

COURT OF APPEAL SITTING

ANTIGUA & BARBUDA

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

STATUS HEARING

Case Name:

Haynes Browne

V

**Lena Carr, deceased by her Personal
Representative Buell Carr**

[ANUHCVAP2014/0007]

Date:

Monday, 24th October 2016

Coram:

The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellant:

Ms. C. Debra Burnette

Respondent:

**Mr. Jarid Hewlett holding papers for Dr. David
Dorsett**

Issue:

Status of the matter

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

Directions

**Result /
Order:**

- 1. The appeal is to be heard based on the documents on file without the notes of evidence.**
- 2. The appellant is to file and serve the record of appeal and skeleton arguments with authorities by no later than 12th December 2016.**
- 3. The respondent is to file and serve written submissions with authorities no later than 13th January 2017.**
- 4. The appeal is to be listed for hearing at the next sitting of the Court of Appeal in Antigua and Barbuda during the week commencing 27th**

February 2017.

Case Name: Titus G.T. Francis
v
Noreen N. Francis
[ANUHCVP2014/0032]

Date: Monday, 24th October 2016

Coram: The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:
Appellant: Mr. Jarid Hewlett holding papers for Dr. David Dorsett
Respondent: No appearance

Issue: Status of the matter

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

**Result /
Order:**

1. The appeal is to be listed for the next sitting of the Court of Appeal sitting in Antigua and Barbuda during the week commencing 27th February 2017.
2. Notice of hearing to be served on the Respondent herself and not on Counsel on or before 12th December 2016.

Case Name: Ultramarine (Antigua) Ltd.
v
Sunsail (Antigua) Ltd.

[ANUHCVP2012/0023]

Date: Monday 24th October, 2016

Coram: The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Jarid Hewlett holding papers for Dr. David Dorsett

Respondent: No appearance

Issue: Status of the matter

Type of Oral Result / Order Delivered: Directions

Result / Order:

1. The appellant is to file and serve on the respondent company the record of appeal and submissions and authorities by no later than 12th December 2016.
2. The appeal is to be listed for hearing at the next sitting of the Court of Appeal sitting in Antigua and Barbuda during the week commencing 27th February 2017.
3. Copy of this order is to be served on the Company by the Court and affidavit of service to be filed.

Case Name: Claudy Kelvin Brown
v
[1] The Attorney General
[2] The Chief Immigration Officer
[3] The Chief Magistrate

[ANUHCVP2012/0017]

Date: Monday, 24th October 2016

Coram: The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Jarid Hewlett holding papers for Dr. David Dorsett

Respondent: No appearance

Issue: Status of the matter

Type of Oral Result / Order Delivered: Directions

Result / Order:

1. The matter is adjourned to the next status hearing before the Court of Appeal sitting in Antigua and Barbuda on during the week commencing 27th February 2017.
2. The appellant's attorney is to report in writing to the Court by 12th December 2016 on the status of the notes of evidence.

Case Name: Geddis Meyer
v
Kevin Dickson

[ANUHCVP2014/0005]

Date: Monday, 24th October 2016

Coram: The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellant: No Appearance

Respondent: Ms. Safiyah Roberts

Issue: Status of the matter

Type of Oral Result / Order Directions

Delivered:

**Result /
Order:**

1. Time for filing the respondent's skeleton arguments with authorities is further extended to 21 days after receipt of transcripts of the proceedings of the court below.
2. If necessary the matter is to come up for hearing during the sitting of the Court of Appeal sitting in Antigua and Barbuda during the week commencing 27th February 2017.

Case Name:

Garfield Morrison

v

[1] The Chief Magistrate

[2] Ivan Walters

[3] The Commissioner of Police

[ANUMCRAP2010/0002]

Date:

Monday, 24th October 2016

Coram:

The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellant:

Mr. Jarid Hewlett holding papers for Dr. David Dorsett

Respondent:

No appearance

Issue:

Status of the matter

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

Directions

Order:

On the application of the appellant, the order made by the Court on 16th March 2016 is varied as follows:

1. The appellant is to produce, file and serve an affidavit of the witness Brenda Furlong who gave

evidence before the Chief Magistrate Mr. Ivan Walters in respect of the charges brought against the appellant and the subject of appeal no. ANUMCRAP2010/0002. The said affidavit to be filed and served by Tuesday, 27th December 2016.

2. The respondent shall have liberty to file an affidavit in reply if deemed necessary by Friday, 13th January 2017.
3. The notes taken by the prosecutor together with the affidavit evidence referred to in paragraphs 1 and 2 shall be deemed the record of proceedings and a bound copy filed and served by the appellant by Friday, 27th January 2017.
4. The appellant shall then file and serve written submissions in support of the appeal not later than Friday, 10th February 2017.
5. The respondent shall file and serve written submissions in response on or before Monday, 20th February 2017.
6. The appeal shall be listed for the next sitting of the Court in Antigua and Barbuda during the week commencing 27th February 2017.
7. Liberty to apply.

APPLICATIONS AND APPEALS

Case Name:

**Big Banana Holding Company Limited
v
ABI Bank Ltd. (In receivership)**

[ANUHCVP2015/0040]

Date:

Monday, 24th October 2016

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Anthony Gonsalves, QC, Justice of Appeal [Ag.]**

Appearances:

Appellant: Ms. Amaya Athill with her Ms. Kathleen Bennett

Respondent: Ms. Kamilah Roberts

Issues: Application for stay of execution – Application to discharge order of a single judge

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

Reason: Counsel for the appellant withdrew the application.

Case Name:

Carl Baynes

v

Ed Meyer

[ANUHCVP2015/0026]

Date: Monday, 24th October 2016

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Anthony Gonsalves, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: Dr. David Dorsett

Respondent: Mr. Hugh Marshall

Issue: Application for leave to appeal to Her Majesty in Council

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

Result/Order:

1. The order of the Court unanimously is that the motion to appeal to Her Majesty in Council is hereby refused.
2. The cost of this application is fixed in the sum of \$1,500.00 as agreed.

