

COURT OF APPEAL SITTING

ANTIGUA AND BARBUDA

7th – 9th July 2014

STATUS HEARING

Case Name: [1] The Proprietors, Condominium Plan No.
2/1989
[2] John Firth
[3] Tom Kepler
[4] John Greaves
[5] Sal Rosa
v
[1] Trinity Investments Company Limited
consolidated with
Trinity Investment Company Limited
[2] Orest Bedrij
[3] Oksana Bedrij
[4] Chrystyhna Bedrij
[5] Rokssana Bedrij
[ANUHCVP2008/0009]

Date: Monday, 7th July 2014

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

Appearances:
Appellant: Mr. Dane Hamilton, Sr., QC
Respondent: No appearance

Issues: Status of the matter – Directions

Result / Order: [Oral delivery]
The matter is set for hearing for the next sitting of the Court of Appeal in Antigua and Barbuda during the week commencing 24th November 2014.

Case Name: **Paulette Matthew**
v
Antigua and Barbuda Port Authority Board of Commissioners
[ANUHCVP2008/0020]

Date: **Monday, 7th July 2014**

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

Appearances:
Appellant: **No appearance**
Respondent: **No appearance**

Issue: **Status of the matter**

Result / Order **[Oral delivery]**
/ Reason: **Parties being absent, the matter is set for status hearing at the next sitting of the Court of Appeal in Antigua and Barbuda during the week commencing 24th November 2014.**

Case Name: **Antigua Real Estates Limited**
v
Rupert Kenlock
[ANUHCVP2010/0046]

Date: **Monday, 7th July 2014**

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

Appearances:

Appellant: Mrs. Andrea Roberts-Nicholas

Respondent: Ms. Kathleen Bennett

Issue:

Status of the matter

Result / Order:

[Oral delivery]

- 1. The respondent shall file skeleton arguments in reply within 28 days.**
- 2. Thereafter the appeal shall proceed in accordance with rules 62.11 and 62.12 of CPR 2000.**

Case Name:

**[1] Vere Bird Jr.
[2] Lester Bryant Bird
[3] Gaston Browne
[4] Mary Claire Hurst
[5] Molywn Joseph
[6] Sharon Kentish
[7] Jim Galloway**

v

[1] The Commissioner of Police

[ANUMCRAP2010/0015]

Date:

Monday, 7th July 2014

Before:

The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Lawrence Daniel

Respondent: Ms. Shannon Jones

Issue:

Status of the matter

Result / Order:

[Oral delivery]

1. The appellant shall file 6 copies of the record of appeal pursuant to rule 62.13 of the revised CPR 2000, within 60 days.
2. The parties shall thereafter comply with rules 62.11 and 62.12 of the revised CPR 2000.
3. The appellant shall have carriage of the order.
4. The matter is set down for further status hearing at the next sitting of the court of appeal in Antigua and Barbuda during the week commencing 24th November 2014.

Case Name:

[1] Garfield Morrison

v

[1] Chief Magistrate

[2] Ivan Walters

[3] The Commissioner of Police

[ANUMCRAP2010/0002]

Date:

Monday, 7th July 2014

Before:

The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Appellant:

Mr. Lawrence Daniel

Respondent:

Ms. Shannon Jones

Issue:

Status of the matter

Result / Order:

[Oral delivery]

1. The court office shall cause a copy of the transcript of the proceedings in the court below to be filed and made available to the parties to this appeal.
2. Within 28 days of receipt of the notice of availability of the transcripts, the appellant shall file at the court office 6 copies of the record of the appeal.

3. The parties shall thereafter comply with the provisions of rules 62.11 and 62.12 of the revised CPR 2000.
4. Further status hearing of this matter is set for the next sitting of the Court of Appeal in Antigua and Barbuda during the week commencing 24th November 2014.
5. The appellant shall prepare and file the order.

Reason: The transcripts were not yet available.

APPLICATIONS AND APPEALS

Case Name: Jumby Bay Resort
v
Kiston Browne

[ANULTAP2012/0019]

Date: Monday, 7th July 2014

Coram: The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellant:	Mr. Nelleen Rogers Murdoch
Respondent:	Mr. Vere Bird III

Issue: Application to adduce fresh evidence

Result / Order: [Oral delivery]
The affidavit of Venereen McKenzie filed on 25th November 2013, which exhibits the affidavit of Fidela Corbin Lincoln, sworn on 6th February 2013 is admitted into evidence.

