

COURT OF APPEAL SITTING

**SAINT LUCIA
8th – 12th February 2016**

JUDGMENTS

Case Name:

**Bryan James
v
The Attorney General
[SLUHCVAP2013/0023]**

**James Enterprises Limited
v
The Attorney General
[SLUHCVAP2013/0024]**

**[1] Fast Kaz Auto Supplies
[2] Curtis Hudson
v
The Attorney General
[SLUHCVAP2014/0021]**

Consolidated

Date: Wednesday, 10th February 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: Mr. Horace Fraser

Respondent: Mr. Dwight Lay, Crown Counsel, for the respondent in claim no.SLUHCVAP2014/0021

Ms. Karen Bernard, Crown Counsel, for the respondent in claim nos. SLUHCVAP2013/0023 and SLUHCVAP2013/0024

Issues: Interlocutory appeal – Article 28, Code of Civil Procedure, Cap 243 – Interpretation and application of article 28 – Proper party to institute civil proceedings against in claims involving public officers – Service of notice of intended suit on Comptroller of Customs and Excise Department and not Attorney General – Whether notice is required to be served on Attorney General – Whether failure to serve Attorney General fatal to claim – Section 13, Crown Proceedings Act, Cap 2.05 – Substitution of Attorney General as defendant in place of Comptroller – Substitution made three years after time of commission of the alleged delicts – Whether substitution created new and distinct claims made for the first time against a new party – Whether claims prescribed by virtue of article 2122 of the Civil Code of Saint Lucia, Cap 4.01

Result & Reason: Held: allowing the appeals and setting aside the order of the single judge upholding the orders striking out the James Parties Claims; ordering that the master's order striking out the James Claims and the master's order striking out the Fast Kaz Claims be set aside; directing that all the claims be remitted to the court below to be proceeded with in accordance with the Rules of Court and ordering costs to the appellant to be fixed at two thirds of the amount agreed between the parties below, failing which, costs to be assessed within thirty (30) days and discounted by 25% as an expression of the court's displeasure at the lack of proper preparation of the bundles and records in these appeals by the appellants, that:

1. The language of article 28 of the CCP is clear and thus says what it means without the necessity for resorting to any rules of interpretation outside the natural and ordinary meaning of the words used. In order to bring a suit against a public officer for damages, a claimant must serve notice of the intended suit on the public officer personally or at

his domicile. While it would be prudent for a claimant to also effect service of an Article 28 Notice on the Attorney General, article 28 itself does not speak to service upon the Attorney General. It does not say in terms that notice must be served on the Attorney General nor is any reference whatsoever made therein to the Attorney General. There is therefore no requirement expressed or to be implied for service of an Article 28 Notice on the Attorney General in order to maintain a claim for damages against the Crown in respect of a delict or quasi-delict committed by a public officer or other servant or agent of the Crown. A claim does not fail where a claimant has served the public officer but has failed to similarly serve the Attorney General.

Article 28 of the Code of Civil Procedure of Saint Lucia Cap. 243, Revised Laws of Saint Lucia 1957 applied; *Bertha Compton v Dr. Nathaniel et al* SLUHCVAP2004/0012 (delivered 15th February 2005, unreported) followed; *General Aviation Services Ltd et al v The Director General of the Eastern Caribbean Civil Aviation Authority et al* SLUHCVAP2012/006 (delivered 11th September 2012, unreported) applied; *Percival Sonson v PC236 Gavin Hunt and the Attorney General of Saint Lucia* SLUHCVAP2007/0005 (delivered 31st October 2007, unreported) considered.

2. It is notable that the Article 28 Notice does not commence proceedings. It simply gives notice to the public officer or government department concerned of an intention to commence proceedings. It may be described as nothing more than a pre-action protocol with an expressed and drastic sanction built in against a prospective claimant who fails to comply. The CPA deals with service of documents on the Attorney General once proceedings have been instituted and does not govern service of documents prior to the commencement of proceedings.
3. The nature of the claim or the cause of action giving rise to the claim against a public officer or servant or agent of the Crown, as a claim against

the Crown, does not change by virtue of the fact that the Attorney General is subsequently made the defendant. The acts or omissions of the public officer complained of, continue to be the cause of action giving rise to the claim save that the CPA has provided for the Attorney General as the representative of the public officer, servant or agent of the Crown to be made the defendant. The Attorney General is simply made to stand in the shoes of the public officer, or other servant or agent of the Crown, in respect of any delicts or quasi delicts committed in the performance of his/her duties. There is no separate and distinct cause of action against the Attorney General outside that created by the delict or quasi delict of the public officer, servant or agent of the crown.

Norman Walcott v Moses Serieux SLUHCVP1975/0002 (delivered 15th October 1975, unreported) distinguished; Michele Stephenson et al v Lambert James-Soomer SLUHCVP2003/0138 and 0453 (delivered 19th April 2004, unreported) distinguished.

