

COURT OF APPEAL SITTING

GRENADA

13th to 16th October 2014

STATUS HEARING

Case Name:

[1] Raphael Edgar

v

[1] Shirley Richards

[2] Ellen James

[3] RDF Enterprises Ltd.

[GDAHCVAP2011/0015]

Date:

Thursday, 16th October 2014

Coram:

**The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Sydney Bennett, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

No appearance

Respondent:

Ms. Lisa Taylor for the 1st and 2nd respondents

Ms. Claudette Joseph for the 3rd respondent

Issues:

Status of the matter – Directions

Result / Order:

[Oral delivery]

- 1. That the Registrar causes to be made a diligent search for the complete note of the proceedings in the court below.**
- 2. In the event that the complete note of proceedings is not available by Friday, 7th November 2014, because the notebook cannot be located, the Registrar shall give written notice to the parties of that fact as well as a statement as to the availability of that portion of the notes which are currently available.**

3. In the further event that the Registrar so notifies of the inability to make available the complete note of the proceedings, the parties shall co-operate with each other with a view to reconstructing that missing portion of the notes and notify the court office upon completion, that the reconstructed note is available by Friday, 28th November 2014.
4. The record of appeal so constructed shall be filed and served on the parties by the appellant herein by 12th December 2014.
5. Any further written submissions to be filed by the appellant shall be filed and served by Tuesday, 30th December 2014.
6. Written submissions in response to be filed by Friday, 30th January 2015.
7. Any reply to be filed in accordance with CPR 2000.

Reason:

Proceedings in chambers were not digitally recorded. Further, the notes of proceedings were partially prepared and the note book of continuation of proceedings cannot be located.

Case Name:

Yvonne James

v

Matthias Paul

[GDAHCVAP2014/0020]

Date:

Thursday, 16th October 2014

Coram:

**The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Sydney Bennett, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

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

Respondent: Ms. Thandiwe Lyle

Issues: Status of the matter – Application to withdraw appeal

Result / Order / Reason: [Oral delivery]
With the leave of the Court, the notice of appeal filed 16th May 2014 is hereby withdrawn with no order as to costs.

APPLICATIONS AND APPEALS

Case Name: [1] Janin Caribbean Construction Limited
v
[1] Cecily Wilkinson
[2] Roselyn Wilkinson
[3] Wilkinson, Wilkinson, Wilkinson
[GDAHCVAP2010/0001]

Date: Monday, 13th October 2014

Coram: The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Ian Sandy

Respondent: Mr. Celia Edwards, QC with her Ms. Shireen Wilkinson, Ms. Karina Johnson and Mr. Deloni Edwards

Issues: Application to discharge order granting conditional leave – Final leave to appeal to Her Majesty in Council

Result / Order:

[Oral delivery]

- 1. The application to revoke the order of conditional leave to appeal to the Privy Council is dismissed.**
- 2. The application for final leave to appeal to the Privy Council is granted.**

Reason:

The Court considered the peculiar circumstances in relation to the case and was of the opinion that there was no inordinate delay or failure to prosecute the appeal. In the circumstances, the Court could not deprive the appellant of its appeal to the Privy Council.

Case Name:

Margery Anne McIntyre

v

Michael McIntyre

[GDAHCVAP2013/0025]

Date:

Monday, 13th October 2014

Coram:

**The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal [Ag.]**

Appearances:

Appellant:

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

Respondent:

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

Issue:

Application for a variation of the order of a single judge

Result / Order:

[Oral delivery]

1. The decision of Justice of Appeal Baptiste where he deemed the counter notice to be one validly filed is overturned.
2. The Court affirms the decision to refuse the consolidation of the appeals.
3. Costs on this application and on the application for consolidation before the single judge of the Court of Appeal is agreed in the sum of \$2,500.00 to be paid by Margery Anne McIntyre to Michael McIntyre.

Reason:

The Court was of the view that the Justice of Appeal erred in principle when he deemed the counter notice duly filed. The learned Justice of Appeal had rightly refused to order a consolidation as sought on the application of the respondent. The Court was also of the view that one cannot disregard a clear rule unless there was evidential basis warranting the exercise of that discretion placed before the Court.

