

COURT OF APPEAL SITTING

**GRENADA
5th to 9th December 2016**

JUDGMENTS

Case Name:

**Anselm B. Clouden
v
Georges Cohen**

**[GDAHCVAP2014/0039]
[GDAHCVAP2015/0021]**

Date:

Monday, 5th December 2016

Coram:

**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:

Appellant:

Dr. Francis Alexis, QC

Respondent:

Ms. Claudette Joseph holding for Henry, Henry & Bristol

Issues:

**Interlocutory appeal – Mediation agreement –
Consent order – Procedure for varying consent
order – No reasonable grounds for bringing
appeals**

**Result &
Reason:**

**Held: dismissing the 1st Appeal with costs of
\$1,000.00 to the respondent and dismissing the
application to review the decision of the single
judge in the 2nd Appeal with costs to the
respondent of \$500.00, that:**

- 1. Where parties mediate their differences and arrive at a settlement, and the settlement is reflected in a mediation agreement that is signed by the parties and filed as an order of the court, the resulting order is a consent**

order within the meaning of the Civil Procedure Rules 2000 and the court does not have jurisdiction to vary the terms of the order in the same proceedings. Any challenge to the order must be by filing separate proceedings. The learned judge applied the correct principles in dismissing the appellant's application to vary the mediation order and her decision is affirmed.

2. The notice of appeal in the 1st Appeal does not disclose reasonable grounds for appealing.
3. The application to set aside the decision of the single judge in the 2nd Appeal is refused. The appeal is an abuse of process in that it is based on issues that were before this Court in the 1st Appeal and the grounds of appeal do not disclose reasonable grounds for bringing the appeal.

STATUS HEARING

Case Name:

Kenston Grimes

V

The Queen

[GDAHCRAP2014/0004]

Date:

Monday, 5th December 2016

Before:

The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant:

Mr. Anselm B. Clouden

Respondent:

Mr. Brendon La Touche

Issue:

Status of the matter

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

Directions

Result / Order:

[Oral delivery]

- 1. The Registrar of the High Court is directed to cause the transcript of the proceedings in the High Court to be prepared and the parties notified thereof no later than 30th June 2017.**
- 2. The appeal shall thereafter proceed in accordance with the Rules.**
- 3. Should the transcript not be produced and the parties notified thereof on 30th June 2017 the appeal shall be set down before the Full Court for its disposition.**

Reason:

The transcript was not yet prepared.

Case Name:

**Todd Sylvester
v
The Queen**

[GDAHCRAP2014/0009]

Date:

Monday, 5th December 2016

Before:

The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant:

Mr. Anselm Clouden

Respondent:

Mr. Brendon La Touche

Issue:

Status of the matter

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

Directions

Result / Order:

[Oral delivery]

- 1. The Registrar of the Court is directed to cause the transcript of the proceedings in the High Court to be prepared and the parties notified thereof no later than 30th June 2017.**
- 2. The appeal shall thereafter proceed in accordance with the rules.**
- 3. Should the transcript not be produced and the parties notified thereof on 30th June 2017 the Appeal shall be set down before the Full Court for its disposition.**

Reason:

The transcript was not yet prepared.

Case Name:

Winston Murray

v

The Queen

[GDAHCRAP2013/0003]

Date:

Monday, 5th December 2016

Before:

The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant:

Mr. Anselm Clouden

Respondent:

Mr. Brendon La Touche

Issue:

Status of the matter

**Type of Oral
Result / Order**

Directions

Delivered:

Result / Order:

[Oral delivery]

- 1. The Registrar of the High Court is directed to cause the transcript of the proceedings in the High Court to be prepared and the parties notified thereof no later than 4th November 2017.**
- 2. The appeal shall thereafter proceed in accordance with the rules.**
- 3. Should the transcript not be produced and the parties notified thereof on 4th November 2017 the appeal shall be set down before the Full Court for its disposition.**

Reason:

The transcript was not yet prepared.

Case Name:

Biko Lewis

v

The Queen

[GDAHCRAP2012/0006]

Date:

Monday, 5th December 2016

Before:

The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant:

No appearance

Respondent:

Mr. Brendon La Touche

Issue:

Status of the matter

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

Oral Judgment or Decision

**Result / Order /
Reason:**

[Oral delivery]

1. The Court notes that the appellant has likely completed the sentence of twenty (20) months imprisonment imposed on him on 18th June 2012 and that attempts to serve him with notice of the status hearing of the appeal has proved unsuccessful because the appellant apparently no longer resides in Grenada.
2. The appeal is accordingly dismissed for want of prosecution.

Case Name:

Alister Stanislaus

V

The Queen

[GDAHCRAP2015/0003]

Date:

Monday, 5th December 2016

Before:

The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant:

In person

Respondent:

Mr. Brendon La Touche

Issue:

Status of the matter

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

Directions

Result / Order:

[Oral delivery]

1. The skeleton arguments filed on behalf of the appellant on 1st February 2016 although filed outside of the time limit for so doing is hereby deemed properly filed.

2. The respondent is directed to file skeleton arguments in response on or before 30th December 2016.
3. Leave to the appellant to file skeleton arguments in reply if necessary on or before 31st January 2017.
4. Hearing of the appeal is fixed for the next sitting of the Court of Appeal in Grenada during the week commencing 3rd April 2017.

Reason: The parties are ready to proceed.

Case Name: Sheldon Bain
V
The Queen
[GDAHCRAP2016/0007]

Date: Monday, 5th December 2016

Before: The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:
Appellant: Mr. George Prime with him Mr. Anselm Clouden
Respondent: Mr. Brendon La Touche

Issues: Status of the matter – Application for leave to appeal against sentence

Type of Oral Result / Order Delivered: Directions

Result / Order: [Oral delivery]
1. The Court Office shall cause to be filed and the parties notified thereof of a transcript of the trial proceedings in this matter by 5th

March 2017.

2. The appeal is set down for further status hearing at the next sitting of the Court of appeal in Grenada during the week commencing 3rd April 2017.

Reason: The transcript was not yet prepared.

Case Name: Nigel Murray
v
The Queen

[GDAHCRAP2015/0008]
[GDAHCRAP2016/0019]

Date: Monday, 5th December 2016

Before: The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: Mr. Anselm Clouden

Respondent: Mr. Brendon La Touche

Issue: Status of the matter

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

Result / Order: [Oral delivery]
1. The Registrar of the High Court is directed to cause a transcript of the trial proceedings in the court below to be prepared and the parties notified thereof within one (1) year of the date of this order and the matter proceed thereafter in accordance with the rules.

2. If the transcript shall not have been produced as ordered, the appeals shall be set down before the Full Court for their disposition.

Reason:

The transcript was not yet prepared.