4. Rule 19.4 (1) of the Civil Procedure Rules 2000 ("CPR") permits the court to add or substitute a party where the relevant limitation period was current when proceedings were started. In the instant case, proceedings were started within the relevant limitation period notwithstanding the Comptroller was named as defendant and not the Attorney General. The failure to name the Attorney General as defendant does not render a claim any less a claim against the Crown albeit suffering from a defect by misnomer of the officer to be named as defendant in the proceedings. The CPA makes the Crown liable for the delicts or quasi-delicts of its officers and because the comptroller is an officer of the Crown, it would be incorrect to say that no claim existed against the Crown. Thus, the substitution of the Attorney General in place of the Comptroller in accordance with section 13 of the CPA did not thereby bring about a fresh cause of action against a wholly new party and as such, there has been no offending against CPR 19.4(2) as it relates to the relevant limitation period namely,

STATUS HEARING

Case Name: Patrick Morille
V
Hermia Roseline Morille
[SLUHCVAP2010/0035]

Date: Monday, 8th February 2016

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

Appearances:
 Applicant: Mr. Horace Fraser
 Respondent: Ms. Esther Greene-Ernest

Issue: Status of the matter

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

Result / Order: [Oral delivery]
The submissions filed by the parties are to be retrieved from the Court's file, failing which copies will be obtained from counsel.

Reason: The Court was not in possession of submissions filed by both counsel.

Case Name:

**David Ferguson
v
Carol Gideon Clovis**

[SLUHCVAP2015/0001]

Date:

Monday, 8th February 2016

Before:

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

Appearances:

Applicant: No appearance

Respondent: No appearance

Issue:

Status of the matter

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

Directions

Result / Order:

**[Oral delivery]
The appeal is adjourned for further status hearing at the
next sitting of the Court of Appeal in Saint Lucia
scheduled to commence on Tuesday, 17th May 2016.**

Reason:

**There was no evidence that the parties had been served
with notice of the day's hearing.**

Case Name:

**Luann Shamel Amorsingh
v
Martina Labadie**

[SLUHCVAP2012/0022]

Date:

Monday, 8th February 2016

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

Appearances:
Appellant: Mr. Andie George
Respondent: Mr. Vern Gill

Issue: Status of the matter

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

Result / Order: [Oral delivery]
The matter is to proceed in accordance with the Civil Procedure Rules 2000.

Reason: Counsel for the respondent had recently been retained and indicated that he is prepared to do all that is necessary to have the matter come up for hearing.

Case Name: Marcus Armstrong
v
Louise Peter

[SLUMCVAP2011/0002]

Date: Monday, 8th February 2016

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

Appearances:
Appellant: No appearance
Respondent: No appearance

Issue: Status of the matter

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

Directions

Result / Order:

[Oral delivery]

The appeal is adjourned for further status hearing at the next sitting of the Court of Appeal in Saint Lucia scheduled to commence on Tuesday 17th May, 2016.

Reason:

The matter was adjourned to facilitate service on the parties. There was no evidence that the parties had been served with notice of the day's hearing.

Case Name:

Denver Melville

v

Keizer John

[SLUMCRAP2009/0000]

Date:

Tuesday, 9th February 2016

Before:

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

Appearances:

Appellant: No appearance

Respondent: No appearance

Issue:

Status of the matter

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

Directions

**Result / Order
& Reason:**

[Oral delivery]

The appeal is adjourned for further status hearing at the next sitting of the Court of Appeal in Saint Lucia scheduled to commence on Tuesday, 17th May 2016 to facilitate service on the parties.

Case Name:

**Justin John
v
The Police**

[SLUMCRAP1999/0008]

Date:

Tuesday, 9th February 2016

Before:

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

Appearances:

Appellant:

In person

Note: Mr. Jeannot-Michel Walters assisted the Court

Respondent:

Mr. Leon France, Crown Counsel

Issue:

Status of the matter

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

Oral Judgment or Decision

Result / Order:

[Oral delivery]

The appeal is allowed to the extent that the sentence is varied to a fine of \$3000.00 payable in 12 months, in default 6 months imprisonment.

Reason:

The Court noted that the order made upon conviction dated 1st October 1999 directed the appellant to pay the

sum of \$5000.00 in 14 days, in default 24 months imprisonment. The Court indicated and the Crown conceded that 24 months imprisonment in default was in excess of what the law provides for and that the maximum default term should have been no more than 6 months. The Court was of the view that the learned magistrate erred in imposing the sentence that she did and was minded to have the sentence reduced.

The court also noted that the matter was of some vintage (17 years) and that the Crown was still not in possession of the record of appeal. Nevertheless the appellant indicated that he intended to prosecute the appeal. The appellant further stated that because of his limited means (as a painter earning \$500 monthly) he would require more than 10 months to pay the fine.

Case Name:

**Simon Gaetan
v
The Police
PC 356 Edmunds**

[SLUMCRAP1999/0009]

Date:

Tuesday, 9th February 2016

Before:

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

Appearances:

Appellant:

In person

Note: Mr. Jeannot-Michel Walters assisted the Court

Respondent:

Mr. Leon France, Crown Counsel

Issue:

Status of the matter

Type of Oral

Oral Judgment or Decision

**Result / Order
Delivered:**

Result / Order:

[Oral delivery]

The appeal is allowed to the extent that the sentence is varied to a fine of \$3000.00 payable in 12 months, in default 6 months imprisonment.