The Court found that the respondent was deliberate in not applying for extension of time to file the counter notice and had disregarded the clear rule and later asserted an entitlement to 42 days.

Case Name:

**Judy Benoit
v
Her Excellency the Governor General
Dame Cecil La Grenade**

[GDAHCVAP2013/0034]

Date:

Monday, 13th October 2014

Coram:

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

Appeal [Ag.]

Appearances:

Appellant: Mr. Ruggles Ferguson with him Ms. Anyika Johnson and Ms. Sabina Gibbs

Respondent: Mr. Dwight Horsford, Solicitor General, with him Mrs. Camille Gooding De Souza

Issue: Application to set aside decision of a single judge

Result / Order:

[Oral delivery]

- 1. The order of the single judge dated the 21st June 2014 is set aside and the leave for judicial review remains.**
- 2. The matter is to proceed in the court below by way of judicial review.**
- 3. Costs will be costs in the judicial review proceedings.**

Reason:

The respondent conceded the point that there was no jurisdiction in a single judge to determine an appeal.

Case Name:

[1] Anthony George

v

[1] The Commissioner of Police

[1] The Director of Public Prosecutions

**[3] The Magistrate of the Southern
Division**

[4] Joseph Goddard

[GDAMCRAP2013/0001]

Date:

Monday, 13th October 2014

Coram:

The Hon. Dame Janice M. Pereira, Chief Justice

**The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Humphrey Stollmeyer, Justice of
Appeal [Ag.]**

Appearances:

Appellant: In person

Respondent: Mr. Christopher Nelson, Director of Public
Prosecutions, with him Mrs. Camille De Souza

Issue: Case management of appeal

Result / Order: [Oral delivery]
Application filed in court on the 4th January
2013 is withdrawn.

Reason: Appellant indicated that he was no longer
interested in pursuing the appeal.

Case Name: Colonial Life Insurance Company
(Trinidad) Limited
v
Chester John

[GDAHCVAP2013/0003]

Date: Monday, 13th October 2014

Coram: The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Humphrey Stollmeyer, Justice of
Appeal [Ag.]

Appearances:

Appellant: Ms. Claudette Joseph

Respondent: Mr. Alban John with him Ms. Thandiwe Lyle

Issue:	Application to set aside order of single judge
Result / Order / Reason:	[Oral delivery] 1. The appeal is withdrawn. 2. Costs agreed in the sum of \$750.00 to be paid by the appellant to the respondent.
Case Name:	[1] Magdalene Lendore v [1] Winsford Frank [2] Viola Frank [GDAHCVAP2014/0001]
Date:	Monday, 13th October 2014
Coram:	The Hon. Dame Janice M. Pereira, Chief Justice The Hon. Mde. Gertel Thom, Justice of Appeal The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal [Ag.]
Appearances:	
Appellant:	Mr. Ruggles Ferguson with him Ms. Anyika Johnson and Ms. Sabina Gibbs
Respondent:	Mrs. Winnifred Duncan Phillip
Issue:	Application to discharge order of single judge
Result / Order:	[Oral delivery] 1. The order of the single judge is set aside. 2. There is no order as to costs.
Reason:	The Court was not aware as to precisely what factors were in the consideration of the single judge in coming to a decision. The Court did

not consider that the delay was inordinate. Consideration must be given in the round and having regard to the grounds of appeal and to the nature of the matter; it could not be said that the appeal has no prospect of success.

Having regard to the overriding objectives of the Civil Procedure Rules 2000, the Court extended time for filing the notice of appeal.

Case Name:

**Keith Mitchell
v
Grenada Today Limited
[GDAHCVAP2014/0019]**

Date:

Monday, 13th October 2014

Coram:

**The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Mrs. Sabrita Khan Ramdhani

Respondent:

Ms. Claudette Joseph holding for Mr. Sean Lewis

Issues:

Application for leave to appeal – Application for stay of execution

Result / Order:

[Oral delivery]

By consent:

- 1. The hearing of the applications is adjourned to the next sitting of the Court in the State of Grenada to be held during the week commencing Monday, the 8th of December 2014.**
- 2. The appellant shall file and serve written**

submissions together with copies of authorities relied on by Friday, 17th October 2014.

