

COURT OF APPEAL SITTING

**GRENADA
15th to 18th September 2015**

JUDGMENTS

Case Name:	C-Mobile Services Limited v Huawei Technologies Co. Limited
	[BVIHCMAP2014/0006] (Territory of the Virgin Islands)
Date:	Tuesday, 15th September 2015
Coram:	The Hon. Dame Janice M. Pereira, DBE, Chief Justice The Hon. Mr. Davidson K. Baptiste, Justice of Appeal The Hon. Mde. Gertel Thom, Justice of Appeal
Appearances:	
Appellant:	Mr. Ian Sandy holding for Mr. Jason Nickless of Pump Court Chambers
Respondent:	Mr. Ruggles Ferguson holding for Mr. Mungo Lowe of Harney Westwood & Riegels
Issues:	Civil appeal - Setting aside statutory demand - Section 157 (1) and section 157(2) of the Insolvency Act, 2003 – Stay pursuant to section 6(2) of the Arbitration Ordinance, 1976 - Whether statutory demand contrary to arbitration clause in Contract – Whether the respondent was barred by the Convention on the Limitation Period in the International Sale of Goods (New York, 1974)
Result & Reason:	Held: dismissing the appeal; confirming the order of the learned trial judge in refusing to set aside the statutory demand and awarding costs to the respondent to be assessed unless agreed

within twenty-eight days, that:

1. Section 157 (2) of the Insolvency Act ("IA") gives the court a discretionary power, whereas subsection (1) does not. Nowhere in C-Mobile's application to set aside do they pray in aid the exercise of the court's discretion pursuant to subsection (2). Furthermore, in order for the court to exercise the discretion given under subsection (2), material on which the learned judge could conclude that a 'substantial injustice would be caused unless the demand was set aside, would be required to be placed before him. There was no such material. The learned judge was perfectly entitled to treat the point on Applied Enterprises as summarily as he did as the issue in that case and the present one differs. The court was here dealing with the setting aside of a statutory demand which is a precursor to the commencement of proceedings for the appointment of a liquidator on insolvency grounds. This has nothing to do with proceedings brought to recover a disputed debt which has arisen under an agreement containing an arbitration clause covering such dispute under the agreement as was the case in Applied Enterprises. Applied Enterprises was decided in a completely different context and is not applicable in the context of an application to set aside a statutory demand on the basis of a substantial dispute, as required to be shown under section 157(1) of the IA. The test for determining whether there is a substantial dispute as to a debt is well settled in Sparkasse. Furthermore, the application to set aside was not grounded under section 157(2) of the IA. The learned judge was not being asked to exercise a discretion. If, having examined the evidence, he was of the view that a substantial dispute (as distinct from a fanciful or make - believe or mere trifling or frivolous one) exists, he must (as distinct from may) set aside the statutory

demand.

Applied Enterprises Ltd v Interisle Holdings Ltd et al BVIHCV (COM) 2012/0135 distinguished; Sparkasse Bregenz Bang AG v Associated Capital Corporation BVI Civ. App. 10/2002 applied.

- 2. The appellant has adduced no evidence to show that the Liberian debt had been included in the Global Settlement or how their belief that it was included could be reasonably held when all the evidence adduced pointed the other way. Based on the evidence before him it was open to the learned judge to find that the Liberian Debt remained due and owing and had not been compromised. Furthermore, the learned judge was not required under section 157(1) of the IA to evaluate the evidence for the purpose of exercising a discretion. He was required to decide whether on the basis alleged he was satisfied that there was a substantial dispute as to the debt. Whether a debt is disputed on substantial grounds is a question of fact. On the evidence before him it was open to him to find, for the reasons he gave, that he was not so satisfied. It is not open to an appellate court to simply substitute its evaluation of facts for that of the trial judge.**
- 3. The learned judge had ample unchallenged material before him on which he could properly conclude that the Liberian Debt was not time barred under the Convention. He was entitled to have regard to the unequivocal statement by the appellant through its director confirming its liability to pay the amount due and to treat it as an acknowledgement of the debt, at least for the purposes of BVI law, there being no evidence of foreign law before him or this court, if such was relevant. No sound basis whatsoever has been put forward for disturbing the trial judge's view on this**

point.

4. As to the discretionary power under section 157(2) of the IA, the evidence adduced before this court shows that even though arbitration proceedings had been commenced before the International Court of Arbitration in Paris on 30th January 2014, those proceedings were withdrawn as at 24th March, 2015. Thus, as at the time of the hearing of this appeal there were no arbitral proceedings afoot. Accordingly, even were resort to be had to the discretionary power of the court on this appeal, the fact that there are no arbitral proceedings underway would be a weighty factor in deciding how the discretion should be exercised in the circumstances as matters currently stand before the court.

Shalston v DF Keane [2003] EWHC 599 (Ch) explained.

Case Name:

**C-Mobile Services Limited
v
Huawei Technologies Co. Limited**

**[BVIHCMAP2014/0017]
(Territory of the Virgin Islands)**

Date:

Tuesday, 15th September 2015

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Appellant:

Mr. Ian Sandy holding for Mr. Jason Nickless of Pump Court Chambers

Respondent: Mr. Ruggles Ferguson holding for Mr. Mungo Lowe of Harney Westwood & Riegels

Issues: Civil appeal - Arbitration - Stay pursuant to section 6(2) of the Arbitration Ordinance – Application for appointment of liquidators – Whether arbitration clause in contract brought the liquidation proceedings within the ambit of section 6(2) of the Arbitration Ordinance

Result & Reason: Held: dismissing the appeal and awarding costs to the respondent to be assessed unless agreed within twenty-eight days, that, inter alia:

1. Having regard to the wording of the arbitration clause and the wording of the Mandatory Stay Provision (section 6(2) of the Arbitration Ordinance), the issue as to the insolvency of the appellant, or the issue as to whether the appellant is to be wound up, does not fall within the category of the disputes under the arbitration clause of the Supply Contract which may be referred to arbitration. The wind up proceedings is not a dispute 'arising out of or in connection with the formation, construction, or performance of the supply contract', as is required by the arbitration clause in the Supply Contract, and is thus, not legal proceedings commenced 'in respect of any matter agreed to be referred', in order to be debarred by section 6(2) of the Arbitration Ordinance. Further, a wind up application, although it may be premised on the underlying debt, is not an action or proceeding on the debt or under the contract. Winding up proceedings are not intended to be caught within the ambit of the mandatory stay provisions contained in the Arbitration Ordinance unless the arbitration agreement itself is so drawn as to encompass such a proceeding.

Re Sanpete Builders (S) Pte. Ltd [1989] 1 MLJ 393 applied; Community Development

**Proprietary Ltd v Engwirda Construction Co.
(1969) 120 CLR 455 applied; Salford Estates
(No. 2) Ltd. v Altomart Ltd. [2014] EWCA
1575 Civ explained and distinguished.**

Case Name: **Tyrone Burke (Chief Personnel Officer)
v
Otto Sam**

**[SVGHCVAP2014/0002]
(Saint Vincent and the Grenadines)**

Date: **Tuesday, 15th September 2015**

Coram: **The Hon. Dame Janice M. Pereira, DBE, Chief
Justice
The Hon. Mr. Davidson K. Baptiste, Justice of
Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Appellant: **Mr. Ian Sandy holding for Mr. Grahame Bollers**

Respondent: **Mr. Ruggles Ferguson holding for Mr. Jomo
Thomas**

Issues: **Civil Appeal – Appeal arising out of judicial
review proceedings - Whether open to trial
judge to disbelieve uncontroverted evidence of
the Chief Personnel Officer when bases upon
which he was to be disbelieved were not put to
him - Whether judge erred in drawing adverse
inferences from evidence when evidence not
subject to cross-examination – Duty of candour
in judicial review proceedings**

**Result &
Reason:** **Held: dismissing the appeal and awarding costs
to the respondent in the sum of \$2,500.00 that:
1. The rule in Brown v Dunn that if a party**

proposes to invite a jury to disbelieve the evidence of a witness, this should be made clear to the witness so that he has the opportunity to offer an explanation which he may have for what he says and to show if he can that his evidence is reliable is inapplicable in this case. The rule in *Browne v Dunn* is speaking to the actions of counsel in cross-examination as opposed to the judge in his fact-finding role.