Reason:

Similar to appeal no. **SLUMCRAP1999/0008**, the Court noted that the order made upon conviction dated 1st October 1999 directed the appellant to pay the sum of \$5000.00 in 14 days, in default 24 months imprisonment. The Court indicated and the Crown conceded that 24 months imprisonment in default was in excess of what the law provides for and that the maximum default term should have been no more than 6 months. The Court was of the view that the learned magistrate erred in imposing this sentence and was minded to have the sentence reduced.

The court also had regard to the age of the matter (17 years) and that the Crown was still not in possession of the record of appeal. The appellant indicated that he had already paid \$2000.00 towards the fine ordered and that because of his limited means he would need some time to pay the balance. He stated that he earns \$1000 monthly and has 11 children, (2, being minors) all of whom he supports.

Case Name:

Morris Francois

v

Fitzroy Alexander

[SLUMCRAP1993/0001]

Date:

Tuesday, 9th February 2016

Before:

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

The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: No appearance

Respondent: In person

Issue: Status of the matter

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

Result / Order: [Oral delivery]
The appeal is struck out for want of prosecution.

Reason: The Court noted that the matter is of some antiquity (24 years) and the appellant has taken no steps to prosecute the appeal.

Case Name: Nicky Isidore
V
PC 532 Albert Charlery
[SLUMCRAP2003/0009]

Date: Tuesday, 9th February 2016

Before: The Hon. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: Mr. Jeannot-Michel Walters

Respondent: Ms. Tamara Foster, Crown Counsel

Issue: Status of the matter

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

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

Reason: The appellant indicated his desire to withdraw the appeal.

Case Name: Sheldon Peter
V
WPC 365 Faucher
[SLUMCRAP2006/0000]

Date: Tuesday, 9th February 2016

Before: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: Mr. Jeannot Michel-Walters

Respondent: Ms. Tamara Foster, Crown Counsel

Issue: Status of the matter

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

Result / Order: [Oral delivery]
The appeal against sentence is allowed to the extent that

the sentence of 1 month imprisonment is varied and a fine of \$500.00 payable in 3 months, in default 1 month imprisonment is substituted therefor.

Reason: The Court had regard to the age of the matter and the fact that the notes of evidence cannot be obtained from the magistrate. The Court also had regard to the submission by counsel for the appellant that, the sentence of a term of 1 month imprisonment be varied and a fine of \$500.00 be substituted.

Case Name: Agnes St. Romain
V
WPC 243 Rubina Joseph
[SLUMCRAP2011/0010]

Date: Tuesday, 9th February 2016

Before: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:
Appellant: Mr. Leslie Prospere
Respondent: Ms. Tamara Foster, Crown Counsel

Issue: Status of the matter

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

Result / Order: [Oral delivery]
The appeal against sentence is allowed to the extent that the sentence is varied to time served.

Reason: The Court noted the order of Michel JA dated 30th October 2015, which directed that the record and skeleton arguments be served on the respective parties. The Court was of the view that compliance with this order is impossible as the record of appeal is incomplete and the notes of evidence cannot be obtained. Further, the senior magistrate, from whom they are to be obtained, is no longer in the jurisdiction. Counsel for the appellant indicated that the appellant had pleaded guilty to the charge of possession of 1 gram of marijuana before the magistrate and was sentenced to 6 months imprisonment. Counsel also informed the Court that the appellant had spent 1 ½ months in prison before released on bail and asked that the appellant's sentence be varied to time already served.

Case Name: Ricky Mercedes
V
Cornelius Jn. Baptiste PC 572
[SLUMCRAP2000/0000]

Date: Tuesday 9th February 2016

Before: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:
Appellant: No appearance
Respondent: Mr. Leon France, Crown Counsel

Issue: Status of the matter

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

Result / Order: [Oral delivery]
The appeal is adjourned for further status hearing at the next sitting of the Court of Appeal in Saint Lucia scheduled to commence on Tuesday, 17th May 2016.

Reason: Counsel for the respondent indicated that a request for the record of appeal was made to the senior magistrate. However no record can be found. The matter was adjourned to allow time to obtain the record.

Case Name: Urban St. Brice
v
The Attorney General
[SLUHCVAP2012/0027]

Date: Tuesday, 9th February 2016

Before: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:
Appellant: In person
Respondent: Mr. Dwight Lay

Issue: Status of matter

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

Result / Order: [Oral delivery]
1. The hearing of the appeal is adjourned and traversed to the next sitting of the Court of Appeal in Saint Lucia scheduled to commence on Tuesday 17th May, 2016.

2. Counsel for the appellant, Mr. Martinus Francois to be advised of the date of hearing by the Registrar.

Reason:

The Court noted that submissions had already been filed in the matter and an adjournment was granted to allow the appellant the opportunity to try to contact counsel on record, Mr. Martinus Francois, who had not been in touch with him for about 3 years. Counsel for the respondent also made attempts to contact Mr. Francois, to no avail.