Reason:

The motion to appeal is refused as it does not meet the requirements set out either in s. 122(1)(a) of the Constitution of Antigua and Barbuda, in that it is not an appeal arising from a final decision of the Court; or the threshold set out in s. 122(2)(a) of the Constitution of Antigua and Barbuda, in that it raises no question of great general or public importance or that it raises any difficult question of law involved.

When the Court is construing the phrase ‘where general or public importance is involved’, as stated in the *Attorney General v Martinus Francois* SLUHCVP2001/0069 (delivered 24th May 2001, unreported) the Court usually looks for matters that involve a really serious issue of law or a constitutional provision that has not been settled or an area of law in dispute or a legal question, the resolution of which poses dire consequences of the public."

Furthermore, as was stated in the Privy Council decision of *Benvoy Krishhna Mukherji v Satish Chandra Giri* (1927) 55 LR Ind App 131 the Board had this to say “they think it right to add that as a general rule and in the absence of special circumstances or some unusual occasion for its exercise, the power of making interlocutory orders is one which is not a suitable subject for review by the Judicial Committee. The Court adopted that dictum by the Board and stated that the Privy Council would not be in the best place and that the Eastern Caribbean Supreme Court is better placed to determine as to what constitutes exceptional circumstances when a case for its consideration arises.

Case Name:

Kings Casino Limited
v
[1] Gayle Stratton-Matthew

[2] Aritha Durand
[3] Mary Otto

[ANULTAP2016/0001]
(Antigua & Barbuda)

Date: Monday, 24th October 2016

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Anthony Gonsalves, QC, Justice of Appeal, [Ag.]

Appearances:

Appellant: Mr. John Fuller

Respondent: Ms. Joy Dublin

Issue: Application for leave to appeal out of time

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

Result/Order:

1. The application for leave to appeal out of time is dismissed.
2. No order as to costs.

Reason: This application cannot succeed because the material put before the Court to grant an extension is scanty material; so scanty that the Court cannot grant the application. The Court has no assistance to come to the view that the prospect of success is high.

Case Name: **Renee James Spencer**
v
The Director of the Office of National Drug and Money Laundering Control Policy

Date: Monday, 24th October, 2016

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Anthony Gonsalves, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: Dr. David Dorsett with him Mr. Jarid Hewlett

Respondent: Ms. Bridget Nelson, Crown Counsel

Issue: Application for leave to appeal against master's decision

Type of Oral Result / Order Delivered: Directions

Result/Order:

1. The application is hereby treated as the hearing of the appeal.
2. The appeal is allowed.
3. The matter is remitted back to the court below for a trial of the preliminary issue, namely, whether the matter was statute barred pursuant to the provisions of Section 13 of the Statute of Limitation Act 1997.
4. No order as to costs.

Reason: The defendant raised an issue which required determination by trial of that issue and could not be determined by a fact sensitive exercise on the basis of affidavit evidence which was proffered in support of the application to strike out the statement of claim. The Court reiterated that the scope of the strike out application set out in Part 26.3 of the Civil Procedure Rules 2000 does not contemplate a party to put in further affidavit evidence to bolster or detract from the pleaded case. Having regard to the averments in the claimant's pleaded case the issue would have clearly arisen as to whether or not the claim was within or outside of the Limitation Act and that could

only be determined on a trial of that issue. The Court thus decided to treat the hearing of the application as the hearing of the appeal.

The Court allowed the appeal on the ground that the learned master made findings of fact which would not be open to him to make without conducting a trial on the issue of whether or not the claimant had knowledge that the injury was significant and at what time as was required for the purposes of the Limitation Act 1997 of the Laws of Antigua and Barbuda. Therefore this Court without making statements as to the merits or demerits of that issue referred the case to the court below to be determined on a trial of that preliminary issue. Such a preliminary issue before a judge of the court at the trial of that preliminary issue. That issue being whether the claim of personal injury made by the claimant is time barred pursuant to s.13 of the Limitation Act 1997.

Case Name:

Adrian Nurse

v

The Queen

[ANUHCRA2015/0018]

Date:

Tuesday, 25th October 2016

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Mr. John Fuller

Respondent:

**Mr. Anthony Armstrong, Director of Public
Prosecutions with him, Mrs. Shannon Jones- Gittens**

Issues:

Criminal appeal against sentence – Indecent assault

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

Oral Judgment or Decision

**Result /
Order:**

The appeal is dismissed and the sentence is affirmed.

Reason:

The Court having heard all that counsel for the appellant has urged in relation to the appeal against sentence, but also having regard to all of the circumstances in this case, and having looked at those circumstances, considered that there is no basis on which this Court should interfere in the sentence imposed on the appellant.

Case Name:

**Jesus Junkere
v
The Queen**

[ANUHCRA2013/0001]

Date:

Tuesday 25th October, 2016

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Appellant: No appearance

**Respondent: Mr. Anthony Armstrong, Director of Public
Prosecutions with him, Mrs. Shannon Jones-Gittens**

Issues:

Criminal appeal against conviction – Manslaughter

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

Directions

Order:

1. The hearing of the appeal is adjourned and the appellant should seek assistance from his mother, Carol John-Jones for instructing another legal practitioner to prosecute the appeal on the appellant's behalf.
2. The appellant shall write to the Court no later than 31st December 2016 informing the Court whether assistance has been obtained.
3. In the event that assistance has been obtained, the appeal would be set down for hearing at the next sitting of the Court in Antigua and Barbuda during the week commencing 27th February 2017.
4. Where the appellant confirms the assistance has been obtained the legal practitioner shall file and serve submissions supporting the appeal no later than 16th January 2017.
5. The respondent shall file and serve submissions by 10th February 2017.