Browne v Dunn (1894) 6 R 67 at 70-71 (HL) distinguished.

2. Where a finding turns on the judge's assessment of the credibility of a witness, an appellate court will take into account that the judge had the advantage of seeing the witnesses give their oral evidence, which is not available to an appellate court. It is therefore rare for an appellate court to overturn a judge's finding as to a person's credibility. Where any finding involves an evaluation of facts, an appellate court must take into account that the judge has reached a multi-factorial judgment, which takes into account his assessment of many factors. The correctness of the evaluation is not undermined, for instance, by challenging the weight the judge has given to elements in the evaluation unless it is shown that the judge was clearly wrong and reached a conclusion which on the evidence he was not entitled to reach. In other cases, where the finding turns on matters on which the appellate court is in the same position as the judge, the appellate court must in general make up its own mind as to the correctness of the judge's finding.

Langsam v Beachcroft LLP [2012] EWCA Civ 1230 applied; *Watt (Thomas) v Thomas* [1947] AC 484 applied.

3. In the absence of some other identifiable error, such as (without attempting an

exhaustive account) a material error of law, or the making of a critical finding of fact which has no basis in the evidence, or a demonstrable misunderstanding of relevant evidence, or a demonstrable failure to consider relevant evidence, an appellate court will interfere with the findings of fact made by a trial judge only if it is satisfied that his decision cannot reasonably be explained or justified.

Henderson v Foxworth Investment Limited [2013] UKPC 41 considered.

4. A public authority impleaded as a respondent in judicial review proceedings owes a duty of candour to disclose materials which are reasonably required for the court to arrive at an accurate decision and this duty applies throughout the proceedings. The learned judge in this case was deeply concerned about the absence of documentary evidence to support the Chief Personnel Officer's evidence that he was instructed to write the letter to Mr. Sam by the Public Service Commission. The learned judge's criticisms and observations about the fact that the letter did not state that approval was given by the Public Service Commission were well-founded.

R v. Lancashire County Council ex p Huddleston [1986] 2 All ER 941 applied; Guidance on Discharging the Duty of Candour in Judicial Review Proceedings, Treasury Solicitor's Department of England, January 2010 considered.

5. It was within the competence of the learned judge to make adverse findings against the Chief Personnel Officer, given the circumstances of the case. Where as in this case there was a clear conflict of evidence between the Chief Personnel Officer and Mr. Sam regarding who had actually made the impugned decision, reference to the

objective facts and documents, to witnesses' motives and to the overall probabilities can be of very great assistance to the judge in ascertaining the truth. The learned judge tested the Chief Personnel Officer's evidence against all the other material available to her and in her fact-finding task, was understandably swayed by and attached much weight to the absence of contemporary documentation to confirm his oral evidence. The learned judge was entitled to and was correct to test the appellant's evidence by reference to both the contemporary documentary evidence and its absence.

The Ocean Frost [1985] 1 Lloyd's L.R. 1 applied; Wetton v Ahmed and Others [2011] ECWA Civ. 61 applied.

6. Although cases are decided on evidence, the Court is entitled to draw adverse inferences from the unexplained absence of evidence from witnesses, or in the form of documents, which it would be reasonable to expect would be before the Court. The learned judge was therefore entitled to draw adverse inferences from the Chief Personnel Officer's failure to produce documentary evidence in support of his oral evidence that he acted on the instructions of the Public Service Commission.

Wisniewski v Manchester Central Health Authority ("The Wisniewski principle") [1998] ECWA Civ. 596 applied; Western Trading Ltd. v Great Lakes Reinsurance (UK) PLC [2015] EWHC 103 QB applied.

Case Name:

Mariette Warrington
v
Dominica Broadcasting Corporation

**[DOMHCVAP2013/0007]
(Commonwealth of Dominica)**

Date: Tuesday, 15th September 2015

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearance:

Appellant: Mr. Ruggles Ferguson holding for Mr. David Bruney

Respondent: Mr. Ian Sandy holding for Mr. Alick Lawrence, SC

Issues: Civil appeal – Contract – Breach of contract – Termination of contract of employment – Wrongful dismissal – Whether there was implied contract between appellant and respondent – Whether Board of respondent was advised by Prime Minister that appellant should be reappointed pursuant to s. 6(6) of the Dominica Broadcasting Corporation Act – Appeal against findings of fact made by learned trial judge

Result & Reason: Held: dismissing the appeal and ordering that the costs of this appeal be assessed if not agreed within 21 days, that:

1. A court will imply a contract based on the conduct of the parties where the implication of a mutual agreement is a reasonable deduction from all of the circumstances and the relation of the parties. All of the surrounding circumstances must be considered –a court does not merely assume that a contract exists. Generally, a court may imply a contract where the parties enter into a fixed term contract and at the expiration of the contract they continue to act as though

the contract was still binding. In such a case, the onus of proof would be on the party asserting that there is an implied contract.

Baird Textile Holdings Limited v Marks & Spencer Plc [2001] EWCA Civ 274 applied; Diane Modahl v British Athletic Federation [2001] EWCA Civ 1447 applied.

2. When an appeal is made against a trial judge's finding of fact, an appellate court should only interfere with the judge's finding in limited circumstances. Very careful consideration must be given to the weight to be attached to the judge's findings and position, and in particular, the extent to which he or she had, as the trial judge, an advantage over the appellate court. The greater that advantage, the more reluctant the appellate court should be to interfere. Some conclusions of fact are, however, not conclusions of primary fact, but involve an assessment of a number of different factors which have to be weighed against each other. In the present case, the learned trial judge, in his written judgment, did not carry out an analysis of the evidence that was before him in coming to a conclusion on the issue of whether there was an implied contract between the parties. Having regard, however, to the nature of the evidence that was relied on by the parties, this Court is in as good a position as the learned trial judge to make a determination on this issue.

In re B (A Child) (Care proceedings: Threshold Criteria) [2013] 1 WLR 1911 applied; Central Bank of Ecuador and Others v Conticorp SA and Others [2015] UKPC 11 applied.

3. From the time the appellant expressed her desire to be reappointed as Manager, the Board, while in agreement that she be reappointed as Manager of the respondent and subsequently either as Manager or

accountant, was aware that the Prime Minister's advice had to be obtained before the position of Manager could be filled, pursuant to section 6(6) of the Dominica Broadcasting Corporation Act. The appellant knew that the respondent was in favour of her appointment but she was also aware that the Prime Minister's advice had not been obtained. In these circumstances, the conduct of the parties does not give rise to implying a fixed term contract as contended by the appellant. The effect of the failure of the respondent to get the advice of the Prime Minister meant that any agreement the respondent entered into for the appointment of a Manager would be void and unenforceable. The appellant was therefore only entitled to be paid for the services rendered.

4. When the court is called upon to interpret a legislative provision that is clear and unambiguous, it must give the wording of the provision its plain and natural meaning. Section 6(6) of the Dominica Broadcasting Corporation Act is one such clear and unambiguous provision. There is therefore no need to correct any drafting errors or add, omit or substitute words in the section. The phrase 'acting on the advice of the Prime Minister' means just what it says. The Board is required to obtain the advice of the Prime Minister before anyone is appointed a Manager and when that advice is received the Board is required to act in accordance with it. The Act does not permit the Board to appoint a person of its own choice without first seeking the advice of the Prime Minister; the respondent could only enter into a contract of employment with a person in relation to the office of Manager where the Prime Minister had given his advice that such person is to be appointed Manager.
5. The onus was on the respondent to prove that the advice of the Prime Minister was not

obtained. However, in view of the evidence that was before the learned judge, it was open to him to find that on a balance of probabilities, the Prime Minister had not given advice to the respondent on the appointment of a Manager.