3. The respondent shall file and serve its written submissions together with copies of authorities relied on by Friday, 31st October 2014.

Reason:

The appellant requested an adjournment of the matter and the respondent consented to the application.

Case Name:

[1] David Holukoff
[2] Nazim Burke
[3] The Attorney General
v

[1] Capital Bank International Limited

[GDAHCVAP2014/0002]

Date:

Monday, 13th October 2014

Coram:

The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal [Ag.]

Appearances:

Appellant:

Mrs. Venescia Francis-Banfield with her Mrs. Sabrita Khan-Ramdhani for the 2nd and 3rd appellants

Ms. Kim George watching the interest of the Receiver

Respondent:

Mr. Raymond Anthony

Issues:

Application for extension of time – Application for stay of execution

Result / Order:

[Oral delivery]

Order on application for extension of time.

- 1. The application for extension of time granted.**
- 2. Capital Bank International Limited shall file and serve a notice of opposition to the notice of appeal by 3:30 p.m. on Tuesday, 14th October 2014.**
- 3. Capital Bank International Limited shall file and serve written submissions together with authorities relied on by Monday, 3rd November 2014.**
- 4. Reply submissions if any by the appellant shall be filed and served by Monday, 17th November 2014 and thereafter the appeal will be considered.**

Order on application for stay of execution

- 1. Leave is granted to the appellant/applicant to withdraw the application for stay of execution filed on 8th May 2014.**
- 2. Costs shall be borne by the appellant/applicant payable to Capital Bank International Limited fixed in the sum of \$1,500.00.**

Reason:

Counsel for the respondent needed time to file opposition to application as well as time to file submissions as he was recently retained in the matter.

The applicant withdrew application for stay of execution.

Case Name:

[1] George Finton DeBourg

v

[1] Magistrate Tamara Gill

[2] Director of Public Prosecutions

[GDAHCVAP2012/0017]

Date: Monday, 13th October 2014

Coram: The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Raymond Anthony

Respondent: Mrs. Venescia Francis Banfield

Issue: Application for stay of execution

Result / Order: [Oral delivery]
1. The application for stay of execution is refused.
2. Costs to the respondent on the application fixed in the sum of \$1,500.00.

Reason: The Court was of the view that there was no reason for a stay of a section 72 offence (section 72 of the Proceeds of Crime Act, 1992 Cap. 4 of the Laws of Grenada 1994) on the basis that the offence creates a misdemeanor.

Case Name: Bankers Insurance Company of Trinidad
& Tobago Limited
v
Indigenous Investments Limited

[GDAHCVAP2014/0022]

Date: Monday, 13th October 2014

Coram: The Hon. Dame Janice M. Pereira, Chief Justice

**The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal [Ag.]**

Appearances:

Appellant: Mr. Asaf Husein with him Mr. Derick Sylvester

Respondent: Mr. Alban John with him Ms. Thandiwe Lyle

Issues:

Application for leave to appeal – Application for stay of execution

Result / Order:

[Oral delivery]

- 1. The application for leave to appeal as well as the application for a stay of execution is dismissed.**
- 2. Costs awarded to the respondent fixed in the sum of \$1,500.00.**

Reason:

The Court held that there was no material placed before the Court which allowed it to exercise its discretion in favour of the grant of an extension of time.

There are several authorities of this Court which says that where you have filed a notice of appeal where leave is required and there is no leave then that notice is a nullity.

Case Name:

[1] Arnwill Limited

v

[1] Godwin Joseph

[2] Grenada Nutmeg Corporative Association

[3] Terrence Phillip

[GDAHCVAP2014/0030]

Date: Monday, 13th October 2014

Coram: The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal [Ag.]

