

COURT OF APPEAL SITTING

**SAINT LUCIA
7th to 11th April 2014**

STATUS HEARING

Case Name:

**Boniface Christophe
v
The Queen**

[SLUHCRA2010/0002]

Date:

Monday, 7th April 2014

Before:

The Hon. Dame Janice M. Pereira, Chief Justice

Appearances:

Appellant:

Mr. Colin Foster

Respondent:

Mr. Stephen Brette

Issues:

Status of the matter – Directions

Result / Order:

[Oral delivery]

- 1. The appellant shall file and serve skeleton arguments no later than Friday, 16th May 2014.**
- 2. The respondent shall file and serve skeleton arguments no later than Monday, 16th June 2014.**
- 3. The hearing of this appeal shall take place at the next sitting of the Court in Saint Lucia during the week beginning 14th July 2014.**

Case Name:

**Tanzanite International Limited
v
The Attorney General of Saint Lucia**

[SLUHCVAP2008/0039]

Date: Monday, 7th April 2014

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

Appearances:

Appellant:	No appearance
Respondent:	No appearance

Issue: Status of the matter

Result / Order: Matter stood down.

Reason: Counsel for the appellant was in another courtroom appearing before the other panel of Court of Appeal judges.

Case Name:

Vincent Jean
v
The Queen

[SLUMCRAP2004/001A]

Date: Monday, 7th April 2014

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

Appearances:

Appellant:	No appearance
Respondent:	Mr. Stephen Brette

Issues: Status of the matter – Directions

Result / Order:

[Oral delivery]

- 1. This appeal shall be assigned no. 14 of 2004.**
- 2. The Registrar of the Court shall cause to be served upon the appellant through Sergeant Arthur Jankie Officer #621 of Police Headquarters, Castries Saint Lucia, a notice of hearing of the appeal scheduled for Monday, 14th July 2014.**
- 3. The hearing of the appeal shall take place at the next sitting of the Court in Saint Lucia during the week commencing 14th July 2014.**

Case Name:

**Brad Forde
V
CPL 472 John Vaudroque
[SLUMCRAP2008/001A]**

Date:

Monday, 7th April 2014

Before:

The Hon. Dame Janice M. Pereira, Chief Justice

Appearances:

Appellant:

No appearance

Respondent:

Mr. Stephen Brette

Issues:

Status of the matter – Directions

**Result / Order /
Reason:**

[Oral delivery]

- 1. This appeal be deemed no. 1A of 2008.**
- 2. The appeal herein is dismissed for want of prosecution.**

Case Name:

**Rohan Girard
v
PC 48 Charlemagne**

[SLUMCRAP2006/001A]

Date:

Monday, 7th April 2014

Before:

The Hon. Dame Janice M. Pereira, Chief Justice

Appearances:

Appellant:

No appearance

Respondent:

Mr. Stephen Brette

Issues:

Status of the matter – Directions

Result / Order /

Reason:

[Oral delivery]

- 1. This appeal shall be deemed no. 1A of 2006.**
- 2. The appeal stands dismissed, appellant having paid the fine imposed.**

Case Name:

**Arnold Auguste
v
Patrice Francis PC 556**

[SLUMCRAP2004/001B]

Date:

Monday, 7th April 2014

Before:

The Hon. Dame Janice M. Pereira, Chief Justice

Appearances:

Appellant:

No appearance

Respondent:

Mr. Stephen Brette

Issues:

Status of the matter – Directions

**Result / Order /
Reason:**

[Oral delivery]

- 1. This appeal shall be deemed no. 1B of 2004.**
- 2. The appeal stands dismissed for want of prosecution.**

Case Name:

**Tanzanite International Limited
V
The Attorney General of Saint Lucia
[SLUHCVAP2008/0039]**

Date:

Monday, 7th April 2014

Before:

The Hon. Dame Janice M. Pereira, Chief Justice

Appearances:

Appellant:

Ms. Renee St. Rose

Respondent:

Mrs. Brender Portland-Reynolds

Issues:

Status of the matter – Directions

Result / Order

[Oral delivery]

- 1. The respondent shall have until Friday, 16th May 2014 to locate and review notes of the proceedings taken by the respondent and those notes submitted to the respondent by the appellant.**
- 2. The parties shall report in writing to the Court setting out the status of the matter after a review of the notes no later than Friday, 30th May 2014.**

Reason:

Counsel for the respondent indicated that attorney at law, Mr. Leslie Prospere, who was also counsel in the matter, has notes that may be available. Counsel needed time to

communicate with Mr. Prospere regarding said notes.