British Guiana Credit Corporation v Clement Hugh Da Silva [1965] 1 WLR 248 distinguished.

6. Section 47 of the Interpretation and General Clauses Act makes it very clear that where the power granted by statute is to be exercised on certain conditions, whenever a power is to be exercised, those conditions have to be met. The appellant having been appointed for a fixed period, and that period having expired, the Board would have to exercise its powers under section 6(6) of the Dominica Broadcasting Corporation Act to appoint the appellant for a further period on terms and conditions agreed. In the exercise of this power, the respondent must act in accordance with the provisions of the Act which requires the Board to exercise its power on the advice of the Prime Minister. The fact that the Prime Minister's advice may not have been given in relation to the 2004 contract is of no moment. Such conduct cannot trump the clear provision of the Act which stipulates that the Board must act on the advice of the Prime Minister in appointing a Manager.
7. Generally, where specific legislative provisions are made to govern a matter, then the general provisions are not applicable. The Dominica Broadcasting Corporation Act makes specific provision for the appointment of a Manager. The Board, in appointing a Manager, must act in accordance with the advice of the Prime Minister. The general provisions of the Labour Contracts Act cannot supersede the specific provisions of the Dominica

Broadcasting Corporation Act. To imply a contract pursuant to the Labour Contracts Act where the express provisions of the Dominica Broadcasting Corporation Act have not been complied with would indeed render the provisions of the latter Act nugatory. Accordingly, the Labour Contracts Act does not apply in the present case.

STATUS HEARING

Case Name:

**Walter Joseph
v
Josephine Stephanie Lawrence**

[GDAHCVAP2013/0015]

Date:

Tuesday, 15th September 2015

Before:

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant:

**Mrs. Sabrita Khan-Ramdhani holding papers for
Ms. Karen Samuel**

Respondent:

Mrs. Kindra Mathurine-Stewart

Issue:

Status of the matter

Result / Order:

[Oral delivery]

- 1. The appellant shall file and serve the record of appeal which shall include the claim form, the order granting default judgment, the application to set aside default judgment and supporting documents, the order dismissing the application to set aside default judgment, the notice of appeal and supporting documents within (14) days.**
- 2. The respondent shall file and serve written**

- submissions on or before 15th October 2015.
3. The appellant shall file and serve written submissions in reply if necessary on or before 30th October 2015.
 4. By agreement, the appeal shall be determined on the written submissions.

Reason:

The parties indicated leave was obtained to appeal and appeal could be done summarily. Notice of opposition was not filed. The respondent wants to be heard on appeal.

Case Name:

[1] Herbert Preudhomme
[2] Geoffrey U. L. Preudhomme
v
[1] Jacqueline Charles
[GDAHCVAP2012/0008]

Date:

Tuesday, 15th September 2015

Before:

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant:	No appearance
Respondent:	In person

Issue:

Status of the matter

Result / Order:

[Oral delivery]
Matter stood over to Wednesday, 16th September 2015

Reason:

The respondent's attorney was before the full Court.

Case Name:

Selwyn Augustus Marshall

V

Curtis Marshall

[GDAHCVAP2013/0027]

Date:

Tuesday, 15th September 2015

Before:

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant:

Mr. Francis Williams

Respondent:

Ms. Sheriba Lewis

Issue:

Status of the matter

Result / Order:

[Oral delivery]

- 1. An extension of time is granted to the appellant to comply with CPR 62.10 within 21 days.**
- 2. The respondent shall comply with CPR 62.10 (4) within 14 days of service.**
- 3. The appeal shall proceed in accordance with CPR 62.10.**
- 4. Unless the appellant complies with paragraph 1 of this order the appeal shall stand dismissed.**
- 5. As agreed by the parties the appellant shall pay the respondent cost of today in the sum of \$500.00.**

Reason:

Counsel for the appellant filed response on 14th September 2015 in the High Court and not in the Court of Appeal.

Case Name: **Virginia Theresa Alexander**
V
Raymond Grant

[Appeal Number Unknown]

Date: **Tuesday, 15th September 2015**

Before: **The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Appellant: **No appearance**

Respondent: **No appearance**

Issue: **Status of the matter**

Result / Order: **[Oral delivery]**
Matter to be listed for hearing at the next sitting
of the Court of Appeal commencing 25th
January 2016.

Reason: **The appellant and the respondent were not**
found.

Case Name: **Dannie Baksh**
V
Angela Peters

[Appeal Number Unknown]

Date: **Tuesday, 15th September 2015**

Before: **The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Appellant: **Ms. Skeeta Chitan**

Respondent: Mrs. Brenda Wardally-Beaumont

Issue: Status of the matter

Result / Order: [Oral delivery]
Status hearing of this appeal is adjourned to the next sitting of the Court of Appeal in Grenada commencing 25th January 2016.

Reason: Parties are in discussion towards settlement.

Case Name: Patrick Antoine
v
Kim Neckles

[Appeal Number Unknown]

Date: Tuesday, 15th September 2015

Before: The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:
Appellant: Ms. Hazel Hopkin with her Ms. Cathisha Williams

Respondent: No appearance

Issue: Status of the matter

Result / Order: [Oral delivery]
Matter to be listed for hearing before the Court of Appeal at the next sitting in the State of Grenada commencing 25th January 2016.

Reason: The affidavit of the Bailiff sworn and filed on

14th September 2015 indicates that service was not effected on the appellant as he could not be found. In addition, the record of proceedings were not yet ready.

Case Name: Valerie Daniel
V
The Commissioner of Police
[Appeal Number Unknown]

Date: Tuesday, 15th September 2015

Before: The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: Mr. Deloni Edwards

Respondent: No appearance

Issue: Status of the matter

Result / Order: [Oral delivery]
Matter to be listed for the Court of Appeal at the next sitting in the State of Grenada commencing 25th January 2016.

Reason: The Court noted that the notice of appeal has been filed since 7th June 2005. The record of appeal has not been received from the Magistrates' Court.

Case Name: Winston Whiteman
V

The Commissioner of Police

[Appeal Number Unknown]

Date: Tuesday, 15th September 2015

Before: The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant:	In person
Respondent:	Mr. Howard Pinnock

Issue: Status of the matter

Result / Order: [Oral delivery]
The matter is to be listed before the Court of Appeal for hearing at the next sitting of the Court of Appeal in the State of Grenada commencing 25th January 2016.

Reason: The court office advised that the record of appeal was not yet ready. The Court noted that the notice of appeal was filed 24th March 2009.

Case Name:

Joseph Luke Hartford
v
The Commissioner of Police

[Appeal Number Unknown]

Date: Tuesday, 15th September 2015

Before: The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant:	No appearance
-------------------	---------------

Respondent: No appearance

Issue: Status of the matter

Result / Order:

[Oral delivery]

- 1. Registrar of the High Court shall cause a notice addressed to the appellant to be published in two consecutive issues of a Newspaper in circulation in the State of Grenada.**
- 2. The notice shall include the name of the parties to the appeal, the number of the appeal, the date, time and place at which the appeal would be heard.**
- 3. The second publication of the notice must be made at least six weeks prior to the date of hearing.**
- 4. The Registrar shall cause a copy of each publication to be sent to the Chief Registrar.**
- 5. Status hearing of the appeal is adjourned to the next sitting of the Court of Appeal in the State of Grenada commencing 25th January 2016.**

Reason:

The affidavit of the Bailiff sworn and filed on 14th September 2015 indicates that service was not effected on the appellant as he could not be found. In addition, the record of proceedings was not yet ready.

