

COURT OF APPEAL SITTING

**The Commonwealth of Dominica
13th- 14th February 2017**

JUDGMENTS

Case Name: Grenada Technical And Allied Workers Union
v
St. George's University Limited

**[GDAHCVAP2014/0008]
(GRENADA)**

Date: Monday, 13th February 2017

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

Appearances:

Appellant: Mrs. Hazel Johnson holding papers for Mr. Douglas Mendes, SC

Respondent: Mr. Lennox Lawrence holding papers for Mr. Anthony Astaphan, SC

Issues: Civil appeal – Construction of article in memorandum of agreement – Interpretation and application of Article 11 – “All shift workers shall receive a Night Differential Allowance” – Whether Night Differential Allowance should be paid to all shift workers or only to maintenance workers – Arbitration tribunal determined Article 11 applied to all workers employed by respondent who were required to work night shift – Learned judge held that Article 11 applied to maintenance personnel and not to all shift workers

Result and Reason: Held: dismissing the appeal and awarding costs of two thirds of the costs in the court below to the respondent, that:

1. When interpreting a commercial contract, the Court is concerned to identify the intention of the parties. In ascertaining intention, the Court has to consider "what a reasonable person having all the background knowledge which would have been available to the parties, would have understood them to be using the language in the contract to mean." The Court therefore focuses on the meaning of the relevant words in their documentary, factual and commercial context. While a commercially sensible construction of the words is generally favoured, the natural and ordinary meaning of the words used cannot be ignored and a court should be very slow to reject the natural meaning of a provision. But, where it is obvious from the "background" or context that the parties have used the wrong words or incorrect language, the law will look further so as to not attribute to the parties an intention which they plainly did not have. In the case at bar, Article 11 when read on its own appears to be ambiguous giving rise to varying interpretations. It is unclear whether the words "all shift workers" meant every shift worker employed or was limited to shift workers from the maintenance department. The Court is therefore justified in considering the circumstances and context surrounding the implementation of the Article.

Investors Compensation Scheme Ltd. v West Bromwich Building Society [1997] UKHL 28 applied; Arnold v Britton [2015] UKSC 36 applied; Chartbrook Ltd v Persimmon Homes Ltd [2009] UKHL 38 applied; Yang Hsueh Chi Serena et al v Equity Trustee Limited et al BVIHCMAP2013/0012 (delivered 29th September 2014, unreported) followed; Antaios Compania Naviera S.A. v Salen Rederierna A.B [1985] A.C. 191, 201 applied.

2. The law excludes from the admissible background, previous negotiations of the parties and their declarations of subjective intent. This exclusionary rule ought not to be

infringed when identifying intention. Consequently, this Court is entitled to consider the previous negotiations between the parties before the signing of the 2001-2003 agreement and the fact that the parties knew the reason for the introduction of the shift system. The Court is also entitled to consider the fact that the category of workers to whom the NDA was to be paid was known to both parties. More fundamentally, the Court must consider the specific hours of work identified by Article 11 and the fact that only workers from the Maintenance Department were rostered for the specific night shifts identified in Article 11. The foregoing are objective facts, which were known to both parties and are therefore admissible within the parameters provided by the law. Based on the surrounding circumstances, the learned judge was correct in her findings.

Oceanbulk Shipping & Trading SA v TMT Asia Limited and others [2010] UKSC 44 applied; Investors Compensation Scheme Ltd. v West Bromwich Building Society [1997] UKHL 28 applied; Arnold v Britton [2015] UKSC 36 applied.

Case Name:

**Canisby Limited
V
Flat Point Development Limited**

**[ANUHCVAP2016/0005]
(ANTIGUA AND BARBUDA)**

Date:

Monday, 13th February 2017

Coram:

**The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Appellant: Mr. Lennox Lawrence holding papers for Mr. Anthony Astaphan, SC

Respondent: Ms. Cara Shillingford holding papers for Mr. Frank Worrel

Issues:

Interlocutory appeal – Application by defendant in court below to stay proceedings in favour of arbitration – Construction of arbitration clause in Preliminary Sale Agreement – Determination of existence of a dispute between the parties with respect to a matter to be referred to arbitration – Role of the court and the arbitration tribunal with respect to disputes – Whether the master erred in finding that the appellant had failed to discharge the burden of showing there was no dispute between the parties

Result and Reason:

Held: dismissing the appeal and awarding costs to the respondent to be assessed by a master of the High Court if not agreed by the parties within 21 days, that:

1. Arbitration agreements generally establish as a prerequisite to the right to arbitrate that there must be controversy, that is, a dispute or difference between the parties regarding a matter covered by the arbitration agreement. In order to determine whether there is a controversy, firstly the precise nature of the dispute should be ascertained; secondly, it should be determined whether the dispute is one that falls within the arbitration clause; and thirdly the court should determine whether there is a sufficient reason why the matter in dispute should not be referred to arbitration. The onus on the second and third matters is on the party resisting the referral to arbitration.

Ocean Conversion Limited v Attorney General of the Virgin Islands BVIHCVAP2007/0330 (delivered 12th January 2009, unreported) followed; Heyman and Another v Darwins Limited [1942] AC 356, applied.

