

COURT OF APPEAL SITTING

**GRENADA
25th to 29th January 2016**

JUDGMENTS

Case Name:

**Michael McIntyre
v
Margery Anne McIntyre
[GDAHMTAP2013/0024]**

Date:

Monday, 25th January 2016

Coram:

**The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Mr. James Bristol holding for Mr. Leslie Haynes, QC

Respondent:

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

Issues:

Civil appeal – Divorce – Division of matrimonial assets – Property adjustment – Ancillary relief – ss. 24 and 25 of Matrimonial Causes Act 1973 (UK) – Whether learned trial judge erred in awarding respondent one half of matrimonial assets – Whether there was proper basis for equal division of matrimonial property – Challenge to findings of fact made by learned trial judge

**Result &
Reason:**

Held: dismissing the appeal, and ordering that Mrs. McIntyre have her costs on the appeal in the sum of \$5,333.33, that being 2/3 of the costs awarded in the court below, that:

1. Section 25(2)(f) of the Matrimonial Causes Act 1973 provides that the court should consider 'the contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family'. This section does not refer to the contributions which each party has made to the parties' accumulated wealth. Each party to the marriage should be seen as doing their best in their own sphere. The assets which Mr. McIntyre argues should not have been included in the list of matrimonial assets represented contributions by Mr. McIntyre to the welfare of the marriage and were properly considered by the judge as matrimonial assets. Accordingly, the learned judge did not err in regarding them as matrimonial assets.

Miller v Miller [2006] UKHL 24 applied; John Robert Charman v Beverley Anne Charman [2007] EWCA Civ 503 applied.

2. There was evidence before the learned judge from which it was open to the judge to properly conclude that Mrs. McIntyre had made a significant non-financial contribution to the marriage. There is no basis therefore for this Court to interfere with the learned judge's findings of fact.
3. The learned judge did not provide reasons for awarding Mrs. McIntyre a half share in the matrimonial property. The judge merely stated in very general terms: 'Having regard to all the circumstances, including [Mrs. McIntyre's] needs', in making the award to Mrs. McIntyre. Insofar as the learned judge failed to provide reasons, it therefore falls to this Court to examine the circumstances of the case and seek to discern the reasons the judge had for granting the award.
4. It is the law that an inquiry on an application

for ancillary relief is always in two stages, namely, computation and distribution. Although the learned judge awarded Mrs. McIntyre one half of the matrimonial assets (at the distribution stage), she excluded, at the computation stage, certain assets on the basis that they were not matrimonial assets, and offered no explanation for the exclusion of certain of the excluded assets. However, although the learned judge did not explicitly state the approach that she was taking, it is clear that she identified the non-matrimonial property to be excluded, leaving the matrimonial property alone to be divided in accordance with the equal sharing principle. The learned judge was entitled to take this approach.

5. While the learned judge's reasons for the exclusion of some assets from the list of matrimonial assets were not entirely clear, had she applied the principles of need, compensation and sharing (enunciated in the cases of *Miller v Miller* [2006] UKHL 24 and *John Robert Charman v Beverley Anne Charman* [2007] EWCA Civ 503) which inform the distribution stage of the inquiry on an application for ancillary relief, she would have, at the very least, made the same award to Mrs. McIntyre as she did in the present proceedings. The judge, in effect, departed from an equal division of the assets by allowing Mr. McIntyre to retain the full benefit of the shares in McIntyre Brothers Ltd. as well as the benefit of the other assets which were excluded. In the circumstances, this was a fair result and accordingly, the learned judge did not err in awarding Mrs. McIntyre 50% of all the assets.

N v F [2011] EWHC 586 (Fam) cited with approval; *Victoria Theresa Jones v Gareth Telfer Jones* [2011] EWCA Civ 41 cited; *Miller v Miller* [2006] UKHL 24 applied; *John Robert Charman v Beverley Anne Charman* [2007] EWCA Civ 503 applied.

6. A maintenance pending suit order only subsists until the determination of the suit, which, in the present case, was the petition for divorce. Accordingly, once the suit has been determined, the maintenance order will cease. In the present proceedings however, the payments made by Mr. McIntyre to Mrs. McIntyre after the decree absolute were as a result of a private agreement between the parties, who had clearly agreed to conduct their affairs outside of the statutory framework. Accordingly, in the circumstances of this case, the parties having agreed to the continued payment of the maintenance post decree absolute, it would not be fair and just for the Court to now arbitrarily vary the amount awarded to Mrs. McIntyre by the learned judge (by deducting the amount that Mr. McIntyre paid to Mrs. McIntyre post decree absolute) in the absence of any evidence of intention by the parties to have those payments referable to the lump sum award.