Appearances:

Appellant: Ms. Karina Johnson

Respondent: Mr. Ruggles Ferguson with him Ms. Anyika Johnson and Ms. Sabina Gibbs for the 1st respondent

Mr. Alban John with him Ms. Thandiwe Lyle for the 2nd respondent

Ms. Shireen Wilkinson for the 3rd respondent

Issues: Application for leave to appeal – Application for stay of all proceedings pending determination of the appeal

Result / Order: [Oral delivery]

1. The application for leave to appeal is granted and by consent the leave to appeal is treated as the appeal.
2. The appeal is dismissed and matter allowed to proceed through case management processes and through trial.
3. No order as to costs on this appeal.

Reason: Having considered the arguments and the master's ruling, the Court reached the same conclusion as the master. Treatment of the matter under part 19 of Civil Procedure Rules 2000 was in effect a substitution of a party albeit it was done at a different point in time. Therefore under that rule there was no need to go into question of finding a change of circumstances.

Case Name:

Aldin Phillip

v

The Queen

[GDAHCRAP2011/0004]

Date:

Tuesday, 14th October 2014

Coram:

**The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal [Ag.]
The Hon. Mr. Sydney Bennett, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Mr. Ashley Bernadine appearing amicus curiae

Respondent:

Mr. Christopher Nelson, Director of Public Prosecutions with him Mr. Brendon La Touche

Issues:

Criminal appeal against sentence – Robbery

Result / Order:

[Oral delivery]

- 1. The appeal is dismissed.**
- 2. The sentence is affirmed.**

Reason:

The Court found no reason to interfere with the sentence imposed by the trial judge. The trial judge applied the principles of sentencing correctly by weighing the mitigating and aggravating factors.

The Court further recommended that Mr. Phillip make representations to the Prison Visiting Committee and there seek a remission in sentence.

Case Name:

Nelon Noel

v

The Queen

[GDAHCRAP2010/0006]

Date:

Tuesday, 14th October 2014

Coram:

**The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal [Ag.]
The Hon. Mr. Sydney Bennett, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Mr. Ashley Bernadine appearing amicus curiae

Respondent:

Mr. Christopher Nelson, Director of Public Prosecutions with him Mr. Brendon La Touche

Issues:

Criminal appeal against sentence of ten years imprisonment – Robbery with violence

Result / Order:

[Oral delivery]

- 1. The appeal is dismissed.**
- 2. The sentence is affirmed.**
- 3. In computing the sentence of ten years, the appellant is to be given credit for the time spent on remand.**

Reason:

The Court held that the sentence imposed was not excessive. Having regard to the circumstances of this case, the aggravating factors identified from the record outweighed the mitigating factors.

Case Name:

Kenneth Joel Blackman

V
The Queen

[GDAHCRAP2010/0007]

Date: Tuesday, 14th October 2014

Coram: The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal [Ag.]
The Hon. Mr. Sydney Bennett, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Ashley Bernadine appearing amicus curiae

Respondent: Mr. Christopher Nelson, Director of Public Prosecutions with him Mr. Brendon La Touche

Issues: Criminal appeal against sentence of eight years imprisonment – Dangerous Harm

Result / Order: [Oral delivery]
1. The appeal is dismissed.
2. The sentence is affirmed.
3. The appellant is to be given credit for the time spent on remand.

Reason: The sentence of eight years was not excessive; having regard to all the circumstances the Court found that the sentence was appropriate. The Court held that there was no basis to interfere with the sentence. However, the time spent on remand was not taken into account at sentencing. The Court held that this ought to have been done.

Case Name: Kester Bailey

V
The Queen

[GDAHCRAP2011/0007]

Date: Tuesday, 14th October 2014

Coram: The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal [Ag.]
The Hon. Mr. Sydney Bennett, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Ashley Bernadine appearing amicus curiae

Respondent: Mr. Christopher Nelson, Director of Public Prosecutions with him Mr. Brendon La Touche

Issues: Criminal appeal against sentence of eight years imprisonment – Burglary and rape

Result / Order: [Oral delivery]
1. The appeal is dismissed.
2. The sentence is affirmed.
3. In computing time to be served by the appellant, credit is to be given for the three months and one week spent on remand.

