

COURT OF APPEAL SITTING

**SAINT LUCIA
26th to 30th January 2015**

JUDGMENTS

Case Name: **FRANCISCUS PETRUS VINGEHOEDT
(also known as Frans Vingerhoedt)
v
STANFORD INTERNATIONAL BANK
LIMITED (IN LIQUIDATION)
(Acting by and through its Joint
Liquidators, Marcus A. Wide and Hugh
Dickson)**

**[ANUHCVP2014/0030]
(Antigua and Barbuda)**

Date: **Monday, 26th January 2015**

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

Appearances:

Appellant: **Mr. Dexter Theodore holding for Ms. E. Ann
Henry, QC**

Respondent: **Mr. Thomas Theobalds holding for Mr. Malcolm
Arthurs**

Issues: **Civil appeal – Hearsay evidence – Whether the
learned trial judge erred in admitting transcript
into proceedings – Whether the trial judge
admitted hearsay evidence under section 29 of
the Evidence (Special Provisions) Act, 2009**

Result / **Held: dismissing the appeal and awarding costs**
Reason: **on the appeal to the respondent to be assessed
unless agreed within 30 days, that:**

1. Section 29 of the Act does not make hearsay evidence admissible in circumstances where it would otherwise be inadmissible. It merely obviates the need for formal proof of its authenticity which was otherwise required by common law. Moreover, it does not provide an exception to the hearsay rule. The test as to whether the evidence falls within an exception to the hearsay rule so as to be admissible without formal proof under section 29 of the Act must still be applied. If the evidence is hearsay evidence not falling within any exception to the rule then such evidence will be inadmissible whether or not section 29 of the Act exists.

Section 29 of the Evidence (Special Provisions) Act, 2009 applied; Merck & Co. Inc v Apotex Inc. (T.D.) [1998] 3 FC 400 applied.

2. Evidence of a statement made to a witness by a person who was not himself called as a witness is not hearsay evidence and is admissible when it seeks to establish by the evidence not the truth of the statement but the fact that it was made. The learned trial judge explicitly stated that it was for that purpose he was admitting the US Transcript. Given that the US Transcript was not admitted as evidence of the truth of what is stated therein, but rather as evidence in proof of the fact of what was stated and by whom, there has been no breach of the hearsay rule.

Subramaniam v Public Prosecutor [1956] 1 WLR 965 applied.

Case Name:

[1] PATRICK SMITH
v
[1] HEIRS OF CAMSELLE ST.
CATHERINE

[2] DARIUS ST. CATHERINE
[3] ST. ROSE ST. CATHERINE aka ST.
ROSE CAMSELLE
[4] SEMEPHER ST. CATHERINE aka
SEMEPHER CAMSELLE

[SLUHCVAP2013/0006]
(Saint Lucia)

Date: Thursday, 29th January 2015

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

Appearances:

Appellant: Mr. Dexter Theodore

Respondent: Ms. Lydia Faisal for the 1st respondent

Ms. Esther Greene-Ernest for 2nd, 3rd, 4th respondents

Issues: Civil appeal – Default judgment – Fixed date claim – Res judicata – Sale of property – Improbation of deed of sale and declaration of succession – Application for default judgment made on fixed date claim – Entry of default judgment on fixed date claims prohibited by CPR 12.2(b) – Nature of resulting order – Whether order liable to be set aside in whole or in part by judge of co-ordinate jurisdiction – Whether learned trial judge erred in holding that order made on default judgment application was final order – Whether order created estoppel against further litigation of issues surrounding validity of deed of sale to appellant of subject property – Whether doctrine of res judicata can bind non-party – Article 1171 of Civil Code of Saint Lucia

Result / Reason: Held: allowing the appeal to the extent that paragraphs 2 and 3 of the order of Georges J

being appealed are set aside, that:

1. The order of Edwards J was either a final order by virtue of being a judgment on a fixed date claim, or a default judgment improperly granted on a fixed date claim. If, as Georges J determined, it was a final order, then it can only be set aside on appeal by the Court of Appeal. Alternatively, if it was a default judgment, then it was an order made by a judge without jurisdiction, since rule 12.2(b) of CPR 2000 does not permit a claimant to obtain default judgment on a fixed date claim. Even if, however, it was a defective default judgment, the order is not wholly without effect and it must be obeyed unless and until it is set aside by the Court of Appeal. It cannot be set aside by a judge of co-ordinate jurisdiction. Accordingly, the order made by Cottle J, in which he purported to set aside Edwards J's order improbatng the deed of sale, was a nullity; this order could only have been set aside by the Court of Appeal.

Strachan v The Gleaner Co Ltd and another [2005] 1 WLR 3204 applied.

2. Notwithstanding that the appellant might have been fully aware of the events leading up to and following from the making of the order by Edwards J, he was not a party to or represented in the proceedings leading to the order and so cannot be prevented from re-litigating the issues adjudicated upon and/or determined by the learned judge. The order made by Edwards J on 10th March 2004, although binding on the parties to it, is not binding on the appellant.

Noellina Maria Prospere (Nee Madore) v Frederick Prospere, Jennifer Remy [2007] UKPC 2 followed; Roberge v Bolduc [1991] 1 SCR 374 applied; Article 1171 of the Civil Code Cap. 4.01, Revised Laws of Saint Lucia 2008 applied.

STATUS HEARING

Case Name: Bonny Charles
v
Roy Busboy
[SLUMCRAP2005/0000]

Date: Monday, 26th January 2015

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

Appearances:

Appellant:	No appearance
Respondent:	Ms. Tina Mensah

Issue: Status of the matter

Result / Order: Matter stood down.

Case Name: Simon Gaetan
v
The Commissioner of Police
[SLUMCRAP1999/0009]

Date: Monday, 26th January 2015

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

Appearances:

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

Respondent: Ms. Tina Mensah

Issue: Status of the matter

Result / Order: [Oral delivery]
The matter is adjourned for status hearing at the next sitting of the Court of Appeal in the State of Saint Lucia during the week commencing 13th April 2015.

Reason: The record of appeal had not yet been prepared.

Case Name: Justin John
V
The Commissioner of Police
[SLUMCRAP1999/0008]

Date: Monday, 26th January 2015

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

Appearances:

Appellant: No appearance

Respondent: Ms. Tina Mensah

Issue: Status of the matter

Result / Order: Matter stood down.

Case Name: **Thierry Tadrille Bryan**
v
PC 666 Simeon
[SLUMCRAP2004/001E]

Date: **Monday, 26th January 2015**

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

Appearances:

Appellant: **No appearance**

Respondent: **Ms. Tina Mensah**

Issue: **Status of the matter**

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

Reason: **There was no appearance from the appellant and information was received from him that he had already served his sentence.**

Case Name: **Tanzanite International Limited**
v
The Attorney General of Saint Lucia
[SLUHCVAP2008/0039]

Date: **Monday, 26th January 2015**

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

Appearances:

Appellant: **No appearance**

Respondent: No appearance

Issue: Status of the matter

Result / Order: The matter is stood down.

Case Name: Jeanette Augustin
v
The Commissioner of Police
[SLUMCRAP2009/0000]

Date: Monday, 26th January 2015

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

Appearances:
Appellant: Mr. Ramon R. Raveneau

Respondent: Ms. Tina Mensah

Issue: Status of the matter

Result / Order: [Oral delivery]
1. The Registrar of the High Court shall send to the Chief Registrar a status report of the record of proceedings in the magisterial appeal on or before 31st March 2015.
2. The matter is adjourned to the next status hearing during the week commencing the 13th April 2015.

Reason: The record of appeal had not yet been prepared.

Case Name:

Bonny Charles

V

Roy Busby

[SLUMCRAP2005/0000]

Date:

Monday, 26th January 2015

Before:

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant:

No appearance

Respondent:

Ms. Tina Mensah

Issue:

Status of the matter

Result / Order:

[Oral delivery]

The appeal is dismissed for want of prosecution.