Section 22 of the Matrimonial Causes Act 1973 cited.

STATUS HEARING

Case Name:

**[1] Herbert Preudhomme
[2] Geoffrey U. L. Preudhomme
v
[1] Jacqueline Charles**

[GDAHCVAP2012/0008]

Date:

Monday, 25th January 2016

Before:

The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: Dr. Francis Alexis, QC

Respondent: Mr. Ian Sandy

Issue:

Status of the matter

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

Directions

**Result / Order /
Reason:**

[Oral delivery]

1. The transcript of proceedings having been prepared on 1st October 2015 and counsel for the parties having been served with notice of the availability herein, this appeal shall proceed in accordance with Part 62 of the CPR.
2. The appeal is fixed for hearing at the next sitting of the Court of Appeal in Grenada during the week commencing June 2016.

Case Name:

**Valerie Daniel
v
The Commissioner of Police**

[Appeal Number Unknown]

Date:

Monday, 25th January 2016

Before:

The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: Ms. Celia Edwards QC with her Ms. Celene Edwards

Respondent: Mr. Howard Pinnock

Issue:	Status of the matter
Type of Oral Result / Order Delivered:	N/A
Result / Order:	[Oral delivery] The matter is adjourned for further status hearing at the next sitting of the Court of Appeal on 20 th June 2016. There upon the Court shall determine the further course of this matter.
Reason:	Counsel for the appellant undertook to make available for the respondent her notes of the proceedings before the magistrate in June 2005 so that counsel for the respondent can make a determination as to whether the respondent wishes to cancel the appeal or resist it.

Case Name:	Winston Whiteman V The Commissioner of Police [Appeal Number Unknown]
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Date:	Monday, 25th January 2016
Before:	The Hon. Mr. Mario Michel, Justice of Appeal
Appearances:	
Appellant:	In person
Respondent:	Mr. Howard Pinnock

Issue:	Status of the matter
Type of Oral	Directions

**Result / Order
Delivered:**

Result / Order:

[Oral delivery]

- 1. The Magistrate, Her Hon. Ms. Karen Noel having been directed by the Court on 8th December 2014 to prepare and transmit a record of appeal to the Registrar and no record of appeal having been transmitted to the Registrar to date, Her Hon. Ms. Karen Noel is hereby directed to prepare the record of appeal and transmit same to the Registrar of the High Court as of the date of this order.**
- 2. Upon receipt of the record of appeal the Registrar shall cause the same to be served on the appellant and the respondent.**
- 3. Further status hearing of the matter is set down for the next sitting of the Court of Appeal in Grenada on 20th June 2016.**

Reason:

The record of appeal is not yet prepared.

Case Name:

**Joseph Luke Hartford
v
The Commissioner of Police
[Appeal Number Unknown]**

Date:

Monday, 25th January 2016

Before:

The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant:

No appearance

Respondent:

Mr. Howard Pinnock

Issue:

Status of the matter

Type of Oral
Result / Order
Delivered:

Oral Judgment or Decision

Result / Order:

[Oral delivery]
The appeal is dismissed for want of
prosecution.

Reason:

The Court was satisfied that efforts were made
by the court office to contact the appellant to
pursue his appeal filed 7th April 2009. There
was no evidence or other indication on the
court's file of any efforts made by the appellant
to pursue his appeal against the judgment of
the magistrate pronounced on 1st April 2009.

Case Name:

Michael Scott
V
The Commissioner of Police
[Appeal Number Unknown]

Date:

Monday, 25th January 2016

Before:

The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant:

No appearance

Respondent:

Mr. Howard Pinnock

Issue:

Status of the matter

Type of Oral
Result / Order
Delivered:

Oral Judgment or Decision

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

Reason: The Court was satisfied that efforts were made by the court office to contact the appellant to pursue his appeal filed 21st October 2008. There was no evidence or other indication on the court's file of any efforts having been made by the appellant to pursue his appeal against the judgment of the magistrate pronounced on 7th August 2008.

Case Name: Patrick Sayers
v
The Commissioner of Police
[Appeal Number Unknown]

Date: Monday, 25th January 2016

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

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

Issue: Status of the matter

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

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

Reason: The Court was satisfied that efforts were made by the court office to contact the appellant to pursue his appeal filed 6th March 2008. There was no evidence or other indication on the court's file of any efforts made by the appellant to pursue his appeal against the judgment of the Magistrate pronounced on 22nd February 2008.