Case Name:

[1] The Attorney General of Grenada
[2] Registrar of the Supreme Court
V
[1] Theodora Dorothy King nee Caesar
[GDAHCVAP2015/0006]

Date:

Monday, 5th December 2016

Before:

The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant:

Mr. Dwight Horsford, Solicitor General with him
Ms. Maurissa Johnson

Respondent:

Ms. Thandiwe Lyle

Issue:

Status of the matter

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

Directions

**Result / Order /
Reason:**

[Oral delivery]

1. Having regard to the age of the respondent and to the request by counsel on both sides for the hearing of this matter before the next sitting of the Court of Appeal in Grenada, the hearing of this appeal is adjourned to a date to be fixed by the court prior to its next

2. Counsel for the parties shall make contact with the Chief Registrar with regard to the fixing of a date for the hearing of the appeal.

Result / Order:

[Oral delivery]

- 1. The application by the respondent to effect service on the appellant of the application to strike out the appeal by publication of a notice thereof in three issues of the Grenadian Voice Newspaper and the Trinidad Guardian Newspaper is hereby granted.**
- 2. The respondent shall cause to be published in three consecutive issues of the Grenadian Voice Newspaper and the Trinidad Guardian**

Newspaper the notice of the application by the respondent to strike out the appellant's appeal unless the appellant shall have notified the Court of its intention to proceed with its appeal and shall provide an address for service in Grenada of all documents on it in connection with the appeal.

3. Should the appellant give notice of its intention to proceed with the appeal and provide an address for service aforesaid within two (2) weeks of the last publication of the notice to the appellant, the Court shall hear and determine the application to strike out the notice of appeal at the next sitting of the Court of Appeal in Grenada during the week commencing 3rd April 2017.
4. Should the appellant fail to respond to the notice in the aforesaid newspapers within two (2) weeks of the notice of last publication, the appeal shall stand dismissed.

Reason:

Counsel who filed the appeal on behalf of the appellant is no longer in private practice and the Chambers from which the appeal was filed is no longer in existence.

Case Name:

[1] Paul Thomas Noel
[2] Curlyn Campbell
(Vested with Power of Attorney)

v

[1] Leroy Hinds

[GDAHCVAP2009/0015]

Date:

Monday, 5th December 2016

Before:

The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: Mrs. Brenda Wardally-Beaumont for both appellants

Respondent: No appearance

Issue: Status of the matter

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

Result / Order / Reason: [Oral delivery]
1. Leave is granted to counsel on behalf of the appellant to withdraw appeal filed on 15th December 2009.
2. The appeal is accordingly dismissed.

Case Name: Allie Baptiste
v
The Commissioner of Police
[GDAHCVAP2012/0010]

Date: Monday, 5th December 2016

Before: The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: In person

Respondent: Mr. Dwight Horsford, Solicitor General with him
Ms. Maurissa Johnson

Issue: Status of the matter

Type of Oral Result / Order Oral Judgment or Decision

Delivered:

**Result / Order /
Reason:**

[Oral delivery]

- 1. The appellant having indicated his desire to withdraw his appeal and to proceed with a civil claim instituted by him, the appeal is accordingly dismissed.**
- 2. No order on costs.**

Case Name:

[1] George Finton De Bourg

V

[1] Chief Magistrate Tamara Gill

[2] Director of Public Prosecutions

[GDAHCVAP2012/0017]

Date:

Monday, 5th December 2016

Before:

The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant:

Mr. George Prime

Respondent:

**Mr. Dwight Horsford, Solicitor General with him
Ms. Maurissa Johnson**

Issue:

Status of the matter

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

Directions

Result / Order:

Matter adjourned to Thursday, 8th December 2016.

Case Name: [1] Karlene Frederick Walcott
v
[1] Winston Earl Frederick Jr.
[2] Wendy Hosten-Celestine
[3] Karen Hosten-Henry
[GDAHCVAP2013/0029]

Date: Monday, 5th December 2016

Before: The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:
Appellant: Mr. Benjamin Hood
Respondent: No appearance

Issue: Status of the matter

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

Result / Order: [Oral delivery]
1. Leave is granted to counsel on record for the appellant to make an application to be removed as counsel for the appellant.
2. Application to be removed to be filed and served on the appellant personally and the respondents.
3. Further status hearing of this appeal is adjourned to the next sitting of the Court of Appeal in Grenada during the week commencing 3rd April 2017.

Case Name: [1] Jean Baptiste

V
[1] Jonas Browne & Hubbard (G'da)
Limited
[2] Allan Bierzyski

[GDAHCVAP2013/0026]

Date: Monday, 5th December 2016

Before: The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: Mr. Ashley Bernardine

Respondent: Ms. Sheriba Lewis

Issue: Status of the matter

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

**Result / Order /
Reason:** [Oral delivery]

1. Leave is granted to the appellant to withdraw the appeal with costs to the respondents in the sum of \$1,000.00.
2. Appeal accordingly dismissed with costs aforesaid.

Case Name: **Jerry Seales**
V
Director of Public Prosecutions

[GDAHCVAP2013/0023]

Date: Monday, 5th December 2016

Before: The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: Dr. Francis Alexis, QC appearing amicus

Respondent: Mr. Christopher Nelson, QC, Director of Public Prosecutions with him Mr. Brendon La Touche

Issue: Status of the matter

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

Result / Order: [Oral delivery]

1. Leave is granted to the appellant to file and serve submissions to the appeal on or before 20th December 2016.
2. Leave is granted to the appellant to file and serve submissions in response to preliminary objection filed by the respondent on or before 20th December 2016.
3. Leave is granted to the respondent to file and serve submissions in reply if necessary on or before 6th January 2017.
4. Hearing of the preliminary objection and of the appeal if necessary are fixed for the next sitting of the Court of Appeal in Grenada during the week commencing 3rd April 2017.

Reason: The Court noted that there was no evidence of service of the respondent's preliminary objection to the appeal and further that by notice filed 10.5.16, the appellant stated his intention to proceed with the appeal.

Case Name: Michael Francois
v
Ryan Richards

[GDAHCVAP2013/0033]

Date: Monday, 5th December 2016

Before: The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: Ms. Thandiwe Lyle with her Mr. Sasha Courtney

Respondent: Ms. Cathisha Williams

Issue: Status of the matter

Type of Oral Result / Order Delivered: Directions

Result / Order: [Oral delivery]

1. The Registrar is directed to cause a transcript of the proceedings in the Court below to be prepared and the parties notified thereof within six (6) weeks of the date of this order.

2. The appeal shall proceed thereafter in accordance with Part 62 of the Civil Procedure Rules.

Reason: The transcript was not yet prepared.