Reason:

Despite the notice of hearing being served on the appellant by publications in the Voice newspaper on 13th and 20th December 2014 respectively, which notice was deemed good service by the Court on 14th July 2014, the appellant failed to appear to prosecute his appeal.

Case Name:

Angus Mathurin

V

Murton Donelly PC 493

[SLUMCRAP2000/0000]

Date:

Monday, 26th January 2015

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

Appearances:

Appellant: No appearance

Respondent: Ms. Tina Mensah

Issue: Status of the matter

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

Reason: The Court noted that the notice of hearing was served on the appellant by publication in the newspaper on 13th and 20th December 2014 and that there was no appearance of the appellant.

Case Name: **Tanzanite International Limited**
v
The Attorney General of Saint Lucia
[SLUHCVAP2008/0039]

Date: Monday, 26th January 2015

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

Appearances:

Appellant: Ms. Renee St. Rose

Respondent: Ms. Brender Portland-Reynolds

Issue: Status of the matter

Result / Order: [Oral delivery]
The matter is stood down until Thursday, 29th

January 2015.

Reason: The matter was stood down to facilitate discussions between the parties.

Case Name: Timothy Dupres
v
Corporal 398 George
[SLUMCRAP2008/001B]

Date: Monday, 26th January 2015

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

Appearances:

Appellant: No appearance

Respondent: Ms. Tina Mensah

Issue: Status of the matter

Result / Order: [Oral delivery]
1. The appeal is adjourned for status hearing at a date to be fixed by the Chief Registrar.
2. The notice of hearing to be served on the appellant by publication in two consecutive issues in a newspaper in general circulation in Saint Lucia.
3. The notice shall include the (i) name (ii) address of the appellant (iii) Number of the appeal and (iv) date the Magistrate pronounced the conviction on the appellant.
4. The appellant shall be required to attend on the date stated in the publication.
5. The notice by publication shall be deemed to be good notice on the appellant for the purpose of the appeal.

Reason: The appellant could not be located to serve him with the notice of the hearing of the appeal.

Case Name: Sheldon Peter
V
The Commissioner of Police
[SLUMCRAP2006/0000]

Date: Monday, 26th January 2015

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

Appearances:

Appellant: No appearance

Respondent: Ms. Tina Mensah

Issue: Status of the matter

Result / Order: [Oral delivery]
1. The Registrar of the High Court shall send a report to the Chief Registrar on the status of the record of proceedings in the magisterial appeal on or before 31st March 2015.
2. The matter is adjourned to the week commencing 13th April 2015.

Reason: The record of appeal had not yet been prepared.

Case Name: Morris Francois
V
Fitzroy Alexander

[SLUMCRAP1993/0001]

Date: Monday, 26th January 2015

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

Appearances:

Appellant:	In person
Respondent:	No appearance

Issues: Status of the matter – Appeal against conviction
– Appeal against sentence – Whether sentence imposed was excessive

Result / Order: [Oral delivery]

1. The Registrar of the High Court shall send a report to the Chief Registrar on the status of the record of proceedings in the magisterial appeal on or before 31st March 2015.
2. The matter is adjourned to the Court of Appeal sitting during the week commencing 13th April 2015.

Reason: The record of appeal had not yet been prepared.

Case Name:

Constable Vincent Marcel
v
Constable 257 Hendricks Constable

[SLUMCRAP2007/0012]

Date: Monday, 26th January 2015

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

Appearances:

Appellant: Ms. Isa Cyril
Respondent: Ms. Tina Mensah

Issue: Status of the matter

Result / Order: [Oral delivery]
The matter is traversed to the next sitting of the Court during the week commencing 13th April 2015.

Reason: The matter had been traversed at case management to the April 2015 sitting of the Court in Saint Lucia.

Case Name: Constable Vincent Marcel
v
Sargeant 375 Mark Evariste
[SLUMCRAP2007/0011]

Date: Monday, 26th January 2015

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

Appearances:
Appellant: Ms. Isa Cyril
Respondent: Ms. Tina Mensah

Issue: Status of the matter

Result / Order: [Oral delivery]
The matter is traversed to the next sitting of the Court during the week commencing 13th April 2015.

Reason: The matter had been traversed at case management to the April 2015 sitting of the Court in Saint Lucia.

Case Name: Cornelius Jn. Baptiste
v
Ricky Mercedes
[SLUMCRAP2000/0000]

Date: Monday, 26th January 2015

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

Appearances:

Appellant: No appearance

Respondent: No appearance

Issue: Status of the matter

Result / Order: The matter is stood down.

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

Date: Monday, 26th January 2015

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

Appearances:

Appellant: Mr. Al Elliot
Respondent: Ms. Tina Mensah

Issue: Status of the matter

Result / Order: [Oral delivery]
1. The Registrar of the High Court shall send a report to the Chief Registrar on the status of the record of proceedings in the magisterial appeal on or before 31st March 2015.
2. The matter is adjourned to next sitting of the Court during the week commencing 13th April 2015.

Reason: The record of appeal had not yet been prepared.

Case Name: The Castries City Council
V
Lambert Nelson
[SLUMCRAP2014/0016]

Date: Monday, 26th January 2015

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

Appearances:
Appellant: No appearance
Respondent: No appearance

Issue: Status of the matter

Result / Order: Matter stood down.

Case Name:

Cornelius Jn. Baptiste

V

Ricky Mercedes

[SLUMCRAP2000/0000]

Date:

Monday, 26th January 2015

Before:

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant:

No appearance

Respondent:

Mr. Andie George

Issue:

Status of the matter

Result / Order:

[Oral delivery]

- 1. The appeal is adjourned to the next status hearing date during the sitting of the Court of Appeal in Saint Lucia commencing during the week 13th April 2015.**
- 2. The notice of hearing to be served on the appellant by publication in two consecutive issues in a newspaper in general circulation in Saint Lucia.**
- 3. The notice shall include the (i) name (ii) address (iii) Number of the appeal and (iv) date the Magistrate pronounced the conviction.**
- 4. The appellant shall be required to attend on the date stated in the publication.**
- 5. The notice by publication shall be deemed to be good service on the appellant for the purpose of the appeal.**

Reason:

The appellant could not be located to serve notice of hearing of the appeal on him.

Case Name: **The Castries City Council**
V
Lambert Nelson
[SLUMCRAP2014/0016]

Date: **Monday, 26th January 2015**

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

Appearances:

Appellant: **No appearance**

Respondent: **Ms. Lydia Faisal**

Issue: **Status of the matter**

Result / Order: **[Oral delivery]**
The matter is stood down until Thursday, 29th January 2015.

Reason: **There was no appearance by counsel for the appellant.**

Case Name: **Justin John**
V
Commissioner of Police
[SLUMCRAP1999/0008]

Date: **Monday, 26th January 2015**

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

Appearances:

Appellant: No appearance
Respondent: Ms. Tina Mensah

Issue: Status of the matter

Result / Order: [Oral delivery]
1. The appeal is adjourned to the next status hearing date during the sitting of the Court of Appeal in Saint Lucia commencing during the week 13th April 2015.
2. The notice of hearing to be served on the appellant by publication in two consecutive issues in a newspaper in general circulation in Saint Lucia.
3. The notice shall include the (i) name (ii) address of the appellant (iii) Number of the appeal and (iv) date the Magistrate pronounced the conviction.
4. The appellant to attend the hearing at the date stated in the notice.
5. Publication in the newspaper shall be deemed good service on the appellant.

Reason: There was no appearance by the appellant and the appellant had not been served with the notice of the hearing.