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

Date: Monday, 25th January 2016

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

Appearances:

Appellant: In person

Respondent: Mr. Howard Pinnock

Issue: Status of the matter

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

Result / Order: [Oral delivery]
Further status hearing of this appeal is adjourned to the next sitting of the Court of Appeal in Grenada on 20th June 2016.

Reason: Counsel for the appellant was absent.

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

Date: **Monday, 25th January 2016**

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

Appearances:

Appellant: **In person**

Respondent: **Mr. Howard Pinnock**

Issue: **Status of the matter**

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

Result / Order: **[Oral delivery]**
**Further status hearing of this appeal is
adjourned to the next sitting of the Court of
Appeal in Grenada on 20th June 2016**

Reason: **Counsel for the appellant was absent.**

Case Name: **Alister Stanislaus**
V
The Commissioner of Police

[Appeal Number Unknown]

Date: Monday, 25th January 2016

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

Appearances:

Appellant:	In person
Respondent:	Mr. Howard Pinnock

Issue: Status of the matter

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

Result / Order: [Oral delivery]
Appeal fixed for hearing on the next sitting of
the Court of Appeal in Grenada commencing
20th June 2016.

Reason: Court noted that the appellant has submissions
but has yet to file same. Submissions on behalf
of the respondent were filed on 20th January
2016.

Case Name: Virginia Theresa Alexander
v
Raymond Grant

[Appeal Number Unknown]

Date: Monday, 25th January 2016

Before: 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:**

Oral Judgment or Decision

Result / Order:

**[Oral delivery]
Appeal is dismissed for want of prosecution.**

Reason:

The Court was satisfied that efforts were made by the court office to contact the appellant to pursue her appeal. There was no evidence or other indication on the court's file of any efforts having been made by the appellant to pursue her appeal against the judgment of the magistrate pronounced on 1st November 2005.

Case Name:

**Dannie Baksh
v
Angela Peters**

[Appeal Number Unknown]

Date:

Monday, 25th January 2016

Before:

The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: Ms. Skeeta Chitan

Respondent: Ms. Brenda Wardally Beaumont

Issue:

Status of the matter

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

Directions

Result / Order:

[Oral delivery]

1. The Magistrate Her Hon. Ms. Karen Noel is directed by the Court to prepare and transmit to the Registrar of the High Court the record of proceedings in the Court below within one month of the date of this order.
2. The Registrar of the High Court shall notify the parties of the availability of the record within one week of receiving same.
3. Should the record be received as per paragraphs 1 and 2 above, the appeal shall be proceeded with in accordance with Part 62 of the CPR.
4. If the Magistrate shall have fail to prepare and transmit the record of appeal by the date herein, counsel on behalf of the parties shall exchange notes of the hearing of the matter in the court below with a view of settling an agreed record of the proceedings.
5. The matter shall in that event be adjourned for further status hearing on 20th June 2016.

Reason:

The record of appeal was not yet prepared.

Case Name:

Patrick Antoine

V

Kim Neckles

[Appeal Number Unknown]

Date:

Monday, 25th January 2016

Before:

The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: Ms. Cathisha Williams

Respondent: In person

Issue: Status of the matter

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

Result / Order: [Oral delivery]

1. The Magistrate Her Hon. Ms. Karen Noel is directed by the Court to prepare and transmit to the Registrar of the High Court the record of proceedings in the Court below within one month of the date of this order.
2. The Registrar of the High Court shall notify the parties of the availability of the record within one week of receiving same.
3. Should the record be received as per paragraphs 1 and 2 above, the appeal shall be proceeded with in accordance with Part 62 of the CPR.
4. If the Magistrate shall have fail to prepare and transmit the record of appeal by the date herein, counsel on behalf of the parties shall exchange notes of the hearing of the matter in the court below with a view of settling an agreed record of the proceedings.
5. The matter shall in that event be adjourned for further status hearing on 20th June 2016.

Reason: The record of appeal was not yet prepared. Further, counsel for the respondent was absent.

APPLICATIONS AND APPEALS

Case Name: Joseph Hyacinth
v
Allan Joseph
[GDAHCVAP2015/0025]

Date: Monday, 25th January 2016

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

Appearances:

Appellant: Mr. Ruggles Ferguson

Respondent: Mr. Darshan Ramdhani with him Mrs. Sabrita Khan-Ramdhani

Issues: Application for leave to appeal – Application for extension of time

Type of Oral Result / Order Delivered: N/A

Result / Order: Judgment reserved.