Case Name:

**Michael Scott
V
The Commissioner of Police

[Appeal Number Unknown]**

Date:

Tuesday, 15th September 2015

Before:

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: No appearance

Respondent: No appearance

Issue:

Status of the matter

Result / Order:

[Oral delivery]

- 1. Registrar of the High Court shall cause a notice addressed to the appellant to be published in two consecutive issues of a Newspaper in circulation in the State of Grenada.**
- 2. The notice shall include the name of the parties to the appeal, the number of the appeal, the date, time and place at which the appeal would be heard.**
- 3. The second publication of the notice must be made at least six weeks prior to the date of hearing.**
- 4. The Registrar shall cause a copy of each publication to be sent to the Chief Registrar.**
- 5. Status hearing of the appeal is adjourned to the next sitting of the Court of Appeal in the State of Grenada commencing 25th January 2016.**

Reason:

The affidavit of the Bailiff sworn and filed on 14th September 2015 indicates that service was not effected on the appellant as he could not be found. In addition, the record of proceedings was not yet ready.

Case Name:

**Patrick Sayers
v
The Commissioner of Police
[Appeal Number Unknown]**

Date:	Tuesday, 15th September 2015
Before:	The Hon. Mde. Gertel Thom, Justice of Appeal
Appearances:	
Appellant:	No appearance
Respondent:	Mr. Howard Pinnock
Issue:	Status of the matter
Result / Order:	[Oral delivery] 1. Registrar of the High Court shall cause a notice addressed to the appellant to be published in two consecutive issues of a Newspaper in circulation in the State of Grenada. 2. The notice shall include the name of the parties to the appeal, the number of the appeal, the date, time and place at which the appeal would be heard. 3. The second publication of the notice must be made at least six weeks prior to the date of hearing. 4. The Registrar shall cause a copy of each publication to be sent to the Chief Registrar. 5. Status hearing of the appeal is adjourned to the next sitting of the Court of Appeal in the State of Grenada commencing 25th January 2016.
Reason:	The affidavit of the Bailiff sworn and filed on 14th September 2015 indicates that service was not effected on the appellant as he could not be found. The Court noted that the notice of appeal was filed 22nd February 2008. The record of appeal was not received from the Magistrates' Court.

Case Name:

**John Thomas
V
The Commissioner of Police
[Appeal Number Unknown]**

Date: Tuesday, 15th September 2015

Before: The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: No appearance

Respondent: Mr. Howard Pinnock

Issue: Status of the matter

Result / Order:

[Oral delivery]

- 1. Registrar of the High Court shall cause a notice addressed to the appellant to be published in two consecutive issues of a Newspaper in circulation in the State of Grenada.**
- 2. The notice shall include the name of the parties to the appeal, the number of the appeal, the date, time and place at which the appeal would be heard.**
- 3. The second publication of the notice must be made at least six weeks prior to the date of hearing.**
- 4. The Registrar shall cause a copy of each publication to be sent to the Chief Registrar.**
- 5. Status hearing of the appeal is adjourned to the next sitting of the Court of Appeal in the State of Grenada commencing 25th January 2016.**

Reason:

The affidavit of the Bailiff sworn and filed on 14th September 2015 indicates that service was not effected on the appellant as he could not be found. The Court noted that the notice of appeal was filed 16th May 2008. The record of

appeal was not yet received from the Magistrates' Court.

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

Date: **Tuesday, 15th September 2015**

Before: **The Hon. Mde. Gertel Thom, Justice of Appeal**

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

Issue: **Status of the matter**

Result / Order: **[Oral delivery]**
Status hearing is adjourned to the next sitting of the Court of Appeal in the State of Grenada commencing 25th January 2016.

Reason: **The affidavit of the Bailiff sworn and filed on 14th September 2015 indicates that service was not effected on the appellant as he could not be found. The Court noted that the notice of appeal was filed on 3rd June 2013. The record of appeal was not yet received from the Magistrates' Court. The Registrar to write the Chief Magistrate requesting record of appeal.**

Case Name: **Alister Stanislaus**
V
The Commissioner of Police
[Appeal Number Unknown]

Date: **Tuesday, 15th September 2015**

Before: **The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:
Appellant: **In person**
Respondent: **Mr. Howard Pinnock**

Issue: **Status of the matter**

Result / Order: **[Oral delivery]**
1. The Registrar is to cause the record of appeal to be prepared and served on the appellant and the respondent.
2. Further status hearing is set down for the next sitting of the Court of Appeal in the State of Grenada commencing 25th January 2016.

Reason: **The Court noted that the record of appeal was not yet ready.**

Case Name: **[1] Herbert Preudhomme**
[2] Geoffrey U. L. Preudhomme
V
[1] Jacqueline Charles
[GDAHCVAP2012/0008]

Date: **Wednesday, 16th September 2015**

Before: The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: Dr. Francis Alexis, QC

Respondent: Mr. Ian Sandy

Issue: Status of the matter

Result / Order: [Oral delivery]

1. The Registrar of the High Court shall within 21 days serve on counsel for both parties the transcript prepared by the court office for counsel to seek to settle the record.
2. Status hearing is adjourned to the next sitting of the Court of Appeal in the State of Grenada commencing 25th January 2016.

Reason: The Court Office informed the Court that the notes of evidence have been prepared but there are some gaps in the evidence as the recording is not clear.

APPLICATIONS AND APPEALS

Case Name: Rodney McBurnie
v
Jerome McBurnie

[GDAHCVAP2014/0037]

Date: Tuesday, 15th September 2015

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal

The Hon. Mr. Paul Webster, Justice of Appeal

Appearances:

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

Respondent: Mr. Ian Sandy with him Ms. Claudette Joseph

Issue:

Application for order of single judge to be set aside or discharged

Result / Order:

[Oral delivery]

- 1. The appeal herein is allowed. The contempt order made by Gilford J dated 27th October 2014 is hereby set aside in its entirety.**
- 2. The Court having regard to the changed circumstances subsequent to the grant of the order of Mohammed J made on 18th September 2014 whereby the appellant is the lessee of the premises the subject of the order and thus cannot be considered a trespasser thereof, the injunction order of Mohammed J dated 18th September 2014 is hereby set aside.**
- 3. The appellant shall have his cost of this appeal agreed in the sum of \$750.00.**

Reason:

An order of court must be clear as to what a person should do or ought to do prior to bringing enforcement proceedings for contempt. The use of the word “trespass” in paragraph 2 of the order of court is a legal term. A judge cannot shut his/her eyes to what the circumstances of the case are. Contempt proceedings are serious. Therefore it is necessary to ensure there is great clarity about what the person is required to do or not to do. There must be no ambiguity.

Case Name: [1] Grenada Property Management Limited
v
[1] Primate Noe
[2] Papaya Industries Limited
[GDAHCVAP2014/0033]

Date: Tuesday, 15th September 2015

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

Appearances:

Appellant: Mr. Anselm Clouden

Respondent: Ms. Celia Edwards, QC with her Mr. Deloni Edwards

Issue: Application to review order of single judge – Refusal of extension of time

Result / Order: [Oral delivery]
1. On the application for extension of time, the decision of the single judge is set aside and the extension is granted and the hearing of this appeal is being treated as the appeal.
2. The appeal is allowed and the order of the master striking out the defence of the appellant is hereby set aside. However the appellant shall bear the respondent's costs fixed in the sum of \$2,500.00 which the Court considers to be fair and reasonable in the circumstances of this case payable within thirty (30) days.

Reason: The appeal has a realistic prospect of success and this limb overshadows the limb of inordinate delay. The master did not take

advantage of the provisions that would protect the order for striking out. The master engaged the process, she struck out/punished but she did not give notice of her intention.

Case Name: Advocate Publishers (2000) Inc.
v
Raelene Lazarus
[GDAHCVAP2015/0001]

Date: Tuesday, 15th September 2015

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

Appearances:

Appellant: Mr. Darshan Ramdhani with him Mrs. Sabrita Khan Ramdhani

Respondent: Mr. Alban John with Ms. Thandiwe Lyle

Issue: Application for leave to appeal

Result / Order: [Oral delivery]
1. Leave to appeal the decision of the learned master delivered on the 22nd December 2014 is refused.
2. No order as to costs on the application.