Case Name: Tanzanite International Limited
v
The Attorney General of Saint Lucia
[SLUHCVAP2008/0039]

Date: Thursday, 29th January 2015

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

Appearances:

Appellant: Ms. Renee St. Rose
Respondent: Mrs. Brender Portland-Reynolds

Issue: Status of the matter

Result / Order / Reason: [Oral delivery]
1. Leave is granted to withdraw the appeal.
2. The appeal is accordingly dismissed with no order as to costs.

Case Name: The Castries City Council
V
Lambert Nelson
[SLUMCRAP2014/0016]

Date: Thursday, 29th January 2015

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

Appearances:
Appellant: Ms. Renee St. Rose
Respondent: Ms. Lydia Faisal

Issue: Status of the matter

Result / Order: [Oral delivery]
The appellant is granted leave to make an application for extension of time to comply with CPR 62.10 within 7 days of today's order.

APPLICATIONS AND APPEALS

Case Name:

[1] Neville Cenac

[2] Julita Cenac

[3] John Smith

[4] Linda Smith

v

[1] Robert Schafer

[SLUHCVAP2012/0036]

Date:

Monday, 26th January 2015

Coram:

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

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

The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant:

Mr. Leslie Prospere

Respondent:

Ms. Renee St. Rose

Issue:

Application for final leave to appeal to the Privy Council

Result / Order:

[Oral delivery]

Final leave is granted to the appellants/applicants to appeal to Her Majesty in Council.

Reason:

The appellants/applicants satisfied the requirements/conditions for final leave to appeal to Her Majesty in Council.

Case Name:

[1] Cecile Beryl Ryan-Cox

[2] Theobald Cox
v
[1] Rhona aka Lorna Cox
[SLUHCVAP2013/0003]

Date: Monday, 26th January 2015

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

Appearances:

Appellant: Mr. Winston Hinkson

Respondent: Mr. Leslie Prospere

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

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

Reason: The appellants/applicants satisfied the requirements/conditions for final leave to appeal to Her Majesty in Council.

Case Name: Denys Barrow
v
The Attorney General
[SLUHCVAP2013/0001]

Date: Monday, 26th January 2015

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

Appearances:

Appellant: Ms. Renee St. Rose

Respondent: Mrs. Cagina Foster-Lubrin

Issue: Conditional leave to appeal to Her Majesty in Council

Result / Order: [Oral delivery]

1. The appellant/applicant is granted conditional leave to appeal to Her Majesty in Council on the following conditions:
 - (a) The appellant/applicant do, within 90 days of the date hereof enter into good and sufficient security in the sum equivalent to £500 (five hundred pounds sterling) pursuant to Section 5(a) of the West Indies Associated States (Appeals to the Privy Council) Order No. 224 of 1967, for the due prosecution of the appeal, such security to consist of a deposit of the said amount at the court office.
 - (b) The appellant/applicant do, within 90 days hereof, take the necessary steps to procure the preparation of the records of proceedings and the said dispatch thereof to the Registrar of the Privy Council. The said records which are to be settled with the solicitors for the respondent and transmitted to the Registrar of the Privy Council shall be comprised of the record used at the hearing of the appeal, save documents of a formal nature omitted by consent of the parties, the judgments, the order of the

Court of Appeal and the Orders granting conditional and final leave to appeal to Her Majesty in Council.

- (c) The record shall be prepared in accordance with Rules 18-20 of the Judicial Committee Rules (2009) and Practice Directions 4.3.1 to 4.3.2 and Practice Directions 5 (as amended in 2013) and shall be transmitted to the Registrar of the Privy Council without delay where final permission to appeal has been granted.
2. The petitioner shall make an application to the Court for final permission to appeal supported by a certificate from the Registrar that security for costs has been given by the time prescribed by this Order to the satisfaction of the Registrar of the High Court.
 3. The costs in this application for conditional leave shall be costs in the appeal to Her Majesty in Council.

Reason:

The appeal was as of right pursuant to section 108 of the Constitution of St. Lucia.

Case Name:

**Kaim Sexius
v
The Attorney General
[SLUHCVAP2012/0034]**

Date:

Monday, 26th January 2015

Coram:

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

Appearances:

Appellant: Mr. Andie George

Respondent: Mrs. Cagina Foster-Lubrin

Issue: Conditional leave to appeal to Her Majesty in Council

Result / Order: [Oral delivery]

1. Leave to appeal to Her Majesty in Council is granted to the appellant/applicant pursuant to Section 108 of the Constitution of Saint Lucia against the judgment of the Court of Appeal issued herein on 27th October 2014 upon the conditions that:
 - (a) The appellant/applicant do within ninety (90) days of the date of the hearing of this application for leave to appeal enter into good and sufficient security in the sum of Five Hundred Dollars (\$500) for the due prosecution of the appeal and the payment of all such costs as may be payable by the appellant/applicant in the event of this appeal being dismissed, such security to consist of the deposit of the said amount in the Court.
 - (b) The appellant/applicant do take such steps for the purpose of procuring the preparation of the Record, settling such Record with the solicitors for the respondent and transmitting such Record to the Registrar of the Privy Council within ninety (90) days of the date of hearing of this application for leave to appeal.
 - (c) The Record shall be comprised of the Record used at the hearing of the appeal, excluding documents of a formal nature and those omitted by consent, and shall include the judgment and orders of the Court of Appeal, and the order granting conditional and final leave to appeal.
 - (d) The appellant/ applicant shall make application to this Court for final leave to appeal to Her Majesty in Council

supported by the Certificate of the Registrar that the security for costs herein ordered has been given within the time prescribed by this order to the satisfaction of the Registrar.

(e) The costs of this application be costs in the cause.

Reason: The appeal was as of right pursuant to section 108 of the Constitution of St. Lucia.

Case Name: Fire Service Association
v
Attorney General
[SLUHCVAP2013/0011]

Date: Monday, 26th January 2015

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

Appearances:
Appellant: Mrs. Cynthia Hinkson-Oula
Respondent: Mr. Dwight Lay with him Ms. Jan Drysdale

Issue: Application for extension of time to file a notice of appeal/application for leave to appeal

Result / Order: [Oral delivery]
1. The application for extension of time for leave to appeal is dismissed save that the order for costs made in the favour of the Attorney General in the court below is set

aside by consent and shall read “That there be no order as to costs having regard to CPR Part 56.13(6)”.

2. No order as to costs on this application.

Reason:

The Court found that the delay was inordinate; the reasons advanced for the delay were not good reasons; further, the appeal had no reasonable prospect of success as the relief claimed will be worthless against the Attorney General as the decision maker was not the Attorney General but the Cabinet Ministers.

However, the Court found, and the respondent conceded, that the learned judge erred in awarding costs against the appellant in breach of rule 56.13(6) of the Civil Procedure Rules 2000.

Case Name:

Richardson Leon

V

Walter Pierre

[SLUHCVAP2013/0018]

Date:

Monday, 26th January 2015

Coram:

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

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

The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Applicant / Intended Appellant: Mr. Gerard Williams

Respondent: Mrs. Wauneen Louis-Harris

Issue:

Application for leave to appeal

Result / Order:

[Oral delivery]

- 1. The application for leave to appeal is dismissed.**
- 2. Costs to the respondent agreed in the sum of \$1000.00.**

Reason:

The applicant failed to file an acknowledgment of service and a defence in the matter. A judgment in default was entered against the applicant. The applicant applied to set aside the default judgment stating that there was a miscommunication/misunderstanding between the applicant and his then lawyer.

The Court found that the onus is on an applicant to advance good/sufficient reasons for his or her failure to file an acknowledgement of service and or defence. The reason given by the applicant in this case was a broad statement. A miscommunication between a lawyer and a client without more is an insufficient reason for failing to file the required documents. The appeal had no realistic prospect of success.

