

COURT OF APPEAL SITTING

MONTSERRAT

Monday, 24th October 2016 to Friday, 28th October 2016

STATUS HEARING

Case Name:

**[1] Warren Cassell
[2] Cassel & Lewis Inc.
v
The Queen**

**[MNHCRAP2012/0001]
[MNIHCRAP2012/0002]**

Date:

Tuesday, 25th October 2016

Before:

**The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mrs. Gertel Thom, Justice of Appeal
The Hon. Mr. John Carrington, QC, Justice of Appeal
[Ag.]**

Appearances:

Appellant: Ms. Lovetta Silcott

Respondent: Mr. Oris Sullivan

Issue:

Status of the matter

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

Directions

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The Learned DPP shall file submissions and authorities by 9th January 2017 on whether the appellants should be retried on all or any of the counts other than Counts 9, 10 13 and 14.**
- 2. The appellants shall file their submissions and authorities by 30th January 2017.**

3. The hearing of this appeal is scheduled during the next sitting of the Court of Appeal in the State of Antigua Barbuda during the week commencing 27th February 2017.

Reason: The record of appeal is not yet available from the Magistrates' Court.

Case Name: John Howes
v
Douglas Anderson
[MNIHCVAP2016/0001]

Date: Tuesday, 25th October 2016

Before: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mrs. Gertel Thom, Justice of Appeal
The Hon. Mr. John Carrington, QC, Justice of Appeal
[Ag.]

Appearances:
Appellant: Mr. David Brandt
Respondent: Mr. Jean Kelsick

Issues: Status of the matter

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

**Result / Order
& Reason:** IT IS HEREBY ORDERED THAT:
1. The trial magistrate Mr. Lakmal Wickramasooriya is hereby directed to prepare the record of proceedings in the court below on or before 30th November 2016.
2. Copies of the record are to be made available to the parties thereafter.

3. The appeal shall thereafter proceed in accordance with Part 62 of CPR 2000.

Case Name:

Sylvester Solomon

v

Julian Romeo

[MNIMCVAP2016/0001]

Date:

Tuesday, 25th October 2016

Before:

**The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mrs. Gertel Thom, Justice of Appeal
The Hon. Mr. John Carrington, QC, Justice of Appeal
[Ag.]**

Appearances:

Appellant: In person

Respondent: Mr. Jean Kelsick

Issues:

Status of the matter

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

Directions

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The hearing of the application for leave to appeal against the order of the learned judge is adjourned to the next sitting of the Court of Appeal in Montserrat during the week commencing 24th October 2016.
2. Costs to the respondent in the sum of EC\$1,500.00.

Case Name:

**Commissioner of Police
v
Alaric Lynch**

[MNIMCRAP2015/0002]

Date:

Tuesday, 25th October 2016

Coram:

**The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mrs. Gertel Thom, Justice of Appeal
The Hon. Mr. John Carrington, QC, Justice of Appeal
[Ag.]**

Appearances:

Appellant: Mr. Oris Sullivan

Respondent: No appearance

Issue:

Status of matter

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

Directions

Result/Order:

**IT IS HEREBY ORDERED THAT:
The matter is to be listed for a further status hearing in
the next sitting of the Court of Appeal in Montserrat
during the week commencing 29th May 2017.**

Case Name:

**Commissioner of Police
v
[1] Rondell Meade
[2] Karina West
[3] Jennifer Meade**

[MNIMCRAP2015/0004]

Date: Tuesday, 25th October 2016

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mrs. Gertel Thom, Justice of Appeal
The Hon. Mr. John Carrington, QC, Justice of Appeal
[Ag.]

Appearances:

Appellant: Mr. Oris Sullivan

Respondents: Mr. Kharl Markham For the 1st respondent
Mr. David Brandt For the 2nd and 3rd respondents

Issues: Status of matter

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

Result/Order: IT IS HEREBY ORDERED THAT:

1. Skeleton arguments in response to the skeleton arguments filed by the appellant shall be filed on behalf of the respondents on or before 30th December 2016.
2. The appellants shall file submissions in reply to include the applicable legislation on or before 15th January 2017.
3. The hearing of the appeal is set for the next sitting of the Court of Appeal in Montserrat during the week commencing 29th May 2017.

Case Name: Leon Allen
v
Commissioner of Police
[MNIMCRAP2016/0002]

Date: Tuesday, 25th October 2016

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mrs. Gertel Thom, Justice of Appeal
The Hon. Mr. John Carrington, QC, Justice of Appeal
[Ag.]