Reason: The Court found that the sentence imposed was appropriate in the circumstances. There was no reason to interfere with the sentence of the trial judge.

Case Name: Michael Stewart
V
The Queen

[GDAHCRAP2010/0005]

Date: Tuesday, 14th October 2014

Coram: The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal [Ag.]
The Hon. Mr. Sydney Bennett, Justice of Appeal [Ag.]

Appearances:

Appellant: No appearance

Respondent: Mr. Christopher Nelson, Director of Public Prosecutions with him Mr. Brendon La Touche

Issues: Criminal appeal against sentence of six years and three years – Attempted house breaking – Arson and possession of housebreaking implements

Result / Order: [Oral delivery]
The appeal is struck out and dismissed.

Reason: The appellant has already served his term of imprisonment.

Case Name: Margaret Blackburn
v
James Bristol

[GDAHCVAP2012/0019]

Date: Tuesday, 14th October 2014

Coram: The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal [Ag.]

**The Hon. Mr. Sydney Bennett, Justice of Appeal
[Ag.]**

Appearances:

Appellant: Mrs. Michelle Emmanuel Steele instructed by
Ms. Keisha Lander

Respondent: Mr. Leslie Haynes, QC with him Mr. Alban John
and Ms. Thandiwe Lyle

Issues:

**Vehicular accident – Whether findings
inconsistent with evidence – Contributory
negligence – Consideration of expert evidence –
Application for adjournment**

Result / Order:

[Oral delivery]

- 1. The hearing of this appeal is adjourned to
the next sitting of the Court in the State of
Grenada commencing the 8th December
2014.**
- 2. By consent, there is no order as to costs.**

Reason:

**Senior Counsel representing the appellant is
unwell.**

Case Name:

Grenada & Carriacou Investments

v

Atlantic Partnership

[GDAHCVAP2012/0020]

Date:

Tuesday, 14th October 2014

Coram:

**The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Humphrey Stollmeyer, Justice of
Appeal [Ag.]
The Hon. Mr. Sydney Bennett, Justice of Appeal
[Ag.]**

Appearances:

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

Respondent: Mr. Alban John with him Ms. Thandiwe Lyle

Issues:

Civil procedure – Promptness of application –
Whether there was a failure to comply with
court order – Relief from sanctions

Result / Order:

[Oral delivery]
Matter adjourned to Wednesday, 15th October
2014 at 9:00 a.m.

Reason:

The Court gave the parties an opportunity to
draft a consent order.

Case Name:

**Francis James
v
National Insurance Board
[GDAHCVAP2013/0016]**

Date:

Tuesday, 14th October 2014

Coram:

The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Humphrey Stollmeyer, Justice of
Appeal [Ag.]
The Hon. Mr. Sydney Bennett, Justice of Appeal
[Ag.]

Appearances:

Appellant: Mr. Derick Sylvester with him Ms. Cathisha Williams

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

Issues: Employment law – Whether accident occurred in the course of employment – Whether appellant was exposed to any particular risk by reason of employment

Result / Order: Judgment reserved.

Case Name: Grenada & Carriacou Investments
v
Atlantic Partnership
[GDAHCVAP2012/0020]

Date: Wednesday, 15th October 2014

Coram: The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal [Ag.]
The Hon. Mr. Sydney Bennett, Justice of Appeal [Ag.]

Appearances:
Appellant: Mr. Ruggles Ferguson with him Ms. Anyika Johnson
Respondent: Mr. Alban John with him Ms. Thandiwe Lyle

Issues: Civil procedure – Promptness of application – Whether there was a failure to comply with court order – Relief from sanctions

Result / Order / Reason: [Oral delivery]
By consent it is ordered as follows:
1. The order of the learned trial judge dated 26th October 2012 refusing an extension of time to file witness statements and relief from sanctions is hereby set aside.
2. Leave be and is hereby granted to the

appellant/defendant to file and serve witness statements on the respondent/claimant on or before Friday, October 17th 2014, the said witness statements to be the same as attached to the application filed in the court below on November 25th 2011.

