skeleton arguments and for the Record of Appeal to 18th July, 2016. The appellants stated as their basis for seeking the extension as (1) that the inability of counsel basically due to volume of work and court commitments on another jurisdiction, and (2) that the record of appeal was voluminous. The Court takes notice of the fact that these are 12 consolidated appeals; that the application had been made promptly; that it was made before the deadline for filing had elapsed; and also that there is no prejudice would be suffered by the respondents given the common knowledge that the appeal could not be listed for hearing before the Court's next sitting in Anguilla scheduled then for the week commencing the 12th of December, 2016. The respondents opposed the application on the primary basis that counsel's reason for the delay presumably contemplated of volume of work of the legal practitioner was not a good and substantial reason. There is no assertion that the grounds of appeal contained in the notice of appeal which was duly filed as of right does not enjoy a realistic prospect of success or that the extension of time sought for filing the record and skeleton arguments would have caused a delay in the hearing of the appeal and thus prejudice the respondents. The principles by which the Court is guided in considering the exercise of its discretion to grant an extension of time for compliance with a rule of court where no sanction for non-compliance is expressed may be considered to be well settled by the decisions of this court in <i>Carleen Pemberton v Mark Brantley</i> SKBHCVAP2011/009 (delivered 14th October 2011, unreported) and <i>C.O. Williams (St Lucia) v Inter-Island Dredging Co. Ltd.</i> SLUHCVAP2011/0017 (delivered 19th March 2012) And Indeed, if higher authority was necessary, by the Privy Council, in the decision of <i>Attorney General of Trinidad and Tobago v Keron Matthews</i> [2011]
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UKPC 38.

The Court in exercising a discretion under the rules must seek to further the overriding objective of dealing with cases justly. The Civil Procedure Rules 2000, as amended clearly contemplate that there may be circumstances where a party may find itself facing the likelihood of a default in complying with a timeline under the rules or may have in fact defaulted in meeting a timeline and thus has provided in Part 26 of the CPR, as a part of the court's plenitude of case management powers, the power to extend time for compliance with a rule whether an application is made before or after the time limited for compliance. Indeed, as this court find in *Pemberton*, where there is a procedural default for which no sanction is imposed, the court has the power to put matters right. That is in CPR 26.9.

An application for an extension an application for an extension of time for filing the record and skeleton arguments does not attract any expressed sanction and thus the exercise of the court's discretion is a power given to the court in the broadest terms. It is not a power circumscribed as the power where the court is called upon to consider the grant of relief from a sanction under Part 26.8 of the Civil Procedure Rules. Thus, the court in seeking to do justice must have regard to all the circumstances. For example, the delay, and its length, and the reason proffered for it, the consequential effect of the delay and whether any prejudice is caused thereby, the degree of that prejudice, and the proportionate response for addressing such prejudice.

The single judge in dealing with the extension of time for filing the record referred to the reason advanced by the appellants for the delay in being able to timely file the record of appeal and the skeleton arguments and noted in the order that lack of due diligence of an attorney is not a good reason for delay. The order is otherwise silent as to whether the circumstances in which the extension was sought was viewed in the round. For example,