Appearances:

Appellant: Mr. Jean Kelsick

Respondent: Mr. Kenroy Hyman with Mr. Oris Sullivan

Issue: Status of the matter

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

Result / Order: IT IS HEREBY ORDERED THAT:

1. The trial magistrate Mr. Lakmal Wickramasooriya is hereby directed to prepare the record of the proceedings by 30th November 2016.
2. Copies of the record are to be made available to the parties.
3. Thereafter the appeal shall proceed in accordance with Part 62 of CPR 2000.

APPLICATIONS AND APPEALS

Case Name: Eurella Grant
v
Superintendent of Prisons

[MNILTAP2015/0002]

Date: Monday, 24th October 2016

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mrs. Gertel Thom, Justice of Appeal
The Hon. Mr. John Carrington, QC, Justice of Appeal
[Ag.]

Appearances:

Appellant: Mr. Sylvester Carrott

Respondent: Mrs. Sheree Jemmotte-Rodney

Issues: Status of the matter – Case management of appeal – Whether the appellant’s power to appeal the decision of the Labour Tribunal is governed by provisions of CPR 61.1(2) – Whether the appellant’s failure to comply with the provisions of CPR 61(7)(1) in failing to file a notice to appeal in time results in not having a properly constituted appeal before the Court - Whether the applicant can resort to the overriding objective of CPR 2000 in the face of a failure to comply with the orders of the Court dated 25th February 2016 and 22nd March 2016 in having the appeal proceed

Type of Oral Result / Order delivered: Directions

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

1. It is open to the appellant to make the appropriate application. This Court will not purport to make an order granting an extension of time to file a notice of appeal. If such an application is made and it is successful then the appeal will proceed in accordance with Part 61 of CPR 2000.
2. There is no order as to costs.

Case Name: The Social Security Fund

v
Emmanuel Galloway
Adrian Galloway
Clayton Weekes
(Trading as The Galloway Group)

[MNIHCVAP2016/0005]

Date: Monday, 24th October 2016

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mrs. Gertel Thom, Justice of Appeal
The Hon. Mr. John Carrington, QC, Justice of Appeal
[Ag.]

Appearances:

Appellant: Mr. Kharl Markham

Respondent: Mr. Jean Kelsick

Issues: Application for leave to appeal – Whether the learned master exercised his discretion fairly in appointment of arbitrator in keeping with the overriding objective of CPR 2000 in dealing with cases justly - Whether the learned master exercised his discretion improperly in appointing the arbitrator nominated by the respondent by accepting the respondent's position that their nominee Mr. Anthony Ross, QC would withdraw the terms of his appointment of having a non-defaulting party pay the expenses post hearing – Whether the learned master in exercising his discretion to accept the respondent's post hearing without evidence before the court illustrating this position an abuse of the court's process

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

Oral Judgment or Decision

**Result / Order
& Reason:**

IT IS HEREBY ORDERED THAT:
By consent the application for leave to appeal the decision of the learned master is hereby withdrawn.

Case Name:

**David Duberry
v
Glenworth Prince**

[MNILTAP2016/0002]

Date:

Monday, 24th October 2016

Coram:

**The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mrs. Gertel Thom, Justice of Appeal
The Hon. Mr. John Carrington, QC, Justice of Appeal
[Ag.]**

Appearances:

Appellant: Mr. Hogarth Sergeant

Respondent: Mr. David Brandt

Issue:

**Case Management of case stated appeal referred by the
Labour Tribunal**

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

Directions

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The time for filing the notice of appeal is hereby extended to 8th November 2016.**
- 2. Following the filing of the notice of appeal the matter shall proceed in accordance with the provisions of Part 61 of CPR 2000.**

Case Name:

Junction Trucking Limited

v
Deswick Halley

[MNILTAP2016/0001]

Date: Monday, 24th October 2016

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mrs. Gertel Thom, Justice of Appeal
The Hon. Mr. John Carrington, QC, Justice of Appeal
[Ag.]

Appearances:

Appellant: Mr. David Brandt

Respondent: Mr. Jean Kelsick

Issues: Application to strike out appeal – Application for extension of time to apply for permission to appeal - Whether the Case Stated filed by the Labour Tribunal on 29th February 2016 should be deemed to the commencement of the proceedings in the Court of Appeal to determine the case pursuant to rule 617 of the CPR 2000 – Whether rule 26.12(c) confers a discretion on the Court to extend the timelines for compliance with any rule, order or direction of the Court - Whether the appellant would be prejudiced by an order of granting an extension of time to file a notice of appeal as well as all matters consequent upon granting of the order - Whether it is proper for the applicant to be granted an extension of time to appeal the decision of the Labour Tribunal so that the appeal can be heard on its merits - Whether the fixed date claim filed by the appellants should be struck out

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

Oral Judgment or Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The application to strike out the fixed date claim filed herein is hereby granted.
2. Costs to the respondent in the sum of \$ 1500.00

dollars.