Case Name:

**Valentine James
v
Bank of Nova Scotia**

[SLUHCVAP2013/0029]

Date:

Monday, 26th January 2015

Coram:

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

Appearances:

Appellant: Mrs. Wauneen Louis Hariris

Respondent: Mr. Jonathan McNamara

Issue: Application for leave to appeal

Result / Order / Reason: [Oral delivery]
Matter stood down until Thursday, 29th January 2015 to facilitate settlement discussions between the parties.

Case Name: Angus Jn. Baptiste
V
Oliver Sampson

[SLUMCVAP2013/0001]

Date: Monday, 26th January 2015

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

Appearances:

Appellant: Mr. Alfred Alcide

Respondent: In person

Issue: Application to set aside decision of a single judge

Result / Order: [Oral delivery]
1. The application to vary or discharge the order of a single judge made on 21st January 2014 is dismissed no good reason having been advanced for varying or discharging of

the same.

2. The decision of the single judge dated 21st January 2014 stands.
3. Costs to the respondent in the sum of \$500.00 on the application, such costs to be paid by 27th February 2015.

Reason:

Counsel for the appellant had filed a notice of appeal in the matter. The Court held that the application ought to have been made under rule 62.16(a) of the Civil Procedure Rules 2000. However, the Court stated that it would not hold counsel to form and will deal with the application.

The Court found that no evidence had been placed before it which could have indicated that indeed a notice of appeal had been filed; so too there was no evidence before the single judge to that effect.

Further, there was a document filed by the District Court which stated that after a lengthy search there was no record of any notice of appeal having been filed. Even in counsel's extensive affidavit, there was no mention of any written notice of appeal; what was referred to in counsel's affidavit was an oral notice.

Case Name:

Bernard Auguste

v

Ian Joseph

[SLUHCVAP2013/0008]

Date:

Monday, 26th January 2015

Coram:

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

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

The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: Mr. Horace Fraser

Respondent: Ms. Antonia Auguste

Issue: Application to withdraw as attorney for the respondent

Result / Order: [Oral delivery]

1. The application for Mrs. Edith Petra Jeffrey Nelson to be removed from the record as legal practitioner for the respondent in this appeal and in Claim No. SLUHCV2008/0309/Civil Appeal No. 27 of 2009 is granted.
2. No order as to costs.
3. A copy of this order granting removal from the record be served on the respondent, Ian Joseph and the legal practitioner for the appellant.
4. The hearing of the substantive appeal and the application to amend grounds of appeal are adjourned to the next sitting of the Full Court during the week of 13th April 2015.

Reason: The Court was satisfied that the respondent had received notice of the application. The respondent had no objection to the application.

The respondent requested time to instruct a new attorney.

Counsel for the appellant did not oppose the application.

Case Name:

**Kim Florent
v**

The Queen

[SLUHCRA2012/0001]

Date: Monday, 26th January 2015

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

Appearances:

Appellant: In person

Respondent: Ms. Tina Mensah

Issues: Criminal appeal against conviction – Rape and unlawful sexual connection

Result / Order: [Oral delivery]

1. The appellant to file and serve submissions on or before Friday, 20th March 2015 through Mr. Andie George, Counsel appearing amicus.
2. The respondent to file and serve submissions on or before Tuesday, 7th April 2015.
3. The hearing of the appeal is adjourned to the next sitting of the Full Court in Saint Lucia commencing the week of 13th April 2015.

Reason: Mr. Andie George addressed the Court and indicated that he will assist the appellant. He needed time to familiarize himself with the matter. He appeared amicus.

Case Name: Boniface Christophe
v

The Queen

[SLUHCRAP2010/0002]

Date: Monday, 26th January 2015

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

Appearances:

Appellant: Mr. Colin Foster

Respondent: Mrs. Victoria Charles-Clarke, Director of Public Prosecutions

Issues: Criminal appeal against conviction – Robbery

Result / Order: [Oral delivery]

1. An amended notice of appeal is to be filed and served on or before Monday, 16th February 2015.
2. The appellant is to file and serve skeleton arguments on or before Monday, 9th March 2015.
3. The respondent is to file and serve skeleton arguments on or before Friday, 27th March 2015.
4. The hearing of the appeal is adjourned to the next sitting of the Full Court in Saint Lucia commencing the week of 13th April 2015.

Case Name: Chester King
v
The Police

[SLUMCRAP2014/0003]

Date: Monday, 26th January 2015

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

Appearances:

Appellant: No appearance

Respondent: Mrs. Victoria Charles-Clarke, Director of Public Prosecutions

Issues: Criminal appeal against conviction –
Intentionally cause a wound

Result / Order: Matter stood down to ascertain the reason for the appellant's absence.

Case Name: Brad Andrew
V
The Police
[SLUMCRAP2014/0011]

Date: Monday, 26th January 2015

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

Appearances:

Appellant: Mr. Horace Fraser

Respondent: Mrs. Victoria Charles-Clarke, Director of Public Prosecutions with her Mrs. Tamara Foster-

Calderon

Issues: Criminal appeal against sentence – Possession of a controlled drug / possession with intent to supply

Result / Order: Matter stood down so that counsel for the appellant, who had recently received the appellant's files and had not seen the respondent's submissions as he was also recently retained, could have a look at the entire file.

Case Name: Christopher St. Rose
v
PC 860 Bruce Bart
[SLUMCRAP2014/0016]

Date: Monday, 26th January 2015

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

Appearances:
Appellant: Mrs. Wauneen Louis-Harris with her Ms. Donna Jacobie
Respondent: Mrs. Victoria Charles Clarke, Director of Public Prosecutions with her Mr. Leon France

Issues: Criminal appeal against sentence – Intentionally causing harm

Result / Order / [Oral delivery]

Reason: Matter adjourned to Thursday, 29th January 2015 to determine progress on obtaining medical report which was referred to by the magistrate but which was not on the file.

Case Name: Constable Henry PC 302
v
Edward Radmore
[SLUMCRAP2001/0009]

Date: Monday, 26th January 2015

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

Appearances:
Appellant: No appearance
Respondent: No appearance

Issues: Criminal appeal against conviction – Refusing to leave premises

Result / Order: [Oral delivery]
1. The hearing of the appeal is adjourned to the next sitting of the Full Court in Saint Lucia commencing the week of 13th April 2015.
2. The Registrar of the High Court is to give notice of the hearing date to Constable Henry, the appellant.

Reason: Mr. Horace Fraser indicated to the Court that the respondent is now deceased.

In addition, the Court was uncertain whether the

appellant was served with a notice of hearing as there was nothing on the file to indicate that he was served with same.

Case Name:

Brad Andrew

v

The Police

[SLUMCRAP2014/0011]

Date:

Monday, 26th January 2015

Coram:

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

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

The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant:

Mr. Horace Fraser

Respondent:

Mrs. Tamara Foster-Calderon with her Ms. Tina Mensah

Issues:

Criminal appeal against sentence – Possession of a controlled drug / possession with intent to supply

Result / Order:

[Oral delivery]

- 1. A pre-sentence report is to be obtained in relation to the appellant from the department of Probation and Parole. The said report to be submitted to the Court with a copy to the parties on or before Friday, 13th March 2015.**
- 2. The appellant is to file and serve skeleton submissions on or before Friday, 20th March 2015.**
- 3. The respondent is to file and serve reply skeleton submissions on or before Friday, 27th March 2015.**

4. The hearing of the appeal is adjourned to the next sitting of the Full Court in Saint Lucia commencing the week of 13th April 2015.

Reason:

Counsel for the appellant requested time to produce a pre-sentencing report. Counsel for the respondent had no difficulty with this request.