Case Name: Lester Howell
V
Constable 586 Thomas
[SLUMCRAP2006/001B]

Date: Monday, 7th April 2014

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

Appearances:

Appellant: No appearance

Respondent: Mr. Stephen Brette

Issues: Status of the matter – Directions

Result / Order: [Oral delivery]
1. This appeal shall be deemed no. 1B of 2006.
2. The appeal stands dismissed for want of prosecution.

Reason: There was no record of appeal nor a recognizance filed in this matter. The Court noted that since the filing of the appeal there has been no activity on the file, which the Court deemed as the appellant having no interest in the matter.

Case Name: Ronald Charlemagne
V

Elizabeth George

[SLUMCVAP1997/0001]

Date: Monday, 7th April 2014

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

Appearances:

Appellant:	Mr. Vern Gill
Respondent:	No appearance (Sgt. Linus George, brother of respondent appeared on behalf of respondent)

Issues: Status of the matter – Affiliation order

Result / Order: [Oral delivery]
The matter is spent.

Reason: The children, who were the subject of the affiliation order, are now over 18 years of age.

Case Name:

James Doxilly
v
Sean Alexander Corporal 476

[SLUMCRAP2006/0007]

Date: Monday, 7th April 2014

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

Appearances:

Appellant:	Mr. Horace Fraser
Respondent:	Mr. Stephen Brette

Issues:

Status of the matter – Directions

Result / Order:

[Oral delivery]

- 1. The appellant shall have until Friday, 16th May 2014 to furnish proof of entry into the recognizance for the due prosecution of his appeal in accordance with Section 733 of the Criminal Code.**
- 2. The matter will be set down for a further status hearing during the next sitting of the Court in Saint Lucia during the week commencing 14th July 2014.**

Case Name:

Aloysius Breedy

V

Julian Jean PC 541

[SLUMCRAP2006/0002]

Date:

Monday, 7th April 2014

Before:

The Hon. Dame Janice M. Pereira, Chief Justice

Appearances:

Appellant:

Mr. Al Elliot

Respondent:

Mr. Stephen Brette

Issue:

Status of the matter

Result / Order:

[Oral delivery]

This matter has been dealt with by the Court of Appeal in 2011.

Reason:

The matter came up before the Court of Appeal in July 2011 and was given criminal appeal number 18 of 2011. The Court, at that time, heard and determined the matter.

Case Name: [1] Jonathan Lang
[2] Bertram Mauricette
V
[1] PC 541 Julien Jean
[SLUMCRAP2006/001C]

Date: Monday, 7th April 2014

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

Appearances:

Appellant: No appearance

Respondent: Mr. Stephen Brette

Issues: Status of the matter – Directions

**Result / Order /
Reason:**

[Oral delivery]

1. This appeal be deemed no. 1C of 2006.
2. The appeal herein is dismissed for want of prosecution.

Case Name: Lincoln Lorde
V
WC 265 Duplessis
[SLUMCRAP2005/001A]

Date: Monday, 7th April 2014

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

Appearances:

Appellant: No appearance
Respondent: Mr. Stephen Brett

Issues: Status of the matter – Directions

Result / Order: [Oral delivery]
1. This appeal shall be deemed no. 1A of 2005.
2. The appeal stands dismissed for want of prosecution.

Reason: The Court noted that there was no recognizance entered into by the appellant for the due prosecution of the appeal.

Case Name: Eldon Simon
v
PC 570 Hugh Darcheville
[SLUMCRAP2004/001C]

Date: Monday, 7th April 2014

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

Appearances:

Appellant: No appearance
Respondent: Mr. Stephen Brette

Issues: Status of the matter – Directions

Result / Order: [Oral delivery]
1. This appeal shall be deemed no. 1C of 2004.
2. Notice of hearing of the appeal to be served on the appellant by PC570 Hugh Darcheville for attendance of the appellant at the next

sitting of the Court in Saint Lucia during the week commencing 14th July 2014.