3. The applicant/appellant Junction Trucking Ltd. shall file its notice of appeal within 7 days of the date of this order.
4. The applicant/appellant Junction Trucking Ltd. shall pay to the respondent, Deswick Halley the amounts ordered by the Tribunal as compensation for unfair dismissal and suspension which have not been disputed.
5. The appeal proceedings shall be conducted in accordance with Part 61 of CPR 2000.

Reason:

The applicant Junction Trucking Ltd. has satisfied the Court that the delay in the circumstances was not inordinately long and there were satisfactory reasons provided for the delay.

The Court found that the applicant does have a reasonable prospect of success in the substantive appeal. The Court also found that there would be no significant prejudice to the respondent if time is allowed to the appellant to file his notice of appeal. The appellant also gives the undertaking that the amounts not disputed as awards in the Tribunal would be paid to the respondent.

Case Name:

Douglas Anderson
v
The Attorney General
The Chief Immigration Officer

[MNIHCVAP2015/0003]

Date:

Monday, 24th October 2016

Coram:

The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mrs. Gertel Thom, Justice of Appeal
The Hon. Mr. John Carrington, QC, Justice of Appeal

[Ag.]

Appearances:

Appellant: Mr. Jean Kelsick

Respondent: Ms. Karen Reid

Issues:

Application for leave to appeal - Whether the learned trial judge erred in basing his decision on matters which were no longer in issue – Whether the learned trial judge erred by failing to properly address in his decision or at all his decision deny leave for judicial review despite particular circumstances canvassed before him in the court below - Whether the learned trial judge erred by failing to properly apply the test for granting leave to apply for judicial review

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

Oral Judgment or Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

Leave is granted to the applicant to apply to the High Court for judicial review.

Reason:

The Court considered the application filed on 30th July 2015 for leave to appeal and the affidavit in support as well as the decision of the learned judge dated 24th July 2015 and the submissions made herein. The Court was of the view that there is a reasonable prospect of success.

Case Name:

Bernard Veronis Molyneaux

v

The Queen

[MNIHCRAp 2016/0007]

Date: Tuesday, 25th October 2016

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mrs. Gertel Thom, Justice of Appeal
The Hon. Mr. John Carrington, QC, Justice of Appeal
[Ag.]

Appearances:

Appellant: Mr. David Brandt

Respondent: Mr. Oris Sullivan

Issue: Application to amend grounds of appeal

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

Result / Order: IT IS HEREBY ORDERED THAT:

1. The appeal is allowed.
2. The conviction is quashed and sentence set aside.
3. The matter remitted to the High Court for retrial before a different judge.

Reasons:

The Court examined the record of appeal and was of the opinion that the trial judge placed the onus on the appellant to prove he was acting in self-defence. The trial judge erred in law in this respect as it was for the prosecution to prove that the appellant was not acting in self-defence as the Connelly Directions make it clear that the onus and standard of proof at all times is on the prosecution.

On the ground of appeal of the honest belief of the appellant that he was acting in self-defence at the time he attacked the complainant, the Court agreed with the Learned DPP that the trial judge was not required to use any specific words. However, the Court was of the opinion that the learned trial judge failed to properly direct the jury on the issue of whether the appellant had an honest belief that he was acting in self-defence and this misdirection was an error on the part of the

learned trial judge. The Court noted that it is unable to say with certainty that the jury would have inevitably accepted or rejected the version of the appellant or the police officer and therefore allowed the appeal on this ground.

The Court was of the considered opinion that this appeal has not resolved the issue in the trial below. The Court stated that when one weighs the interests of the accused, the victim and the public interest, a determination needs to be made as to the appellant's guilt or innocence. The Court further noted there has not been any undue delay in taking the matter to Court and it is mindful that Criminal Assizes will start in November in Montserrat.