Reason:

The matter was adjourned in order for the appellant to obtain legal counsel.

Case Name:

Jerome Henry

v

The Queen

[ANUHCRA2015/0007]

Date:

Tuesday, 25th October 2016

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Mr. Sherfield Bowen

Respondent:

Mr. Anthony Armstrong, Director of Public Prosecutions with him, Mrs. Shannon Jones-Gittens

Issues: Criminal appeal against conviction – House Breaking/Larceny

Type of Oral Result / Order Delivered: Directions

Result/Order:

1. The hearing of the appeal is adjourned to the next sitting of the Court in Antigua and Barbuda during the week commencing 27th February 2017.
2. The appellant through his legal practitioner shall file and serve written submissions with copies of any authority relied on no later than 30th November 2016.
3. The respondent shall file and serve written submissions in response together with authorities relied on no later than 31st December 2016.

Case Name: Dave Roacher
v
The Queen

[ANUHCRA2015/0008]

Date: Tuesday, 25th October 2016

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Lawrence Daniel

Respondent: Mr. Anthony Armstrong, Director of Public Prosecutions with him, Mrs. Shannon Jones-Gittens

Issues: Criminal appeal against conviction – Armed robbery

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

Directions

Result/Order:

1. The hearing of this appeal is adjourned to the next sitting of the Court in Antigua and Barbuda during the week commencing 27th February 2017 to enable the completion of the transcript of the proceedings.
2. The Registrar shall make available to the parties the missing portions of the transcript on or before 31st December 2016.
3. The appellant by his legal practitioner shall file and serve written submissions with copies of authorities no later than 20th January 2017.
4. The respondent shall file and serve written submissions in response with authorities no later than 17th February 2017.

Reason:

Portions of the transcript were unavailable.

Case Name:

Simon Davis

v

The Queen

[ANUHCRA2012/0007]

Date:

Tuesday, 25th October 2016

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Mr. Sherfield Bowen

Respondent:

**Mr. Anthony Armstrong, Director of Public
Prosecutions with him, Mrs. Shannon Jones-Gittens**

Issues: Criminal appeal against conviction – Sexual intercourse with a minor under 16 years – Buggery

Type of Oral Result / Order Delivered: Directions

Result/Order:

1. The hearing of this appeal is adjourned to the next sitting of the court in Antigua and Barbuda during the week commencing 27th February 2017.
2. The appellant by his legal practitioners Mr. Sherfield Bowen and Mr. Lawrence Daniels shall file and serve written submissions with authorities no later than 31st December 2016.
3. The respondent shall file and serve written submissions with authorities by 31st January 2017.

Case Name: Errol Porter
v
The Queen

[ANUHCRA2009/0003]

Date: Tuesday, 25th October 2016

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellant: Dr. David Dorsett

Respondent: Mr. Anthony Armstrong, Director of Public Prosecutions with him, Mrs. Shannon Jones-Gittens

Issues: Criminal appeal against conviction – Larceny

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

Oral Judgment or Decision

Result/Order:

The appeal against conviction is dismissed and the sentence of the High Court is affirmed.

Reason:

The appellant was charged on an indictment containing six counts. At the close of the case for the Prosecution, two counts were withdrawn and he was found not guilty on one count and convicted on three counts of larceny. Prior to commencement of the trial, the indictment was amended, the changes related to the items that were allegedly stolen and the value of the items stolen. The charges against the appellant were made the same. The amended indictment was not served on the appellant before the trial.

At the commencement of the trial, the amended indictment was read by the clerk of court to the accused who was represented by counsel. The appellant complaint is based on two issues: firstly on the issue of service - the non-service of the indictment on the appellant; and secondly, the fact that he only became aware of the changes during the course of a no case submission at the end of the Prosecution's case.

On the issue of non-service of the amended indictment it is important to note that the amended indictment was read to the accused person at the commencement of the trial so he would have been aware since then of the details of the charges being made against him. On the question of being taken by surprise because of the changes to the indictment, there was no application by the appellant's counsel that when he became aware of the changes to either adjourn the trial or to recall the witnesses for the Prosecution for further cross-examination.

In the circumstances, the Court found that there is no real prejudice in the fact that the amended indictment was not served on the appellant or that he only became aware of the changes in the indictment

during the course of the trial.

The Court was satisfied that the cases of *R v Clarke* [1973] NI 45 and *R v Olivo* [1942] 2 All ER 494 referred to by the appellant are distinguishable from the case that is before it. In *Clarke* the indictment was unsigned and court therefore found it was a nullity. In *Olivo*, the appellant was in fact facing two indictments during the trial. In this case the appellant was facing one indictment which had amendments which went to the items stolen and the value of those items.

In those circumstances, the Court was not of the view that a new charge was proffered against the appellant. The changes to the indictment was not such as to cause undue prejudice. In any event, the appellant ought to have been aware of the changes from as early as the beginning of the trial. Regardless of the time he became aware, it was his right at that stage was to apply to the Court for an adjournment or to recall the Prosecution's witnesses. The fact that that was not done is an indication that no real prejudice was suffered. The finding of this Court was that there is no real prejudice for the non-service of the indictment and the fact that the contents of the change to the indictment only became apparent to the appellant during the course of the trial.

The second issue raised by the appellant is the fact that Steven Michael who gave evidence in the trial was not cross-examined and that he gave evidence on the crucial point in the case. Steven Michael had before trial given a statement to the police and that statement was read into evidence at the trial and he also gave oral evidence during trial. The opportunity was therefore available to the Prosecution to cross-examine Mr. Michael but that opportunity was not taken advantage of.

In dealing with this issue, the Court had regard to the entire evidence in the case and stated that it is apparent from the evidence by Mr. Michael the important aspect of which was that he gave permission to the appellant to take several materials. This was more than balanced by the evidence of Mr.