Case Name:

**Clive Oliveira
v
The Attorney General**

[ANUHCVP2010/0047]

Date:

Monday, 7th July 2014

Coram:

**The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Appellant: Dr. David Dorsett with him Mr. Jarid Hewlett

Respondent: Mrs. Carla Brooks-Harris

Issue:

Application for leave to appeal to Her Majesty in Council

Result / Order:

**[Oral delivery]
Conditional leave to appeal to Her Majesty in Council is granted according to the terms of the draft order filed.**

Reason:

The appellant satisfied the requirements for leave to appeal.

Case Name:

**[1] Clarvis Joseph
[2] Esworth Martin
[3] Public Utilities Authority**

v

[1] Antigua Power Company Limited

[ANUHCVP2014/0016]

Date: Monday, 7th July 2014

Coram: The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellant: Dr. David Dorsett with him Mr. Jarid Hewlett

Respondent: Mr. Dane Hamilton, QC

Issue: Application for leave to appeal

Result / Order: [Oral delivery]
The matter is adjourned to Tuesday, 8th July 2014.

Case Name:

[1] George Anthony
[2] Elista Anthony
v
[1] Deborah Licorish
[2] R. Dexter Wason

[ANUHCVP2013/0030]

Date: Monday, 7th July 2014

Coram: The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellant: Dr. David Dorsett

Respondent: Mr. John Fuller holding papers for Mr. Dexter Wason

Issues: Civil appeal – Whether the judge erred in making a

final order mandating that the appellants grant the respondents access to the child – Whether the learned judge had jurisdiction to make order under the Maintenance of and Access to Children Act 2008

Result / Order:

[Oral delivery]

- 1. The appeal is allowed.**
- 2. There is no order as to costs.**

Reason:

By agreement between the parties.

Case Name:

Geary Andrew Joseph

v

Zephepha Rose Mae Joseph

[ANUHCVP2013/0003]

Date:

Monday, 7th July 2014

Coram:

The Hon. Dame Janice M. Pereira, Chief Justice

The Hon. Mr. Mario Michel, Justice of Appeal

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

Appearances:

Appellant:

Dr. David Dorsett

Respondent:

Ms. Samantha May holding papers for Mr. Steadroy Benjamin

Issues:

Civil appeal – Whether the single judge erred in finding that the order appealed against was not a final order but an interlocutory order which required leave of the court to appeal

Result / Order:

[Oral delivery]

The matter is adjourned to the next sitting of the court during the week of 24th November 2014.

Reason: Counsel for the respondent requested an adjournment of the matter.

Case Name: Atiba Francis
v
The Queen

[ANUHCRA2008/0009]

Date: Monday, 7th July 2014

Coram: The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellant: In person

Respondent: Mr. Anthony Armstrong, Director of Public Prosecutions with him Ms. Shannon Jones

Issues: Criminal appeal against conviction – Wounding with intent to do grievous bodily harm – Directions

Result / Order: [Oral delivery]

1. The Registrar of the Court to serve upon Mr. Bowen, counsel for the appellant, a copy of the record of the proceedings in the court below, no later than Friday, 25th July 2014.
2. Counsel for the appellant shall file and serve written submissions in support of the appeal no later than Friday, 29th August 2014.
3. Counsel for the respondent shall file and serve written submissions in response no later than Friday, 26th September 2014.
4. The hearing of the appeal is adjourned to the next sitting of the court commencing on Monday, 24th November 2014.

Case Name:

**[1] Clarvis Joseph
[2] Esworth Martin
[3] Public Utilities Authority
v
[1] Antigua Power Company Limited**

[ANUHCVP2014/0016]

Date: Tuesday, 8th July 2014

Coram: The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellant: Dr. David Dorsett with him Mr. Jarid Hewlett

Respondent: Mr. Dane Hamilton, QC

Issues: Application for leave to appeal

Result / Order: [Oral delivery]
1. The application for leave is refused.
2. The applicants will bear the costs of the application fixed at \$2,500.00

Reason: The Court was of the view that the applicants had not met the threshold requirements for leave to appeal.

Case Name:

**Rashid Pigott
v
The Queen**

[ANUHCRA2009/0009]

Date: Tuesday, 8th July 2014

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

Appearances:

Appellant: In person

Respondent: Mr. Anthony Armstrong, Director of Public Prosecutions with him Ms. Shannon Jones

Issues: Criminal appeal against conviction – Breaking and entering a building – Larceny – Whether the appellant’s constitutional rights were infringed by reason of delay in preparing the transcripts for the prosecution of his appeal against conviction

Result / Order: [Oral delivery]
1. The decision is reserved.
2. The Director of Public Prosecutions is to provide the court with a chronology of events from the filing of the appeal to the hearing of the appeal within two (2) weeks.
3. The chronology of events is to be served on the appellant.