Case Name:

Ken Weakley

v

[1] The Complaints Commission

[2] The Chief Medical Officer

[MNIHCVAP2016/0013]

Date:

Tuesday, 25th October 2016

Coram:

The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mrs. Gertel Thom, Justice of Appeal

**The Hon. Mr. John Carrington, QC, Justice of Appeal
[Ag.]**

Appearances:

Appellant: Mr. Jean Kelsick

Respondent: Mrs. Sheree Jemmotte-Rodney

Issues:

Application for extension of time to file for leave to appeal – Application for relief from sanctions – Application for leave to apply for judicial review - Whether leave should be granted to the applicant for an extension of time to appeal against the refusal of the

high court judge for leave to apply for judicial review - Whether the trial judge erred by only considering the application for leave to apply for judicial review in relation to the first respondent and failed to consider the application in so far as it related to the 2nd respondent the Chief Medical Officer - Whether the trial judge erred by failing to consider the issue that the applicant had a legitimate expectation that the 2nd respondent would honour the undertaking he gave him concerning his return to Montserrat - Whether the trial judge erred when he concluded at paragraphs 28 29 and 35 that the application for leave to appeal was fuelled by the applicant's desire for compensation when this was only one of reasons for bringing the application - Whether the trial judge erred in treating the application for leave to apply for judicial review as substantive application for judicial review - Whether the trial judge's confusion resulted in his failing to apply the correct test or any threshold test in considering the application - Whether the trial judge erred in concluding that the civil proceedings referred to in section 32 (2) of the Complaints Commission Act include judicial review proceedings and by failing to address the arguments and authorities advanced by counsel for the applicant - Whether the trial judge erred in holding that the Complaints Commission Act restricts the Court's freedom to review the decision of the Complaints Commission - Whether the learned trial judge erred in ruling that the applicant did not have an arguable case as no reasons were given for arriving at this conclusion - Whether the learned trial judge erred by failing to address the threshold test governing applications to apply for judicial review as laid down in the case of Sharma v Brown

Type of Oral
Result / Order
delivered:

Oral Judgment or Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The appeal is allowed in part.
2. Leave is granted to the appellant to apply for judicial review of the in respect of the undertaking provided by the 2nd respondent and for the failures of the trial judge to provide reasons and to apply the

proper test for in deciding to grant leave to apply for judicial review.

3. Costs in the substantive proceedings shall include the costs in the court below.

Reason:

The Court was of the view that the failure of the trial judge to provide any reasons for the refusal of leave to apply for judicial review and for the failure to apply the threshold test in *Sharma v Browne* [2006] UKPC 57 rendered his decision wrong.

In respect of the ground of appeal relating to the undertaking given to the application by the 2nd respondent that she would honour the cost of his return to Montserrat the Court considered that the undertaking was clear and the applicant was entitled to rely on it. The case of *Francis Paponette* [2010] UKPC 32 is an authority for this position.

In respect of the other complaints made in respect of the 2nd respondent the Court considered that these allegations were vague and unsupported and therefore denied granting leave to apply for judicial review on these grounds.

In respect of the decision made by the Complaints Commission, the Court did not consider that the allegations raised establish irrationality or unreasonableness in the *Wednesbury* sense to deem the decision impeachable. The Court therefore declined to grant leave for judicial review on this ground as well.

Case Name:

Fitzroy Farrell

v

The Queen

[MNIHCRAP2015/0005]

Date:

Tuesday, 25th October 2016

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mrs. Gertel Thom, Justice of Appeal
The Hon. Mr. John Carrington, QC, Justice of Appeal
[Ag.]

Appearances:

Appellant:	Mr. Ralph Francis
Respondent:	Mr. Oris Sullivan

Issues: Criminal appeal against conviction – Drug trafficking – Whether the learned trial judge failed to put the defence’s case fairly and adequately to the jury – Whether the learned trial judge failed to properly address the jury on the issue of possession – Whether the learned trial judge failed to direct the jury properly on the issue – Whether the appellant had discharged the evidential burden regarding lack of knowledge of the drugs

Type of Oral Result / Order delivered: N/A

Result / Order: Judgment Reserved.

Case Name: Fitzroy Farrell
v
The Queen

[MNIHCRAP2015/0004]

Date: Tuesday, 25th October 2016

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mrs. Gertel Thom, Justice of Appeal
The Hon. Mr. John Carrington, QC, Justice of Appeal

[Ag.]

Appearances:

Appellant: Mr. Ralph Francis

Respondent: Mr. Oris Sullivan

Issues:

Case management – Criminal appeal against conviction
– Drug trafficking – Whether verdict unsafe and unsatisfactory given the contradiction of Prosecution witnesses – Whether phone records given as evidence established that the main witness made contact with persons associated with the illegal transaction

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

Directions

Result / Order:

IT IS HEREBY ORDERED THAT:

1. At the request by the DPP the hearing of this appeal is set for the week commencing 13th February 2017.
2. Leave is given to the appellant to amend his grounds of appeal to add new grounds.
3. The appellant shall file and serve skeleton submissions with the amended grounds of appeal and supplemental submissions within 14 days of this order.
4. Submissions in response shall be filed and served on or before 9th December 2016.
5. Leave is granted to the respondent to file and serve submissions in reply on or before 30th December 2016.