Webster whose evidence was explored in detail by counsel for the respondent and it is quite clear that there was abundant evidence that the materials that were stolen were taken from the store yard of Stanford Development Company.

Mr. Webster was present when the material was taken. He gave evidence that he saw some of the material at the home of the appellant where it was being used. Some of the material had the logo of Stanford Development Company on it. It appears that attempts have been made to erase the logo and it is the appellant who was giving instructions to Mr. Webster to take the material from the store yard. The non-cross-examination of Mr. Steven Michael did not cause any prejudice or unfairness to the appellant.

The third issue raised was the submissions by counsel for the appellant that the material that was taken, the fencing material in particular had been abandoned by Stanford Development Company. There is no evidence that was presented by the Prosecution that this material had been abandoned in the sense that Stanford Development Company had parted with all interest in the building materials. In fact, Mr. Webster said that material was not in the garbage heap and in fact it was not garbage.

The Court was referred by counsel for the respondent to the case of *Williams v Phillips* (1957) 41 Cr App Rep 5 which makes it quite clear that merely putting garbage out for collection does not mean that the garbage has been abandoned. It simply means that it's being put out. The person putting it out still has an interest in that material. He only loses his interest when it is taken by the persons who are lawfully authorized to take the garbage. In that case the garbage collector.

The Court was of the view that there is no evidence in this case that the material taken by the appellant had been abandoned. Even if it was in a garbage heap on the premises, that of itself does not mean that the company had parted with all interest in it and presumably the company could have gone and retrieved any item out in that garbage. The Court held that in those circumstances it does not find that the

materials taken were abandoned by the company and was therefore still capable of being stolen.

In relation to the issue of the indictment, the Court accepted the submission of the Director of Public Prosecutions that there would only have been prejudice if the accused had been forced to alter his defence as a result of the changes. Having regard to the nature of the changes that were made to the indictment, the Court was not of the opinion that there was any need for the accused to change his defence. Any unfairness would have been dealt with by the fact that the indictment was read to the appellant before the commencement of the trial. The Court found that there is no unfairness in the conduct of the trial and in the circumstances dismissed the appeal against conviction and affirmed the sentence of the High Court.

Case Name:

Jay Marie Chin

v

The Queen

[ANUHCRA2012/0005]

Date:

Tuesday, 25th October 2016

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Mr. Dane Hamilton, QC, with him Mr. D. Raimon Hamilton

Respondent:

Mr. Anthony Armstrong, Director of Public Prosecutions with him, Mrs. Shannon Jones-Gittens

Issues:

Criminal appeal against conviction – Murder

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

N/A

Result/Order:

Judgment reserved.

Case Name:

Gemal Benjamin

v

The Queen

[ANUHCRA2015/0004]

Date:

Tuesday, 25th October 2016

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Appellant:

**Mr. Dane Hamilton, QC. with him Mr. D. Raimon
Hamilton**

Respondent:

**Mr. Anthony Armstrong, Director of Public
Prosecutions with him, Mrs. Shannon Jones-Gittens**

Issues:

**Criminal appeal against conviction – Aggravated
robbery**

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

Directions

**Result/Order
& Reason:**

- 1. The Court notes that the appellant's submissions have been filed as of 30th September 2016 and it is directed that the respondent will file and serve written submissions with authorities in response no later than 16th December 2016.**
- 2. The hearing of the appeal is accordingly adjourned to the next sitting of the Court in the**

Case Name:

Joseph Charles

v

The Queen

[ANUHCRA2016/0001]

Date:

Tuesday, 25th October 2016

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Appellant:

No appearance

Respondent:

**Mr. Anthony Armstrong, Director of Public
Prosecutions with him Mrs. Shannon Jones-Gittens**

Issues:

**High Court criminal appeal against conviction –
Indecent assault**

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

Directions

Result/Order:

- 1. The appellant shall file and serve written submissions together with the copies of authorities relied on no later than 16th December 2016.**
- 2. The respondent shall file and serve written submissions in response together with copies of authorities relied on no later than 31st January 2017.**
- 3. The hearing of this appeal is adjourned to the next sitting of the Court in the State of Antigua and Barbuda during the week commencing the**

27th February 2017.

Case Name:

Vern Small

v

The Queen

[ANUHCRA2015/0019]

Date:

Tuesday, 25th October 2016

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Mr. Sherfield Bowen

Respondent:

**Mr. Anthony Armstrong, Director of Public
Prosecutions with Mrs. Shannon Jones-Gittens**

Issues:

**Criminal appeal against conviction – Serious
indecent**

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

Oral Judgment or Decision

Result/Order:

- 1. In all of the circumstances of this case, the appeal is accordingly dismissed and the sentence of three years is upheld.**
- 2. The appeal against conviction having been abandoned is also dismissed.**

Reason:

There is no basis shown for interfering with the sentence imposed on the appellant.

Case Name:

Deless Phillip

v

The Queen

[ANUHCRA2015/0020]

Date:

Tuesday, 25th October 2016

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Mr. Sherfield Bowen

Respondent:

**Mr. Anthony Armstrong, Director of Public
Prosecutions with him Mrs. Shannon Jones-Gittens**

Issues:

**Criminal appeal against conviction – Shooting with
intent – Aggravated burglary**

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

Directions

Result/Order:

- 1. The hearing of this appeal is adjourned to the next sitting of the Court in the state of Antigua and Barbuda during the week commencing 27th February 2017 at the request of the appellant.**
- 2. The appellant shall file and serve written submissions with authorities in support of his appeal by 20th January 2017.**
- 3. The respondent shall file and serve written submissions in response with authorities by 17th February 2017.**

Case Name:

Antigua and Barbuda Transport Board

v

[1] Anderson Carty

[2] James Sebastian
[3] Anique Francis

[ANULTAP2015/0006]
[ANULTAP2015/0007]
[ANULTAP2015/0008]

Date: Wednesday, 26th October 2016

Coram: The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mr. Anthony Gonsalves, QC, Justice of Appeal, [Ag.]