2. It is within the Court's jurisdiction to determine as a preliminary issue whether a controversy exists. The discretion or obligation to grant a stay therefore does not arise until there has been a preliminary finding that there is in fact a dispute between the parties with regard to the matter to be referred to arbitration and a secondary determination that there is no sufficient reason why the matter should not be referred to arbitration.

Section 5, Arbitration Act, Cap. 33, Revised Laws of Antigua and Barbuda, 1975 applied.

3. A court must bear in mind the following principles when making a determination as to whether a dispute exists: (i) there is a dispute unless and until the defendant makes a clear admission of the claim; (ii) a dispute or difference may exist even if it can be immediately determined beyond doubt which side is right; (iii) it is the function of the arbitrators and not the court to determine whether or not the claim is in truth disputable, i.e. whether the defendant has a good defence to the claim; and (iv) the court's function is to distinguish between whether the defendant is raising a dispute at all (that is, he has not admitted the claim) which is a question for the court itself and whether the issue merely is whether the claimant is very likely to overcome the defence raised by the defendant (which is properly a question for the tribunal).

Applied Enterprises Limited v Interisle Holdings Ltd (BVIHCV(COM) 2012/0135 (delivered 21st June 2013, unreported) cited; Hayter v Nelson [1990] 2 Lloyd's Rep. applied.

4. The evidence before the master by the respondent in its prima facie defence to the claim is that the parties had varied their agreement and this was the reason the respondent did not meet its obligations under the terms of the original contract and as such

did not accept that the appellant's right to terminate the Preliminary Sale Agreement had arisen. Based on the foregoing, it was open to the master to conclude, in light of the low threshold to be met by the respondent in establishing the existence of a dispute, that the respondent disputed the appellant's claim and that the nature of the dispute was in relation to the execution, i.e. performance by parties of their obligations under the Preliminary Sale Agreement, and the validity of a purported termination of that agreement by the appellant. Both of these matters fall within the matters agreed to be referred to arbitration under the agreement.

Ocean Conversion Limited v Attorney General of the Virgin Islands BVIHCVAP2007/0330 (delivered 12th January 2009, unreported) followed; Heyman and Another v Darwins Limited [1942] AC 356 applied; Section 5, Arbitration Act, Cap. 33, Revised Laws of Antigua and Barbuda, 1975 applied.

STATUS HEARING

Case Name:

Lennox Jervier

v

Madge Angevin (by her attorney Carlton Phillip)

[DOMHCVAP2012/0014]

Date:

Monday, 13th February 2017

Before:

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

Appearances:

Appellant:

Mrs. Gina Dyer-Munro

Respondent:	Mrs. Coleen Felix-Grant
Issue:	Status of the matter
Type of Oral Result / Order Delivered:	N/A
Result / Order:	[Oral delivery] 1. The matter is adjourned to the next status hearing in the Commonwealth of Dominica during the week of 18th September 2017.
Reason:	The Court noted that the respondent, Madge Angevin and her attorney, Carlton Phillip are deceased.
Case Name:	Windward Islands Banana Development & Exporting Co. Ltd v Felix Christmas [DOMHCVAP2011/0005]
Date:	Monday, 13th February 2017
Before:	The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
Appearances:	
Appellant:	Mr. Kondwani Williams
Respondent:	Mr. Ronald Charles
Issue:	Status of the matter
Type of Oral	Directions

**Result / Order
Delivered:**

Result / Order:

[Oral delivery]

- 1. The respondent to file and serve submissions and authorities on or before the 21st day of March 2017.**
- 2. The hearing of the matter is adjourned to the next sitting in the Commonwealth of Dominica during the week commencing 18th September 2017.**

Case Name:

Liana Leanne Prince Charles

V

Derrickson Charles

[DOMHCVAP2013/0023]

Date:

Monday, 13th February 2017

Before:

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

Appearances:

Appellant:

Mrs. Gina Dyer-Munro

Respondent:

Mrs. Hazel Johnson

Issue:

Status of the matter

**Type of Oral
Result / Order
Delivered:**

Directions

Result / Order:

[Oral delivery]

- 1. The appellant is to file and serve written submissions and authorities on or before the 15th day of March 2017.**
- 2. The respondent is to file and serve written submissions and authorities on or before the 15th day of April 2017.**
- 3. Appeal is scheduled for hearing at the next sitting in the Commonwealth of Dominica during the**

week commencing 18th September 2017.