Case Name:

**Joseph Abraham Skerritt
(As lawful executor of the
above-named deceased)**

v

Kenneth Silcott

[MNIHCVAP2016/0006]

Date: Tuesday, 25th October 2016

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mrs. Gertel Thom, Justice of Appeal
The Hon. Mr. John Carrington, QC, Justice of Appeal
[Ag.]

Appearances:

Appellant: Mr. Jean Kelsick

Respondent: Mr. Karl Markham

Issues: Whether the trial judge erred in refusing leave to appeal his ruling delivered on 8th April 2016 – Whether the learned trial judge erred in holding that the respondent's application was governed by Rule 19.3 of CPR 2000 - Whether the trial judge erred in effectively holding that the respondent/defendant is entitled to inherit the estate of his father because his father implicitly and consistently acknowledged the respondent as his son when pursuant to s. 13(3) of the Status of Children Act the respondent/defendant being illegitimate has no right to inherit his father's estate - Whether the learned trial judge erred in appointing the respondent as a representative of the Estate of Denys Daniel Greenaway, there being no legal basis upon which his decision was could be properly grounded and Part 19.3 of CPR 2000 – Whether in the circumstances the Court had the jurisdiction to appoint the respondent/defendant as a representative of the Estate of Denys Daniel Greenaway the respondent being required instead to apply to the Probate Registry in the normal manner for the Grant of Letters of administration of the Estate to him - Whether the trial judge erred in rejecting the submission that the respondent had no locus standi to bring the application

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

Oral Judgment or Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal is allowed.**
- 2. The order of the court below joining the Estate of Daniel Daly to the proceedings below is set aside.**
- 3. Costs of this appeal shall be costs in the cause.**

Reason:

The issue in this case is whether the learned judge erred in the exercise of his discretion. The Application to add the respondent as a party to the claim in the Court below is governed by part 19.3 of CPR 2000.

After inviting arguments on both sides the Court was of the view that the test for joinder was not satisfied. Part 19.2(3) of CPR 2000 established that it must be desirable to add a new party so that the Court can resolve all the matters in dispute in the proceedings. Part 19.2 (3) requires for there to be a nexus between the existing issue that arises in the proceedings.

Having listened to the arguments of respondent the Court did not find that he was seeking to resolve an existing issue but to foreshadow issues that may arise in the proceedings. In those circumstances the Court was of the view that the test was not satisfied.

The Court was of the opinion that the issue of whether the learned judge erred in joining the Estate of Daniel Denys Daley to the proceedings was not a live issue in the proceedings. The Court was also of the opinion that the application of Part 21.7 to appoint the respondent as the personal representative for the purposes of these proceedings has no application to this matter.

Case Name:

William White

v

The Queen

[MNIHCVAP2014/0001]

Date:

Tuesday, 25th October 2016

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mrs. Gertel Thom, Justice of Appeal
The Hon. Mr. John Carrington, QC, Justice of Appeal
[Ag.]

Appearances:

Appellant:	Mr. Ralph Francis
Respondent:	Mr. Oris Sullivan

Issues: Criminal appeal against conviction – Whether the fine of EC\$5,000.00 to be paid in 2 years in default 1 year imprisonment in addition to sentence of 3 years imprisonment on conviction for the offence of being in possession of cannabis sativa with intent to supply was wrong in law and principle – Whether the order for forfeiture of the bus/taxi found in the appellant’s possession comprising various sums of United States, Euro, Pound Sterling and Eastern Caribbean currency, namely US\$1160.00, Euro \$350.00, Pound Sterling £150 and EC\$6545.00 were wrong in law and principle as there was no evidence led to establish that the bus belonging to the appellant was used for the purpose of transporting cannabis sativa and in addition that there was no evidence led to establish that the sums of money found on the appellant directly related to the selling and supplying of drugs – Whether the counts on the indictment were bad for duplicity in that they did not specify the quantity of drugs found on the appellant and in the appellant’s home and that they alleged the commission of more than one offence – Whether the failure of the prosecution to file an indictment containing separate counts pertaining to the cannabis sativa found in the house and the cannabis sativa found on the appellant resulted in a miscarriage of justice - Whether the guilty verdict arrived at by the jury was based on a finding that the appellant had in his possession 142.2 grams of cannabis sativa which was the amount of cannabis sativa found on the appellant or 1978.8 grams the amount of cannabis sativa found in the appellant’s home

Type of Oral N/A

**Result / Order
delivered:**

Result / Order:

Judgment reserved.