Appearances:

Appellant: Mr. Hugh Marshall Jr. with him Ms. Andrea Smithen

Respondents: All appearing in person

Issues: Appeal against order from the President of the Industrial Court – Whether the President was correct in applying the new Industrial Court rules which were not yet in effect at the time the order was granted

Type of Oral Result / Order Delivered: N/A

Result / Order: Judgment reserved.

Case Name: Xavier Mason
v
Antigua Port Authority
[ANUHCVP2011/0027]

Date: Wednesday, 26th October, 2016

Coram: The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mr. Anthony Gonsalves, QC, Justice of Appeal, [Ag.]

Appearances:

Appellant: Ms. Kathleen Bennett holding papers for Mr. Kendrickson Kentish

Respondent: Mr. Craig Jacas

Issues: Application for an adjournment

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

**Result /
Order:**

1. Leave is granted to the appellant so that the submissions that were filed on 20th September 2016 are deemed properly filed and served.
2. Leave is granted to the respondent to file and serve witness statements in reply on or before 20th November 2016.
3. The hearing of this appeal is adjourned and traversed to the next sitting of the Court in Antigua and Barbuda during the week which commences 27th February 2017.

Case Name: Joseph W. Horsford, as sole administrator of
the estate of William Horsford (deceased)
v
Geoffrey Croft
[ANUHCVP2014/0028]

Date: Wednesday, 26th October 2016

Coram: The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mr. Anthony Gonsalves, QC, Justice of

Appeal, [Ag.]

Appearances:

Appellant: In person

Respondent: Mr. D. Raimon Hamilton

Issue: Application for adjournment of appeal

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

**Result /
Order:**

1. The parties are to get together and file a supplemental bundle no later than 12th December 2016.
2. Insofar as the appellant has already filed skeleton arguments, leave is granted to the respondent to file and serve skeleton arguments on or before 13th January, 2017.
3. Leave is granted to the appellant, Mr. Horsford if necessary to file and serve submissions in reply on or before 3rd February 2017.
4. The hearing of this appeal is adjourned to the next sitting of this Court in Antigua and Barbuda during the week which commences on the 27th February 2017.

Reason:

Case Name: Robin M. Yearwood
v
Christina Yearwood

[ANUHCVP2015/0018]
consolidated with
[ANUHCVP2015/0019]

Date: Wednesday, 26th October 2016

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

Appearances:

Appellant: Ms. Andrea Smithen with her Mr. Hugh Marshall Jr.

Respondent: Dr. David Dorsett with him Mr. Jarid Hewlett

Issue:

Application for adjournment of appeal

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

Directions

**Result /
Order:**

1. On the application by the appellant, the hearing of this appeal is adjourned and traversed to the next sitting of the Court in Antigua and Barbuda during the week commencing 27th February 2017.
2. Costs of the adjournment to the respondent, Mrs. Yearwood of \$7,000.00 to be paid within fourteen (14) days as agreed between the parties.

Reason:

The Court having listened to counsel on both sides fully appreciate the litigant's right to counsel of their choice.

The facts supporting this application are not very strong. There was information since March that this appeal was in all likelihood going to come up in October at this sitting of the Court. Nonetheless it is the first time that the appeal is coming on board and reluctantly the Court acceded to the application for an adjournment bearing in mind that senior counsel was involved in the matter and has been for some time including the overseas proceeding.

The Court was of the unanimous view that the applicant should pay the cost of this application those costs will not just be costs wasted on this occasion but the costs of Mrs. Yearwood's attendance at this hearing as she was entitled to appear because there was no guarantee that the adjournment would have been upheld.

Case Name:

**Mackenzie Frank
v
The Attorney General**

[ANUHCVP2015/0007]

Date:

Wednesday, 26th October 2016

Coram:

**The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mr. Anthony Gonsalves, QC, Justice of
Appeal, [Ag.]**

Appearances:

Appellant:

Mr. Ralph Francis with him Mr. Sylvester Carrott

Respondent:

**Mr. Anthony Astaphan QC, instructed by Ms. Alicia
Aska, Attorney General's Chambers**

Issues:

**Interlocutory appeal – Process of securing approval
for major development in Barbuda under s.17
Barbuda Land Act**

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

Directions

**Result /
Order:**

**Appeal proceedings will be stayed pending the final
outcome of the constitutional matter.**

Reason:

**This appeal concerned the proposed development in
Barbuda which brings into question provisions of the
Barbuda Land Act. Subsequent to the leave being
granted to pursue this appeal, Parliament has passed
the Paradise Fund (Project) Act 2015, which directly
impacts the Barbuda Land Act and the sections of
that Act which are being questioned in this
proceeding.**

Case Name: Ultramarine (Antigua) Ltd.
v
Sunsail (Antigua) Ltd.
[ANUHCVP2016/0004]

Date: Wednesday, 26th October 2016

Coram: The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal
The Hon. Mr. Anthony Gonsalves, QC, Justice of Appeal, [Ag.]

Appearances:
Appellant: Dr. David Dorsett with him, Mr. Jarid Hewlett
Respondent: Mr. Septimus Rhudd

Issues: Interlocutory appeal – Appeal against order of Single Judge for security for costs – Wrongful exercise of Judge’s discretion

Type of Oral Result/Order Delivered: N/A

Result/Order: Judgment Reserved.