APPLICATIONS AND APPEALS

Case Name:

CLICO International Life Insurance Limited

v

Deldridge Flavius

[SLUHCVAP2010/0041]

Date:

Monday, 8th February 2016

Coram:

**The Hon. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Applicant: Mr. Sahleem Charles on behalf of Ms. Renee St. Rose

Respondent: Mr. Horace Fraser

Issues:

**Application for extension of time to file record of appeal –
Application to strike out appeal**

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

N/A

Result / Order: [Oral delivery]
Hearing of the application is adjourned to Friday, 12th February 2016

Reason: Mr. Charles requested an adjournment on behalf of Ms. Rose, who, due to a death in her family was unable to be at the day's hearing. This had been communicated to the Court before the hearing. Counsel for the respondent objected to the adjournment application on the basis that the application was a simple one which could have been made on Ms. St. Rose's behalf.

Case Name: RE: Bryan Stephen
[SLUHCVAP2010/0041]

Date: Monday, 8th February 2016

Coram: The Hon. Davidson Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:
Applicant: Mr. Huggins Nicholas
Respondent: Ms. Brender Portland-Reynolds appearing amicus curiae

Issues: Application to dismiss leave to appeal to her Majesty in Council

Type of Oral Result / Order Delivered: N/A

Result / Order: [Oral delivery]
The application is adjourned to Friday, 12th February 2016 at 9:00 am

Reason: Counsel for the respondent requested an adjournment so that he could fully prepare for the matter. He stated that he had only received the application on the morning of the hearing and had not had time to read the application in detail. The Court noted that an order was made almost 2 ½ years previously, granting leave to appeal on certain conditions which had not been fulfilled. Accordingly, the matter was adjourned to Friday, 12th February 2016.

Case Name: The Attorney General
v
Peter Hippolyte
Michael Augustin
Martinus Alexander
[SLUHCVAP2015/0019]

Date: Monday, 8th February 2016

Coram: The Hon. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:
Appellant: Mr. Dwight Lay, Crown Counsel
Respondent: Mr. Horace Fraser

Issues: Civil Appeal – Interpretation of section 441 of the Criminal Code of Saint Lucia – Whether section 441 of Criminal Code is inconsistent with sections 8 (1), 8 (2) and 8 (3) of the Constitution – Distinction between evidential burden and legal burden – Whether section 441 imposes legal burden of proof of innocence on defendant – Interpretation of section 8 (12) of the Constitution – Application of Attorney-General of Hong Kong v. Lee Kwong-Kut [1993] 3 W.L.R. 329 – Severance of section 441 of the Criminal Code

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

N/A

Result / Order:

**[Oral delivery]
Judgment reserved.**

Case Name:

**Esther Augustin aka Esther St. Marie,
representative for Marie Madeleine Marshall aka
Marie Madeleine Augustin (deceased)**

V

Paul Jason Auguste

[SLUHCVAP2013/0033]

Date:

Monday, 8th February 2016

Coram:

**The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal**

Appearances:

Appellant: Mr. Evans Calderon

Respondent: Mr. Robert Barrow with him, Ms. Elaine French

Issues:

**High Court civil appeal – Contract – Specific performance
of contract for sale of property – Whether learned judge
erred in granting specific performance – Impact of
judge’s failure to consider provisions of Civil Code of
Saint Lucia which govern agreements for sale – Article
1387 of the Civil Code – Application of article 954 and 997
of the Civil Code of Saint Lucia**

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

N/A

Result / Order:	[Oral delivery] Matter adjourned to Friday, 12th February 2016 for report				
Reason:	The Court having heard submissions of counsel for both sides invited them to have a discussion with a view to arriving at an agreement on the remaining issues.				
Case Name:	Lazarus Paul v [1] Raquel Willie- Trotman [2] Douglas Trotman [3] Teferi Trotman minor acting herein and represented by his mother Raquel Willie- Trotman [SLUMCRAP2013/0028]				
Date:	Monday, 8th February 2016				
Coram:	The Hon. Mr. Davidson K. Baptiste, Justice of Appeal The Hon. Mde. Gertel Thom, Justice of Appeal The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]				
Appearances:	<table border="0" style="width: 100%;"> <tr> <td style="vertical-align: top;">Appellant:</td> <td>Mr. Gerard Williams</td> </tr> <tr> <td style="vertical-align: top;">Respondent:</td> <td>Ms. Wauneen Louis-Harris</td> </tr> </table>	Appellant:	Mr. Gerard Williams	Respondent:	Ms. Wauneen Louis-Harris
Appellant:	Mr. Gerard Williams				
Respondent:	Ms. Wauneen Louis-Harris				
Issues:	Application to adduce fresh evidence – Basis for committal – Irregularity of order – Order endorsed with a penal notice but no time for compliance stated therein				
Type of Oral Result / Order Delivered:	Oral Judgment or Decision				

Result / Order:

[Oral delivery]