Case Name:

Gordon Smith
v
Brenda Baldeo

[GDAHCVAP2012/0013]

Date: Monday, 5th December 2016

Before:	The Hon. Mr. Mario Michel, Justice of Appeal
Appearances:	
Appellant:	No appearance
Respondent:	Mr. Anselm Clouden
Issue:	Status of the matter
Type of Oral Result / Order Delivered:	Directions
Result / Order:	[Oral delivery] 1. The Registrar of the High Court is directed to cause a transcript of the proceedings before the Master to be produced and the parties notified thereof within three (3) months of the date of this order. 2. Further status hearing of this appeal is adjourned to the next sitting of the Court of Appeal in Grenada during the week commencing 3rd April 2017.
Reason:	The transcript was not yet prepared.
Case Name:	Margaret Stevenson (as Administratrix of the Estate of Carlton Stevenson, Deceased) v Lashley A. Salfarlie [GDAHCVAP2013/0035]
Date:	Monday, 5th December 2016

Before: The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: No appearance

Respondent: Ms. Sheriba Lewis

Issue: Status of the matter

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

**Result / Order /
Reason:**

[Oral delivery]

1. The appellant not having filed a notice of appeal for which leave was given to her by the court on 27th February 2014 there is accordingly no appeal before the Court.
2. The matter listed as GDAHCVAP2013/0035 is struck off.

Case Name:

Ian Edwards

v

Nazim Burke

[GDAHCVAP2014/0018]

Date: Monday, 5th December 2016

Before: The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: In person

Respondent: Ms. Thandiwe Lyle with her Mr. Sasha Courtney

Issues: Status of the matter – Application to strike out

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

Oral Judgment or Decision

**Result / Order /
Reason:**

[Oral delivery]

- 1. Leave is granted to the appellant to withdraw the appeal filed on 28th April 2014.**
- 2. Appeal is accordingly dismissed with costs to the respondent in the sum of \$1,000.00.**

Case Name:

**Godwin Bibby
v
Public Workers Union
[GDAHCVAP2015/0011]**

Date:

Monday, 5th December 2016

Before:

The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant:

No appearance

Respondent:

No appearance

Issue:

Status of matter

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

N/A

Result / Order:

[Oral delivery]

Status hearing of this appeal is adjourned to the next sitting of the Court of Appeal in Grenada during the week commencing 3rd April 2017.

Reason: There was no appearance of either party and or counsel for either party.

Case Name: Winston Whiteman
V
The Commissioner of Police
[Appeal Number Unknown]

Date: Monday, 5th December 2016

Before: The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: Mr. George Prime

Respondent: Mr. Brendon La Touche

Issue: Status of the matter

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

**Result / Order /
Reason:** [Oral delivery]
The Court having ordered at status hearing since December 2013 and at latest in January 2016 that the Magistrate Ms. Karen Noel prepare and transmit to the Registrar a Record of Appeal and no record having been transmitted to the Registrar to date, this appeal shall be set down for disposition by the Full Court at its next sitting in Grenada during the week commencing 3rd April 2017.

Case Name: John Thomas
v
The Commissioner of Police
[Appeal Number Unknown]

Date: Monday, 5th December 2016

Before: The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:
Appellant: Mr. George Prime
Respondent: Mr. Brendon La Touche

Issue: Status of the matter

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

Result / Order: [Oral Delivery]
The Court having noted that the appellant appealed against his conviction by the Magistrate on 16th May 2008 and that to date no record of appeal has been transmitted to the Registrar by the presiding Magistrate in the court below, this appeal shall be set down for disposition by the Full Court at its next sitting in Grenada during the week commencing 3rd April 2017.

Case Name: Dixon Lewis
v
The Commissioner of Police
[Appeal Number Unknown]

Date: Monday, 5th December 2016

Before: The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant:	In person
Respondent:	Mr. Brendon La Touche

Issue: Status of the matter

Type of Oral Result / Order Delivered: N/A

Result / Order: [Oral Delivery]
The status hearing of this appeal is adjourned to the next sitting of the Court of Appeal in Grenada during the week commencing 3rd April 2017.

Reason: The appellant appeared in person and indicated to the Court that he is represented by counsel who was not present in Court and who asked that for a request an adjournment of the matter.

Case Name:

**Dannie Baksh
v
Angela Peters**

[Appeal Number Unknown]

Date:

Before: The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant:	Mrs. Brenda Wardally-Beaumont
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Respondent: Ms. Cathisha Williams holding papers for Ms. Skeeta Chitan

Issue: Status of the matter

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

**Result / Order /
Reason:** [Oral delivery]
The parties having filed a joint request for dismissal of the appeal by consent, the appeal filed on 19th December 2008 is hereby dismissed.

Case Name: [1] George Finton De Bourg
v
[1] Chief Magistrate Tamara Gill
[2] Director of Public Prosecutions

[GDAHCVAP2012/0017]

Date: Thursday, 8th December 2016

Before: The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: Mr. George Prime

Respondent: Mr. Dwight Horsford, Solicitor General with him
Ms. Maurissa Johnson

Issue: Status of the matter

Type of Oral Directions

**Result / Order
Delivered:**

Result / Order:

[Oral delivery]

- 1. Leave is given to the appellant to respond to the submissions of the respondents filed on the 9th November 2016 on a preliminary objection.**
- 2. The appellant is to file and serve submissions in response to the preliminary objection on or before the 30th December 2016.**
- 3. Leave is given to the respondents to reply to the appellant's submissions if necessary within one (1) month of being served with the appellant's submissions.**
- 4. The preliminary objection shall be determined by the Court on the papers.**
- 5. Should the Court rule against the respondents on the preliminary objection, the appeal shall be proceeded with in accordance with Part 62 of Civil Procedure Rules 2000.**

Reason:

Counsel for the appellant requested an extension of time to reply to the preliminary objection filed. There was no objection made to the request by counsel for the respondents.

APPLICATIONS AND APPEALS

Case Name:

**[1] Godwin Bibby
v
[1] Jacqueline Rosemary Polling
[2] Republic Bank (Grenada) Limited
[GDAHCVAP2016/0023]**

Date: Monday, 5th December 2016

Coram: The Hon. Dame Janice Pereira, DBE, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellant: No appearance

Respondent: Ms. Sheriba Lewis for the 1st Respondent
No appearance for the 2nd Respondent

Issue: Application for leave to appeal

Type of Oral Result / Order Delivered: N/A

Result / Order: [Oral delivery]
Due to the illness of the appellant, the hearing of this appeal is adjourned to the next sitting of the Court scheduled to commence during the week beginning 3rd April 2017.

Reason: A medical certificate of sick leave was presented to the Court on behalf of the appellant. There was no opposition by 1st respondent to the matter being postponed.

Case Name: George Worme
v
Shiraz Aziz
[GDAHCVAP2016/0002]

Date: Monday, 5th December 2016

Coram: The Hon. Dame Janice Pereira, DBE, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal
[Ag.]