		the fact that the appellants had approached the court for an extension before the deadline and importantly, that the grant of the extension sought would have had no effect on the parties in respect of the timeliness of the hearing of the appeal and thus would have had no prejudicial impact of the respondents as the hearing of the appeal would have comfortably come on for hearing as contemplated even if the timeline limited by the rules could be kept. There is no indication that the single judge adverted his mind to the ultimate effect of his refusal to grant the extension of time to file the record on the appeal which had been properly commenced in that refusal to allow filing of the record in effect rendered the appellant's appeal at an end as it would be practically an impossibility for the appeal to proceed in the absence of the record and that this result would in all the circumstances be wholly disproportionate to the relief sought way of extension for filing the record. This court has wide powers under Part 26. And while the rules are not to be flouted with impunity and any such approach will not be condoned by this court, the court has a duty to ensure that a particular course being undertaken confirms to and achieves the overriding objective of dealing with a case justly as between the parties. The factor that the reasons given by the learned judge suggest that weight was given solely to one factor and not others which he was duty bound to do compels us to the conclusion that there was a failure to weigh all factors in the circumstances of this case fairly in the scale. Indeed, the application by the respondents to dismiss the appeal demonstrates the greater prejudice to the appellants and the disproportionate impact on the appellants on their appeal in respect of and compared to the procedural irregularity. For these reasons we consider that the interest of justice requires that the decision of the single judge be set aside and that the record of appeal which
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		was lodged on the 4th of July, 2016 and the skeleton arguments lodged on the 10th of June, 2016 be deemed to be duly filed. In essence, that time was thereby extended to the 4th of July, in totality, for the filing of the record of appeal and for the filing of the skeleton arguments in this appeal. And so, the decision refusing the extension is set aside. As to costs, the general rule is that the party seeking an extension should pay the cost of the other party. We see no basis for departing from the general rule in all the circumstances. Accordingly, the Court, having regard to the nature of the extension application, hereby orders that the appellants shall bear the costs of the application for extension fixed in the sum of US\$1,500.00 in respect of the first to the fifth respondents and US\$750.00 in respect of the seventh respondent. For the reasons given above, the Court also hereby dismisses the application for dismissal of the appeal with no order as to costs.
Case Name:		Collins Richardson et al v Benjamin Wilson Richardson et al [AXAHCVP2016/0011]
Date:		Tuesday, 25th April 2017
Before:		The Hon. Mde. Louise Blenman, Justice of Appeal The Hon. Mde. Gertel Thom, Justice of Appeal The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
Appearances:		
	Appellants:	Mr. Clyde Williams, with him Ms. Lauri Smikle instructed by Alex Richardson & Associates
	Respondents:	Mr. Kerith Kentish for the 1st to 5th respondents, instructed by Joyce Kentish & Associates

Issues:		Interlocutory appeal – Cross appeal – Whether learned master erred in failing to give any reasons for ordering the applicants to pay costs of valuation for land claimed by the respondents despite being the successful parties
Type of Oral Result / Order Delivered:		Oral Judgment or Decision
Result / Order:		[Oral Delivery] 1. The appeal in 11 of 2016 is adjourned to await the hearing and determination of appeal number 2 of 2016 in view of the fact that the former is dependent on the disposition of Civil Appeal Number 2 of 2016.
Reason:		The Court was of the view that in light of the disposition of AXAHCVAP2016/0002 and bearing in mind that the orders that have been appealed are related to what had transpired before the learned judge, Justice Combie-Martyr that the prudent approach would be to adjourn the appeal and await the determination of the underlying substantive appeal from Justice Combie- Martyr's judgment since both appeals are interrelated. The Court noted that the costs applications are based on Justice Combie- Martyr's order which is now a live appeal before the court.
Case Name:		Vanroy Romney v Sheridan Smith [AXAHCVAP2015/0002]

Date:		Wednesday, 26th April 2017
Before:		The Hon. Mde. Louise Blenman, Justice of Appeal The Hon. Mr. Mario Michel, Justice of Appeal The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
Appearances:		
	Appellant:	Ms. Jenny Lindsay, instructed by Jenny Lindsay & Associates
	Respondent:	Mr. Wesley George, instructed by C.R. Hodge & Associates
Issues:		Application to set aside an order of a single judge – Alternatively, application for leave to appeal to the Privy Council on the basis that the proposed appeal involves a procedural question of general public importance.
Type of Oral Result / Order Delivered:		Oral Judgment or Decision
Result / Order:		[Oral Delivery] 1. The application to set aside the judgment of the full court of 16th September 2016 is dismissed. 2. Leave to withdraw the aspect of the application that addresses the leave to go to Privy Council is granted. 3. Costs are agreed in the sum of EC\$600.00.
Reason:		This is an application to set aside an order of this Court pursuant to CPR 62.22 or alternatively to grant the applicant special leave to appeal to the Privy Council. The order which the applicant seeks to set aside or to appeal to the Privy Council was made by this Court in a judgment dated 14th September 2016, after a hearing on written submissions by the applicant who is the appellant in the appeal. The application was filed on 28th September 2016 and contains a single ground for the setting aside of the