Case Name:

**Yolanda Jno Jules
Valentine Joseph
Anselm J Leblanc
John Augustine**

v

**Emmanuel Royer
Mona Virgina Royer**

[DOMHCVAP2011/0026]

Date:

Monday, 13th February 2017

Before:

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

Appearances:

Appellant:

Mrs. Noelize Knight-Didier

Respondent:

No appearance

Issue:

Status of the matter

**Type of Oral
Result / Order
Delivered:**

Directions

**Result / Order
& Reason:**

[Oral delivery]

- 1. The registrar of the High Court is directed to ensure the preparation of transcripts in this matter.**
- 2. The matter is adjourned to the next status hearing in the Commonwealth of Dominica during the week of 18th September 2017.**

Case Name:

**Peter Winston
v
Dianne Telemacque**

[DOMHCVAP2012/0017]

Date:

Monday, 13th February 2017

Before:

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

Appearances:

Appellant:

Mrs. Gina Dyer-Munro

Respondent:

Mrs. Hazel Johnson

Issue:

Status of the matter

**Type of Oral
Result / Order
Delivered :**

Directions

Result / Order:

[Oral delivery]

- 1. The appellant is to file and serve written submissions and authorities on or before the 15th day of March 2017.**
- 2. The respondent is to file and serve written submissions and authorities on or before the 15th day April 2017.**
- 3. Appeal is scheduled for hearing at the next sitting of the Court of Appeal in the Commonwealth of Dominica during the week of 18th September 2017.**

Case name:

**Clarence Guiste
v
Mitchel Prevost**

[DOMHCVAP2013/0002]

Date:

Monday, 13th February 2017

Before: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal

Appearances:

Appellant: Mrs. Gina Dyer-Munro

Respondent: No appearance

Issue: Status of the matter

**Type of Oral
Result / Order
Delivered:** N/A

Result / Order: [Oral delivery]
The matter is adjourned to the next status hearing in the Commonwealth of Dominica during the week of 18th September 2017.

Case name: Reynold Eloi
v
Jules Mark

[DOMHCVAP2012/0018]

Date: Monday, 13th February 2017

Before: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal

Appearances:

Appellant: No appearance

Respondent: No appearance

Issue: Status of the matter

**Type of Oral
Result / Order** N/A

Delivered:

Result / Order:

[Oral delivery]

The matter is adjourned to next status hearing in the Commonwealth of Dominica during the week of 18th September 2017.

Case name:

**Glouster Pierre
Eudora Pierre
v
Cecil James
Nathalie James**

[DOMHCVAP2012/0010]

Date:

Monday, 13th February 2017

Before:

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

Appearances:

Appellant:

Mrs. Gina Dyer-Munro

Respondent:

Mrs. Noelize Knight-Didier

Issue:

Status of the matter

**Type of Oral
Result / Order
Delivered:**

Directions

**Result / Order
& Reason:**

[Oral delivery]

- 1. The registrar of the High Court is directed to ensure the preparation of transcript in this matter.**
- 2. The matter is adjourned to the next status hearing in the Commonwealth of Dominica during the week of 18th September 2017.**

Case Name:	Bronwen Energy Trading Limited v Calais Shipholding Co. [DOMHCVAP2012/0004]
Date:	Monday, 13th February 2017
Before:	The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
Appearances:	
Appellant:	No appearance
Respondent:	No appearance
Issue:	Status of the matter
Type of Oral Result / Order Delivered (if applicable):	N/A
Result / Order:	[Oral delivery] The matter is adjourned to the next status hearing in the Commonwealth of Dominica during the week of September 18th 2017.
Reason:	There was no indication of service of notice of the day's hearing on the parties.

Case Name:	Joseph Raphael Leblanc v James S.W. Cyrille [DOMHCVAP2012/0003]
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Date: Monday, 13th February 2017

Before: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal

Appearances:

Appellant: Mrs. Noelize Knight-Didier

Respondent: Mrs. Gina Dyer-Munro

Issue: Status of the matter

Type of Oral Result / Order Delivered: N/A

Result / Order: [Oral delivery]
The matter is adjourned to the next status hearing in the Commonwealth of Dominica during the week of 18th September 2017.

Reason: The matter was adjourned to allow counsel for the appellant the opportunity to obtain instructions from the appellant who was currently out of the jurisdiction.

Case Name: Joseph Michael George
v
Land Sales, Builders And Financial Ltd
[DOMHCVAP2011/0012]

Date: Monday, 13th February 2017

Before: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal

Appearances:

Appellant: Mrs. Gina Dyer-Munro

Respondent: Mrs. Hazel Johnson

Issue:	Status of the matter
Type of Oral Result / Order Delivered:	N/A
Result / Order:	[Oral delivery] The matter is adjourned to the next status hearing in the Commonwealth of Dominica during the week of 18th September 2017.
Reason:	The matter was adjourned to allow counsel for the appellant time to obtain instructions from the appellant.
Case Name:	Joan Joseph v Pamela Lyburd [DOMHCVAP2012/0011]
Date:	Monday, 13th February 2017
Before:	The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
Appearances:	
Appellant:	No appearance
Respondent:	Mrs. Hazel Johnson
Issue:	Status of the matter
Type of Oral Result / Order Delivered:	Directions

**Result / Order
& Reason:** [Oral delivery]
1. The registrar of the High Court is directed to ensure the preparation of transcripts in this matter.
2. The matter is adjourned to the next status hearing in the Commonwealth of Dominica during the week of 18th September 2017.