Case Name: Flat Point Development Limited
v
Canisby Limited
[ANUHCVP2016/0006]

Date: Thursday, 27th October 2016

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. John Carrington, Justice of Appeal [Ag.]
The Hon. Mr. Anthony Gonsalves, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Frank Walwyn with him Ms. Jacqueline Walwyn and Mr. Wesley George

Respondent: Mr. Anthony Astaphan, QC., with him Ms. Rika Bird

Issues: Application for stay of execution – Application for variation of order of single judge

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

Result/Order:

1. The application is dismissed.
2. Costs are awarded to the respondent to be assessed if not agreed within twenty one (21) days.

Reason:

This is an application by Flat Point Development before the Full Court against the order of the Honourable Mr. Mario Michel, Justice of Appeal made on 24th May 2016 in which he refused to a stay of execution of the order of the Honorable Master Raulston Glasgow pending the outcome of this appeal. This application is to vary Michel JA's order by granting the stay.

The applicant acknowledged that its application before the Honourable Mr. Justice of Appeal Michel did not contain sufficient facts in order to obtain the grant of a stay.

In support of its application, the applicant relied on the affidavit of Maribel Greenidge filed on 3rd June 2016. In the said affidavit, Ms. Greenidge sets out the material on which the applicant sought to rely. These included a statement that without a stay of execution on the order the respondent will commence enforcement proceedings against the

applicant including the sale of several of the applicant's properties. The affidavit continued that the properties which the respondent would attempt to sell in enforcement proceedings are all part of a high-end real estate/hotel development which is now at a critical phase and that the sale of any of the properties would be highly destructive to the project. Further, that if sold, the applicant will be unable to unwind the sale of its properties and thus that it is clear that the applicant would suffer irreparable harm. The respondent resisted the application on the basis that:

1. the respondent merely being resident overseas was insufficient.
2. the naked allegation of a refusal on the part of the respondent to obey an order of the Court is insufficient.
3. It would be wrong to vary the order and grant a stay based on what the respondent suggested to be mere speculation. That there was no evidence that the actions suggested were likely to occur.
4. Merely to say that the project will be impacted was not itself evidence of irreparable harm.

The Court considered the application and the submissions of counsel. The Court noted that in the case of *Marie Makhoul v Cicely Foster and Louis Lockhart* (ANUHCVP2009/0014 (delivered 26th August 2009, unreported), the Honorable Justice Janice George-Creque, Justice of Appeal as she then was, outlined the principles applicable to a stay as follows:

1. Whenever the Court should exercise its discretion in granting 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 another of the parties if the stay is granted or refused. This calls for an examination of the nature of the case and the consequences flowing from the enforcement of the judgment.

2. The burden is on the applicant to satisfy the Court that he would be personally and financially ruined without a stay which is not enough for the applicant to merely make a broad assertion to the effect that he will be ruined; rather, what is required is evidence which demonstrates that ruination would occur in the

absence of his stay.

In the present case, the Court was of the opinion that the applicant has not even with the new affidavit demonstrated that it will face ruin. The evidence only goes so far as to suggest the possible destruction of a particular project but falls short of what is required to demonstrate what would be the applicant's resulting financial position. On that basis the Court held that it is not necessary to consider Mr. Astaphan, QC's point in relation to the applicability of the rules concerning the introduction of fresh evidence to interlocutory applications. In the circumstance, the Court dismissed the application ordered that costs are awarded to the respondent, to be assessed if not agreed within 21 days.

Case Name:

**Canisby Limited
v
Flatpoint Development Limited
[ANUHCVP2016/0005]**

Date:

Thursday, 27th October 2016

Coram:

**The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. John Carrington, Justice of Appeal
[Ag.]
The Hon. Mr. Anthony Gonsalves, QC, Justice of Appeal, [Ag.]**

Appearances:

Appellant:

Mr. Anthony Astaphan QC, with him Ms. Rika Bird

Respondent:

**Mr. Frank Walwyn with him Ms. Jacqueline Walwyn
and Mr. Wesley George**

Issue:

Application for security for costs

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

N/A

**Result /
Order:**

Judgment Reserved.

Case Name:

**Marcus A. Wide and Hugh Dickson as Joint
Liquidators of Stanford International Bank
Limited (In Liquidation)**

v

**[1] Marcus Gandy
Lenworth Johnson
Latoya Letlow
(appearing Amicus Curiae)
[2] Timour Gainouline**

[ANUHCVP2015/0039]

Date:

Thursday 27th October, 2016

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Gretel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal**

Appearances:

Appellant:

**Mr. Malcolm Arthurs with him, Ms. Nicole Sandells
and Ms. Nicole Doherty**

Respondents:

**Mr. Marcus Gandy with him, Mr. Lenworth Johnson
and Ms. Latoya Letlow appearing Amicus Curiae
Mr. Lawrence Daniels for the second named
respondent**

Issues:

**Interlocutory appeal – Whether the decision of the
judge sought to prevent Stanford International Bank
through its joint liquidators from recovering funds
from persons who are required to pay said sums into
Stanford International Bank**

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

N/A

**Result /
Order:**

Judgment reserved.

Case Name:

**Myrna Norde
v
Jacqueline Mannix (As Personal
Representative of Henry Alford Mannix)**

[ANUHCVP2015/0034]

Date:

Friday, 28th October 2016

Coram:

**The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gretel Thom, Justice of Appeal
The Hon. Mr. John Carrington, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Mr. Ralph Francis

Respondent:

Mr. Hugh Marshall Jr.

Issue:

**Interlocutory appeal – Order for transfer of title of
lands**

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

N/A

**Result /
Order:**

Judgment Reserved.