		order of the Court of Appeal, that is, that the order was made in the absence of the applicant who was given no opportunity to attend the hearing and be heard orally. The application also contains a single ground for the grant of special leave to appeal to the Privy Council, that is, on the basis that the proposed appeal involves a procedural question of great general legal importance. In the affidavit in support of his notice of appeal, the applicant states that the appeal was heard in his absence, that he was not given any notification of the hearing and therefore he did not fail to turn up at the hearing. He states also that he believes that not granting his appeal or not giving him the opportunity to be heard has caused significant and material prejudice to him. He further states that it is equitable that all matters be heard substantively and that due process of the law takes its course in the interest of justice and fairness in these unique circumstances. In terms of his application for special leave to appeal to the Privy Council, the applicant states in his affidavit that he believes that there are procedural questions of great general legal importance and that he is advised and believes that the matter involves important principles of law. In submissions filed on 24th January 2017 in support of his application to set aside the order of this Court, the applicant submits that his application was made pursuant to CPR 62.22 and that in his judgement on 14th September 2016, the Court wholly misdirected itself in law and fact and that his decision is plainly wrong. He submits that the appeal was a procedural appeal and that: <i>"The single judge, having not decided the matter not less than 14 days after the filing of the notice of appeal pursuant to Rule 62.10(5), the matter was directed to the full court and ought to have been heard orally pursuant to Rule 62.10(6)."</i> The applicant submits that the hearing took place as indicated in the written judgement but the parties were not invited to give oral submissions and the
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		matter was heard in his absence unknown to him. The applicant submits that the Court of Appeal has an inherent jurisdiction to reconsider the matter and that the decision would have been wholly different had an oral hearing taken place. The remainder of the twenty-three-page submission by the applicant addresses the merits of the master's judgement, the appeal against which has already been determined and the merits of the judgement of the Court of Appeal, an appeal against which is not before us. In terms of the applicant's submissions on the primary matter before this Court, which is the application to set aside the order of the Court of Appeal, they are based on rule 62.22 of the CPR which deals with applications to set aside decisions made in a party's absence and rule 62.10 which deals with interlocutory appeals. The relevant portions of CPR 62.22 states: <i>(1) A party who was not present at an appeal at which a decision was made or where an appeal was struck out may apply to set aside that order.</i> <i>(3) The application to set aside the order must be supported by evidence on affidavits showing-</i> <i>(b) that it is likely that had the applicant attended, some other decision might have been made."</i> CPR 62.10(5) states: <i>"Consideration of the appeal must take place not less than 14 days after filing of the notice of appeal, unless the court otherwise directs."</i> CPR 62.10(6) states: <i>"The Court may direct that there be an oral hearing and the parties shall be entitled to make oral submissions."</i> The applicant's main submission is, in essence, that his appeal was an interlocutory appeal which in accordance with CPR 62.10(5) has to be heard within 14 days of the filing of his notice of appeal, and not
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		having been heard within that time the appeal was directed to the full court for an oral hearing in accordance with CPR 62.10(6). The parties were not invited to make oral submissions of the hearing and the hearing took place in his absence. CPR 62.22 entitles the appellant to have the order of the court resulting from this hearing set aside because according to him he was absent when the appeal was heard and the decision would have been wholly different had an oral hearing taken place. The appellant's other submissions which constituted the main thrust of her oral presentation this morning was that the Court of Appeal has the inherent jurisdiction to reopen an issue which is as previously decided when the justice of the case so requires. Counsel for the appellant pointed to the fact that Section 9 of the Eastern Caribbean Supreme Court Anguilla Act requires the court in Anguilla to exercise its jurisdiction in accordance with the practice and procedure for the time being enforced in England where there is no rule in force in Anguilla on the applicable practice and procedure. She then referred to Rule 52.1(7) of the English CPR