- 1. The appeal against the Order dated 21st October, 2013 is allowed and the order of the learned judge dated 21st October, 2013 committing the appellant to prison, is set aside.**
- 2. The order of the learned judge on costs is set aside.**
- 3. Costs are awarded to the appellant in the sum of \$1000.00 in the court below and 2/3 of those costs on the appeal.**
- 4. The appeal against the dismissal of the application to set aside the default judgment, having not been pursued is accordingly dismissed.**
- 5. On the appeal against the dismissal of the application to set aside the default judgment, the appellant shall pay to the respondent costs in the sum of \$500.00.**
- 6. The application to admit fresh evidence is dismissed with no order as to costs.**

Reason:

The Court took judicial notice of the publications as to the cancellation of the registration of an insurer, Great Northern Insurance Company Ltd (Saint Lucia), found in the Saint Lucia Gazette dated 21st and 27th July 2015 and so there was no need for this to be adduced as fresh evidence. Additionally, the Court noted that the order dated 1st July 2004 did not comply with rule 53.2(2) of the Civil Procedure Rules 2000 and therefore could not form a proper basis for committal of the appellant. The order specified the sum to be paid but did not specify a date by which it should have been done.

Case name:

Boniface Christophe

v

The Queen

[SLUMCRAP2010/0002]

Date:

Tuesday, 9th February 2016

Coram:

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

The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: Mr. Colin Foster

Respondent: Mr. Leon France, Crown Counsel

Issues:

High Court criminal appeal against sentence – Rape and robbery – Whether sentence excessive – Whether sentences ought to run concurrently instead of consecutively – Oral application for adjournment to obtain a pre-sentence report

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

Directions

Result / Order:

[Oral delivery]

- 1. The Probation Services Department is to prepare a pre-sentence report in respect of the appellant, Boniface Christophe within 2 months from today's date.**
- 2. The pre-sentence report is to be filed with the Court on or before 30th April, 2016.**
- 3. The parties are to file and serve submissions if necessary upon receipt of the pre-sentence report.**
- 4. The hearing of the appeal is adjourned and traversed to the next sitting of the Court of Appeal in Saint Lucia scheduled to commence on Tuesday 17th May, 2016.**

Reason:

The appellant requested an adjournment to obtain the pre-sentence report. The previous order directing that the pre-sentence report be prepared had not been received by the Probation Department.

Case name:

**Jason Alcee
v
Earven Frederick, PC 721**

[SLUMCRAP2015/0004]

Date: Tuesday, 9th February 2016

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

Appearances:

Appellant: Mr. Huggins Nicholas

Respondent: Mr. Leon France, Crown Counsel

Issues: Magisterial criminal appeal against sentence –
Possession of a controlled drug – Oral application for an
adjournment

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

Result / Order: [Oral delivery]

1. The appellant is to file and serve submissions in respect of the appeal on or before 10th March, 2016.
2. The respondent is to file and serve submissions in response on or before 11th April, 2016.
3. The hearing of the appeal is adjourned and traversed to the next sitting of the Court of Appeal in Saint Lucia scheduled to commence on Tuesday 17th May, 2016.

Reason: Counsel for the appellant stated that he had recently received the file and was only instructed by the appellant on Thursday, 4th February 2016. No submissions had been filed in the matter.

Case name: Shawn Duncan
v
Chester Simeon PC 666

[SLUMCRAP2013/0013]

**Elvis Andrew King
V
Chester Simeon PC 666**

[SLUMCRAP2013/0012]

**Brad Stephen
V
Chester Simeon PC 666**

[SLUMCRAP2013/0012]

Date: Tuesday, 9th February 2016

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

Appearances:

Appellant: Mr. Al Elliott

Respondent: Ms. Jenin Samuel- Kisna

Issues: Magisterial criminal appeal against conviction-
Possession of a controlled drug

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

**Result / Order
& Reason:** [Oral delivery]
1. The appellant is to file and serve skeleton submissions on or before 30th March, 2016.
2. The respondent is to file and serve skeleton submissions on or before 28th April, 2016.
3. The hearing of the appeal is adjourned and traversed to the next sitting of the Court of Appeal in Saint Lucia

scheduled to commence on Tuesday 17th May, 2016.

Reasons: The transcript of proceedings in the court below was received for two appellants on Friday, 5th February 2016, while the transcript for the 3rd appellant is still outstanding. Directions were required for the hearing of the appeal.

Case Name: Stephen Toussaint
V
Dellan Emmanuel SPC 608
[SLUMCRAP2013/0007]

Date: Tuesday, 9th February 2016

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

Appearances:
Appellant: Mr. Leslie Prospere
Respondent: Ms. Khadya Florius

Issues: Magisterial criminal appeal against conviction –
Intentionally causing damage to property

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

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

Reason: The appellant sought leave to withdraw the appeal.

Case Name:

**Evans Estaphane
V
Patrice Francis PC 556
[SLUMCRAP2014/0013]**

Date:

Tuesday, 9th February 2016

Coram:

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

Appearances:

Appellant: Mr. Bryan Stephen

Respondent: Ms. Tamara Foster

Issues:

Magisterial criminal appeal against conviction – Driving without due care and attention

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

Directions

Result / Order:

[Oral delivery]

- 1. The appellant is granted leave to file submissions on or before 30th March. The respondent is granted leave to file submissions in reply on or before 28th April 2016**
- 2. The hearing of the appeal is adjourned and traversed to the next sitting of the Court in Saint Lucia during the week commencing 17th May 2016.**

Reasons:

Counsel for the appellant requested an adjournment to file the necessary document as he was only served with the magistrates notes on Monday, 8th February 2016. Counsel for the respondent had no objections to the request.