Case Name:

Chester King

V

The Police

[SLUMCRAP2014/0003]

Date:

Monday, 26th January 2015

Coram:

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

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

The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant:

In person

Respondent:

Ms. Tina Mensah

Issues:

**Criminal appeal against conviction –
Intentionally cause a wound**

Result / Order:

[Oral delivery]

**The hearing of the appeal is adjourned until
Thursday, 29th January 2015.**

Reason:

**The appellant requested an adjournment.
Counsel for the respondent had no objection.**

Case Name:

Kester Donnelly

V

Murkey Xavier

[SLUMCVAP2013/0002]

Date:

Monday, 26th January 2015

Coram:

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

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

The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant:

No appearance

Respondent:

No appearance

Issue:

Civil appeal

Result / Order:

[Oral delivery]

There being no appearance by either party the appeal herein stands struck out.

Reason:

The Court had before it an affidavit of service which stated that the appellant was served on 11th December 2014.

Case Name:

Bryan James

V

The Attorney General

[SLUHCVAP2013/0023]

James Enterprises Limited
v
The Attorney General

[SLUHCVAP2013/0024]

Date: Monday, 26th January 2015

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Mario Michel, Justice of appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant:	Mr. Horace Fraser
Respondent:	Ms. Karen Bernard

Issue: Application for extension of time to file a notice of appeal against a decision of a single judge

Result / Order: [Oral delivery]

1. The applications for extension of time to appeal are granted.
2. There be no order as to costs.
3. Appeal Nos. SLUHCVAP2013/0023 and SLUHCVAP2013/0024 are consolidated as they relate to the same issues and the same parties.
4. The appellant shall file and serve submissions addressing (1) Article 28 of the Code of Civil Procedure and its relationship to the relevant provisions of the Crown Proceedings Act, particularly, sections 4, 10, 13 and 14 of that Act and (2) the question of the Article 28 notice operating as a judicial demand and thus constituting a civil interruption under Article 2085 of the Civil Code, on or before Monday, 23rd February 2015.
5. The respondent is to file and serve submissions addressing the same issues on

or before Monday, 23rd March 2015.

6. The matter is adjourned to the next sitting of the Full Court in Saint Lucia commencing the week of 13th April 2015.

Reason:

The Court looked at the entire situation in the round to determine whether to exercise the discretion to allow an extension of time.

The Court was satisfied notwithstanding the inadequate explanation for the delay, the issues raised were serious questions as to the juxtaposition of Article 28 of the Code of Civil Procedure with sections 4, 13 and 14 of the Crown Proceedings Act, Cap. 2:05, as well as the question as to whether the Article 28 notice, if properly given, amounts to a judicial demand operating as a civil interruption for the purpose of prescription of the claim.

The Court considered the issue of prejudice to both the respondent and was satisfied that granting the appellant an extension of time would not cause the respondent prejudice but to the contrary would prejudice the appellant and any chances of a remedy available to him. The balance of justice favored the appellant in this regard.

Case Name:

**Michael Duncan formerly registered as
Michael Jones
v
Juline Jones**

[SLUHCVP2013/0026]

Date:

Tuesday, 27th January 2015

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: Mrs. Andra Gokool-Foster

Respondent: Mr. Dexter Theodore

Issues:

Civil appeal – Whether trial judge ought to have accepted foreign evidence as proof of service which service the appellant denies – Article 45 of the Civil Code of St. Lucia

Result / Order:

[Oral delivery]

1. The appeal is allowed.
2. The order of Belle J dated 15th November, 2013 is set aside in Claim SLUHCV2005/1002.
3. The order of Mason J made on 15th November 2005 is also set aside.
4. The rectification order dated 10th November, 2003 in petition number M136/2000 subsists.
5. The respondent is granted leave to take any steps deemed fit in relation to the 2003 Order.
6. Costs to the appellant agreed in the sum of \$2000.00.

Reason:

In 2003, the appellant had applied for and was granted a rectification of his birth record by the registrar due to the fact that there was an error/omission on that record. In 2005, upon application for rectification by the respondent, Mason J made an order setting aside the registrar's 2003 order. Mason J had accepted a foreign document, a French document, filed as evidence that service was effected on the appellant. The appellant, at all material times, lived outside of the jurisdiction.

(Obiter) The Court noted that with Mason J's order subsisting, an application ought not to have been made to correct the vital record,

being the birth record of the appellant, save and except by an appeal or by an application to set it aside made within requisite time as granted by the CPR.

An application came before Belle J for Mason J's order to be set aside. Belle J made an order in November 2013 approving the order of Mason J.

The Court found that Belle J erred in seeking to review the order of Mason J. He had no such jurisdiction and purported to act in a manner consistent with the exercise of an appellate jurisdiction. He exceeded his jurisdiction in so doing by first reversing Mason J's order and then seeking to restore it. He made pronouncements and findings which were not open to him including findings of fraud and deception which both sides agreed were not before him.

The Court recognised that there was no appeal against the order of Mason J of 2005. Both parties however made submissions on the order and that order was reviewed by Belle J. It would not be possible to sever the two orders as they are inextricably bound. The Court was of the view that the justice of the case required that the Court addressed the issue of Mason J's order as well.

The Court invoked the provisions of section 28 of the Eastern Caribbean Supreme Court (St. Lucia) Act, Cap. 2.01, which deals with the power of a Court of Appeal on hearing an appeal. Both parties agreed that the issue of service on the appellant of the application to rectify was critical to the appeal.

The Court was of the view that there was non-compliance with section 149 of the Evidence Act of St. Lucia, Cap. 4.15, and Mason J erred in finding that there was service. In any event, the appellant deposed on affidavit that he was not served. It was wrong in the circumstances to

make a finding of service.

Case Name: **Francis Maurice**
V
Marlene Briere-Cherry
[SLUHCVAP2014/0009]

Date: **Tuesday, 27th January 2015**

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. Alvin St. Clair**

Respondent: **Mr. Horace Fraser**

Issues: **Application to vary order of a single judge –**
Application to reconsider stay of execution

Result / Order: **[Oral delivery]**
1. By consent the 2nd paragraph of the Order of Baptiste, JA made on 21st October 2014 is set aside.
2. The appeal is allowed.
3. By consent there shall be no order as to costs.

Reason: **Having read the written submissions and listened to the oral submissions of the parties, the Court allowed the appeal on the basis that the trial judge erred in ordering the removal of the caution. Apart from giving no reasons for so doing, the judge erred in not paying regard to Article 1909 of the Civil Code which states**

that a hypothec is indivisible and binds in entirety all the immovables subject to it and each and every portion of them.

In the circumstances of this case, the Court found that Article 1914 of the Civil Code was not engaged. Justice Saunders' order simply declared the parties' interest but he did not partition the land.

Case Name:

[1] Moses Joseph
[2] St. Lawrence Matty
[3] Matthew Matty
[4] Patrick Lubrin
[5] Earl Bernard
[6] Antoine Fanis

v

[1] Alicia Francois
(Adminstratrix of the Estate of the late
Jacob Fanus of Desruisseaux, Micoud)

Date:

Wednesday, 28th January 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. Horace Fraser

Respondent:

Mrs. Wauneen Louis-Harris holding for Mr. Vern Gill

Issue:

Application for leave to amend grounds of appeal

Result / Order:

[Oral delivery]

- 1. Leave is granted for the amendment of the grounds of appeal.**
- 2. The appellant shall file and serve a duly amended notice of appeal on or before Wednesday, 4th February 2015.**

Reason:

Mr. Vern Gill, counsel who had conduct of the matter, sent a medical certificate to the Court as he was ill and unable to attend.

Mrs. Harris indicated that Mr. Gill had no objection to the application to amend the grounds of appeal.