Case Name: Anselm B. Clouden
v
Georges Cohen

[GDAHCVAP2015/0021]

Date: Monday, 25th January 2016

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

Appearances:

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

Respondent: Mr. James Bristol with him Ms. Kimber Guy-Renwick

Issue: Application to review order of single judge

Type of Oral Result / Order Delivered: N/A

Result / Order: [Oral delivery]
The matter is adjourned to Tuesday, 26th January 2016.

Reason: The Court needed to be differently constituted.

Case Name:

[1] Keith Claudius Mitchell
[2] The Attorney General of Grenada
v
[1] Capital Bank International Limited

[GDAHCVAP2015/0034]

Date: Monday, 25th January 2016

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

Appearances:

Appellant: Mr. Dwight Horsford, Solicitor General

Respondent: Mr. Raymond Anthony

Issues: Application for leave to appeal – Application for stay of execution

Type of Oral Result / Order Delivered: N/A

Result / Order: [Oral delivery]
Matter adjourned to Wednesday, 27th January 2016.

Reason: Lead counsel for the State, Mr. Thomas Astaphan, QC, is unwell.

Case Name:

[1] The Attorney General of Grenada
[2] Chief Immigration Officer
v
[1] Sebastian Isaac
[2] Maria Ytterholm

[GDAHCVAP2015/0028]

Date: Monday, 25th January 2016

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

Appearances:

Appellant: Mr. Dwight Horsford, Solicitor General with him
Ms. Francine Foster and Ms. Marisa Johnson

Respondent: Mr. Darshan Ramdhani with him Mrs. Sabrita
Khan-Ramdhani

Issue: Application for permission to adduce fresh
evidence

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

Result / Order: [Oral delivery]
The matter is adjourned to Thursday, 28th
January 2016.

Reason: Lead counsel for the State, Mr. Thomas
Astaphan, QC, is unwell.

Case Name: [1] The Director of Public Prosecutions
[2] The Magistrate, Eastern Magistrate
District, St. David
[2] The Commissioner of Police
V
[1] Roddy Felix
[2] Edward Gibson
[3] Shawn Ganness

**[4] Wendell Sylvester
[5] Kenton Hazzard**

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

Date: Monday, 25th January 2016

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

Appearances:

Appellant: Mr. Dwight Horsford, Solicitor General with him
Ms. Francine Foster and Ms. Marisa Johnson

Respondent: Dr. Francis Alexis, QC

Issue: Application for adjournment

Type of Oral Result / Order Delivered: N/A

Result / Order: [Oral delivery]
Matter is adjourned to Wednesday, 27th January 2016.

Reason: Lead counsel for the State, Mr. Thomas Astaphan, QC, is unwell.

Case Name: **[1] Willan Thompson
[2] Smith Roberts**

V
[1] The Attorney General of Grenada
[2] Public Service Commission

[GDAHCVAP2015/0010]

Date: Monday, 25th January 2016

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

Appearances:

Appellant: Mr. Rohan Phillip

Respondent: Mr. Dwight Horsford, Solicitor General with him
Ms. Francine Foster and Ms. Marisa Johnson

Issue: Application for adjournment

Type of Oral Result / Order Delivered: N/A

Result / Order: [Oral delivery]
Matter is adjourned to Thursday, 28th January 2016.

Reason: Lead counsel for the State, Mr. Thomas Astaphan, QC, is unwell.

Case Name: Valma Jessamy
V
Grenada Co-operative Bank Limited

[GDAHCVAP2015/0031]

Date: Monday, 25th January 2016

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

Appearances:

Appellant: Mr. Jerry Edwin

Respondent: Ms. Deborah St. Bernard

Issue: Application for leave to appeal

Type of Oral Result / Order Delivered: Directions

Result / Order: [Oral delivery]

1. The matter is remitted to the learned judge for the fixed date claim form to be case managed in accordance with Civil Procedure Rules 2000.
2. The learned judge will hear all relevant issues and matters to be determined including whether or not there is a judgment on admission.
3. Costs to the respondent in the sum of \$1,500.00.

Reason: The Court noted that no order has been filed in respect of which leave to appeal is sought. Also the parties were at variance with respect to the contents of the order. Further, the application for leave to appeal was out of time and the justice of the case required that the fixed date claim be case managed.