Reason: The Court found no reason to disturb the exercise of discretion of the learned master where the circumstances put forward to set aside the judgment have not been made out. On the issue of whether the appellant was the proper party in the lower Court, this was not a

point placed before the master. It was raised for the first time before the Court of Appeal. It was not foreshadowed in the grounds. The draft defence sets out a relationship but failed to establish the link of agency.

Case Name:	Anthony Geoffrey Croome v The Supervisor of Elections [GDAHCVAP2015/0012]
Date:	Tuesday, 15th September 2015
Coram:	The Hon. Dame Janice M. Pereira, DBE, Chief Justice The Hon. Mde. Louise E. Blenman, Justice of Appeal The Hon. Mr. Paul Webster, Justice of Appeal
Appearances:	
Appellant:	Mr. Ian Sandy with him Ms. Claudette Joseph
Respondent:	Mrs. Kinna Marrast Victor with her Ms. Francine Foster
Issue:	Application for leave to appeal
Result / Order / Reason:	[Oral delivery] By consent it is ordered that: 1. The application for leave to appeal is treated as the appeal and the appeal is allowed. 2. The order of the Honourable Mr. Justice Shiraz Aziz in so far as it dismisses Claim No. GDAHCV2014/0541B is hereby set aside. 3. The order for assessed cost in Claim No. GDAHCV2014/0541B is also set aside. 4. Claim No. GDAHCV2014/0541B is to proceed before a High Court Judge in accordance with the Rules of Court.

5. Costs agreed in the sum of \$1,000.00 payable within twenty one (21) days.

Case Name: [1] Her Excellency The Governor General
Dame Cecile La Grenade
[2] The Attorney General
v
[1] Judy Benoit
[GDAHCVAP2015/0009]

Date: Tuesday, 15th September 2015

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

Appearances:

Appellant: Mr. Dwight Horsford, Solicitor General, with him
Mrs. Kinna Marrast-Victor and Ms. Francine Foster

Respondent: Mr. Ruggles Ferguson

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

Result / Order / Reason: [Oral delivery]
With the leave of the Court the application is withdrawn and by consent of the parties, costs shall be met by the appellant to the respondent in the sum of \$1,000.00 to be paid within twenty one (21) days.

Case Name: Francis James
V
National Insurance Board
[GDAHCVAP2013/0016]

Date: Tuesday, 15th September 2015

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

Appearances:
Appellant: Mr. Derick Sylvester
Respondent: Mr. Ruggles Ferguson

Issue: Final leave to appeal to Her Majesty in Council

Result / Order: [Oral delivery]
The application is allowed and the applicant/appellant do have final leave to appeal to Her Majesty in Council.

Reason: All conditions for final leave were satisfied.

Case Name: [1] The Attorney General of Grenada
V
[1] Jo Ann Parker
[2] George Finton De Bourge
[GDAHCVAP2015/0020]

Date: Wednesday, 16th September 2015

Coram:	The Hon. Dame Janice M. Pereira, DBE, Chief Justice The Hon. Mde. Louise E. Blenman, Justice of Appeal The Hon. Mr. Paul Webster, Justice of Appeal
Appearances:	
Appellant:	Mr. Dwight Horsford, Solicitor General, with him Ms. Francine Foster
Respondent:	Mr. Darshan Ramdhani with him Mrs. Sabrita Khan Ramdhani instructed by Mrs. Venescia Francis-Banfield
Issue:	Application for leave to intervene and for extension of time to appeal
Result / Order / Reason:	[Oral delivery] By consent it is ordered that: 1. Paragraph 4(b) of the order of Court dated 11th March 2015 of the Honourable Justice Thomas Astaphan, QC is hereby set aside. 2. In place of paragraph 4(b) of the said order it is declared that the first defendant having purchased the property more particularly described in 4(a) of the said order of Court dated 11th March 2015 from Seaview Corporation Limited prior to the said land being compulsorily acquired by the Crown, the said first defendant is entitled to compensation as a consequence of the acquisition by the Crown. 3. No order as to costs.
Case Name:	In the matter of an application by Joseph Ewart Layne to be admitted to practice as an Attorney at Law of the Supreme Court of Grenada and the West Indies Associated States

[GDAHCVAP2013/0036]

Date: Tuesday, 15th September 2015

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

Appearances:

Applicant	/ Mr. Ruggles Ferguson
Appellant:	
Respondent:	Ms. Thandiwe Lyle holding for Mr. Alban John with her Ms. Kim George, Mr. James Bristol and Mr. Rohan Phillip

Issues: Application for conditional leave to appeal to Her Majesty in Council – Application to deem skeleton validly filed

Result / Order: Judgment reserved.

Case Name: In the matter of an application by Joseph Ewart Layne to be admitted to practice as an Attorney at Law of the Supreme Court of Grenada and the West Indies Associated States

[GDAHCVAP2013/0036]

Date: Wednesday, 16th September 2015

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal

The Hon. Mr. Paul Webster, Justice of Appeal

Appearances:

Applicant / Mr. Ruggles Ferguson
Appellant:

Respondent: Ms. Thandiwe Lyle holding for Mr. Alban John with her Ms. Kim George, Mr. James Bristol and Mr. Rohan Phillip

Issues:

Application for conditional leave to appeal to Her Majesty in Council – Application to deem skeleton validly filed

Result / Order:

[Oral delivery]

- 1. The skeletal argument shall be deemed properly filed.**
- 2. The motion is dismissed.**

Reason:

This is an application seeking conditional leave to appeal to the Privy Council from the decision of the Court of Appeal upholding the refusal of the trial judge to admit the applicant as an Attorney-at-Law of the Eastern Caribbean Supreme Court.

The applicant has relied on section 104 (1)(a) which affords leave as of right where the matter in dispute on the appeal to Her Majesty in Council is of the value of \$1500.00 or upwards, or where the appeal involves directly or indirectly, a claim to or question respecting property or a right of the value of \$1500.00 or upwards, final decisions in any civil proceedings.

We are satisfied following the authority of Darrel Sands Controller Of Bank Crozier Limited v Garvey Louison Liquidator Of Bank Crozier Limited et al (GDAHCVAP2007/0001, delivered 16th September 2008) that this application does not concern one which falls within the ambit of section 104 (1)(a) in that there is no value which

has been shown to be attached to the right. The right is simply: (1) of admission to the Bar; and (2) under section 104(1)(c), which relates to a matter which involves the interpretation of a revision of the Constitution.

The applicant/appellant asserts that the right specified in section 1(d) of the Grenada Constitution, which is the declaratory section of the Constitution, suggests that the application can be submitted to her Majesty in Council. What he argues in essence is that the learned trial judge in the exercise of a discretion in considering the application to admit or not to admit the applicant to work ought to have had regard to the right to work contained in that section of the Constitution. This, to our mind, does not involve a question of the interpretation of the provision of the Constitution, but rather the application of it. In this regard, the Court follows the decision in *Joseph v The State of Dominica* (1998 36 WIR 216) where the Privy Council held that in relation to a question whether a case had received a fair hearing within the meaning of section 181 of the Constitution of the Commonwealth of Dominica, that question is not a question of interpretation but a question of the application of those words to the fact of a particular case. The fact that a mistake is made in the court of a trial does not mean that the case has not received a fair hearing nor does it result in a right of an appeal to the Privy Council under section 106(1) (c) of the Constitution of the Commonwealth of Dominica. In our view therefore, this does not bring the claim within the ambit of section 104(1)(c) of the Constitution.