Case Name:

**[1] St. Torrence Matty
[2] Matthew Matty
[3] Peter Fanus
[4] Raymond Fanis
(Representatives of the estate of Louis
Seraphin)**

V

[1] Alicia Francois

[SLUHCVAP2012/0037]

Date:

Wednesday, 28th January 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. Horace Fraser

Respondent:

Mrs. Wauneen Louis-Harris holding for Mr. Vern Gill

Issue: Civil appeal

Result / Order: [Oral delivery]
1. Civil Appeal No. 25 of 2011 and Civil Appeal No. 27 of 2012 be consolidated.
2. The respondent shall file and serve skeleton arguments on or before 27th February 2015.
3. The appellant shall be at liberty to file and serve skeleton arguments in reply by Friday 13th March 2015; all skeleton arguments shall have accompanying list of authorities referred to.
4. The consolidated appeals shall be heard during the next sitting of the court during the week commencing 13th April 2015.

Reason: Mr. Vern Gill, counsel who had conduct of the matter, was ill (he furnished the Court with a medical report) and requested an adjournment through counsel who is holding for him.

Case Name: Jewel Thornhill
v
The Attorney General
[SLUHCVAP2012/0035]

Date: Wednesday, 28th January 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. Horace Fraser

Respondent: Mr. Dwight Lay

Issues: Civil appeal – Bad faith – Whether police officer was acting as a servant of the Crown – Section 4 of the Crown Proceedings Act, Cap. 2.05 – Whether action prescribed

Result / Order: Judgment reserved.

Case Name: Peter Auguste
v
Rudy John

[SLUHCVAP2014/0010]

Date: Wednesday, 28th January 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. Alvin St. Clair

Respondent: Ms. Maureen John-Xavier

Issues: Civil appeal – Default judgment

Result / Order: [Oral delivery]
1. The appeal is allowed and the matter is remitted to the High Court to be determined by a different judge.
2. The counter appeal is also allowed.
3. No order as to costs on the appeal and counter appeal.

Reason:

The judgment entered by the court on 15th October 2008, the defence having been struck out, was in the nature of a default judgment pursuant to CPR Part 12.5(c). Having ordered that the terms of the judgment were to be determined on the application of the appellant, for that determination the terms of the judgment ought to have been decided in accordance with CPR 12.10 rather than treating the application to determine the terms of the judgment as an assessment at that stage.

The Court went on further to state:

“Accordingly, the terms of the default judgment is to be treated as “pursuant to CPR 12.10(1)(c)(ii)” and we would order that an assessment before a different judge be carried out pursuant to CPR Part 16.”

Case Name:

WPC Collinthia Thomas

V

Thomas Collin Boulton

[SLUMCRAP2013/0023]

Date:

Wednesday, 28th January 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:

Mrs. Victoria Charles-Clarke, Director of Public Prosecutions

Issues:

Civil Appeal – Case Stated – Interpretation of section 763 and 768 of the Criminal Code

Result / Order:

[Oral delivery]

- 1. The cases stated together with the notices of appeal, the records of appeal submissions and authorities shall be served on the legal practitioners for the defendants below and on the President of the Bar Association on or before Friday, 13th February 2015.**
- 2. The Legal Practitioners for the defendants below and the Legal Practitioner designated by the Bar Association shall file and serve submissions addressing the legal issue raised in the statement of case on or before 31st March 2015.**
- 3. Consideration of the cases stated is adjourned to be heard during the week of the sitting of the Court of Appeal commencing on 13th April 2015.**
- 4. A copy of this order shall be served on the legal practitioners of the defendants below and on the President of the Bar Association no later than 6th February 2015.**
- 5. Civil Appeal cases No. 22 of 2013 and No. 23 of 2013 are hereby consolidated.**

Reason:

The Court was of the opinion that in the interest of justice the legal practitioners who appeared for the parties in the lower court and the Bar Association ought to be given an opportunity to file submissions in relation to the wide public interest on the question so that the Court could have well-rounded assistance in giving the guidance that is sought.

Case Name:

Christopher St. Rose

v

PC 860 Bruce Bart

[SLUMCRAP2014/0016]

Date:

Thursday, 29th January 2015

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

Appearances:
Appellant: Mrs. Wauneen Louis-Harris
Respondent: Mrs. Victoria Charles-Clarke, Director of Public Prosecutions with her Mr. Leon France

Issues: Criminal appeal against conviction – Intentionally causing harm

Result / Order: [Oral delivery]
1. The appeal against sentence is allowed.
2. The appellant to pay compensation to the virtual complainant in respect of the injuries sustained in the sum of \$1,000.00 to be paid on or before 27th February 2015.

Reason: The Court was of the view, that having regard to the maximum sentence of two years coupled with the mitigating factors, that was the guilty plea, the fact that there were no prior convictions, having regard to the fact that the appellant has to date been incarcerated for a period of 1 month and a few days and having regard to the nature of the injuries sustained by the virtual complainant, the appropriate sentence which meets the justice of the case would be to time served.

The Court noted that the magistrate is a creature of statute and the provisions of the criminal code under which the appellant was convicted and sentence provided for a custodial sentence.

Case Name:

Christopher Bristol

v

The Police

[SLUMCRAP2012/0007]

Date:

Thursday, 29th January 2015

Coram:

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

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant:

Mr. Horace Fraser

Respondent:

Mr. Stephen Brette

Issues:

Criminal appeal against conviction - Unlawful assault – Breach of protection order

Result / Order:

[Oral delivery]

- 1. The appeal against conviction is dismissed.**
- 2. The appeal against sentence is allowed to the extent that in respect of the assault charge, the appellant is cautioned reprimanded and discharged. In respect of the charge of the breach of the protection order a fine is imposed in the sum of \$500.00 to be paid within 30 days.**

Reason:

In relation to the conviction, the appeal was dismissed. Even though the magistrate did not carry out a complete evaluation of the facts in determining proportionality, when one considers the entire incident it was clear there was sufficient evidence on which she could have made a finding of assault.

As it related to the appeal against sentence, the respondent having conceded the point with regard to the punishment imposed and having regard to the principles in *Graham and another v Police and Other cases* ((2010) 79 WIR 288)

the two matters having occurred in the same series of facts, the Court was of the view, that there should be no punishment recorded in respect of the assault; there should be a reprimand and discharge.

The Court however looks very seriously on the breach of the protection order which is an order of the court; even in these particular circumstances, the Court's displeasure of a breach of a court order ought to be reflected.

Case Name:

Colville Walcott

V

Titus Leo PC 135

[SLUMCRAP1998/0002]

Date:

Thursday, 29th January 2015

Coram:

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

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant:

Mr. Marcus Peter Foster

Respondent:

Mr. Stephen Brette

Issue:

Criminal appeal against conviction

Result / Order:

[Oral delivery]

- 1. The appeal against conviction is dismissed.**
- 2. The appeal against sentence is allowed to the extent that the appellant is cautioned, reprimanded and discharged.**

Reason:

Evidence was given that the appellant (who at that time was the defendant) was duly served

with notice of the hearing; the appellant failed to show up, there was no explanation on the record for the appellant's absence. Having regard to those facts, it was within the power of the magistrate to proceed to hear the matter ex parte and on the facts given to have found that the offence was made out. There was nothing that was shown that the magistrate was blatantly wrong.

The Court was however of the view that the imposition of the fine of \$500.00 to be paid forthwith would have amounted to an immediate term of imprisonment which would have been excessive. In the justice of the case, the Court was of the opinion that the conviction ought to be discharged and the appellant reprimanded and discharged.

Case Name:

**Bernard Monrose
v
SPC 513 Lucius Small
[SLUMCRAP2003/0010]**

Date:

Thursday, 29th January 2015

Coram:

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

Appearances:

Appellant:

Mr. Shawn Innocent

Respondent:

Mrs. Victoria Charles-Clarke, Director of Public Prosecutions with her Mr. Leon France

Issues:

Criminal appeal against conviction – Section 22(5) of the Firearms Act, Cap. 14.12

Result / Order:

[Oral delivery]

- 1. The appeal against conviction is dismissed.**
- 2. The appeal against sentence is allowed to the extent that a fine is substituted for the custodial sentence. The appellant shall pay a fine in respect of the offences in the sum of \$10,000.00, the said sum to be paid within 3 months' of today's date. In default of payment of the fine the appellant to be imprisoned for a term of 6 months.**

Reason:

The Court found that there was no good reason for disturbing the learned magistrate's finding of guilt in the circumstances of the case. The facts were such that he could have drawn a reasonable inference that the appellant was in possession of the firearm and ammunition.