Case Name:

**James Doxilly
v
Sean Alexander, CPL 476**

[SLUMCRAP2006/0007]

Date:

Tuesday, 9th February 2016

Coram:

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

Appearances:

Appellant:

In person

Respondent:

Mr. Leon France, Crown Counsel

Issues:

**Magisterial criminal appeal against conviction –
Possession of unlicensed firearm and ammunition**

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

Directions

Result / Order:

[Oral delivery]

- 1. The Crown is to serve a copy of the record of appeal together with its submissions on the appellant within 14 days of today's date.**
- 2. The appellant is to file and serve skeleton submissions on or before 28th April, 2016.**
- 3. The hearing of the appeal is adjourned and traversed to the next sitting of the Court of Appeal in Saint Lucia scheduled to commence on Tuesday 17th May, 2016.**

Reason:

The appellant requested time to retain counsel. The appellant indicated that he had not yet received the transcript of proceedings. However, counsel for the respondent was in possession of the transcript and agreed to copy and serve it on the appellant.

Case Name:

Alius Charlemagne

V

Kendel Bicar PC 695

[SLUMCRAP2012/0009]

Date:

Tuesday, 9th February 2016

Coram:

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

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

The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: Mr. Huggins Nicholas

Respondent: Ms. Tamara Foster, Crown Counsel

Issues:

Magisterial appeal against conviction – Driving with defective tires

Type of Oral

Directions

Result / Order

Delivered:

Result / Order:

[Oral delivery]

- 1. The appellant is to file and serve skeleton submissions within 14 days of today's date.**
- 2. The respondent is to file and serve skeleton submissions within 28 days thereafter.**
- 3. The hearing of the appeal is adjourned and traversed to the next sitting of the Court of Appeal in Saint Lucia scheduled to commence on Tuesday 17th May, 2016.**

Reason:

An adjournment was requested by the appellant to file and serve submissions.

Case Name: **Fiona Norville**
v
Clemencia Grandison
[SLUMCVAP2015/0001]

Date: **Wednesday, 10th February 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

Appearances:
Appellant: **Mr. Jeannot-Michel Walter**
Respondent: **Ms. Mary Juliana Charles**

Issues: **Magisterial Civil appeal – Claim for arrears of rent**

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

Result / Order
& Reason: **[Oral delivery]**
BY CONSENT:
1. The parties mutually agree to the payment of \$5000.00
(in keeping with the jurisdiction of the magistrate), the
said sum to be paid by monthly instalments of \$300.00
commencing 31st March, 2016 and continuing
thereafter at the end of each successive month until
the debt is fully liquidated.
2. No order as to costs.

Case Name: **Dr. Martin G.C. Didier**
Dr. Kanan Mathiprakasam

Dr. Guruswamy Ramachandrappa

v

Royal Caribbean Cruises Limited

[SLUHCVAP2014/0024]

Royal Caribbean Cruises Limited

v

Medical Associates Limited

Dr. Martin C Didier

Dr. Kanan Mathiprakasam

Dr. Guruswamy Ramachandrappa

[SLUHCVAP2015/0004]

Date:	Wednesday, 10th February 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:	Mr. Geoffrey DuBoulay with him, Ms. Sardia Cenac-Prospere
Respondent:	Mr. Dexter Theodore
Issues:	High Court civil appeal– Interlocutory appeal – Tort – Negligence – Application to strike out statement of case – Whether claim prescribed under article 2122 (2) of the Civil Code of Saint Lucia – Computation of time – Whether learned judge erred in interpretation and application of article 2121 (7) of the Civil Code – Claim for contribution as per 989C (1)(c) of the Civil Code
Type of Oral Result / Order Delivered:	N/A

Result / Order: [Oral delivery]
Judgment reserved

Case Name: AOB Holdings Limited
v
Financial Services Regulatory Commission
[ANUHCVP2015/0038]

Date: Thursday, 11th February 2016

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

Appearances:

Appellant:	Sir Richard Cheltenham, KA, QC, PhD with him Ms. Jacqueline Walwyn and Ms. Shelly-Ann Seecharan
First Respondent:	Mr. Justin L. Simon, QC with him Eleanor Salomon
Second Respondent:	Mr. Anthony Astaphan S.C, with him Mr. Kendrickson Kentish and Ms. Kathleen Bennett

Issues: Civil appeal – Approval of bank’s reorganisation plan by Financial Services Regulatory Commission – Whether court has power to approve reorganisation plan which was rejected by Financial Services Regulatory Commission – Whether the jurisdiction of the court to approve a reorganisation plan is ousted by sections 174, 288,304 of the International Business Corporations Act (Antigua & Barbuda) – Interpretation of section 304 of the International Business Corporations Act Antigua & Barbuda) – Whether learned judge breached doctrine of separation of powers