Ultimately, the appellant relies on section 104(2)(a) of the Constitution, which states in effect that this court may permit a question to be referred to the Privy Council where in the opinion of the Court of Appeal the question involved in the appeal is one that, by reason of its great general or public importance or otherwise, ought to be submitted to Her Majesty

in Council, decisions in any civil proceedings. In relation to that section, there are several decisions of this Court of which this provision was considered such as *Martinus Francois v The Attorney General* (SLUHCVP2003/0037, delivered 7th June 2004) and the case of *Nam Tai Electronics, Inc v David Hague et al* (BVIHCVAP2003/0012, delivered 21st September 2004). In support of this ground, the applicant relies on three matters: (1) the right to work, as already mentioned as contained in the Constitution; (2) that the Court of Appeal had mistakenly applied principles in relation to the appellate court interfering with the judge's discretion; and (3) that the Court of Appeal ought to have relaxed the application of the principles in *Ladd and Marshall* in relation to the further evidence application which was to be adduced at the level of the Court of Appeal.

In our view, none of these matters bring the application within section 104(2) of the Constitution of Grenada. Taking it in turn: (1) the right to work. The application, in our view, has nothing to do with the right to work as contained in the Constitution which is a declaratory right; in this case this right was not an issue before the Court, what was before the Court was whether the applicant is a fit and proper person to be admitted as an Attorney-at-Law. It did not concern whether he has a right to work simpliciter, which is a broad right declared by the Constitution (but is a right no doubt tangential to his claim for admission as an Attorney-at-Law). Accordingly, there is no merit in this ground.

As to whether the Court of Appeal is stating the applicable principles on which the appellate court would be fair, this argument was completely debunked having been shown that the principles as sanctified at Court of Appeal are precisely as they have been stated and cited in several or other authorities and in particular in the case of *Dufour v Helenair Corp Ltd*. (1996 52 WIR 188) which is a case from Saint Lucia in

which Sir Vincent Flossaic set out the principles and which has been followed and is taken as a *locus classicus* in this jurisdiction. There is nothing therefore putting these principles in a state of confusion as suggested by the applicant/appellant. The law is clear and settled and therefore does not raise a question of great general or public importance or give rise to any uncertainty or any legal question, the resolution of which poses dire consequences for the public.

There is no merit in the argument that the Ladd and Marshall principle poses a question which is of grave, general or public importance or gives rise to a legal question the resolution of which poses dire consequences for the public. Furthermore, the applicant/appellant has cited no authority as to why his case calls for a relaxation of the principles in the admission of further evidence. This ground accordingly does not bring the application within the ambit of section 104(2) of the Constitution.

Accordingly, none of the grounds that were advanced by the appellant brings the claim within the ambit of section 104(1)(a) or 104(1) (c) or 104(2) (a) of the Constitution. The motion is accordingly dismissed.

Case Name:

**Jennifer Hosten
v
Joya Des Carabies Limited**

[GDAHCVAP2015/0016]

Date:

Wednesday, 16th September 2015

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal**

The Hon. Mr. Paul Webster, Justice of Appeal

Appearances:

Appellant: Mrs. Celia Edwards, QC with her Mr. Deloni Edwards

Respondent: Mr. Gregory Delzin with him Mrs. Michelle Emmanuel Steele instructed by Ms. Cherelle Bain of Veritas Legal

Issues:

Application for extension of time to file submissions – Application for leave to amend grounds of appeal – Application for relief from sanctions

Result / Order:

Judgment reserved.

Case Name:

Kester Williams

v

The Queen

[GDAHCRAP2010/0003]

Date:

Thursday, 17th September 2015

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:

Appellant: Mr. Benjamin Hood

Respondent: Mr. Howard Pinnock

Issues:

Criminal appeal against conviction and sentence – Murder – Whether direction on good character adequate – Whether sentence excessive

Result / Order:

[Oral delivery]

- 1. Appeal allowed.**
- 2. Conviction and sentence quashed.**
- 3. The appellant is to be retried for the offence of murder.**
- 4. The appellant is to be remanded in custody until the retrial. In the interim, if the appellant is so minded he may seek bail from the High Court.**

Reason:

Having reviewed the submissions, the main challenge was that the learned trial judge unfairly summed up the evidence in particular, the way the judge dealt with the evidence of Dr. Martin who had seen the appellant.

There was undermining of the appellant's defence of self-defence which resulted in a miscarriage of justice which was unfair to the appellant. The question whether to allow a re-trial requires an exercise of judgment and involves considerations of the public interest and the interest of the appellant.

Case Name:

**Jennifer Hosten
V
Joya Des Carabies Limited**

[GDAHCVAP2015/0016]

Date:

Thursday, 17th September 2015

Coram:

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

Appearances:

Appellant: Mrs. Celia Edwards, QC with her Mr. Deloni Edwards

Respondent: Mr. Gregory Delzin with him Mrs. Michelle Emmanuel Steele instructed by Ms. Cherelle Bain of Veritas Legal

Issues: Application for extension of time to file submissions – Application for leave to amend grounds of appeal – Application for relief from sanctions

Result / Order: [Oral delivery]
1. The Court allows the appeal and set aside the order of Aziz J made on the 29th April.
2. The application for the interim injunction is remitted to the Court below for hearing and for further directions to be given by the trial judge.
3. The stay ought to abide the determination of the inter partes hearing of the injunction.
4. Each party will bear their own costs of this appeal.

Reason: The purported service on the appellant by leaving the injunction on the place of business in Grenada did not comply with the requirements of personal service of an ex parte order as required by Part 17.4.6 of Civil Procedure Rules 2000.

The said service did not comply with the undertaking in the injunction to serve the appellant personally. Accordingly, the injunction was not personally served.

The withdrawal of counsel who never stated that she appeared for the appellant from the hearing on the 29th April meant that the hearing proceeded as an ex parte hearing and the order made was an ex parte order. Since the injunction was not served on the appellant, Aziz J should not have proceeded with the hearing

on the 29th unless and until he satisfied himself that the appellant had waived the requirement of service.

The Court of Appeal has jurisdiction in this matter based on section 33 of the West Indian Associated States Supreme Court (Grenada) Act, Cap. 336, Revised Laws of Grenada because of the following:

1. Failure to serve the appellant with the injunction in accordance with the Rules of Court.
2. Aziz J treatment of the 29th April hearing as an inter partes hearing where he proceeded to make the draconian and highly irregular order granting a declaration regarding property rights that should be made after a full trial.
3. The grant of a mandatory injunction without hearing the appellant's side of the dispute.
4. The 14 days' time limit in rule 11.1.6 has expired and the appellant cannot apply to the Court to set aside the injunction unless the Court makes an order extending the time for applying.

Case Name:

Anderson Thomas

v

The Queen

[GDAHCRAP2009/0011]

Date:

Thursday, 17th September 2015

Coram:

The Hon. Dame Janice M. Pereira, DBE, Chief Justice

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

The Hon. Mr. Paul Webster, Justice of Appeal

Appearances:

Appellant:

Mr. Anselm Clouden

Respondent: Mr. Howard Pinnock

Issues: Criminal appeal against conviction and sentence – Murder

Result / Order: [Oral delivery]
The appeal against conviction having been withdrawn, the conviction is affirmed and the appeal against sentence is allowed to the extent that the time spent on remand shall be credited to the appellant.

Reason: The appeal against conviction was abandoned. The trial judge did not take into account the time spent on remand. The Crown offered no objection.

Case Name: Michael McIntyre
v
Margery Anne McIntyre
[GDAHCVAP2013/0024]

Date: Wednesday, 16th September 2015

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

Appearances:

Appellant: Mr. Leslie Haynes, QC with him Mrs. Denise Haynes, Mr. James Bristol and Ms. Kimber Guy Renwick

Respondent: Mrs. Celia Edwards, QC with her Mr. Deloni Edwards

Issues: Civil law – Family Law – Distribution of matrimonial assets

Result / Order: Judgment reserved.