Case Name:

Hassan Hadeed

v

Nahla Hadeed

[GDAHCVAP2014/0012]

Date:

Tuesday, 26th January 2016

Coram:

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

The Hon. Mr. Mario Michel, Justice of Appeal

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

Appearances:

Appellant:

Dr. Francis Alexis, QC with him Ms. Afi Ventour DeVega

Respondent:

Ms. Celia Edwards, QC with her Ms. Shireen Wilkinson, Mr. Deloni Edwards, Mr. Dillon Charles and Ms. Celene Edwards

Issues:

Application to deem record of appeal, chronology and submissions validly filed – Divorce – Division of matrimonial assets – Ancillary proceedings – Forum

Type of Oral Result / Order Delivered:

N/A

Result / Order:

[Oral delivery]

- 1. The record of appeal 1, 2 and the chronology filed by the appellant, submissions filed by the Appellant and record of appeal 3 together with chronology and submissions of the respondent are deemed properly filed and served for the purposes of this appeal.**

2. Judgment reserved.

Case Name:

**[1] Samuel Charles
[2] Wendy Charles
v
[1] Bernadette Sampson
[GDAHCVAP2012/0015]**

Date:

Tuesday, 26th January 2016

Coram:

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

Appearances:

Appellant:

No appearance

Respondent:

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

Issues:

**Civil appeal – Negligence – Personal injury –
Credibility of witness – Burden of proof –
Decision against weight of evidence**

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

Oral Judgment or Decision

Result / Order:

**[Oral delivery]
1. The appeal is struck out for want of
prosecution.
2. Cost is awarded in the sum of \$2,500.00.**

Reason:

Counsel placed before the Court a letter the

contents of which should not be brought to the Court's attention. There was no application for adjournment contained in the letter. Additionally, the appellant and counsel for the appellant was absent.

Case Name:	Anselm B. Clouden v Georges Cohen [GDAHCVAP2014/0039]
Date:	Tuesday, 26th January 2016
Coram:	The Hon. Mde. Louise E. Blenman, Justice of Appeal The Hon. Mr. Mario Michel, Justice of Appeal The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
Appearances:	
Appellant:	Dr. Francis Alexis, QC with him Ms. Olabisi Clouden
Respondent:	Mr. James Bristol instructed by Ms. Kimber Guy-Renwick of Henry, Henry & Bristol
Issues:	Application to strike out grounds of appeal – Application that appeal be dismissed
Type of Oral Result / Order Delivered:	N/A
Result / Order:	Judgment reserved.

Case Name:	Anselm B. Clouden v Georges Cohen [GDAHCVAP2015/0021]
Date:	Tuesday, 26th January 2016
Coram:	The Hon. Mde. Louise E. Blenman, Justice of Appeal The Hon. Mr. Mario Michel, Justice of Appeal The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
Appearances:	
Appellant:	Dr. Francis Alexis, QC with him Ms. Olabisi Clouden
Respondent:	Mr. James Bristol instructed by Ms. Kimber Guy-Renwick of Henry, Henry & Bristol
Issue:	Application to review order of single judge
Type of Oral Result / Order Delivered:	N/A
Result / Order:	Judgment reserved.

Case Name:	[1] The Director of Public Prosecutions [2] The Magistrate, Eastern Magistrate District, St. David [2] The Commissioner of Police v [1] Roddy Felix [2] Edward Gibson
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**[3] Shawn Ganness
[4] Wendell Sylvester
[5] Kenton Hazzard**

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

Date: Wednesday, 27th January 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:

Appellant: Mr. Thomas Astaphan, QC with him Mr. Dwight Horsford, Solicitor General, Ms. Francine Foster, Ms. Maurissa Johnson and Mr. Christopher Nelson, QC, Director of Public Prosecutions

Respondent: No appearance

Issues: Civil appeal – For directions

Type of Oral Result / Order Delivered: Directions

Result / Order: [Oral delivery]
It is directed that the parties seek to agree to directions in this matter and submit to the Court on or before Thursday, 28th January 2016.

Case Name: **[1] Keith Claudius Mitchell
[2] The Attorney General of Grenada**

V
[1] Capital Bank International Limited

[GDAHCVAP2015/0034]

Date: Wednesday, 27th January 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:

Appellant: Mr. Thomas Astaphan, QC with him Mr. Dwight Horsford, Solicitor General, Ms. Francine Foster and Ms. Maurissa Johnson

Respondent: Mr. Raymond Anthony

Issue: Application for leave to appeal and stay of execution

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

Result / Order: [Oral delivery]
1. The applicant is granted leave to appeal on paragraph 1 of the order of the master i.e. damages to be assessed for breach of statutory duty and common law duty, and leave to appeal shall be on issues of findings of law by the master.
2. By consent paragraphs 3 & 4 of the master's order are set aside.
3. Costs in the appeal.

Reason: There was an arguable case with a likelihood of success and the parties agreed that there was no need for the appointment of an assessor.