Case Name: Judith Magloire Joseph
Zacharias Joseph
v
Antonio Honore nee Le Blanc
Mark Leblanc (as personal representative of
Maxim Leblanc)

[DOMHCVAP2011/0004]

Date: Monday, 13th February 2017

Before: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal

Appearances:
Appellant: Mrs. Gina Dyer-Munro

Respondent: No appearance

Issue: Status of the matter

**Type of Oral
Result / Order
Delivered:** Oral Judgment or Decision

Result / Order: [Oral delivery]
The appeal is accordingly dismissed.

Reason: A notice of discontinuance was filed by appellant.

Case Name: **Global Education Providers Inc**
v
The Hon Petter Saint Jean
[DOMHCVAP2012/0009]

Date: **Monday,13th February 2017**

Before: **The Hon. Mr. Davidson K. Baptiste, Justice of Appeal**

Appearances:
Appellant: **Mr. Kondwani Williams**
Respondent: **Mrs. Tameka Hyacinth-Burton**

Issue: **Status of the matter**

Type of Oral
Result / Order
Delivered: **Directions**

Result / Order: **[Oral delivery]**
1. The record of appeal to be filed on or before the 31st day of March 2017.
2. The appellant is to file and serve written submission and authorities on or before the 31st day of April 2017.
3. The respondent to file and serve skeletal submissions and authorities on or before the 15th day of May 2017.
4. The matter is scheduled for hearing during the sitting of the Court of Appeal during the week commencing 18th September 2017.

Case Name: **Elwin Bedneau**
v

Verdun David

[DOMHCVAP2012/0019]

Date: Monday, 13th February 2017

Before: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal

Appearances:

Appellant: Mr. Kondwani Williams

Respondent: Mrs. Noelize Knight-Didier

Issue: Status of the matter

Type of Oral Result / Order Delivered: N/A

Result / Order: [Oral delivery]
The matter is adjourned to the next status hearing in the Commonwealth of Dominica during the week of 18th September 2017.

Case Name:

David James
v
Fitzgerald Fadelle

[DOMHCVAP2011/0036]

Date: Monday, 13th February 2017

Before: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal

Appearances:

Appellant: Mrs. Gina Dyer-Munro

Respondent: Mrs. Hazel Johnson

Issue:	Status of the matter
Type of Oral Result / Order Delivered:	N/A
Result / Order:	[Oral delivery] The matter is adjourned to the next status hearing in the Commonwealth of Dominica during the week of 18th September 2017

Case Name:	Joseph Senhouse v The State [DOMHCRAP2015/0009]
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Date:	Monday, 13th February 2017
Before:	The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
Appearances:	
Appellant:	Mrs. Dawn Yearwood-Stewart
Respondent:	Ms. Evelina Baptiste, Director of Public Prosecutions with her, Ms. Sherma Dalrymple

Issue:	Status of the matter
Type of Oral Result / Order Delivered:	Directions
Result / Order & Reason:	[Oral delivery] 1. The registrar of the High Court is directed to ensure the preparation of transcripts in this matter. 2. The matter is adjourned to the next status hearing

in the Commonwealth of Dominica during the week of 18th September 2017.

Case Name:

**Wilson Wade
v
The Queen**

[DOMHCRAP2015/0001]

Date:

Monday, 13th February 2017

Before:

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

Appearances:

Appellant:

No appearance

Respondent:

**Ms. Evelina Baptiste, Director of Public Prosecutions
with her, Ms. Sherma Dalrymple**

Issue:

Status of the matter

**Type of Oral
Result / Order
Delivered:**

Directions

**Result / Order
& Reason:**

[Oral delivery]

- 1. The registrar of the High Court is directed to ensure the preparation of transcripts in this matter.**
- 2. The matter is adjourned to the next status hearing in the Commonwealth of Dominica during the week of 18th September 2017.**

Case Name:

**The Director of Public Prosecutions
v**

Steve Pond

[DOMHCRAP2014/0001]

Date: Monday, 13th February 2017

Before: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal

Appearances:

Appellant: Ms. Evelina Baptiste, Director of Public Prosecutions
with her, Ms. Sherma Dalrymple

Respondent: No appearance

Issue: Status of the matter

Type of Oral Result / Order Delivered: Oral Judgment or Decision

Result / Order: [Oral delivery]
The appeal is accordingly dismissed.

Reason: The appellant wished to discontinue the matter.

Case Name: Anselm Drigo
v
The Queen

[DOMHCRAP2014/0004]

Date: Monday, 13th February 2017

Before: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal

Appearances:

Appellant: No appearance

Respondent: Ms. Evelina Baptiste, Director of Public Prosecutions with her, Ms. Sherma Dalrymple

Issue: Status of the matter

Type of Oral Result / Order Delivered: Directions

Result / Order & Reason: [Oral delivery]
1. The registrar of the High Court is directed to ensure the preparation of transcripts in this matter.
2. The matter is adjourned to the next status hearing in the Commonwealth of Dominica during the week of 18th September 2017.

Case Name: Fagan Jno Hope
v
The Queen

[DOMHCRAP2015/0004]

Date: Monday, 13th February 2017

Before: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal

Appearances:

Appellant: No appearance

Respondent: Ms. Evelina Baptiste, Director of Public Prosecutions with her, Ms. Sherma Dalrymple

Issue: Status of the matter

Type of Oral Result / Order Delivered: Directions

**Result / Order
& Reason:**

[Oral delivery]

1. The registrar of the High Court is directed to ensure the preparation of transcripts in this matter.
2. The matter is adjourned to the next status hearing in the Commonwealth of Dominica during the week of 18th September 2017.