In relation to the appeal against sentence, the Court was mindful of the delay in the prosecution of the appeal due to no fault of the appellant. The Court noted that the appellant had been at liberty over the period and at this stage, over 12 years having elapsed from the time of conviction, held that it would not serve the interests of justice to impose the custodial sentence on the appellant at this stage.

Case Name:

Peter Charles

v

The Police

[SLUMCRAP2013/0001]

Date:

Thursday, 29th January 2015

Coram:

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

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: Mr. Alfred Alcide

Respondent: Mr. Stephen Brette

Issues: Criminal appeal against conviction – Possession of a controlled drug – Possession with intent to supply

Result / Order: [Oral delivery]
1. The hearing of the appeal is adjourned to the next sitting of the court in Saint Lucia during the week commencing 13th April 2015.
2. The appellant shall file and serve skeleton arguments on or before 27th February 2015.

Reason: Counsel for the appellant requested an adjournment as appellant's skeleton submissions were not filed in this matter.

Counsel for the respondent had no objection but placed on record that the matter was adjourned before and that directions were given in July 2014 for submissions to be filed.

Case Name: Chester King
V
The Police (WPC Larna Nicholas)

[SLUMCRAP2014/0003]

Date: Thursday, 29th January 2015

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

Appearances:
Appellant: In person

Respondent: Mrs. Victoria Charles-Clarke, Director of Public Prosecutions with her Ms. Tina Mensah

Issues: Criminal appeal against conviction – Intentionally cause a wound

Result / Order: [Oral delivery]
1. The appeal against conviction is dismissed.
2. The appeal against sentence is dismissed and the sentence of 18 months imprisonment is affirmed.

Reason: The Court noted that the role of an appellate court is not to retry the case; the role is to determine, on the issues complained about, whether or not there was evidence before the court which could have substantiated the findings to which the magistrate came.

The Court was of the view that there was sufficient evidence in the matter on which the magistrate could have come to the decision with which he came, that is, that the virtual complainant was wounded by the appellant.

As it related to the sentence of 18 months imposed by the magistrate, the Court had regard to the fact that the maximum time in prison is 3 years. There was a full trial of the matter; the learned magistrate set out in reasons for decision various matters which she took into account (lines 10 to paragraph 10 to 13); the learned magistrate took into account the aggravating factors which outweighed the mitigating factors. As such, there was no reason to disturb the sentence imposed by the magistrate.

Case Name: Guy Godfrey Harte

V
The Police

[SLUMCRAP2012/0010]

Date: Thursday, 29th January 2015

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

Appearances:

Appellant: Mr. Horace Fraser

Respondent: Mrs. Tamera Foster-Calderon with her Ms. Tina Mensah

Issues: Criminal appeal against conviction – Indecent assault

Result / Order: [Oral delivery]
1. The appeal against conviction is dismissed.
2. The appeal against sentence is dismissed.
Conviction and sentence affirmed.

Reason: The Court did not conclude that there was any irregularity in the trial of the defendant. The magistrate is an arbiter of both fact and law. The Court was satisfied that he considered all of the evidence and the defence of the defendant notwithstanding the magistrate did not go into the defence in detail. The learned magistrate clearly accepted the evidence of the virtual complainant while reminding himself of the difficulties of the defendant on the charge. He clearly alerted his mind to and weighed the defence. As such, it was reasonable for him to come to the conclusion to which he came.

The Court did not consider that the matters raised and urged on the Court were inconsistencies which impacted on the credibility of the virtual complainant. It was of

the view that the mere fact that the defendant was not allowed to cross-examine the virtual complainant in relation to competency to testify, the questions posed by the magistrate satisfied him as to the competency of the virtual complainant.

Case Name:

**[1] Lazarus Paul
v
[1] Raquel Willie-Trotman
[2] Douglas Trotman
[3] Teferi Trotman minor acting herein
and represented by his mother Raquel
Willie-Trotman**

[SLUHCVAP2013/0028]

Date:

Friday, 30th January 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. Gerard Williams

Respondent:

Mrs. Wauneen Louis-Harris

Issues:

**Application for leave to appeal – Application to
strike out application for leave to appeal –
Application for leave to extend time**

Result / Order:

[Oral delivery]

- 1. The application for leave to appeal is not required. The draft notice of appeal is treated as the notice of appeal in the matter.**
- 2. The hearing of this appeal is adjourned to the next sitting of the Court of Appeal in St.**

Lucia during the week commencing 13th April 2015.

3. The appellant to file and serve a properly paginated and tabulated record of appeal on or before the 28th day of February 2015. The parties are to agree on the documents to be included in the record of appeal.
4. The skeleton arguments with authorities to be filed and served by the appellant on or before the 14th day of March 2015.
5. The skeleton arguments in reply to be filed and served by the respondent on or before the 28th day of March 2015.
6. The appellant is granted leave to file and serve reply submissions within 7 days of being served the respondent's submissions.

Reason:

The Court being of the view that leave to appeal a contempt order (where the liberty of the individual is concerned) is not required pursuant to section 26(2)(g)(i) of the Eastern Caribbean Supreme Court Act (Saint Lucia), Cap. 2:01, the appellant was not required to seek leave of the Court. The Court decided to treat the draft notice of appeal, which was filed within time, as the notice of appeal.

In relation to the adjournment of the hearing of the appeal, the Court required a proper record of appeal in order to proceed with the matter.

Case Name:

**Valentine James
v
Bank of Nova Scotia**

[SLUHCVAP2013/0029]

Date:

Friday, 30th January 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. Wauneen Louis-Harris

Respondent: Mr. Johnathan McNamara

Issue:

Application for leave to appeal

Result / Order:

[Oral delivery]

- 1. The application for leave to appeal is granted.**
- 2. The notice of appeal to be filed within 21 days.**
- 3. There being no opposition to the application for a stay of Master Taylor-Alexander's order dated October 25th 2013 it is ordered that this order is stayed pending the hearing of the appeal or further order.**
- 4. Costs to the applicant in the sum of \$1500.00 to be paid within 21 days.**

Reason:

The Court found that there was adequate reason to grant leave to appeal. The master's judgment was based on a wrong premise; she made an attempt to address it in her postscript, however given the nature of the claim, the way in which she dealt with it was insufficient. Further, she omitted to deal with the counterclaim. There was no proper basis in arriving at her conclusion.

Case Name:

Cameron Wayne Ernest

v

PC 490 George Leopold

[SLUMCRAP2002/0147]

Date: Friday, 30th January 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. Andie George with him Ms. Isa Cyril

Respondent: Mrs. Victoria Charles Clarke, Director of Public Prosecutions with her Mr. Leon France

Issues: Criminal appeal against conviction – Possession of firearm and ammunition without licence

Result / Order: [Oral delivery]
1. The appeal against conviction is dismissed.
2. The appeal against sentence is allowed to the extent that the sentence imposed is varied on the possession of firearm charge. The appellant is fined \$10,000.00 payable in 12 months in default 6 months imprisonment.
3. The appellant is cautioned, reprimanded and discharged on the possession of ammunition charge.

Reason: The appellant appealed his conviction and sentence on the charge of possession of firearm and ammunition without licence. He was sentenced to a fine of \$15,000.00 on each count payable in 4 months and in default imprisonment for seven years.

The appellant advanced several grounds of appeal. He contended that the magistrate erred in law by not upholding a no case submission made by counsel at the close of the case for the prosecution and also erred in law by not giving

reasons upon which the no case submission was rejected.