Case Name:	Velda Lewis aka Velda Lewis Clarke V Grenada Ports Authority [GDAHCVAP2011/0025]
Date:	Wednesday, 27th January 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:	
Appellant:	Ms. Pauline Hannibal
Respondent:	Mr. Ruggles Ferguson instructed by Mrs. Amy Bullock-Jawahir of Renwick & Payne
Issues:	Civil appeal – Termination of employment – Withholding of wages – Non-compliance with terms of bond
Type of Oral Result / Order Delivered:	Directions
Result / Order:	[Oral directions] By consent, the parties are to conduct discussions with a view to resolution of this appeal and are to report to the Court in writing on or before the 29th February 2016. Failing resolution of the matter the appeal is adjourned to the next sitting of the Court of Appeal in Grenada during the week of 20th June 2016.
Reason:	Parties are in discussion and request additional

time to continue same.

Case Name:

Roger Thompson

v

The Queen

[GDAHCRAP2012/0005]

Date:

Wednesday, 27th January 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:

Appellant:

In person

Respondent:

Mr. Howard Pinnock

Issues:

**Criminal appeal against conviction –
Housebreaking – Robbery with violence –
Whether the learned trial judge misdirected the jury**

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

N/A

Result / Order:

[Oral delivery]

The matter is traversed to the next sitting of the Court of Appeal in Grenada during the week of 20th June 2016.

Reason:

The appellant requested assignment of counsel due to his inability to personally retain counsel.

Case Name:

**Dwayne Sylvester
V
The Commissioner of Police
[GDAMCRAP2015/0004]**

Date:

Wednesday, 27th January 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:

Appellant:

In person

Respondent:

Mr. Howard Pinnock

Issues:

Criminal appeal against sentence – Intentionally and unlawfully causing damage

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

N/A

Result / Order:

**[Oral delivery]
The hearing of the appeal against sentence is traversed to the next sitting of the Court of Appeal in Grenada during the week of 20th June 2016.**

Reason:

Counsel for the appellant was absent due to illness.

Case Name:

**Clarence Ferguson
V
The Commissioner of Police**

[GDAMCRAP2015/0011]

Date:

Wednesday, 27th January 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:

Appellant:

In person

Respondent:

Mr. Howard Pinnock

Issues:

Criminal appeal against conviction and sentence – Disorderly behaviour – Damage to property – Intentional and unlawful wounding – Assault on a police officer

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

Oral Judgment or Decision

**Result / Order /
Reason:**

**[Oral delivery]
The appeal against conviction and sentence having been withdrawn by the appellant is accordingly dismissed.**

Case Name:

**Kellon Patrick
V
The Commissioner of Police**

[GDAMCRAP2015/0007]

Date: Wednesday, 27th January 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:

Appellant: In person

Respondent: Mr. Howard Pinnock

Issues: Criminal appeal against conviction –
Housebreaking – Stealing

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

**Result / Order /
Reason:** [Oral delivery]
The appeal against conviction having been
withdrawn, the appeal is accordingly dismissed.

Case Name: Kellon Patrick
v
The Commissioner of Police

[GDAMCRAP2015/0008]

Date: Wednesday, 27th January 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:

Appellant: In person

Respondent: Mr. Howard Pinnock

Issues:

Criminal appeal against conviction – Stealing from a dwelling house

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

Oral Judgment or Decision

**Result / Order /
Reason:**

**[Oral delivery]
The appeal against conviction having been withdrawn, the appeal is accordingly dismissed.**

Case Name:

**Kellon Patrick
v
The Commissioner of Police**

[GDAMCRAP2015/0009]

Date:

Wednesday, 27th January 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:

Appellant: In person

Respondent: Mr. Howard Pinnock

Issues:

Criminal appeal against conviction –

Housebreaking – Stealing

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

Oral Judgment or Decision

**Result / Order /
Reason:**

**[Oral delivery]
The appeal against conviction having been
withdrawn, the appeal is accordingly dismissed.**

Case Name:

**Michael Bernard
v
The Commissioner of Police
[GDAMCRAP2015/0016]**

Date:

Wednesday, 27th January 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:

Appellant:

In person

Respondent:

Mr. Howard Pinnock

Issues:

Criminal appeal against conviction – Stealing

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

Oral Judgment or Decision

Result / Order:

**[Oral delivery]
The appeal against conviction is dismissed and**

the conviction is upheld.

Reason:

The Court was of the opinion that the magistrate had the advantage of seeing and hearing the evidence and made full and proper use of this advantage. The Court of Appeal in that circumstance was not minded to interfere with the decision of the magistrate.