Case Name:

**Kenrick Tyson
v
The Queen**

[DOMHCRAP2015/0005]

Date:

Monday, 13th February 2017

Before:

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

Appearances:

Appellant:

No appearance

Respondent:

**Ms. Evelina Baptiste, Director of Public Prosecutions
with her, Ms. Sherma Dalrymple**

Issue:

Status of the matter

**Type of Oral
Result / Order
Delivered:**

Directions

**Result / Order
& Reason:**

[Oral delivery]

1. The registrar of the High Court is directed to ensure the preparation of transcripts in this matter.
2. The matter is adjourned to the next status hearing in the Commonwealth of Dominica during the week of 18th September 2017.

Case Name:	Richardson Fontaine v The Queen [DOMHCRAP2015/0007]
Date:	Monday, 13th February 2017
Before:	The Hon. Davidson K. Baptiste, Justice of Appeal
Appearances:	
Appellant:	Mrs. Dawn Yearwood-Stewart
Respondent:	Ms. Evelina Baptiste, Director of Public Prosecutions with her, Ms. Sherma Dalrymple
Issue:	Status of the matter
Type of Oral Result / Order Delivered:	Directions
Result / Order:	[Oral delivery] 1. The appellant is to file and serve written submissions and authorities on or before the 13th day of April 2017. 2. The respondent is to file and serve written submissions and authorities on or before the 13th day of June 2017. 3. The matter is scheduled for hearing during the sitting of the Court of Appeal during the week commencing 18th September 2017.

Case Name:	Shadrach Valarie v The Queen
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[DOMHCRAP2014/0005]

Date: Monday, 13th February 2017

Before: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal

Appearances:

Appellant: No appearance

Respondent: Ms. Evelina Baptiste, Director of Public Prosecutions
with her, Ms. Sherma Dalrymple

Issue: Status of the matter

**Type of Oral
Result / Order
Delivered:** Directions

**Result / Order
& Reason:** [Oral delivery]
1. The registrar of the High Court is directed to ensure the preparation of transcripts in this matter.
2. The matter is adjourned to the next status hearing in the Commonwealth of Dominica during the week of 18th September 2017.

Case Name: Clement Labassiere
v
The Queen

[DOMHCRAP2013/0004]

Date: Monday, 13th February 2017

Before: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal

Appearances:

Appellant: Mr. Darius Jones

Respondent: Ms. Evelina Baptiste, Director of Public Prosecutions
with her, Ms. Sherma Dalrymple

Issue: Status of the matter

**Type of Oral
Result / Order
Delivered:** Directions

**Result / Order
& Reason:** [Oral delivery]
1. The registrar of the High Court is directed to ensure the preparation of transcripts in this matter.
2. The matter is adjourned to the next status hearing in the Commonwealth of Dominica during the week of 18th September 2017.

Case Name: Pedro Ramon Narvaez Rodriguez
v
The Police

[DOMMCRAP2014/0004]

Date: Monday, 13th February 2017

Before: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal

Appearances:
Appellant: No appearance

Respondent: Ms. Evelina Baptiste, Director of Public Prosecutions
with her, Ms. Sherma Dalrymple

Issue: Status of the matter

**Type of Oral
Result / Order** Oral Judgment or decision

Delivered:

Result / Order:

[Oral delivery]

The appeal is struck out for want of prosecution.

Reason:

The Court noted that the appellant has served his time and is no longer in the jurisdiction.

Case Name:

Peter Winston

v

The Police

[DOMMCRAP2013/0011]

Date:

Monday, 13th February 2017

Before:

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

Appearances:

Appellant:

No appearance

Respondent:

Ms. Evelina Baptiste, Director of Public Prosecutions with her, Ms. Sherma Dalrymple

Issue:

Status of the matter

**Type of Oral
Result / Order
Delivered:**

Directions

**Result / Order
& Reason:**

[Oral delivery]

- 1. The registrar is to obtain from the magistrate reasons for the decision in this matter.**
- 2. The registrar to obtain the transcript of proceedings from the Magistrate Court.**
- 3. The matter is adjourned to the next status hearing in the Commonwealth of Dominica during the week of 18th September 2017.**

Case Name: **Amos Ezekiel Paul**
v
The Police
[DOMMCRAP2013/0014]

Date: **Monday, 13th February 2017**

Before: **The Hon. Mr. Davidson K. Baptiste, Justice of Appeal**

Appearances:

Appellant: **No appearance**

Respondent: **Ms. Evelina Baptiste, Director of Public Prosecutions with her, Ms. Sherma Dalrymple**

Issue: **Status of the matter**

Type of Oral Result / Order Delivered: **Oral Judgment/Decision**

Result / Order & Reason: **[Oral delivery]**
The appeal is dismissed for want of prosecution.