Case Name:

Nelisa Spencer

v

James Herbert

[ANUHCVAP2016/0003]

Date:

Friday, 28th October 2016

Coram:

**The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gretel Thom, Justice of Appeal
The Hon. Mr. John Carrington, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

Nelisa Spencer in pro se

Respondent:

Ms. Samantha May with Kivinee Knight - Edwards

Issues:

Interlocutory appeal – Decision of sitting judge to set aside an extension of time to serve Claim Form and Default Judgment

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

Oral Judgment or Decision

**Result /
Order:**

**1. The appeal is allowed.
2. There is no order as to costs.
3. The default judgment entered by the Court on 10th June 2015 in the proceedings below is set aside and the matter shall proceed in accordance with the Civil Procedure Rules 2000.**

Reason:

The Defendant in the proceedings below brought this appeal pursuant to leave granted by a single judge on 3rd May 2016. The appeal lies against the decision of Master Glasgow made on 26th January 2016 in which he refused to set aside both an extension of time to serve the claim form and a default judgment.

The respondent in this appeal (the claimant in the court below) is claiming damages for personal injury

and financial loss arising from a motor vehicle accident. The respondent indicated he had difficulty in serving the appellant/defendant and as a result had to seek an extension of time within which to serve the claim form. The claim was eventually served on the defendant who probably acting pursuant to legal advice felt that the claim was not a valid claim and did not acknowledge service thereof. As a result, the claimant entered judgment in default of an acknowledgement of service for an amount to be assessed.

The appeal essentially was on the footing of the extension of the validity of the Claim Form. However, when the appeal was called the Court asked counsel to consider the effect of Parts 12.4, 13.2 and 2.4 of the Civil Procedure Rules 2000. Having heard counsel on those rules, the Court was of the view that the mandatory conditions in Part 12.4 for the entry of a judgment in default of acknowledgement of service was not met in this case as the claim was not only a claim for a specified sum of money. As a result under Part 13.2 the Court ruled that it must set aside that default judgment.

Perhaps through no fault of his own, the master did not address that matter because the parties concentrated on the issue of the validity of the extension of the claim. Nevertheless, the rule appears to be clear that this is a case where the Court must set aside a judgment in default of acknowledgment of service and the Court therefore orders that the appeal be allowed on this ground and was of the opinion that in the light of allowing the appeal on this ground, there is really no need to pursue the main ground on which the appeal was being lodged.

The Court ruled that in those circumstances, there will be no order as to costs. So the order is that the appeal is allowed and there is no order as to cost. The default judgment entered by the Court on 10th day June 2015 in the proceedings below is set aside, and the matter shall proceed in accordance with the Civil Procedure Rules.

Case Name:

**[1] Theodore Gobat
[2] Alexandra Rooke
v
Island Heights Limited**

[ANUHCVP2016/0016]

Date: **Friday, 28th October 2016**

Coram: **The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Appellants: Dr. David Dorsett

Respondent: Mr. Justin Delany

Issue: **Application to set aside injunction**

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

**Result /
Order:**

- 1. The appeal is allowed.**
- 2. The injunctions are set aside due to irregularities contained in the order.**
- 3. Costs are awarded to the appellants to be paid by the respondents fixed in the sum of \$1,500.00 to be paid within 21 days.**

Reason: **The order having been obtained ex parte would have as a matter of law been spent, 28 days having expired in respect of such ex parte order.**

The Court noted that matters have moved on and the fears expressed by the respondent no longer obtains. However, the Court also had regard to the fact that an inappropriate procedure was utilised by the appellants for the setting aside of the ex parte order by appealing to this Court without utilising the procedures set out in Part 11 and 17 of the Rules of Court which makes adequate provisions for moving

the court in respect of an order made in a party's absence. Accordingly, the Court awarded costs to the appellants to be paid by the respondents fixed in the sum of \$1,500.00 to be paid within 21 days.

Case Name:

Errol C. Barnes

V

The Commissioner of Police

[ANUMCRAP 2013/0001]

Date:

Friday, 28th October 2016

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Mr. Lawrence Daniel

Respondent:

**Mr. Anthony Armstrong, Director of Public
Prosecutions with Mrs. Shannon Jones-Gittens**

Issues:

**Criminal appeal against sentence – Possession of
cannabis – Possession with intent to supply**

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

Directions

**Result /
Order:**

- 1. At the request of the appellant through his counsel the hearing of this appeal is adjourned to the next sitting of the court in Antigua and Barbuda during the week commencing 27th of February 2017.**
- 2. The appellant shall file and serve written submissions with authorities, if any, in support of this appeal no later than 15th December 2016.**
- 3. The respondent shall file and serve written submissions with authorities, if any, in response no later than 15th January, 2017.**
- 4. This will be the last adjournment of this matter.**

Case Name:

**Mandella Victor Spencer
v
The Commissioner of Police
[ANUMCRAP 2011/0002]**

Date:

Friday, 28th October 2016

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Mr. Lawrence Daniel

Respondent:

**Mr. Anthony Armstrong, Director of Public
Prosecutions with Mrs. Shannon Jones-Gittens**

Issues:

**Criminal appeal against sentence – Possession of
cocaine**

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

Oral Judgment or Decision

**Result /
Order:**

- 1. The appeal is allowed by substituting a fine of \$1,500.00 for the sentence of imprisonment. The said fine to be paid as \$750.00 by Monday, 31st October 2016 and the balance of \$750.00 payable by Wednesday, 30th November 2016.**
- 2. In default of any one payment, the appellant shall be imprisoned for three months.**

Case Name:

**[1] Vere Bird Jr.
[2] Gaston Browne**

[3] Marie Claire Hurst
[4] Lester Bird
[5] Molwyn Joseph
[6] Sharon Kentish
[7] Jim Galloway

v

The Commissioner of Police

[ANUMCRAP2010/0015]

Date: Friday, 28th October 2016

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellants: Mr. John Fuller with him, Ms. Rika Bird

Respondent: Mr. Anthony Armstrong, Director of Public Prosecutions with him, Mrs. Shannon Jones-Gittens

Issue: Criminal appeal against conviction

Type of Oral Result / Order Delivered: Directions

Result / Order & Reason: Upon hearing counsel on behalf of the appellants it is hereby ordered as follows:

1. Subject to paragraph 2 hereof, the hearing of this appeal is adjourned to the next sitting of the Court in the State of Antigua and Barbuda during the week commencing 27th February 2017. This shall be the final adjournment.
2. Time is hereby extended to the appellants to file and serve written submissions in support of the appeal no later than Monday 21st November 2016, failing which the appeal herein shall stand dismissed.
3. In the event that the appellants comply with paragraph 2 of this order, the respondents shall file and serve submissions no later than Friday,

30th December 2016.