which prescribes a procedure for applications for the reopening of a final determination of an appeal court. The English rule which learned counsel invites this Court to apply allows the appeal court to reopen an appeal where: (1) it is necessary to do so to avoid real injustice; (2) the circumstances are exceptional and make it necessary to reopen the appeal; and (3) there is no alternative effective remedy. We consider that the applicant's submissions are flawed for the following reasons: Firstly, CPR 62.10(5) does not provide that an interlocutory appeal must be heard within 14 days of the notice of appeal being filed. On the contrary, 62.10(5) provides that the appeal cannot be heard within 14 days of the filing of the notice of appeal; it must be considered <i>"not less than 14 days after the filing of the notice of appeal."</i> And it could not be otherwise because the respondent to the appeal has 14 days after his receipt
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	of the notice of appeal to file and serve submissions in opposition to the appeal. So, it is only after the expiration of these 14 days that the appeal could properly be heard. One should also note that the provision which sub rule (5) replaced read, and I quote: "<i>Consideration of the appeal must take place not less than 14 days, no more than 28 days after the filing of a notice of appeal.</i>" The difference between the old and the new provision is that now there is no longer a stipulated time by which the appeal must be heard, only a time before which it cannot be heard. Secondly, the appeal was not directed to the Full Court for an oral hearing pursuant to 62.10(6) but was heard on written submissions by the parties pursuant to CPR 26.12(n) which provides that: "<i>The court may- instead of holding an oral hearing deal with a matter on written representations submitted by the parties.</i>" The applicant filed his written submissions but the respondent failed to do so and the appeal proceeded on the submissions of the appellant only. Thirdly, CPR 62.22 was not intended to deal with an appeal dealt with on written submissions where the parties are not expected to attend. The content of the rule makes it clear that it was intended to deal with an appeal hearing which the parties were expected to attend but the appeal was decided or struck out in the absence of a party who wishes to set aside the order made in his absence because he has a good reason for failing to attend the hearing and he can show that it is likely that some other decision might have been made if he was present. This is not the situation here. Secondly, insofar as CPR 52.17 of the UK is applicable to Anguilla, it can only form the basis to reopen an appeal decided by the court when all three prerequisites earlier outlined are satisfied, and one must, in any case, first seek the leave of the court even to make the application. On the facts of this case, quite apart from the fact that there is no prior application to the court to make application for this discretion to be exercised, we do not consider that
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		any of the three prerequisites laid down in the rule have been satisfied. In particular, we do not consider that there is anything exceptional in this case to make it appropriate to reopen the issue addressed in the appeal. The judgement of the court of appeal, which application is being made to set aside, is unexceptional and is clearly distinguishable from the case of Taylor et al and Lawrence et al [2002] EWCA CIV 90. It is also the case that the applicant does have an alternative remedy, which incidentally he has utilized, in seeking leave to appeal to the Privy Council. In the circumstances, the application to set aside the judgement of the full court of 16th September 2016 is dismissed. So therefore, the order of the court in relation to that the leave aspect of it is that: leave to withdraw the aspect of the application that addresses the leave to go to the Privy Council is granted. On the issue of costs in relation to the dismissed application, together with the leave to go to the Privy Council, costs are agreed in the sum of EC\$600.00.
Case Name:		Cutelyn Carty et al v West Indies Concrete company Limited [AXAHCVAP2016/0010]
Date:		Wednesday, 26th April 2017
Before:		The Hon. Mde. Louise Blenman, Justice of Appeal The Hon. Mr. Mario Michel, Justice of Appeal The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
Appearances:		
	Appellant:	Ms. Tara Carter, instructed by Carter & Associates

Issues:		Application for leave to appeal order of judge permitting cross-examination of the expert
Type of Oral Result / Order Delivered:		Oral Judgment or Decision
Result / Order:		[Oral Delivery] 1. Leave to appeal is refused.
Reason:		Based on the very helpful submissions that were put before the Court and based on the application, the Court was of the unanimous view that the application did not have a realistic prospect of success. Accordingly, leave to appeal was refused.