3. Costs in the sum of \$7,500.00 to be paid to the respondent/claimant by the appellant/defendant on even date with the filing of the witness statements failing which the order of the learned judge at first instance will be restored.
4. Matter to be remitted to the Registrar for priority fixture for trial date.

Case Name:

Sigma Marina & Resorts Limited

v

Alban Redhead

[GDAHCVAP2011/0024]

Date:

Wednesday, 15th October 2014

Coram:

**The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal [Ag.]
The Hon. Mr. Sydney Bennett, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Ms. Skeeta Chitan holding for Sir Richard Cheltenham, QC

Respondent:

Mr. Ian Sandy holding for Dr. Francis Alexis, QC

Issues:

Possession of Crown lands – Whether lands vested in the Governor General – Trespass – Limitation of action – Oral application for adjournment

Result / Order:

[Oral delivery]

- 1. The hearing of the appeal is adjourned to the next sitting of the Court in the State of Grenada commencing 8th December 2014.**
- 2. No order as to costs.**

Reason:

The appellant applied for an adjournment due to ill health of senior counsel for the appellant. There was no objection to application from the respondent.

Case Name:

**[1] Arnwill Limited
v
[1] Ernest Marshall Construction
Company Limited
[2] The Attorney General of Grenada**

[GDAHCVAP2013/0032]

Date:

Wednesday, 15th October 2014

Coram:

**The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal [Ag.]
The Hon. Mr. Sydney Bennett, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Ms. Karina Johnson

Respondent:

Mr. Nigel Stewart with him Mrs. Kindra Mathurin-Stewart for the 1st respondent

Ms. Christine Bowen for the 2nd respondent

Issues:

Civil appeal – Garnishee proceedings – Whether order of court unjust

Result / Order:

[Oral delivery]

- 1. The appeal is dismissed.**
- 2. Appellant to bear the costs of the 1st respondent in the sum of \$1,500.00.**
- 3. No order as to costs in respect of 2nd respondent.**

Reason:

The Court was satisfied that the appellant was given an opportunity to be heard. The Court, having considered the grounds advanced for attachment of judgment debt, was of the view that the reasons advanced were totally unavailing. The Court affirmed the order of Mohammed J.

Case Name:

**Willan Fletcher
v
The Commissioner of Police
[GDAMCRAP2013/0004]**

Date:

Thursday, 16th October 2014

Coram:

**The Hon. Dame Janice Pereira, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Sydney Bennett, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

Mr. Henry Paryag

Respondent:

Mr. Howard Pinnock, with him Mr. Brendon La Touche

Issues:

Criminal appeal against sentence – Possession of a controlled drug

Result / Order:

[Oral delivery]

- 1. The appeal is dismissed.**

2. The sentence is affirmed.
3. The time spent on remand is to be credited against the sentence term.

Reason:

The Court found that the record showed that the magistrate considered all relevant factors. The role of the appellate court is not to substitute its view for sentence unless satisfied that the magistrate went outside the ambit of her discretion.

Case Name:

**David Hamilton
v
The Commissioner of Police
[GDAMCRAP2014/0004]**

Date:

Tuesday, 14th October 2014

Coram:

**The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal [Ag.]
The Hon. Mr. Sydney Bennett, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Mr. Ashley Bernadine appearing amicus curiae

Respondent:

Mr. Christopher Nelson, Director of Public Prosecutions with him Mr. Brendon La Touche

Issues:

**Criminal appeal against conviction –Stealing –
Resisting arrest**

**Result / Order /
Reason:**

**[Oral delivery]
The appeal is withdrawn and accordingly dismissed.**

Case Name:

**Kellon Jeffery
v
The Commissioner of Police
[GDAMCRAP2014/0006]**

Date:

Thursday, 16th October 2014

Coram:

**The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Sydney Bennett, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

Mr. Ruggles Ferguson with him Ms. Sabina Gibbs

Respondent:

Mr. Howard Pinnock with him Mr. Brendon La Touche

Issues:

Criminal appeal against sentence – Stealing

Result / Order:

[Oral delivery]

- 1. The appeal against sentence is allowed.**
- 2. The sentence is varied in the circumstances of the case, particularly having regard to the mitigating factors.**
- 3. The conviction is lifted and the appellant is reprimanded and discharged.**

Reason:

The Court was of the view that the appeal ought to be allowed having regard to the circumstances of the case, in particular, the mitigating factor that the poles were returned prior to matter coming on for trial.