Case Name: [1] Samuel Charles
[2] Wendy Charles
v
[1] Bernadette Sampson
[GDAHCVAP2012/0015]

Date: Thursday, 17th September 2015

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:
Appellant: Ms. Herricia Willis holding for Ms. Denise Campbell
Respondent: Mrs. Celia Edwards, QC

Issue: Application for adjournment

Result / Order: [Oral delivery]
1. The hearing of the appeal is adjourned to the next sitting of the Court of Appeal in Grenada scheduled for the week commencing 25th January 2016 upon the application of counsel for the appellants.
2. The appellants shall pay costs to the respondent in the sum of \$1,000.00 within two weeks of the date of this order.

Reason: Counsel for the appellants, Ms. Denise Campbell, is unwell and submitted a letter to the Court.

Case Name: Lennie De Gale
v
Louise Matthias
(by her attorneys Graeme Stratton and Jocelyn Stratton)

Date: Thursday, 17th September 2015

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

Appearances:

Appellant:	Mr. Parnell Campbell, QC with him Mr. Richard Williams
Respondent:	Mr. Ian Sandy with him Ms. Claudette Joseph

Issues: Civil appeal – Land Law – Extent and location of right of way

Result / Order: [Oral delivery]

1. On the preliminary issue in which the learned trial judge held that he had no discretion to admit the report of Mr. Bedeau, the Court considers that ruling to be in error. The Court does have such discretion. In exercising the discretion this Court has had regard to the nature of the breached which the Court considers to be technical breaches and not one going to the quality of the content of the report itself. Further having

regard to the fact that the report submitted by the Court appointed surveyor Mr. Ogilvie suffers from the same flaws, it is only right in the exercise of the Court's discretion that the report of Mr. Bedeau be admitted in evidence. It is clear that the report will be of assistance to the Court in resolving the key issue in the case which relates to the location of a right of way and also the extent of that right of way.

2. On the substantive appeal and having regard to the fact that the Court excluded from its consideration the report of Mr. Bedeau which would have been of assistance to it in resolving the issue of the extent and location of the right of way and further that the learned trial judge at the end of the decision declared the entitlement to a right of way under the Deed of Indenture of 1955 between Barclays Overseas Corporation of the First Part and Eversley Williams Gittens of the Second Part and Frank Albert Baker of the Third Part recorded in the Deeds and Land Registry of Grenada in Liber Vol. 9 page 728 but without deciding the exact extent and location of the said right of way referred to therein, the matter is hereby remitted to the Court below for a retrial so that the real issue between the parties, i.e. the extent and precise location of the right of way be determined.
3. The claimant/respondent shall have liberty to amend her pleading within three (3) months of today's date.
4. The defendant/appellant shall also have liberty to amend his pleading within twenty eight (28) days following service of the claimant's/respondent's amended pleading or following the expiry of the three (3) months period given to the claimant/respondent in paragraph 3 whichever happens later.
5. Thereafter the matter proceeds in accordance with the Rules of Court.
6. Having regard to the circumstances of this case in particular the factors giving rise to

the appeal, the Court holds that the appropriate order as to costs should be no order as to costs on this appeal or in the court below and the Court so orders.

Case Name: **Dr. Nazir Hadeed (Trading as Hadeed Variety Store)**
v
Clico International General Insurance Limited

[GDAHCVAP2015/004]

Date: **Friday, 18th September 2015**

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:

Appellant:	Mr. Ruggles Ferguson with him Ms. Anyika Johnson
Respondent:	Ms. Kimber Guy-Renwick with her Mr. James Bristol

Issues: **Civil appeal – Whether there was a flood in the context of the definition of the agreement – Whether there was compliance with section 11 of the agreement**

Result / Order: **Judgment reserved.**

Case Name: **Jean Mc Neilly**

V
Jacqueline Charles (Administratrix of the
Estate of Joshua Thorne, deceased)

[GDAHCVAP2013/0013]

Date: Wednesday, 16th September 2015

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:

Appellant: Mr. Ruggles Ferguson with him Ms. Anyika Johnson

Respondent: Ms. Claudette Joseph with him Mr. Ian Sandy

Issues: Civil appeal – Whether learned judge erred and misdirected herself by placing the burden of proof on the issue of mental capacity on the defendant – Whether the judge misdirected herself in relation to the issue of independent advice – Whether judge’s decision against the weight of the evidence

Result / Order: [Oral delivery]
1. The appeal is dismissed.
2. The appellant to pay the respondent 2/3 of the costs assessed in the court below.

Reason: At common law, burden of proving lack of mental capacity lies on the person alleging it. The evidential burden may shift to a defendant if a prima facie case of lack of capacity has been established. Whilst the legal burden is on the party asserting incapacity, if that person adduces evidence to raise a sufficient doubt from which incapacity can be inferred, then the evidential burden shifts from the claimant to the opposing party. The burden upon the person alleging mental incapacity only extends to

showing a prima facie case of lack of capacity and thereafter the evidential burden is shifted to the person seeking to uphold the gift (per Kicks and anr. V Leigh 2014 EWHC 3926).

It was the defendant's contention that the deed of gift was valid so it was therefore for the defendant to prove that there was sufficient capacity to make the deed. Therefore, the learned judge was consistent in her pronouncements on this point which accords with the common law position. There is accordingly no merit in this ground.

The fact that the issue of independent legal advice was put to the judge by both parties, it was open to her not to place any weight on it. The Court also agrees with this approach.

The learned judge was correct in finding that she could attach no weight to the evidence the appellant attempted to adduce on this issue which concerned Joshua Thorne's lucid moments. The fact is this was not part of the appellant's pleaded case.

The defendant failed to call any medical evidence of her own and so it was open to the judge to accept and prefer the medical evidence of Dr. Thompson to that of nurse Joyce Da Breo. The Court finds no basis in upsetting the judge's finding.

The judge was better placed than the appellate Court to accept the evidence of the claimant's witnesses over the defendant's having seen and heard the witnesses and particularly having regard to the medical evidence. The judge was well placed to come to the conclusions that she made and make the findings that she did.

The issue of the weight to be attached to evidence in a trial is for the trial judge. The Court will not conclude that the judge erred in attaching the weight she did to the evidence of Joselle Thorne. The judge was adequately

positioned unlike the appellate court to attach the appropriate weight to the evidence led.

The appellate court must be satisfied that the judge was plainly wrong and could not reasonably have arrived at the decision that she did.

Case Name:	[1] The Director of Public Prosecutions v [1] Roddy Felix [2] Edward Gibson [3] Kenton Hazzard] [GDAHCVAP2013/0007;0008;0009]
Date:	Thursday, 17 th September 2015
Coram:	The Hon. Dame Janice M. Pereira, DBE, Chief Justice The Hon. Mde. Louise E. Blenman, Justice of Appeal The Hon. Mr. Paul Webster, Justice of Appeal
Appearances:	
Appellant:	No appearance
Respondent:	Mr. Anselm Clouden
Issue:	Civil appeal
Result / Order:	[Oral delivery] The hearing of Civil Appeal Nos. 7, 8 & 9 of 2013, The Director of Public Prosecutions et al v Roddy Felix et al is adjourned to the next sitting of the Court in Grenada during the week commencing 25 th January 2016.

Reason: Counsel made an application for adjournment as the matter was not ready to proceed.

Case Name: Dwayne Sylvester
V
The Commissioner of Police
[GDAMCRAP2015/0004]

Date: Tuesday, 15th September 2015

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

Appearances:

Appellant: No appearance

Respondent: Mr. Howard Pinnock

Issues: Criminal appeal against sentence – Intentionally and unlawfully causing damage

Result / Order: [Oral delivery]
1. The Registrar of the High Court is to ensure that the appellant is served.
2. The matter is traversed to the next sitting of the Court of Appeal in Grenada during the week commencing 25th January 2016.

Reason: The appellant was absent. There was no indication of service on him. The appellant's mother intimated that the appellant is mentally ill.