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

Result / Order:

[Oral delivery]

- 1. The appeal is hereby dismissed.**
- 2. The order granting the winding up of Antigua Overseas Bank Ltd (In Receivership) made on July 24th 2015 is hereby confirmed and shall take effect as at 4 p.m. on February 11th 2016.**
- 3. The Receiver-Manager will cease to hold office as at 4 p.m. on February 11th 2016.**
- 4. The Liquidators, Brian Glasgow and Cleveland Seaforth, who have been appointed with their consent, shall commence the Liquidation under section 308 of the International Business Corporations Act Cap 222 as at 4 p.m. on February 11th 2016.**
- 5. The Liquidators fees are fixed at US\$350.00 per hour for each Liquidator, US \$200.00 for Senior Management and US\$140.00 per hour for their senior staff; the said remuneration, and reimbursement of all expenses are to be paid from the assets of Antigua Overseas Bank Ltd.**
- 6. The Liquidators are at liberty to apply for directions from the Court if necessary.**
- 7. The appellant shall bear the costs of this appeal to be assessed unless agreed within 28 days of the date of this Order.**

Reason:

Written reasons for decision to follow.

Case Name:

Jewel Thornill

v

The Attorney General

[SLUHCVAP2012/0035]

Date:

Friday, 12th February 2016

Coram:

**The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon Mr. Mario Michel, Justice of Appeal
The Hon. Paul Webster, Justice of Appeal [Ag]**

Appearances:

Applicant: Mr. Horace Fraser

Respondents: Ms. Brender Portland-Reynolds, Solicitor General

Issues: Application for final leave to appeal to her Majesty in Council

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

Result / Order: [Oral delivery]
Final leave to appeal to Her Majesty in Council is granted.

Reason: The Court was satisfied that the applicant had met the requirements for leave to appeal to Her Majesty in Council.

Case Name: Terentia N. Toussaint and the heirs of Thelma Toussaint
v
[1] The Attorney General
[2] Hon Stanley Felix, The Minister responsible for the administration of the Land Registration Act in respect of Land Registration Act Section 35;
[3] Gemyma Norville, Registrar of Lands

[SLUHCVP2015/0028]

Date: Friday, 12th February 2016

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Applicant: No appearance
Respondent: Ms. Brender Portland-Reynolds, Solicitor General

Issues: Application for leave to appeal

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

Result / Order: [Oral delivery]
The hearing of the application for leave to appeal is adjourned at the request of the applicant to the next sitting of the Court of Appeal in Saint Lucia during the week commencing 17th May, 2016.

Reason: The applicant sent a request for an adjournment to the respondent via facsimile on Friday, 5th February 2016. Counsel for the respondent had no objection to the request made.

Case Name: Wauneen Louis-Harris
v
Lazarus Paul

[SLUHCRA2015/0032]

Date: Friday, 12th February 2016

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:
Applicant: In person

Respondent: Mr. Gerard Williams

Issues: Application for leave to appeal

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

Result / Order: [Oral delivery]
Hearing of the application for leave to appeal is adjourned to the next sitting of the court of appeal in St. Lucia during the week commencing 17th may 2016

Reason: The Court noted the nature of the matter and the allegations made therein and took the view that it would be more prudent that the applicant be represented by counsel. Accordingly, an adjournment was granted to facilitate this.

Case Name: Jonathan D. Lesfloris
V
Glenda Dale Lesfloris (nee Henry)
[SLUHCRA2015/0018]

Date: Friday, 12th February 2016

Coram: The Hon. Mr. Davidson K Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:
Applicant: Ms. Wauneen Louis-Harris
Respondents: No appearance

Issues: Application for extension of time to file notice of appeal –

Application to vary or discharge order of learned judge

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

Directions

Result / Order:

[Oral delivery]

- 1. The application for extension of time to file the notice of appeal is granted.**
- 2. The applicant shall file and serve the notice of appeal within seven (7) days of the date of this Order.**
- 3. Thereafter the appeal shall proceed in accordance with the provisions of CPR 2000.**
- 4. No order as to costs.**

Reason:

The court considered the application, documents in support of the application and principles upon which the court will exercise its discretion in granting an application for extension of time. The court was of the view that the appellant had satisfied all the requirements for the grant of an extension of time.

Case Name:

**Esther Augustin aka Esther St. Marie,
representative for Marie Madeleine Augustin
(deceased)**

V

**Paul Jason Augste
[SLUHCVAP2013/0033]**

Date:

Friday, 12th February 2016

Coram:

**The Hon. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Mr. Evans Calderon

Respondent: Mr. Robert Barrow with him Ms. Elaine French

Issues: High Court civil appeal – Contract – Specific performance of contract for sale of property – Whether learned judge erred in granting specific performance – Impact of judge's failure to consider provisions of Civil Code of Saint Lucia which govern agreements for sale – Article 1387 of the Civil Code – Application of article 954 and 997 of the Civil Code of Saint Lucia

Type of Oral Result / Order Delivered: N/A

Result / Order: [Oral delivery]
Judgment reserved

Reason: The parties, accepting the Court's invitation, met on Wednesday, 10th February 2016 to see whether an agreement was possible. However, no agreement was reached.