Case Name: Dexter Joseph
v
The Queen

[ANUHCRA2010/0007]

Date: Tuesday, 8th July 2014

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

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

Appearances:

Appellant: Dr. David Dorsett with him Mr. Jarid Hewlett

Respondent: Mr. Anthony Armstrong, Director of Public Prosecutions with him Ms. Shannon Jones

Issues:

**Criminal appeal against conviction and sentence –
Wounding with intent – Assault with intent to rob –
Whether dock identification should have been
allowed**

Result / Order:

**[Oral delivery]
The appeal is dismissed and the conviction is
affirmed.**

Reason:

**The Court was of the view that the learned trial judge
gave correct instructions on dock identification.
There was powerful circumstantial evidence
connecting the appellant with the offence.
Additionally, the trial judge adequately directed the
jury with respect to circumstantial evidence.**

**The Court ultimately found no reason to allow the
appeal.**

Case Name:

**Brown's Bay Resort Limited
v
Luca Pozzoni**

[ANUHCVP2010/0033]

Date:

Tuesday, 8th July 2014

Coram:

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

Appearances:

Appellant: Mrs. Fidela Corbin-Lincoln
Respondent: Mr. Lenworth Johnson holding papers for Mr. Leon Symister

Issues:

Civil appeal – Lease – Repudiation of contract – Whether learned trial judge erred in awarding liquidated damages – Remoteness of damages - Whether learned trial judge erred in not deducting taxes from the award of damages

Result / Order:

[Oral delivery]
1. The decision is reserved.
2. Counsel is to submit to the registrar, by Friday, 18th July 2014, information as to how tax is to be deducted, in the event that that issue has to be dealt with.

Case Name:

**Hawksbill Hotel
v
Dale Abraham**

[ANUHCVP2013/0014]

Date:

Tuesday, 8th July 2014

Coram:

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

Appearances:

Appellant: Mrs. Fidela Corbin-Lincoln
Respondent: Mr. Lenworth Johnson holding papers for Mr. Leon Symister

Issues:

Civil appeal – Whether the Industrial Court erred in

finding that the Limitation Act 1997, Cap. 456, created no limitation period for the commencement of an unfair dismissal claim

Result / Order:

[Oral delivery]

- 1. The appeal is dismissed.**
- 2. There is no order as to costs.**

Reason:

A claim for unfair dismissal is not a claim for the recovery of sum in accordance with section 11 of the Limitation Act 1997.

Case Name:

**[1] Leslie Dunnah
[2] Danielle Otto
[3] Philbert Raynes**

v

[1] Permanent Secretary, Ministry of National Security and Labor

[ANUHCVP2014/0020]

Date:

Tuesday, 8th July 2014

Coram:

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

Appearances:

Appellant: Dr. David Dorsett with him Mr. Jarid Hewlett

Respondent: Mrs. Carla Harris with her Ms. Rose Ann Kim

Issues:

Civil appeal – Whether the learned trial judge erred in law on the point of delay which was not argued

Result / Order:

[Oral delivery]

- 1. The appeal is allowed.**

2. The matter is remitted for hearing before a different judge.
3. Costs of the appeal to be assessed.

Reason:

The Court found that the learned trial judge erred in (1) not considering the substantive matter before him; and (2) in proceeding to find that the appellant waited too long before bringing the matter for judicial review.

Case Name:

Gregory Williams

v

The Queen

[ANUHCRA2014/0001]

Date:

Wednesday, 9th July 2014

Coram:

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

Appearances:

Appellant:

Mr. Sherfield Bowen

Respondent:

Mr. Anthony Armstrong, Director of Public Prosecutions with him Ms. Shannon Jones

Issues:

**Criminal appeal against sentence – Larceny –
Whether the sentence was excessive and harsh in all the circumstances**

Result / Order:

[Oral delivery]

1. The appeal against sentence is allowed.
2. Court substitutes a sentence of time already served for the sentence imposed by the learned trial judge.

Reason:

The Court found that the learned judge erred in starting from the maximum sentence without taking into consideration a notional sentence from which he ought to have deducted 1/3 for an early guilty plea. Consideration should have been given for previous good character with no previous infractions of the law et cetera. Accordingly, the judge erred in the imposition of a sentence of 3 years. The Court considered that the justice of the case merits the imposition of a sentence of time already served, which was 5 months.