The Court was of the view that based on the evidence presented by the prosecution, there was a case for the appellant to answer. The police witnesses provided clear evidence that the appellant was seen with a group of young men and as they approached the group the appellant ran off; the police gave chase, they saw the appellant take out of the crotch area of his trousers a black and silver firearm and the appellant threw it away. The appellant was apprehended, taken to the area and the firearm retrieved in his presence. The magistrate, on that evidence, would have had adequate basis to reject the submission.

With respect to the failure to give reasons for not upholding the no case submission, the learned Director of Public Prosecutions submitted that there was no duty imposed by statute on the magistrate to provide reasons for rejecting a no case submission. The Court was of the view that, having reviewed the evidence presented by the prosecution, the reasons for rejecting the no case submission would be quite patent.

The appellant also complained that the magistrate erred in law by allowing the testimony of the witnesses for the prosecution in relation to the exhibits despite the fact that the chain of custody had not been established and despite the fact that the exhibits were never produced in evidence. The feature of this case was that the firearm was not tendered into evidence. The appellant complained that the absence of the firearm, which he denied was his, was a serious omission. The appellant was also of the view that there was an abuse of process. The appellant further complained that the magistrate misdirected himself at his decision having failed to observe or address his mind that a key exhibit was unavailable.

The Court was not of the opinion that, the absence of the firearm as an exhibit and on looking at the facts of this case, rendered the trial unfair or the verdict of the magistrate unsafe. The Court considered that there was no issue or dispute as to the existence of the firearm. The omission of this exhibit was not fatal. The Court also considered that the police witness gave evidence as to the chain of custody in relation to the gun. The issue was one of reliability and credibility. A magistrate is well placed to determine that issue.

Looking at how the matter was conducted at the trial, of particular importance was the fact that the issue of the firearm was not a live one. The Court was not persuaded that there was any error by the magistrate in allowing the evidence of the prosecution save and except that the evidence of Corporal Prospere, in terms of checking the licence department with respect to whether or not the appellant has a licence, was conceded by the respondent to be hearsay but there was also the evidence of the prosecution with respect to the question posed to the appellant and the caution in which the appellant replied that he did not have a licence or a permit.

The evidence of Corporal Casimir Prospere was that he asked the appellant if he had a licence or permit, the appellant replied no, he cautioned the appellant later asking him about the licence, after caution the appellant replied that “the gun is not mines”, is a black and silver knife he threw.

The appellant complained that the magistrate erred in law and procedure by admitting expert and hearsay evidence which ought to have been ruled inadmissible. The Court noted the concession of the respondent on the hearsay issue but also noted the admission of the appellant that he did not have a licence and further that the gun was not his.

Accordingly, the Court found no merit in the grounds advanced. The Court was of the view that the appellant was properly convicted of the offence.

With respect to the issue of sentence, there was a concession by the respondent that the magistrate erred in imposing a default term of seven years. The Court was of the view that the magistrate erred in principle by imposing a sentence of \$15,000.00 in respect to both offences as they in fact arose out of the same circumstance. The Court noted that a period of 10 years have elapsed since the appellant was sentenced. It was agreed by all that some reduction in the sentence ought to be given in respect of the delay. The Court appreciated that firearm possession/charge is a serious one.

In the circumstances of this case and also to be consistent, the Court considered that it would be fair to reduce the sentence imposed by the learned magistrate.

Case Name:

**Keitha Peter
V
WPC 210 Emmanuel
[SLUMCRAP2013/0003]**

Date:

Friday, 30th January 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. Leon France with him Ms. Tina Mensah

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

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

Reason: The appellant was served with notice of hearing of the appeal but failed to appear.

Case Name: David Christopher
V
The Police
[SLUMCRAP2012/0005]

Date: Friday, 30th January 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. Horace Fraser
Respondent: Ms. Tina Mensah with her Mr. Leon France

Issues: Criminal appeal against conviction – Possession of firearm and ammunition without licence – Application to adduce fresh evidence

Result / Order: [Oral delivery]
1. The appeal against conviction is dismissed.
2. The appeal against sentence is allowed to the extent that the sentence imposed is varied and the appellant is fined \$10,000.00

payable in 6 months, in default 6 months imprisonment.

Reason:

APPLICATION TO ADDUCE FRESH EVIDENCE

The Court noted that there was nothing on the evidence to counter what the appellant said in relation to what transpired in the lower court. As such, the application was granted and the evidence was allowed in.

APPEAL

This is an appeal by the appellant against conviction and sentence in relation to charges of possession of a firearm and ammunition without a valid licence. The appellant was fined \$20,000.00 payable in 60 days in default 7 years imprisonment.

At the commencement of the appeal, the appellant sought to introduce evidence that the record of the magistrate was incomplete and that he was misled. This refers to an admission the prosecution relied on in support of their charge against the appellant.

The evidence was that after having been cautioned, the appellant said, I have to protect myself and my family. I live up in the hills and I normally carry thousands of dollars because I am a business man. That evidence was admitted. Undoubtedly in the Court's mind, that would constitute an admission.

Counsel for the appellant contended that though admitted, that evidence was not admitted as an admission and his case was conducted along that line. As the matter proceeded, counsel complained, that the evidence in fact was treated by the magistrate as an admission. The consequence of which, counsel contended, being that he was disabled from employing various sections of the Evidence Act, Cap. 4.15, in terms of seeking to

impugn the veracity of the statement and the conditions under which it was made and other matters in the round counsel contends rendered the trial unfair. Counsel also contended that in the absence of that admission there was nothing on the evidence to ground a conviction against the appellant.

Various arguments were heard as to the issue of whether or not various questions put when the police attended the home of the appellant to conduct a search warrant were put in the course of official questioning.

The respondent's position was that the questions were not put during the course of official questioning and the police simply went to execute a search warrant.

The appellant made reference to section 72 of the Evidence Act. In his submissions, counsel adverted to being disabled from conducting a voir dire among other matters.

The respondent posited that in the circumstances of this case section 72 was not engaged and even if it were engaged, the Court still has a discretion under section 72(5) and (6) to allow the evidence.

Having perused the written submissions and listened to the oral submissions of the parties, the Court was inclined to the view that section 72 was not engaged; even though it were engaged 72(5) and (6) would be of relevance given the circumstances of the case.

The Court was also of the opinion that, quite apart from and independent of reliance on an admission of the appellant the Crown proffered sufficient evidence for the magistrate to have found the appellant guilty of possession of the firearm.

The magistrate in his decision at page 10 referred to particular elements such as the

property being under the control of the appellant, the room being his, the mode of sequestration of the item, the lack of valid permit or licence. It was the position of the appellant that none of these matters individually or collectively would provide an adequate basis to found a conviction. The Court was however not of that view.

The evidence of the prosecution that was given, which the magistrate accepted, was quite adequate to support the conviction and this was quite independent of the admission being relied on. In the circumstances, the Court found no basis to disturb the conviction. The Court accordingly dismissed the appeal against conviction and affirmed the conviction.

With respect to the sentence of \$20,000.00 payable in 60 days in default 7 years, the Court noted that the magistrate failed to pay proper regard to the various factors in mitigation. The magistrate imposed a sentence which was \$5000.00 in excess of minimum as the law states. There was, to the Court's mind, no proper exercise of discretion in that the magistrate failed to have regard to the fact that this was the first offence of the appellant, he was of good character, he is a well-known person in community, the firearm was not being used in any act of violence, it was found at his home. If the magistrate had paid proper regard to these factors in mitigation, he would have imposed a lesser sentence.

The Court accordingly found that the magistrate erred in principle and that the sentence imposed was manifestly excessive. Further, the respondent conceded that there was nothing on the record to show the reason why the magistrate chose to exercise his discretion in moving upwards in the fine where the statute said that the minimum fine to be imposed is \$15,000.00.