Case Name: CLICO International Life Insurance Limited
v
Deldridge Flavius

[SLUHCVP2014/0029]

Date: Friday, 12th February 2016

Coram: The Hon. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Paul Webster, Justice of Appeal [Ag.]

Appearances:
Appellant: Ms. Renee St. Rose
Respondent: Mr. Horace Fraser

Issue: Application for extension of time to file record of appeal -

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

Result / Order: [Oral delivery]
Judgment reserved until 2 pm.

Case Name: RE: Bryan Stephen
[SLUHCVP2010/0041]

Date: Friday, 12th February 2016

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Applicant: Ms. Brender Portland-Reynolds on behalf of AG , amicus curiae
Ms. Wauneen Louis-Harris holding a watching brief for Ms. Mary Juliana Charles, President of the Saint Lucia Bar Association

Respondent: Mr. Leon Gokool with him Mr. Huggins Nicholas

Issues: Civil appeal – Application to dismiss leave to appeal to Her Majesty in Council – Appellant’s failure to comply with order for conditional leave granted in December 2012 within time specified – Whether Court has jurisdiction to extend time for compliance with order

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

Delivered:

Result / Order: [Oral delivery]
Judgment reserved until 2:30pm.

Case Name: CLICO International Life Insurance Limited
v
Deldridge Flavius
[SLUHCVAP2014/0029]

Date: Friday, 12th February 2016

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:
Applicant: Mr. Bryan Stephen on behalf of Ms. Renee St. Rose
Respondent: Mr. Horace Fraser

Issues: Application for extension of time to file record of appeal –
Application to strike out appeal

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

Result / Order: [Oral delivery]
1. The application for extension of time to file the record of appeal is dismissed.
2. Costs to the respondent in the sum of \$1500.00.

Reason: The Court noted that on an application for the grant of an extension of time to file the record of appeal, the applicant is required to show:

1. Length of delay was not inordinate;
2. There were good reasons for the delay;
3. There was no prejudice to the respondent; and
4. The appeal has good prospects of succeeding

The Court found that the delay was inordinate; the delay being 2½ months between the receipt of the respondent's notice and the respondent's application to strike out. The Court noted that there was a further delay of 34 days after service of the application to strike out the appeal. In relation to the second condition, the Court noted the reasons for the delay in making the application, advanced by counsel for the appellant were unacceptable. The first reason put forward by counsel for the appellant was that there was a change in lawyers representing the appellants within the firm but no details were given. The second reason preferred by counsel was that the appellant was considering whether the appeal should be done by way of a summary appeal. The Court found the second reason to be wholly irrelevant. Further, the court noted that there was no evidence on the issue of prejudice. In relation to the final condition, the appellant relied on allegations that there was a denial of cross examination by the learned trial judge during the assessment proceedings. However the court found that there was no actual denial of cross examination. In fact, no request was made to cross examine. The other ground which counsel relied on was contained in her skeleton arguments, rather than in the affidavit in support of the application. In any event, the Court found the appellant's case in grounds 1-3 to be so weak that it would take something exceptional for the appellant to succeed on appeal. There were no exceptional circumstances. Accordingly, the application failed.

Case Name:

RE: Bryan Stephen

[SLUHCVP2010/0041]

Date:

Friday, 12th February 2016

Coram:	The Hon. Davidson K. Baptiste, Justice of Appeal The Hon. Mde. Gertel Thom, Justice of Appeal The Hon. Paul Webster, Justice of Appeal [Ag.]
Appearances:	
Applicant:	Ms. Brender Portland-Reynolds on behalf of AG, appearing amicus Ms. Wauneen Louis-Harris holding a watching brief for Mrs. Mary Juliana Charles, President of Bar Association
Respondent:	Mr. Leon Gokool with him Mr. Huggins Nicholas
Issues:	Civil appeal – Application to dismiss leave to appeal to Her Majesty in Council – Appellant’s failure to comply with order for conditional leave granted in December 2012 within time ordered – Whether Court has jurisdiction to extend time for compliance with order
Type of Oral Result / Order Delivered:	Directions
Result / Order:	[Oral delivery] 1. The time for complying with paragraph (1) of the Order granting conditional leave to appeal dated 10th December 2012 is extended by twenty-one (21) days from the date of this order, that is the appellant is to take the necessary steps for procuring the record, settling and certifying of the record on or before 7th March, 2016. 2. Applicant is to file his application for final leave to appeal on or before 7th March, 2016. 3. No order as to costs. 4. The application to dismiss the appeal for want of prosecution is refused.
Reasons:	The Court was satisfied that it had jurisdiction to extend time for compliance with the order. The court noted Caribbean Steel Company Ltd. v Price Waterhouse (A firm). Albeit no written application was made for an extension of time by counsel for the respondent, an oral application was made by counsel articulating the reasons

why the respondent was late in complying with the order in its entirety. The reason for non-compliance proffered by the respondent was that certain documents intended to form part of the record were in the custody of the Registrar of the High Court and was only recently notified of their availability.