4. The 4th named appellant is excused from appearance in this Court due to his medical condition.

Case Name:

**James Pelle
v
The Commissioner of Police
[ANUMCRAP 2011/0001]**

Date:

Friday, 28th October 2016

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Appellant: No appearance

**Respondent: Mr. Anthony Armstrong, Director of Public
Prosecutions with him, Mrs. Shannon Jones-Gittens**

Issues:

**Criminal appeal against conviction – Malicious
damage**

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

Directions

**Result /
Order:**

- 1. The Registrar of the Court shall cause a notice of hearing to be served personally on the appellant, James Pelle for his appearance at the next sitting of the Court during the week commencing 27th February 2017 and shall file proof of such service on the record of this appeal in the Court.**
- 2. Upon proof of service on the appellant and should the appellant fail to appear before the Court as herein directed, the appeal shall stand**

dismissed and the conviction and sentence shall take effect.

Case Name:

**Anthony Browne
v
The Commissioner of Police
[ANUMCRAP 2012/0005]**

Date:

Friday, 28th October 2016

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Mr. Kwame Simon holding papers for Mr. Justin Simon, QC

Respondent:

Mr. Anthony Armstrong, Director of Public Prosecutions with him, Mrs. Shannon Jones-Gittens

Issues:

**Criminal appeal against conviction – Larceny -
Counsel for the appellant not in receipt of record of
proceedings and written reasons of Chief Magistrate**

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

Directions

**Result /
Order:**

- 1. The Chief Magistrate, Mrs. Joanne Walsh, having failed to comply with the order of the Court made on 14th March 2016, shall have until Thursday, 15th December 2016 to comply with the order of the Court dated 14th March 2016.**
- 2. Failing compliance by the said date, a summons shall be issued by the Registrar of the Court for the personal appearance of her Honour Chief Magistrate Walsh at the next sitting of this Court**

- during the week commencing 27th February 2017.
3. A sealed copy of this order shall be served on her Honour, Chief Magistrate Walsh by the Registrar of the Court by 4th November 2016. The Registrar shall cause to be prepared and filed a Certificate of Service on her Honour Chief Magistrate Walsh of the said order hearing.

Case Name:

Washington E. Bramble

v

[1] Commissioner of Police

[2] Chief Magistrate Joanne Walsh

[ANUMCRAP2013/0002]

Date:

Friday 28th October, 2016

Coram:

The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mde. Gretel Thom, Justice of Appeal

The Hon. Mr. John Carrington, Justice of Appeal

[Ag.]

Appearances:

Appellant:

In person

Respondent:

Mr. Anthony Armstrong, Director of Public Prosecutions with Shannon Jones-Gittens

Issues:

Magisterial criminal appeal against conviction – Malicious Damage

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

Directions

**Result /
Order:**

1. Leave is given to the appellant to file and serve a supplementary affidavit if necessary on or before 2nd November 2016.

2. Leave is also given to the appellant to file and serve supplementary submission if necessary on or before 14th December 2016.
3. Leave is given to the respondents to file and serve an affidavit and or submission in reply on or before 16th January 2017.
4. Hearing of the appeal is adjourned to the next sitting of the Court of Appeal in Antigua and Barbuda during the week beginning 27th February 2017.

Reason:

The appellant having misunderstood the contents of the order of the Honourable Chief Justice Dame Janice Pereira given on 14th March 2016 is seeking an adjournment to enable him to seek legal advice.

Case Name:

Romar Graham
v
Chief Immigration Officer
[ANUMCVAP2012/0006]

Christian D. Hinds
v
Chief Immigration Officer
[ANUMCVAP2013/0003]

Date:

Friday, 28th October 2016

Coram:

The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellant: Dr. David Dorsett

Respondent: Ms. Bridget Nelson, Crown Counsel

Issue:

Appeal against removal order of Magistrate

Type of Oral

Oral Judgment or Decision

**Result/ Order
Delivered:**

Result/Order:

The appeals are allowed and the orders of removal are quashed.

Reason:

The Court quashed the orders of removal in Appeals No. 3 of 2013, in the case of Christian Hinds and No. 6 of 2012, in the case of Romar Graham removing the appellants from the State of Antigua and Barbuda for breach of the principles of natural justice, in that the appellants were not given an opportunity to be heard on the application made by the Chief Immigration Officer seeking applications for their removal from the State of Antigua and Barbuda.

The Court also allowed the appeal on the further basis that there was a breach by the Chief Immigration Officer in making the applications for removal orally when the statute clearly states that an application pursuant to Section 25 of the Immigration and Passport Act of Antigua and Barbuda is to be made in writing. That is a duty and a requirement with which the Chief Immigration Officer must strictly comply.

Case Name:

Glenda Hanley

v

Colin Hanley

[ANUHCVP2015/0005]

Date:

Friday, 28th October 2016

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Mr. John E. Fuller

Respondent:

Ms. E. Deniscia Thomas

Issue:

Application for an adjournment of the appeal

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

Directions

Result/Order:

1. By consent the hearing is adjourned to the next sitting of the court in the State of Antigua and Barbuda during the week commencing 27th February 2017.
2. Cost is agreed in the sum of \$1,500.00 to be paid in fourteen days.