Appearances:

Appellant: Mr. Ralph Thorn, QC with him Ms. Claudette Joseph and Mr. Ian Sandy

Respondent: Mr. Thomas Astaphan, QC with him Mr. Derick Sylvester, Ms. Cathisha Williams and Ms. Hazel Hopkin

Issue: Application to strike out appeal

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

Result / Order: [Oral delivery]
1. The application to strike out the appeal is dismissed.
2. The appellant's appeal is allowed.
3. The respondent to pay costs to the appellant here and in the court below in the sum of US\$10,000.00, such payment to be made in full on or before May 31st 2017.
4. The appellant undertakes not to publish any aspect of these proceedings and the proceedings below in any of his media and he shall not disseminate the same to any other media.

Reason: The Court was of the view that leave was not required in the circumstances. The parties have reached a consent position.

Case Name:

**[1] Choo Loi Poi
[2] Choo Liu Yue Xin
V
[1] Donald Frederick**

[GDAHCVAP2016/0026]

Date:

Monday, 5th December 2016

Coram:

**The Hon. Dame Janice Pereira, DBE, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

Mrs. Celia Edwards, QC with her Ms. Celene Edwards

Respondent:

Dr. Francis Alexis, QC with him Mr. Ian Sandy

Issue:

Application for a stay of execution pending appeal

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

Directions

Result / Order:

[Oral delivery]

- 1. The respondent shall file and serve submissions in respect of the Report of the Engineer received 1st December 2016 by 12:00 noon on Tuesday, 6th December 2016.**
- 2. The appellant will file and serve a response thereto by 12:00 noon Wednesday, 7th December 2016.**
- 3. The Court will further consider the matter on Thursday, 8th December 2016.**

Reason: The respondent required time to consider the Report.

Case Name: Issa Nicholas (Grenada) Limited
V
Time Bourke Holdings (Grenada) Limited
[GDAHCVAP2015/0029]

Date: Monday, 5th December 2016

Coram: The Hon. Dame Janice Pereira, DBE, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal
[Ag.]

Appearances:

Appellant: Mr. Andrew Mitchell, QC with him Mr. Ruggles Ferguson

Respondent: Mr. James Guthrie, QC with him Mrs. Afi Ventour-De Vega and Ms. Yurana Phillip

Issues: Default in filing witness statement – Exercise of discretion – Relief from sanctions

Type of Oral Result / Order Delivered: N/A

Result / Order: [Oral delivery]
Judgment reserved.

Case Name:

**Valma Jessamy
v
Grenada Cooperative Bank Limited**

[GDAHCVAP2016/0034]

Date:

Tuesday, 6th December 2016

Coram:

**The Hon. Dame Janice Pereira, DBE, Chief Justice
The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal**

Appearances:

Appellant:

Mr. Jerry Edwin

Respondent:

Ms. Deborah St. Bernard

Issues:

Application for leave to appeal – Application to accept filed submissions

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

Directions

Result / Order:

[Oral delivery]

- 1. Counsel for the parties shall meet no later than Friday, 9th December 2016 and seek to agree the documents comprising of the latest version of the pleaded cases; that would be the fixed date claim form, affidavit or statement of claim in support of that claim form and similarly for the defendant the amended reply or answer or defence, whatever the name that is given to it, in reply to that fixed date claim form and any affidavit that was filed or statement in support of that reply or answer to the claim form and shall attend for case management before the court below on the 12th December 2016 with the agreed list of the documents apprising the court of the pleading in this**

case.

2. Both parties will attend before the judge and set out the list of issues arising to be determined by the judge at the trial of the case.
3. The order of 13th July is hereby set aside with no order as to costs.
4. There shall be no further amendments to the pleaded case without the leave of the court below.

Reason:

Given the state of the record and the pleadings in the matter, the Court needed to put things on an even footing so as to get the matter moving towards trial.

Case Name:

[1] Valma Jessamy

V

[1] Grenada Cooperative Bank Limited

[2] Lewis & Renwick “a Firm”

[GDAHCVAP2016/0036]

Date:

Tuesday, 6th December 2016

Coram:

The Hon. Dame Janice Pereira, DBE, Chief Justice

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

The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant:

Mr. Jerry Edwin

Respondent:

Ms. Deborah St. Bernard

Issues:

**Application to strike out statement of claim –
Failure of court to provide reasons for decision**

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

Oral Judgment or Decision

Result / Order:

[Oral delivery]

- 1. The appeal is allowed and the order of Aziz J made on 16th July 2015 is hereby set aside.**
- 2. The appellant's amended claim and statement of claim filed on 16th May 2015 filed outside of the time allowed by the order of Astaphan J [Ag.] on 15th February 2015 is deemed to be timely filed.**
- 3. The respondents/defendants shall have until Friday, 17th February 2017 for filing and serving the defences to the claim.**
- 4. Thereafter the cause shall proceed in accordance with the Rules of Court.**
- 5. Cost is fixed in the sum of \$1,000.00 to be paid by the respondents to the appellant by Friday, 9th December 2016.**

Reason:

The Court found no good reason why the claim was struck out and no reasons were provided. The Court did not consider that the order could stand. Striking out a party's claim is referred to as a "nuclear option" by the Privy Council and this should be utilized as a last option. The Court held that less draconian options need to be utilised.

Case Name:

Director of Public Prosecutions

V

Shankiel Myland

[GDAHCVAP2012/0016]

Date:

Tuesday, 6th December 2016

Coram:

The Hon. Dame Janice Pereira, DBE, Chief

Justice
The Hon. Mde. Louise Esther Blenman, Justice
of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: Mr. Dwight Horsford, Solicitor General with him
Mrs. Dionne Lawrence-Pivotte and Ms. Maurissa
Johnson

Respondent: Mr. Ruggles Ferguson

Issue: Case Management of Appeal

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

**Result / Order /
Reason:**

[Oral delivery]

1. This appeal shall by consent be treated as a summary appeal to determine the legal questions posed in grounds 1 and 2 of the Notice of Appeal filed herein on 5th October 2012.
2. Counsel for the parties shall agree a statement of facts, same to be filed with the Court on or before Tuesday, 20th December 2016.
3. The appellant shall file and serve written submissions addressing the grounds of appeal together with copies of authorities relied on, on or before Monday, 30th January 2017.
4. The respondent shall file and serve written submissions in response together with copies of authorities relied on, on or before Tuesday, 21st February 2017.
5. The appellant shall be at liberty to file and serve reply submissions on or before Tuesday, 7th March 2017.
6. The hearing of the appeal is fixed to the next sitting of the Court in the State of Grenada during the week commencing 3rd April 2017.

7. Relief from sanction sought in the application filed on 22nd June 2016 is by consent hereby granted on agreed undertakings given. Said agreed undertakings to be filed with the Court on or before Thursday, 8th December 2016.