Case Name: **Laudrick Bruno**
v
The Police
[DOMMCRAP2013/0009]

Date: **Monday, 13th February 2017**

Before: **The Hon. Mr. Davidson K. Baptiste, Justice of Appeal**

Appearances:

Appellant: No appearance

Respondent: Ms. Evelina Baptiste, Director of Public Prosecutions with her, Ms. Sherma Dalrymple

Issue: Status of the matter

Type of Oral Result / Order Delivered: Directions

Result / Order & Reason: [Oral delivery]

1. The registrar to obtain from the magistrate the transcript of proceedings and reason for decision.
2. The matter is adjourned to the next status hearing in the Commonwealth of Dominica during the week of 18th September 2017.

Case Name: Danel John
v
The Police

[DOMMCRAP2013/0017]

Date: Monday, 13th February 2017

Before: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal

Appearances:

Appellant: No appearance

Respondent: Ms. Evelina Baptiste, Director of Public Prosecutions with her, Ms. Sherma Dalrymple

Issue: Status of the matter

Type of Oral Result / Order Directions

Delivered:

**Result / Order
& Reason:**

[Oral delivery]

- 1. The registrar to obtain from the Magistrate the transcript of proceedings and reasons for decision.**
- 2. The matter is adjourned to the next status hearing in the Commonwealth of Dominica during the week of 18th September 2017.**

Case Name:

Randy John Baptiste

V

The Police

[DOMMCRAP2013/0008]

Date:

Monday, 13th February 2017

Before:

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

Appearances:

Appellant:

No appearance

Respondent:

**Ms. Evelina Baptiste, Director of Public Prosecutions
with her, Ms. Sherma Dalrymple**

Issue:

Status of the matter

**Type of Oral
Result / Order
Delivered:**

Oral Judgment or Decision

**Result / Order
& Reason:**

[Oral delivery]

- 1. The appellant has served his time.**
- 2. The appeal is dismissed for want of prosecution.**

Case Name:

**Glenda Bertrand
v
The Police**

[DOMMCRAP2013/0018]

Date: Monday, 13th February 2017

Before: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal

Appearances:

Appellant: No appearance

Respondent: Ms. Evelina Baptiste, Director of Public Prosecutions
with her, Ms. Sherma Dalrymple

Issue: Status of the matter

**Type of Oral
Result / Order
Delivered:** N/A

Result / Order: [Oral delivery]
The matter is adjourned to the next status hearing in
the Commonwealth of Dominica during the week of
18th September 2017 to facilitate the recovery of the
file.

Case Name:

**Ian Liverpool
v
The Police**

[DOMMCRAP2013/0025,26,27,28,29]

Date: Monday 13th February 2017

Before: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal

Appearances:

Appellant: No appearance

Respondent: Ms. Evelina Baptiste, Director of Public Prosecutions with her, Ms. Sherma Dalrymple

Issue: Status of the matter

Type of Oral Result / Order Delivered: Directions

Result / Order & Reason: [Oral delivery]

1. The registrar to obtain from the magistrate the transcript of proceedings and reasons for decision.
2. The matter is adjourned to the next status hearing in the Commonwealth of Dominica during the week of 18th September 2017.

Case Name: Uranus Carbon
v
The Police

[DOMHCRAP2014/0007]

Date: Monday, 13th February 2017

Before: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal

Appearances:

Appellant: No appearance

Respondent: Ms. Evelina Baptiste, Director of Public Prosecutions with her, Ms. Sherma Dalrymple

Issue: Status of the matter

Type of Oral Directions

**Result / Order
Delivered:**

**Result / Order
& Reason:**

[Oral delivery]

1. The registrar to obtain from the magistrate the transcript of proceedings and reasons for decision.
2. The matter is adjourned to the next status hearing in the Commonwealth of Dominica during the week of 18th September 2017.

APPLICATIONS AND APPEALS

Case Name:

**David Howe
v
Byron Williams**

[DOMHCVAP2016/0006]

Date:

Monday, 13th February 2017

Coram:

**The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Ms. Cara Shillingford

Respondent:

Mrs. Gina Dyer-Monroe holding papers for Mrs. Zena Moore-Dyer

Issues:

High Court civil appeal – Application for leave to appeal to Caribbean Court of Justice – Appeal arising from interlocutory application for extension of time to appeal – Application for stay of proceedings

**Type of Oral
Result / Order**

Oral Judgment or Decision

**Delivered
(if applicable):**

Result / Order:

[Oral delivery]

- 1. The application for leave to appeal to the CCJ is denied.**
- 2. The application for the stay automatically falls away.**

Reason:

This is an application for leave to appeal to the Caribbean Court of Justice (“CCJ”) together with an application for a stay of proceedings. The Court, having heard the oral submissions and read the written submissions of counsel for the applicant, Ms. Shillingford, noted that an interlocutory application was made for an extension of time to apply for leave to appeal and that application was dismissed.