Case Name:

**Winston Smith
v
The Commissioner of Police**

[GDAMCRAP2012/0004]

Date:

Thursday, 16th October 2014

Coram:

**The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Sydney Bennett, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

In person

Respondent:

Mr. Howard Pinnock with him Mr. Brendon La Touche

Issues:

**Criminal appeal against conviction –
Possession of an offensive weapon**

Result / Order:

**[Oral delivery]
1. Appeal allowed.
2. Conviction quashed.**

Reason:

The Court found that there had been a miscarriage of justice in all the circumstances of the case.

Case Name:

**Valdon Charles
v
The Commissioner of Police**

[GDAMCRAP2014/0001]

Date:

Thursday, 16th October 2014

Coram: The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Sydney Bennett, Justice of Appeal
[Ag.]

Appearances:

Appellant: Ms. Herricia Willis

Respondent: Mr. Howard Pinnock with him Mr. Brendon La Touche

Issues: Criminal appeal against conviction – Intentional and unlawful harm

Result / Order:

[Oral delivery]

1. The matter is adjourned to the next sitting of the Court in the State of Grenada commencing 8th December 2014.
2. The appellant shall be liberty to file evidence by affidavit relating to the conduct of the trial below by Friday, November 7th 2014 together with written submissions.
3. The respondent shall be at liberty to reply to the affidavit of the appellant together with any further written submissions by Friday, November 21st 2014.

Reason: The issues raised by counsel for the appellant cannot be taken from the bar table.

Case Name:

Nichol Williams

v

**Manufacturing Investments (Grenada)
Limited**

[GDAMCVAP2012/0001]

Date:

Thursday, 16th October 2014

Coram: The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Sydney Bennett, Justice of Appeal
[Ag.]

Appearances:

Appellant: Mr. Raphael Baptiste

Respondent: Ms. Shireen Wilkinson with her Ms. Tanya Lambert and Ms. Rosana John

Issues: Civil appeal – Vicarious liability

Result / Order: [Oral delivery]
1. Appeal allowed.
2. The matter is remitted for trial before another magistrate with no order as to costs.

Reason: Given the nature of the claim and the nature of the evidence and the total lack of any reasons by the magistrate for coming to the conclusion which he came, the Court was of the belief that the appellant was placed in an unsatisfactory position.

Case Name: Leighton Taylor
v
Thomas Roberts

[GDAMCVAP2013/0001]

Date: Thursday, 16th October 2014

Coram: The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Sydney Bennett, Justice of Appeal
[Ag.]

Appearances:

Appellant: Mr. Ruggles Ferguson with him Ms. Sabina Gibbs

Respondent: No appearance

Issues: Civil appeal – Damages

Result / Order:

[Oral delivery]

1. The hearing of this appeal is adjourned to the next sitting of the Court in the State of Grenada commencing in the week beginning 8th December 2014.
2. The Registrar of the court shall cause a notice of hearing to be served on the Respondent. Said service to be effected by Friday, 14th November 2014.

Reason:

The Court was uncertain if the respondent was served with notice of hearing of the appeal.