Case Name:

Sheridan Buckmire

V

The Queen

[GDAHCRAP2013/0002]

Date:

Tuesday, 6th December 2016

Coram:

The Hon. Dame Janice Pereira, DBE, Chief Justice

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

The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant:

Mr. Derick Sylvester with him Ms. Hazel Hopkin

Respondent:

Mr. Howard Pinnock

Issues:

Criminal appeal against sentence – Robbery – Burglary – Stealing

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

Oral Judgment or Decision

Result / Order:

[Oral delivery]

The sentence imposed by the court below on the 29th July 2013 is hereby varied to reflect that the sentence shall run as from the date of remand.

Reason: The Crown conceded the point of the remand time of 18 months being given to the appellant.

Case Name: [1] Keith Claudius Mitchell
(Minister of Finance in the Government of Grenada)
[2] Attorney General of Grenada
v
[1] Capital Bank International Limited
[GDAHCVAP2015/0034]

Date: Tuesday, 6th December 2016

Coram: The Hon. Dame Janice Pereira, DBE, Chief Justice
The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:
Appellant: Mr. Thomas Astaphan, QC with him Mr. Dwight Horsford, Solicitor General, Mrs. Dionne Lawrence-Pivotte and Ms. Maurissa Johnson
Respondent: Mr. Raymond Anthony

Issues: Interlocutory Appeal – Sections 43 & 44 of Banking Act, No. 19 of 2005 – Breach of statutory and common law duties – Default judgment – Assessment of damages

Type of Oral Result / Order Delivered: Directions

Result / Order: [Oral delivery]

1. The hearing of this appeal is adjourned to the next sitting of the Court in the State of Grenada during the week commencing the 3rd April 2017.
2. This shall be the final adjournment.
3. The representative of the respondent Mr. Finton De Bourg shall take all steps forthwith to instruct a legal practitioner to act on behalf of the respondent in connection with this appeal.
4. The costs occasioned by this adjournment are reserved to the hearing of the substantive appeal.
5. The legal practitioner for the respondent shall file and serve written submissions in response on or before Friday, 17th February 2017.

Reason:

Having regard to the position as it relates to the respondent company being without (it seems) legal representation and the failure of communication between the respondent and its legal practitioner who stated that he has not been acting for the respondent company in the appeal notwithstanding service of the record and other documents of appeal upon him, and the representative of the respondent Mr. Finton De Bourg not being aware of the appeal having been fixed for hearing during this sitting, the Court found that it would not serve the interest of justice for the hearing or the appeal to proceed given the current circumstances.

Case Name:

Sterlin Martin Alic

v

The Queen

[GDAHCRAP2012/0010]

Date:

Wednesday, 7th December 2016

Coram:	The Hon. Mde. Louise Esther Blenman, Justice of Appeal The Hon. Mde. Gertel Thom, Justice of Appeal The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
Appearances:	
Appellant:	Mr. Derick Sylvester with him Ms. Hazel Hopkin
Respondent:	Mr. Howard Pinnock
Issues:	Criminal appeal against conviction and sentence – Possession and trafficking of cocaine
Type of Oral Result / Order Delivered:	Oral Judgment or Decision
Result / Order:	[Oral delivery] 1. Leave to withdraw the appeal against conviction is granted. 2. The appellant is sentenced to twelve years in prison to take effect from the date of incarceration.
Reason:	The appellant was convicted of two offences, that of, possession of a controlled drug and trafficking of a controlled drug and was sentenced to 25 years in prison in relation to the offence of trafficking and appealed against conviction and sentence. During the course of the appeal, it was indicated that the appellant was no longer pursuing the appeal against conviction. The issue concerning sentence was whether the trial judge erred in the exercise of her discretion in sentencing the appellant to 25 years in prison. The Crown conceded that the trial judge erred in the exercise of her discretion in

sentencing the appellant. The Court was of the view that where the appellate court is looking at the issue of sentence, it is for the Court to determine whether the sentence imposed by the trial judge was (1) arrived at by applying the usual known and accepted principles of sentencing and (2) fell within the range of sentences which a court is empowered to give for the particular offence and is usually given for like offences in like circumstances. The Court stated that it was guided by *Meisha Clement v R* [2016] JMCA Crim 26.

Having received agreement that the trial judge erred in the exercise of her discretion, it therefore fell to the appellate court to exercise the discretion afresh. The Court took into account the Social Inquiry Report and the affidavit deposed to by the appellant. The Court was minded of the fact that the offence of trafficking in cocaine carries a maximum sentence of life imprisonment. This indicated that the Legislature treated this offence as a serious offence.

In determining what is an appropriate sentence the Court must bear in mind the quantity of drugs the appellant was found with and the attendant circumstances of the offence. The quantity was 92.4 pounds. This was a substantial amount. There was no guilty plea so the appellant would be entitled to the benefit of a one third discount.

The maximum sentence was looked at and the Court determined that the notional sentence applicable in this matter should be ten years in prison. The Court was mindful that the principles of punishment, deterrence, rehabilitation and retribution had to be applied. The Court was of the view that a sentence which reflects punishment would be given major consideration since as far as deterrence is concerned, the Court need not seek to deter him specifically.

Given the fact that this was a serious offence, the quantity of cocaine, the fact of another conviction for marijuana even though the circumstances were interposed before this offence, the Court was of the view that looking at other cases presented, the appropriate sentence would have to reflect the fact that in this matter the mitigating factors were slightly outweighed by the aggravating factors.

The Court therefore felt justified in slightly moving the bench mark from ten years to twelve years in prison.

Case Name:

**Clifford Robertson
V
H.M. Bhola & Co. Ltd.**

[GDAHCVAP2012/0009]

Date:

Wednesday, 7th December 2016

Coram:

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

Appearances:

**Appellant: Mr. Anselm Clouden
Respondent: Mrs. Lisa Taylor**

Issues:

Civil appeal – Limitation of Actions Act, Cap. 173 of 1990 – Whether claim statute barred

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

Oral Judgment or Decision

Result / Order:

[Oral Delivery]

- 1. Leave to withdraw the appeal is granted and the appeal accordingly stands dismissed.**
- 2. Costs are to be agreed within 14 days of this order failing which they are to be assessed.**

Reason:

Parties had discussions with regard to discontinuing the appeal. There was no objection by the respondent.

Case Name:

Stephen Mc Burnie

v

Irma Marryshow (in her capacity as administrator of the estate of Sheba Marryshow, deceased)

[GDAHCVAP2016/0021]

Date:

Wednesday, 7th December 2016

Coram:

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

Appearances:

Appellant:

Mr. James Bristol

Respondent:

Mr. Ruggles Ferguson with him Ms. Sabina Gibbs

Issues:

Interlocutory appeal – Default judgment as bar to subsequent finding of liability – Doctrine of merger – Election

Type of Oral

N/A

**Result / Order
Delivered:**

Result / Order: Judgment reserved.