In order for leave to be granted, the applicant would have to persuade this Court that the matter is one of great general or public importance as provided by section 106 (2) of the Constitution of the Commonwealth of Dominica. This area of law is very well settled and has been consistently applied and there is absolutely no controversy as to what are the relevant principles that should be applied in circumstances where leave to appeal is sought. The Court took the unanimous position that the matter was not one which warranted the granting of leave to go to the CCJ. The Court was of the view that no serious issue of law arose much less one of great general or public importance. Accordingly, the application for leave to appeal was denied and the application for the stay automatically fell away.

The Court referred to the cases of *Martinus Francois v The Attorney General* SLUHCVP2003/0037 (delivered 7th June 2004, unreported); *Daryl Sands Controller of Bank Crozier Limited (in liquidation) v Garvey Louison Liquidator of Bank Crozier Limited (in liquidation) et al* GDAHCVAP2007/0001 (delivered 16th September 2008, unreported); *Pacific Wire & Cable Company Limited v Taxan Management Limited* BVIHCVAP2006/0019 (delivered 6th October 2008, unreported); and *Marinor Enterprises Limited v First*

Caribbean International Bank (Barbados) Ltd. formerly known as Barclays Bank Plc
DOMHACVAP2013/0003 (delivered 6th July 2016, unreported).

The foregoing cases are authority for the proposition that unless the applicant can persuade the Court that the matter is one of great general or public importance leave to appeal to the CCJ ought not to be granted.

Case Name:

**Hilary Shillingford
v
Angel Peter Andrew
Gloria Burnette nee Shillingford**

[DOMHCVAP2011/0032]

Date:

Monday, 13th February 2017

Coram:

**The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Appellant: Ms. Cara Shillingford

Respondent: No appearance

Issues:

High Court civil appeal – Application for leave to appeal to Caribbean Court of Justice – Service of notice of application as per rule 10.4 of Caribbean Court of Justice Appellate Jurisdiction Rules 2015 – Service effected only on attorney who represented applicant in lower court – Whether leave to appeal to CCJ should be granted in such circumstances – Application for adjournment to effect service on respondent

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

N/A

Result / Order:

[Oral delivery]

1. The application is adjourned in order for the respondent to be served with the notice of application.
2. Counsel for the appellant will do what is required in order to bring the matter to the Court's attention.

Reason:

This is an appeal as of right. The only question is service on the respondent in accordance with CCJ rule 10.4 (1) which states : "A notice of application to the court below for leave to appeal shall be served by the applicant upon each respondent within seven (7) days after the notice is filed or within such further period as the court below may allow." The Court indicated that the use of the word 'shall' made it mandatory that the respondent be served. In this case, the applicants had only served the respondent's attorney in the court below, Mr. Michael Bruney and not the respondent. The Court noted that 'shall be served by the applicant upon each on respondent' made it clear that the framers of the CCJ Rules specifically wanted to ensure that the respondent likely to be affected was served.

Notably, at the case management conference and at this hearing, Mr. Bruney indicated that he had not been retained by the respondent. The Court therefore adjourned the matter in order for service to be effected on the respondent in accordance with CCJ rule 10.4.

This appeal was heard together with Hilary Shillingford v Angel Peter Andrew et al DOMHCVAP2011/0033

Case Name:

**Gloria Burnette Nee Shillingford
Rashida Pierre
v
Angel Peter Andrew**

[DOMHCVAP2011/0033]

Date:

Monday, 13th February 2017

Coram:

**The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Applicants: Mr. Lennox Lawrence

Respondent: No appearance

Issues:

High Court civil appeal – Application for leave to appeal to Caribbean Court of Justice – Service of notice of application as per rule 10.4 of Caribbean Court of Justice Appellate Jurisdiction Rules 2015 – Service effected only on attorney who represented applicant in lower court – Whether leave to appeal to CCJ should be granted in such circumstances – Application for adjournment to effect service on respondent

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

N/A

Result / Order:

[Oral delivery]

- 1. The application is adjourned in order for the respondent to be served with the notice of application.**
- 2. Counsel for the appellant will do what is required in order to bring the matter to the Court's attention.**

Reason:

This is an appeal as of right. The only question is

service on the respondent in accordance with CCJ rule 10.4 (1) which states : “A notice of application to the court below for leave to appeal shall be served by the applicant upon each respondent within seven (7) days after the notice is filed or within such further period as the court below may allow.” The Court indicated that the use of the word ‘shall’ made it mandatory that the respondent be served. In this case, the applicants had only served the respondent’s attorney in the court below, Mr. Michael Bruney and not the respondent. The Court noted that ‘shall be served by the applicant upon each on respondent’ made it clear that the framers of the CCJ Rules specifically wanted to ensure that the respondent likely to be affected was served.

Notably, at the case management conference and at this hearing, Mr. Bruney indicated that he had not been retained by the respondent. The Court therefore adjourned the matter in order for service to be effected on the respondent in accordance with CCJ rule 10.4.