Case Name:

Michael Fletcher

v

Glenna Joseph

[GDAMCVAP2013/0002]

Date:

Thursday, 16th October 2014

Coram:

**The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Sydney Bennett, Justice of Appeal
[Ag.]**

Appearances:

Appellant: Mr. Ruggles Ferguson with him Ms. Sabina Gibbs

Respondent: In person

Issues: Damages – Determination of liability – Whether decision against weight of evidence – Absence of reasons for decision

Result / Order: [Oral delivery]

1. Leave is hereby granted to amend the grounds of appeal.
2. The hearing of this appeal is adjourned to the next sitting of the Court in the State of Grenada commencing the week of December 8th 2014, having regards to lack of service of the amended grounds of appeal and the written submissions of the appellant on the respondent.
3. It is directed that the appellant shall serve the amended notice of appeal and written submissions on the respondent by Friday, 17th October 2014.
4. The appellant is at liberty to file and serve an affidavit relating to matters at the trial before the learned magistrate by Wednesday, October 22nd 2014.
5. The respondent shall be at liberty to file and serve an affidavit in reply to the affidavit of the appellant by Friday, 7th November 2014.

Reason: The respondent was not served with the amended notice of appeal nor the written submissions. The Court did not think it fair to proceed in those circumstances.

Case Name: Terrence Marryshow
v
Lennox Archibald

[GDAMCVAP2013/0003]

Date: Thursday, 16th October 2014

Coram: The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Sydney Bennett, Justice of Appeal
[Ag.]

Appearances:

Appellant: Mr. Ashley Bernardine

Respondent: Ms. Thandiwe Lyle holding for Ms. Skeeta Chitan

Issues: Rent Restriction Act, Cap. 286 – Whether there was non-compliance with statutory requirements – Application for an adjournment

Result / Order:

[Oral delivery]

1. The Court directs that the respondent files and serves written submissions in response to the submissions of the appellant by Thursday, 6th November 2014.
2. The hearing of this appeal is adjourned to the next sitting of the Court fixed for the week commencing the 8th December 2014.

Reason: The respondent's attorney was ill.

Case Name: Yasim Kibawi (also known as Keith Aird)
v
Cassion Felix

[GDAMCVAP2014/0001]

Date: Thursday, 16th October 2014

Coram: The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Sydney Bennett, Justice of Appeal
[Ag.]

Appearances:

Appellant: Mr. Henry Paryag

Respondent: Mr. Ashley Bernardine appearing amicus curiae

Issues:

Rules of natural justice – Whether judgment against weight of evidence – Application for adjournment

Result / Order:

[Oral delivery]

The hearing of this appeal is adjourned to December 2014 during the week commencing 8th December 2014.

Reason:

The application for adjournment by the appellant was unopposed by the respondent.

Case Name:

Sydney Williams (also called Sidney Louis)

v

Bernadette St. Louis nee Antoine

[GDAMCVAP2014/0002]

Date:

Thursday, 16th October 2014

Coram:

**The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Sydney Bennett, Justice of Appeal
[Ag.]**

Appearances:

Appellant: Ms. Thandiwe Lyle

Respondent: Ms. Shireen Wilkinson with her Ms. Tanya Lambert and Ms. Rosana John

Issues: Title to property – Possession of property – Jurisdiction of magistrate – Whether judgment wrong in law

Result / Order: [Oral delivery]
1. Appeal allowed.
2. The decision of the magistrate is set aside on the basis of lack of jurisdiction as the matter raised on its pleadings an issue of title to land.
3. There shall be no order as to costs.

Reason: The Court was of the opinion that the matter raised a question of title to land and therefore authority of owner in terms of possession of land. The magistrate had no jurisdiction to entertain the matter.

Case Name: Raphael Charles
v
David Pierre
[GDAMCVAP2014/0003]

Date: Thursday, 16th October 2014

Coram: The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Sydney Bennett, Justice of Appeal
[Ag.]

Appearances:
Appellant: Mr. Raphael Baptiste
Respondent: In person

Issues: Civil appeal – Trespass

Result / Order:

[Oral delivery]

- 1. Appeal allowed.**
- 2. Matter remitted to be heard on the claim based on the cause of action asserted by a different magistrate.**
- 3. There shall be no order as to costs.**

Reason:

The magistrate was addressing his mind to a breach of duty in negligence and the claim was in trespass which gave rise to completely different issues.