Case Name: The Permanent Secretary of the Ministry
of Finance
v
Financial Investment Consultancy
Services

[GDAHCVAP2016/0001]

Date: Thursday, 8th December 2016

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

Appearances:

Appellant: Mr. Thomas Astaphan, QC with him Mr. Dwight
Horsford, Solicitor General, Mrs. Dionne
Lawrence-Pivotte and Ms. Maurissa Johnson

Respondent: Mr. James Bristol

Issues: Interlocutory appeal – Stay of proceedings in
court below – Section 41 of Public Finance
Management Act, Cap. 262B – Section 21 of the
Crown Proceedings Act, Cap. 74 – Jurisdiction
of the court

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

Result / Order:

[Oral delivery]

- 1. The appellant is granted leave to file and serve skeleton arguments together with authorities on or before the 16th January 2017.**
- 2. The respondent is granted leave to file and serve skeleton arguments in reply on or before 31st January 2017.**
- 3. The appellant is granted leave to file and serve skeleton arguments in answer if necessary on or before 16th February 2017.**
- 4. The hearing of this appeal is adjourned to the next sitting of the Court in Grenada during the week which commences on the 3rd April 2017.**

Reason:

The Court required counsel to address the issue of whether or not there is an issue to be tried in the matter based on the fact that leave was granted to the appellant to appeal against the order of Roberts J, made on the 17th December on the preliminary point and that subsequent to that order, the judge proceeded to hear the entire matter and has made the mandamus order. Consequently, there arose whether there is any live issue between the parties based on the order of the single judge.

Case Name:

[1] The Director of Public Prosecutions

[2] The Magistrate, Eastern Magisterial District, St. David

[3] The Commissioner of Police

V

[1] Roddy Felix

[2] Edward Gibson

[3] Shawn Ganness

[4] Wendell Sylvester

[5] Kenton Hazzard

[GDAHCVAP2013/0007]
[GDAHCVAP2013/0008]
[GDAHCVAP2013/0009]

Date: Thursday, 8th December 2016

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

Appearances:

Appellant: Mr. Thomas Astaphan, QC with him Mr. Dwight Horsford, Solicitor General, Mr. Christopher Nelson, QC, Director of Public Prosecutions, Mrs. Dionne Lawrence-Pivotte and Ms. Maurissa Johnson

Respondent: Dr. Francis Alexis, QC with him Ms. Olabisi Clouden

Issues: Section 9 Coroners Act Cap. 69 – Magistrate’s powers as Coroner – Sections 94, 95, 97, 98 and 99 of Criminal Procedure Code Cap. 72B – Effect of order for certiorari

Type of Oral Result / Order Delivered: Directions

Result / Order: [Oral delivery]

1. Leave is granted to the respondent to file and serve the submissions together with authorities that were presented orally within seven (7) days of this order.
2. Leave is granted to the appellant to file and serve submissions in writing to the oral arguments that were advanced this morning and the written submissions filed on behalf of the respondent on or before the 13th January 2017.
3. Decision reserved.

Case Name:	The Attorney General of Grenada V Denis Thomas [GDAHCVAP2014/0041]
Date:	Thursday, 8th December 2016
Coram:	The Hon. Mde. Louise E. Blenman, Justice of Appeal The Hon. Mr. Mario Michel, Justice of Appeal The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
Appearances:	
Appellant:	Mr. Dwight Horsford, Solicitor General, with him Mrs. Dionne Lawrence-Pivotte and Ms. Maurissa Johnson
Respondent:	Mrs. Celia Edwards, QC with her Ms. Celene Edwards
Issues:	Contributory negligence – Requirements of rule 17.6 (1)(d) of CPR 2000 – Effect of interim payment order
Type of Oral Result / Order Delivered:	Oral Judgment or Decision
Result / Order:	[Oral delivery] The appeal is dismissed with costs to the respondent in the sum of \$1,000.00.
Reason:	The respondent was injured by a vehicle driven by Mr. Ricky Munro, the servant or agent of the appellant. The evidence of the accident was

disputed but what was clear was that there was an accident where Mr. Munro was reversing the vehicle; he did not see the claimant. The vehicle hit the claimant, ran over him with both wheels and stopped a short distance from the point of impact. He said he did not know what happened. The claimant received serious injuries; both legs were broken. He had surgery and spent five weeks in hospital following the surgery. He did not work for one year. The claimant applied for an interim payment. The application was supported by his affidavit and other affidavits.

The Court was satisfied that his affidavit complied with rule 17.5(4) of Civil Procedure Rules 2000. His application relied on rule 17.6(1) (d).

The Court found that the material before the trial judge entitled him to find that the claimant would receive judgment at trial. He also found that the claimant had satisfied rule 17.6 (1)(d) which suggested or meant that he was satisfied that the claimant would receive substantial damages at trial.

Two aspects of the judge's order required comment. The trial judge may have carried out an assessment of the amount of damages that may be awarded but he did not say so in his order; however the Court exercised its discretion based on the material that was before the trial judge.

On the evidence of the nature and extent of the injuries and the pain and suffering that the claimant suffered, the Court was of the view that it was open to find that the claimant would receive at least \$150,000.00 without the element of contributory negligence and that this amount was not unreasonable. The trial judge found that contributory negligence was probable but did not say how he factored that element into the assessment of the amount of the interim payment. The trial judge having made a clear

finding that contributory negligence was probable, he must have factored contributory negligence in his assessment of the interim payment of \$15,000.00. The Court did not think that the level of contributory negligence would be substantial. The claimant would still be entitled to a substantial amount of damages which would not be less than \$150,000.00 and so even factoring in the element of contributory negligence, the Court did not think that the award of \$15,000.00 was unreasonable.

Case Name: [1] Gemma Bain-Thomas (Secretary to
the Cabinet of Grenada)
V
[1] The Attorney General of Grenada
[2] The Public Service Commission
[GDAHCVAP2015/0013]

Date: Thursday, 8th December 2016

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

Appearances:

Appellant: Mr. Rohan Phillip

Respondent: Mr. Dwight Horsford, Solicitor General with him
Mrs. Dionne Lawrence-Pivotte and Ms. Maurissa Johnson

Issues: Section 85(2) of the Constitution of Grenada 1973 – PSC Regulations No. 28 – Definition of “transfer” and “appointment” – Whether PSC can act independent of the Governor General in so far as removal or transfer of the Cabinet

Secretary

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

N/A

Result / Order:

Judgment reserved.

Case Name:

**Jude Lessey
V
Dominic Hopkin**

[GDAHCVAP2016/0033]

Date:

Thursday, 8th December 2016

Coram:

**The Hon. Dame Janice Pereira, DBE, Chief
Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mde. Wynante Adrien-Roberts, Justice
of Appeal [Ag.]**

Appearances:

Appellant:

Mr. Ruggles Ferguson

Respondent:

**Mrs. Celia Edwards, QC with her Mr. Deloni
Edwards and Ms. Celene Edwards**

Issues:

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

Oral Judgment or Decision

Result / Order:

**[Oral delivery]
1. The appeal is allowed.
2. The orders of the 29th September and the 7th**

July are set aside.