Case Name:

**Marc James
v
The Commissioner of Police**

[GDAMCRAP2015/0014]

Date:

Tuesday, 15th September 2015

Coram:

**The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal**

Appearances:

Appellant:

In person

Respondent:

Mr. Howard Pinnock

Issues:

Criminal appeal against sentence – Intentional and unlawful wounding – Whether magistrate erred in not giving 1/3 discount for plea of guilty.

Result / Order:

**[Oral delivery]
Appeal against sentence dismissed. Sentence affirmed.**

Reason:

It appeared that there was some ambiguity in the pleas taken and what was recorded. The one-third discount on a plea of guilty is not set in stone. The maximum sentence for this offence would be 4 years. The appellant having pled guilty at the first instance was entitled to the discount. The Court accepted that the appellant pled guilty. The Court was of the view that the magistrate applied the discount to the maximum sentence. The aggravating factors clearly outweighed the factors in mitigation. The Court also noted that the accused has a previous conviction for a similar offence. As a result, the Court was not minded to interfere with the sentence which would have resulted in an increase in the sentence from 17 months to 3 years. There was therefore no error in the

sentence imposed and the Court did not disturb the sentence.

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

Date: **Tuesday, 15th September 2015**

Coram: **The Hon. Mr. Davidson K. Baptiste, Justice of Appeal**
The Hon. Mr. Mario Michel, Justice of Appeal

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

Issues: **Criminal appeal against sentence – Driving without due care and attention**

Result / Order: **[Oral delivery]**
1. Hearing of the appeal is traversed to the next sitting of the Court of Appeal in Grenada during the week of 25th January 2016.
2. Registrar of the High Court is to serve the appellant with notice of hearing.

Reason: **There was no indication that the appellant was served.**

Case Name: **Vincent Bascombe**

V
The Commissioner of Police

[GDAMCRAP2015/0010]

Date: Tuesday, 15th September 2015

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

Appearances:

Appellant:	Mr. Michael Lindo
Respondent:	Mr. Howard Pinnock

Issues: Criminal appeal against conviction – Driving without due care and attention

Result / Order: [Oral delivery]
Appeal allowed. The conviction of the appellant is set aside.

Reason: The findings of fact by the magistrate that she preferred the evidence of the virtual complainant on the basis that she found it to be more logical, the Court found was fundamentally flawed. The Court opined that even if it were to accept the evidence of the virtual complainant, the evidence did not support a finding of driving without due care and attention. The evidence showed due care and attention on the part of the appellant. The magistrate could not have come to the conclusion that she did based on the evidence of the virtual complainant. It was not open to the magistrate to arrive at the conclusion that she did. The appellate court can interfere with the findings of the magistrate where the decision arrived at could not be supported on the evidence.

The Court noted that this matter took a total of

seven years to be heard on account of the magistrate not having produced reasons. This smacked of serious injustice to the appellant.

Case Name: **Clarence Ferguson**
V
The Commissioner of Police
[GDAMCRAP2015/0011]

Date: **Tuesday, 15th September 2015**

Coram: **The Hon. Mr. Davidson K. Baptiste, Justice of Appeal**
The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:
Appellant: **Mr. Michael Lindo (appearing amicus)**
Respondent: **Mr. Howard Pinnock**

Issues: **Criminal appeal against conviction – Intentional and unlawful wounding – Application for adjournment**

Result / Order / Reason: **[Oral delivery]**
On the application of Mr. Michael Lindo on behalf of the appellant and there being no objection from the respondent and on account of the appellant being unwell, the matter is adjourned to the next sitting of the Court of Appeal during the week commencing 25th January 2015.

Case Name: **Kellon Patrick**

V
The Commissioner of Police

[GDAMCRAP2015/0007]
[GDAMCRAP2015/0008]
[GDAMCRAP2015/0009]

Date: Tuesday, 15th September 2015

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

Appearances:

Appellant: Mr. Deloni Edwards (appearing amicus)

Respondent: Mr. Howard Pinnock

Issues: Criminal appeal against conviction –
Housebreaking – Stealing – Stealing from a
dwelling house – Housebreaking

Result / Order: [Oral delivery]
Matter traversed to the next sitting of the Court
of Appeal in Grenada during the week
commencing 25th January 2016.

Reason: The appellant requested an adjournment to
secure some funds to be able to prosecute his
appeal. No objections were made by the
respondent.

Case Name: Anderson Farry

V
The Commissioner of Police

[GDAMCRAP2015/0015]

Date: Tuesday, 15th September 2015

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

Appearances:

Appellant: In person

Respondent: Mr. Howard Pinnock

Issues: Criminal appeal against conviction – Stealing

Result / Order: [Oral delivery]
Appeal dismissed. Conviction and sentence affirmed.

Reason: There was no evidence before the Court to support the allegations of the appellant that the sentence was biased or that there was any injustice. There was no reason to upset the magistrate's conviction. The magistrate accepted the evidence of the witnesses.

Case Name: Kevin Dabreo
V
The Commissioner of Police
[GDAMCRAP2015/0013]

Date: Wednesday, 16th September 2015

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:

Appellant: Mrs. Winnifred Duncan Phillip

Respondent:	Mr. Howard Pinnock
Issues:	Criminal appeal against conviction – Driving a motor vehicle without a licence
Result / Order / Reason:	[Oral delivery] 1. Appeal is allowed. 2. A new trial is ordered before a different magistrate. 3. The order of the magistrate is set aside and the conviction is quashed.
Reason:	The respondent conceded the appeal and requested a re-trial on the basis of the new affidavit filed by the appellant which puts in dispute the date.
Case Name:	[1] Bernard Jones [2] Janice Carter Jones v [1] St. Augustine’s Medical Services [GDAMCVAP2015/0001]
Date:	Wednesday, 16th September 2015
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:	
Appellant:	No appearance
Respondent:	Mr. Darshan Ramdhani with him Mrs. Sabrita Khan-Ramdhani

Issues:	Civil appeal – Judgment Summons Order
Result / Order:	[Oral delivery] Appeal is traversed to the next sitting of the Court of Appeal in Grenada during the week commencing 25th January 2016.
Reason:	The appellant was absent. The Court stated that the information that was received was that that the first appellant is overseas receiving medical attention.
Case Name:	[1] Alana Wildman [2] Monica Calliste [3] Lisa Wildman V [1] Linda Downes
Date:	Wednesday, 16th September 2015
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:	Appellant: Respondent: Mr. Anselm Clouden Ms. Cathisha Williams
Issues:	Civil appeal – Possession of land – Interpretation of section 31 of the Magistrate’s Court Act – Whether proceedings a nullity – Right to a fair hearing
Result / Order:	[Oral delivery] 1. Appeal allowed.

2. A new trial is ordered to be held before a different magistrate.
3. Costs to the appellants as agreed in the sum of \$1,500.00.

Reason:

The actions of the magistrate in allowing evidence to be led by the claimant and the claimant to be cross-examined and arriving at the decision before the defendants were given an opportunity to put their case and lead their evidence deprived the appellant of the right to a fair hearing.

The Court was of the view that the defendants were denied the opportunity to present their defence. The matter was called on three occasions and counsel for the appellants had participated on the previous occasions. The magistrate acted in an arbitrary manner and with due haste in determining the matter. It would have been appropriate for the magistrate to grant a short adjournment to allow the appellants to present their defence.

Case Name:

[1] George Azar
[2] Husam Azar
v
[1] Oslyn Harris

[GDAMCVAP2015/0003]

Date:

Wednesday, 16th September 2015

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:

Appellant: Mr. Ashley Bernadine

Respondent: Ms. Claudette Joseph

Issues: Civil appeal – Whether magistrate erred in hearing the matter ex parte

Result / Order: [Oral delivery]
By consent the appeal is dismissed. Costs to the respondent in the sum of \$500.00.

Reason: The appellant did not receive notice of the date of hearing.