Case Name:

**Clevon Williams
V
The Commissioner of Police
[GDAMCRAP2015/0012]**

Date:

Wednesday, 27th January 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:

Appellant:

Mr. Ruggles Ferguson holding for Mr. Peter David

Respondent:

Mr. Howard Pinnock

Issues:

Criminal appeal against conviction and sentence – Driving without due care and attention

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

Oral Judgment or Decision

Result / Order:

[Oral delivery]

1. The appeal against conviction having been withdrawn is dismissed.
2. The appeal against sentence is allowed to the extent that the sentence of two (2) months imprisonment is varied to a fine of \$900.00 payable in two weeks and in default two (2) months imprisonment.

Reason:

The magistrate took note of the appellant's previous convictions as a driver in coming to decision. The Court noted the concession made by the respondent regarding the sentence; the Court also stated that it was not bound by this concession.

Case Name:

[1] Bernard Jones
[2] Janice Carter Jones
v
[1] St. Augustine's Medical Services
[GDAMCVAP2015/0001]

Date:

Wednesday, 27th January 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:

Appellant:

No appearance

Respondent:

Mr. Darshan Ramdhani

Issues:

Civil appeal – Monies due and owing – Whether order of magistrate against weight of evidence – Whether there was a denial of opportunity to be heard

**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 found that the appellants have not
shown interest in prosecuting the appeal.**

Case Name:

**Westerhall Point Residents Association
Ltd.
v
Anthony Batihk**

[GDAMCVAP2015/0004]

Date:

Wednesday, 27th January 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:

Appellant:

**Mr. Alban John with him Ms. Thandiwe Lyle and
Mr. Sasha Courtney**

Respondent:

Ms. Kim George with her Ms. Sheriba Lewis

Issues:

**Civil appeal – Misinterpretation of By-Laws of
Association**

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

N/A

Result / Order:

Judgment reserved.

Case Name:

**[1] Eva Kachariess-Aban
[2] William Aban
[3] Palm Trees Immo Ltd.**

v

**[1] Hans Paulig
[2] Marlen Paulig**

[GDAHCVAP2015/0037]

Date:

Thursday, 28th January 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. Ruggles Ferguson with him Ms. Anyika
Johnson and Mr. Joshua John**

Respondent:

**Mr. Derick Sylvester with him Ms. Cathisha
Williams and Ms. Hazel Hopkin**

Issues:

**Civil appeal – Application to admit fresh
evidence/strike out application to adduce fresh
evidence – Ex parte injunction – Material non-
disclosure – Whether there was a serious issue
to be tried – Damages as an adequate remedy**

**Type of Oral
Result / Order**

Oral Judgment or Decision

Delivered:

Result / Order:

[Oral delivery]

- 1. The application to adduce fresh evidence not being proceeded with is accordingly refused.**
- 2. The appeal is dismissed.**
- 3. Costs to the respondents agreed at \$2,000.00.**

Reason:

This was an appeal against the order of the learned judge continuing an injunction granted against the appellants on 3rd October 2015 and an order refusing the injunction applied for by the appellants by application dated October 2015 and refusing the appellant's application to set aside the respondents' cost order dated 3rd October 2015. Eight grounds of appeal were advanced.

On the first ground of appeal the Court held that in deciding whether the judge at first instance who has heard the evidence has gone plainly wrong, the appeal court has to be satisfied that the judge could not reasonably have reached the decision under appeal. The learned judge in his judgment addressed the issue of the letter at paragraph 28. He said that the letter of 18th August 2015 in which the first named defendant wrote terminating the tenancy of the claimants are matters to be determined at the trial. In relation to the issues raised about non-disclosure of material information, the judge found at paragraph 31 that there was no material breach. The learned judge considered the authorities referred to by both parties and made his decision. There was therefore no reason to disturb the judge's finding in respect to this issue. It was noted that material facts are those matters which are relevant not only to a defence which might be available but also to the nature of the injunctive relief sought.

The respondents submitted and the Court agreed that the nature of the injunctive relief

sought was in essence protection of the persons of the respondents and the preservation of peace until the claim was determined and that the letter of 18th August 2015 was not material to the determination of the injunction application of 3rd October 2015. The Court found no reason to disturb the judge's finding in that regard.

In relation to ground 2 of the appeal, the Court noted that the grant or refusal of an injunction engages the exercise of discretion by the judge and stated that the circumstances under which such discretion can be impugned are well known. The Court was of the view that the threshold for upsetting the discretion had not been met by the appellants.