3. The defence is restored and the Court directs that the matter proceed to case management.
4. Costs to the respondent in the sum of \$500.00 to be paid by the end of January 2017.

Reason:

The order of the master was set aside on the basis that the rules under 26.2 of the CPR 2000, in particular 26.2(2), where the master was making an order on his own initiative, the rules set out therein give a party an opportunity to be heard; that rule was breached and therefore the order which followed along, striking out the defence on that unless order, ought to have followed the procedure set out in 26.5 and ought to have gone no further if he was satisfied that there was service. The master ought to have only struck out the defence but not to proceed and then to enter automatically judgment on behalf of the respondent because in doing so it then breached those conditions contained in 26.5 where it contemplates that the party must file a request for judgment and set out those matters contained in 26.5(4). A party may always under the rules apply for relief from sanction and the entry of the judgment foreclosed the engagement of that procedure by the appellant had he wished to do so.

Case Name:

**Issa Nicholas (Grenada) Limited
v
Time Bourke Holdings (Grenada) Limited
[GDAHCVAP2015/0029]**

Date:

Thursday, 8th December 2016

Coram:

The Hon. Dame Janice Pereira, DBE, Chief Justice

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

Appearances:

Appellant: Mr. Ruggles Ferguson

Respondent: Mrs. Afi Ventour-De Vega and Ms. Yurana Phillip

Issues:

Default in filing witness statement – Exercise of discretion – Relief from sanctions

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

Oral Judgment or Decision

Result / Order:

[Oral delivery]

The appeal is dismissed with costs to be assessed by the court below unless agreed within 21 days.

Reason:

This was an interlocutory appeal and concerned the admission of a witness statement of one Mr. Roland Mouly sought to be filed by the appellant/defendant in the court below after the time limited by the case management conference order for filing witness statements by the parties had passed. The underlying claim was by the respondent for the forfeiture of a 99 year lease with an unexpired period of 81 years of a property in Grenada upon which the appellant as tenant operates a hotel business, Radisson Grenada. The respondent alleged breach of covenant contained in the lease. The number of the claim in the court below reflected that the proceedings have been running for a fairly long period, having been convened in 2011, with no trial date as yet being fixed.

On the 21st January 2015, Wallbank J made a case management order (1) allowing the respondent to amend its claim and similarly for

the appellant to amend its case and (2) for the appellant, if need be, to file and presumably serve any further witness statements on or before 27th July 2015. Both parties complied with this order and the appellant on the 27th July 2015 filed the supplementary witness statement of Daniel Nicholas, hereinafter referred to as the supplementary statement, in support of its case.

Paragraph 36 of the supplementary statement made reference to statements contained in a letter dated March 9th 2015 from Mr. Roland Mouly and attached a copy of the said letter to the supplementary statement.

At that time, the appellant did not seek to file a witness statement of Mr. Roland Mouly but counsel for the appellant made clear at the hearing of the appeal that the purpose of exhibiting the letter to the supplementary statement was to rely on it at the trial.

The supplementary statement having been served on the respondent, counsel for the respondent wrote to counsel for the appellant inter alia pointing out that paragraph 36 of the supplementary statement contained hearsay evidence and suggested in effect that if the said hearsay evidence was to be relied on, the appellant should ensure compliance with section 36(E) of the Evidence Act, Cap. 92. The relevant provisions of Section 36(E) are subsections (2) & (3).

Approximately a month later, 26th August 2015, the appellant sought to file a witness statement presumably setting out the statements he had made in his letter to Mr. Nicholas and attached to the supplementary statement and applied for an extension of time to deem the Mouly statement timely filed and for relief from sanctions pursuant to CPR 26.8 as the sanction contained in CPR 29.11 has already bitten.

The Court has been consistent in expressing

the view that the evidence adduced in support of an application for relief from sanctions must be cogent, in the sense that it must set out with sufficient particularity so as to satisfy the court that the 3 pre conditions in CPR 26.8 have been met.

Rule 26.8 (2) is uncompromising. It imposes a fetter on the exercise of the court's discretion. Failure to satisfy all three pre-conditions is fatal. The court is not permitted to guess and supply the omissions in the application. An applicant who must be taken to be seized of the importance of its case and thus the evidence it requires to make good its case, must never leave it up to the court to find a way to fill the void in its favour. At its highest, the material before the judge showed that the applicant was satisfied that the supplementary statement referencing the statements made by Mouly and exhibiting his letter to that effect was sufficient.

It seemed to the Court that at the time of the filing of the supplementary statement exhibiting Mouly's letter on which it intended to rely, the appellant would have been aware that the witness statement by Mouly would be required, unless the appellant intended to rely on Section 36(E) of the Evidence Act notwithstanding the case management deadline or it took the view that the hearsay evidence would be admitted without challenge. That was the risk taken by the appellant. Even though the appellant's conduct may not have reached the bar of being considered reckless, the appellant clearly took a position and must be taken to be aware of the risk it took based on the methods it adopted for placing this evidence before the Court. The reasonable inference to draw from this is that the failure to timely file the witness statement of Mouly may be considered as being intentional. It was therefore open to the judge to conclude that pre-condition (a) in 26.8(2) had not been met and in as much as (b) was intertwined with (a), that pre-condition (b) had also not been met. The judge did not specify which of the pre-

conditions of rule 26.8(2) had not been met. However, the failure to meet any of the three pre-conditions required under 26.8(2) was fatal to the application for relief from sanctions. The Court found that there was no basis, for the reasons given, to interfere with her finding.

Case Name:	Linton Thomas V The Commissioner of Police [GDAMCRAP2016/0011]
Date:	Thursday, 8th December 2016
Coram:	The Hon. Dame Janice Pereira, DBE, Chief Justice The Hon. Mde. Gertel Thom, Justice of Appeal The Hon. Mde. Wynante Adrien-Roberts, Justice of Appeal [Ag.]
Appearances:	
Appellant:	No appearance
Respondent:	Mr. Howard Pinnock
Issues:	Criminal appeal against sentence – Praedial Larceny
Type of Oral Result / Order Delivered:	Directions
Result / Order:	[Oral delivery] 1. The appellant be served with a notice to appear before the Court at its next sitting in the State of Grenada during the week commencing 3rd April 2017. 2. Notice to be served by the bailiff of the

Court.

- 3. Bailiff shall file an affidavit of service.**
- 4. The hearing of this appeal is adjourned to the next sitting of the Court during the week commencing 3rd April 2017.**

Reason: There was no evidence of service on the appellant.