This appeal was heard together with Hilary Shillingford v Angel Peter Andrew et al DOMHCVAP2011/0032

Case Name:

**Barrington Pond
v
Netherland Antilles General Insurance
Corporation N.V**

[DOMHCVAP/2013/0005]

Date:

Monday, 13th February 2017

Coram:

**The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Appellant: Mrs. Noelize Knight-Didier
Respondent: Mrs. Singoalla Blomqvist-Williams

Issues: High Court civil appeal – Application to set aside decision of single judge of Court of Appeal – Whether learned Justice of Appeal erred in dismissing application for extension of time to file record of appeal – Whether appeal has good prospects of succeeding

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

Result / Order: [Oral delivery]
1. Application is allowed and set aside the decision in cost.
2. Each party bears their own cost

Reason: This is an appeal against the order of Webster JA [Ag.] in which the appellant's application for an extension of time to file the record of appeal was dismissed, the appeal was struck out for want of prosecution and cost was awarded to the respondent.

The Court, having read the documents in the matter and heard the oral submissions from learned counsel for the appellant and respondent, was of the unanimous view that based on the authorities referred to there was some prospect of success in the matter. The Court considered the cases of Joseph Hyacinth v Allan Joseph GDAHCVAP2015/0025 (delivered 20th June 2-16, unreported) and Michael Baptiste v Yoland Bain-Joseph GDAHCVAP2006/0026 (delivered 7th February 2008, unreported)

The Court was of the view that the learned Justice of Appeal erred in coming to the conclusion that the appeal did not have any good prospect of succeeding. Further, the court was of the view that the appeal ought to be allowed to proceed to trial.

Accordingly, the Court allowed the appeal and set aside the orders of the learned Justice of Appeal in relation to cost.

Case Name:

**Myron Luke
Bobby Luke
v
The Police**

[DOMMCRAP2013/0012]

Date:

Monday, 14th February 2017

Coram:

**The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Mrs. Gina Dyer-Munro holding papers for Mr. Wayne Nordé

Respondent:

Ms. Evelina Baptiste, Director of Public Prosecutions

Issues:

Magisterial criminal appeal – Possession of controlled drug

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

Oral Judgment or Decision

Result / Order:

**[Oral delivery]
The appeal is allowed**

Reason:

The learned Director of Public Prosecutions conceded the appeal because of difficulties in having the record of appeal completed. The learned magistrate who presided in the matter has demitted

office and the matter is of some vintage, in excess of three years.

Case Name:

**Kalunda Faustin
v
The Commissioner of Police**

[DOMMCRAP2016/0012]

Date:

Monday, 14th February 2017

Coram:

**The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Appellant:

In person

Respondent:

**Ms. Evelina Baptiste, Director of Public Prosecutions
with her, Ms. Sherma Dalrymple**

Issues:

Magisterial criminal appeal against conviction and sentence – Stealing – Whether the evidence supported the conviction of the appellant – Whether there was a lack of disclosure on the part of the prosecution – Whether the sentence imposed appropriate in the circumstances

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

Oral Judgment or Decision

Result / Order:

[Oral delivery]

- 1. The appeal is dismissed.**
- 2. The sentence is varied to the extent that the provision in relation to hard labour is removed.**

Reason:

The appellant was convicted of the offence of theft

and sentenced to a term of imprisonment of 2 years with hard labour. He appealed his conviction on 2 grounds:

1. There was a lack of evidence to support a conviction.
2. Lack of disclosure on the part of the prosecution.

The Court, having listened to the submissions made by the appellant who appeared in person, having read the submissions filed on behalf of the respondent and having reviewed the record, was of the view that the evidence in support of the charge was overwhelming. The Court saw no reason to disturb the decision of the learned magistrate except as it relates to the sentence imposed of a term of imprisonment of 2 years with hard labour. The Court was satisfied that the magistrate had no jurisdiction to impose a term of imprisonment with hard labour and so varied the sentence to remove the condition of hard labour.

Case Name:

Daniel Joseph

v

Lynton Lafond

[DOMHCRAP2015/0004]

Date:

Tuesday, 14th February 2017

Coram:

**The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Appellant: In person

Respondent: In person

Issues:

High Court criminal appeal – Whether decision of magistrate unsupported by evidence – Whether decision unsafe and unsatisfactory

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

Oral Judgment or Decision

Result / Order:

[Oral delivery]

- 1. The appeal is dismissed.**
- 2. The decision of the magistrate is affirmed.**

Reason:

Having reviewed the evidence, the Court took the view that the decision to which the magistrate came was one that was open to her. The Court was of the unanimous view that there was no basis on which it could interfere with the decision of the magistrate. There was no basis to conclude that the learned magistrate's decision was either unsafe or unsatisfactory. Accordingly, the appeal was dismissed and the decision of the magistrate affirmed.

Case Name:

Ronald Andre

v

David Leblanc

[DOMMCVAP2016/0005]

Date:

Tuesday, 14th February 2017

Coram:

**The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Appellant:

No appearance

Respondent:

Ms. Rose-Anne Charles

Issues:

Magisterial Civil Appeal – Application for

adjournment

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

N/A

Result / Order:

[Oral delivery]

- 1. This appeal is adjourned and traversed to the next sitting of the Court in the Commonwealth of Dominica during the week commencing on the 18th of September 2017.**

Reason:

An adjournment was granted due to the illness of learned counsel for the appellant, Mrs. Zena Moore-Dyer. A medical certificate was provided to the Court to that effect.