On the third ground of appeal, the Court examined and applied the rules in respect of continuing an interim injunction with reference to the order made by the judge and found no merit in the complaint.

Concerning the fourth ground of appeal, the Court stated that it is beyond doubt that there is in fact a serious issue to be tried as the learned judge found. Accordingly, there was no basis for interfering with the judge's finding.

In context of the fifth ground of appeal, the Court was of the opinion that it was necessary to look at the application filed and the order made by the trial judge. The application was not based on the proprietary right matters. In essence it was to preserve the peace and when one looked at the orders which were made by the judge it was very obvious that damages would not have been an adequate remedy given the context of the application before the judge and the orders which he made. This ground likewise failed.

In respect of the sixth ground of appeal, the Court was of the view that given the prevailing circumstances the judge did not err in his

finding that the balance of convenience lay in continuing the injunction. There was no error of law committed by the judge in so finding; neither could the Court say given the circumstances of the case that this finding was plainly wrong.

As it concerned ground 7 of the appeal, the Court was being asked to upset the exercise of the discretion of the judge and the Court was not satisfied that the learned judge erred in the exercise of his discretion in his decision. This ground likewise failed.

In relation to the eight ground of appeal, the Court held that though the cost order could be said to be unusual, the Supreme Court Act states that to appeal against a cost order, leave of the court is required. No such leave was sought or obtained. Consequently, the Court found that the appellant at this stage could not sustain an appeal against the order of the judge.

Case Name:

**[1] British American Insurance Company
Limited**

v

**[1] Grenada Authority for the Regulation
of Financial Institutions**

[2] Trevor Layne

[GDAHCVAP2016/0003]

Date:

Thursday, 28th January 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. James Bristol with him Ms. Kimber Guy-Renwick

Respondent: Ms. Lisa Taylor for the 1st respondent

Mr. Derick Sylvester with him Ms. Cathisha Williams and Ms. Hazel Hopkin for 2nd respondent

Issues:

Application for extension of time to apply for leave to appeal – Application for leave to appeal – Application for stay of execution

Type of Oral Result / Order Delivered:

Oral Judgment or Decision

Result / Order:

[Oral delivery]

1. The time for making of the application for leave to appeal is extended to 28th January 2016.
2. Leave to appeal is granted.
3. The hearing of this application for leave to appeal is treated as the hearing of the appeal.
4. The order of the trial judge dated 17th December 2015 is set aside.
5. The 2nd respondent's application made in the High Court on the 12th November 2015 be heard de novo.
6. The appellant and the 1st respondent be served through their respective attorneys at law with the application.
7. Cost to the appellant in the sum of \$1,000.00 to be paid by the 2nd respondent to the appellant.
8. No order as to cost with respect to the 1st respondent.

Reason:

The Court was of the opinion that the High Court is in a better position to deal with the

application. The respondents consented to the matter being sent back to the High Court for full ventilation.

Case Name:	[1] The Attorney General of Grenada [2] Chief Immigration Officer V [1] Sebastian Isaac [2] Maria Ytterholm [GDAHCVAP2015/0028]
Date:	Thursday, 28 th January 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. Thomas Astaphan, QC with him Mr. Dwight Horsford, Solicitor General and Ms. Maurissa Johnson
Respondent:	Mr. Darshan Ramdhani with him Mrs. Sabrita Khan-Ramdhani
Issue:	Application for permission to adduce fresh evidence
Type of Oral Result / Order Delivered:	N/A
Result / Order:	[Oral delivery] 1. There being no objection to the application to adduce fresh evidence, leave is granted to

the respondents to adduce fresh evidence in accordance with the application.

2. Leave is granted to the appellant to rely on the gazette exhibited to the affidavit of the Attorney General and marked "ACKH1".
3. Judgment reserved.

Reason:

There was no objection to the application to adduce fresh evidence.

Case Name:

[1] Willan Thompson

[2] Smith Roberts

v

[1] The Attorney General of Grenada

[2] Public Service Commission

[GDAHCVAP2015/0010]

Date:

Thursday, 28th January 2016

Coram:

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

The Hon. Mr. Mario Michel, Justice of Appeal

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

Appearances:

Appellant:

Mr. Rohan Phillip

Respondent:

Mr. Thomas Astaphan, QC with him Mr. Dwight Horsford, Solicitor General, Ms. Francine Foster and Ms. Maurissa Johnson

Issues:

Constitutional law – Functions of the Public Service Commission – Whether it was lawful for Public Service Commission to transfer police officers to offices within the general public service

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

N/A

Result / Order:

Judgment reserved.