Case Name: **Dwayne Mapson**
V
The Commissioner of Police
[GDAMCRAP2016/0004]

Date: Thursday, 8th December 2016

Coram: The Hon. Dame Janice Pereira, DBE, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mde. Wynante Adrien-Roberts, Justice of Appeal [Ag.]

Appearances:
Appellant: No appearance
Respondent: Mr. Howard Pinnock

Issues: Criminal appeal against sentence – Housebreaking – Stealing

Type of Oral Result / Order Delivered: N/A

Result / Order: [Oral delivery]
The hearing of this appeal is adjourned to the next sitting of the Court in Grenada during the

week commencing 3rd April 2017.

Reason:

A medical certificate was presented to the Court by the mother of the appellant. The appellant's mother was instructed to inform Mr. Mapson that he is to be present for the next sitting of the Court in Grenada.

Case Name:

**Irvin Changoo
V
The Commissioner of Police
[GDAMCRAP2016/0012]**

Date:

Thursday, 8th December 2016

Coram:

**The Hon. Dame Janice Pereira, DBE, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mde. Wynante Adrien-Roberts, Justice of Appeal [Ag.]**

Appearances:

Appellant:

In person

Respondent:

Mr. Howard Pinnock

Issues:

Criminal appeal against sentence – Trafficking a controlled drug

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

Oral Judgment or Decision

Result / Order:

**[Oral delivery]
1. The appeal is allowed.
2. The sentence is varied by substituting a term of imprisonment of eighteen months. Same**

to run from date of remand.

Reason:

There was no means test that was carried out. The Court found that the sentence imposed was tantamount to sentencing the appellant to a term of three years. The Court held that there was no balancing of the aggravating and mitigating factors in the lower court.

Case Name:

Deandra Samuel
V
The Commissioner of Police
[GDAMCRAP2016/0006]

Date:

Thursday, 8th December 2016

Coram:

The Hon. Dame Janice Pereira, DBE, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mde. Wynante Adrien-Roberts, Justice of Appeal [Ag.]

Appearances:

Appellant: **Mrs. Kindra Mathurine-Stewart**
Respondent: **Mr. Howard Pinnock**

Issues:

Criminal appeal against sentence – Stealing

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

Oral Judgment or Decision

Result / Order:

[Oral delivery]
The appeal against sentence is allowed and the sentence is varied as follows:
1. To imprisonment for time served.

2. That the compensation order is also varied to the effect that the sum of \$2336.48 shall be paid by the appellant on or before 30th June 2017. In default three months in prison.
3. The sentence of \$2,000.0 fine is hereby set aside.

Reason:

The sentence had a number of different parts and the Court found that the sentence was unduly harsh in all of the circumstances having regard to the fact that the appellant had no prior offences and entered a guilty plea for the offence. There was a compensation order, a fine which carried the default provision, six months' imprisonment. The appellant served 10 days in prison and the fine and the compensation order are still outstanding. The Court was of the opinion that its current decision meets the justice of the case.

Case Name:

**Jude Jeremiah
v
The Commissioner of Police
[GDACRMAP2016/0009]**

Date:

Thursday, 8th December 2016

Coram:

**The Hon. Dame Janice Pereira, DBE, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mde. Wynante Adrien-Roberts, Justice of Appeal [Ag.]**

Appearances:

Appellant:	Mr. Peter David
Respondent:	Mr. Howard Pinnock

Issues: Criminal appeal against sentence – Use of insulting language – Disorderly behaviour

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

Result / Order: [Oral delivery]
1. The conviction on disorderly conduct is quashed.
2. The conviction on insulting language is also quashed.
3. The appellant is reprimanded and discharged.

Reason: The appellant had no prior convictions. The incident took place in the home of the appellant. The Court found it unfortunate that the appellant had to spend 12 days incarcerated given the history of this matter. The Crown conceded that the offence of disorderly conduct was not made out. The Court noted that the number of irregularities stood out in the matter which ought not to have occurred in relation to this appellant. The Court stated that notice must be taken of these. The Court further stated that the police must never use their offices to abuse the power that comes with those offices.

Case Name: Alston Roberts
V
The Commissioner of Police
[GDACRMAP2016/0010]

Date: Thursday, 8th December 2016

Coram: The Hon. Dame Janice Pereira, DBE, Chief

Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mde. Wynante Adrien-Roberts, Justice
of Appeal [Ag.]

Appearances:

Appellant: Mr. Henry Paryag

Respondent: Mr. Howard Pinnock

Issues:

Criminal appeal against sentence – Insulting language – Obscene language – Driving without due care and attention

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

Oral Judgment or Decision

Result / Order:

[Oral delivery]

- 1. The appeal is allowed by consent and remitted to the Magistrate's Court for a re-trial.**
- 2. Summons be served on the appellant on the fixing by the Magistrate of the date of trial.**

Reason:

The matter was heard by the Magistrate in the appellant's absence. Also, the parties arrived at a consent position in relation to the matter.

Case Name:

[1] Choo Loi Poi
[2] Choo Liu Yue Xin
v
[1] Donald Frederick

[GDAHCVAP2016/0026]

Date:

Thursday, 8th December 2016

Coram:	The Hon. Dame Janice Pereira, DBE, Chief Justice The Hon. Mde. Gertel Thom, Justice of Appeal The Hon. Mde. Wynante Adrien-Roberts, Justice of Appeal [Ag.]
Appearances:	
Appellant:	Mrs. Celia Edwards, QC with her Mr. Deloni Edwards and Ms. Celene Edwards
Respondent:	Dr. Francis Alexis, QC with him Mr. Ian Sandy
Issues:	Application for a stay of execution pending appeal – Right of way
Type of Oral Result / Order Delivered:	Oral Judgment or Decision
Result / Order:	[Oral delivery] 1. The appellants are granted a stay pending the hearing and determination of the appeal. 2. The costs of this application shall be costs in the appeal.
Reason:	Whether the Court should exercise its discretion to grant a stay will depend on all the circumstances of the case, but the essential question is whether there is a risk of injustice to one or both parties if the stay is granted or refused. This calls for an examination of the nature of the case and consequences flowing from the judgment. In <i>C-Mobile Services Limited v Huawei Technologies Co. Limited</i> (BVIHCMAP2014/0017, delivered 2nd October 2014, unreported), Blenman JA distilled the principles relevant to granting stays pending an appeal. The Court, having considered those principles and applying them to the circumstances of the

case, could not say that the appeal herein had no prospect of success and in carrying out the balance of harms test, the Court was of the opinion that this favoured the appellant pending the appeal as the greater injustice at this stage would have been the obstruction by the respondent to the use by the Appellant of the disputed right of way.

Maintaining the status quo pending the appeal by allowing the appellant to continue accessing their property over the disputed right of way would cause less prejudice to the respondent.