Reason:

There is a notice of appeal and a recognizance on the record. Further, the investigating officer requested more time to serve the appellant as he had received new information pertaining to the address of the appellant.

Case Name:

Vincent Evans

V

Ian Harrow PC 491

[SLUMCRAP2004/001D]

Date:

Monday, 7th April 2014

Before:

The Hon. Dame Janice M. Pereira, Chief Justice

Appearances:

Appellant:

No appearance

Respondent:

Mr. Stephen Brette

Issues:

Status of the matter – Directions

Result / Order /

Reason:

[Oral delivery]

- 1. This appeal shall be deemed no. 1D of 2004.**
- 2. The appeal stands dismissed for want of prosecution.**

Case Name:

Timothy Dupres

V

Corporal 398 George

[SLUMCRAP2008/001B]

Date: Monday, 7th April 2014

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

Appearances:

Appellant:	No appearance
Respondent:	Mr. Stephen Brette

Issues: Status of the matter – Directions

Result / Order: [Oral delivery]
1. This appeal shall be deemed no. 1B of 2008.
2. Notice of hearing to be given to the appellant by the respondent Sergeant 398 George for attendance at the Court at its next sitting in Saint Lucia during the week commencing 14th July 2014.

Reason: Corporal 398 George requested additional time to serve the appellant.

Case Name:

Nelbert Toto
v
Darren Williams PC 674

[SLUMCRAP2008/001C]

Date: Monday, 7th April 2014

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

Appearances:

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

Respondent: Mr. Stephen Brette

Issues: Status of the matter – Directions

Result / Order: [Oral delivery]
1. This appeal shall be deemed no. 1C of 2008.
2. The appeal stands dismissed for want of prosecution.

Reason: The Court noted that to date no steps have been taken by the appellant for the due prosecution of the appeal.

Case Name: Marcus Peter Foster
V
PC 534 Lester Broomes
[SLUMCRAP2007/0014]

Date: Monday, 7th April 2014

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

Appearances:
Appellant: No appearance

Respondent: Mr. Stephen Brette

Issue: Status of the matter

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

Reason: The Court noted that to date no steps have been taken by the appellant for the due prosecution

of the appeal.

Case Name: **Benedict Arthur**
v
PC 689 Serieux
[SLUMCRAP2008/001D]

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

Before: **The Hon. Dame Janice M. Pereira, Chief Justice**

Appearances:
Appellant: **No appearance**
Respondent: **Mr. Stephen Brette**

Issues: **Status of the matter – Directions**

Result / Order: **[Oral delivery]**
1. This appeal shall be deemed no. 1D of 2008.
2. The appeal stands dismissed for want of prosecution.

Reason: **The Court noted that to date no steps have been taken by the appellant for the due prosecution of the appeal.**

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

Date: Monday, 7th April 2014

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

Appearances:

Appellant: No appearance

Respondent: Mr. Stephen Brette

Issues: Status of the matter – Directions

Result / Order: [Oral delivery]

1. This appeal shall be deemed no. 1E of 2004.
2. The respondent shall follow up with the French Embassy and report thereon by 16th May 2014 as to the status of service on the appellant.
3. The matter is adjourned for further hearing at the next sitting of the Court during the week commencing 14th July 2014.

Reason: The appellant is a French national and is no longer residing in the jurisdiction. Documents for service on the appellant were previously taken to the French Embassy.

Case Name: Titus Duboulay
v
PC 57 Cherlton Nickson
[SLUMCRAP2007/0008]

Date: Monday, 7th April 2014

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

Appearances:

Appellant: No appearance

Respondent: Mr. Stephen Brette

Issue: Status of the matter

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

Reason: The appellant was served with notice of the hearing. The Court noted that despite this, no interest has been shown by the appellant for the due prosecution of the appeal.

Case Name: Trevor Son
V
WPC 628 Lewis
[SLUMCRAP2003/0008]

Date: Monday, 7th April 2014

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

Appearances:
Appellant: No appearance

Respondent: Mr. Stephen Brette

Issue: Status of the matter

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

Case Name: Curtis Rameau
V
George Charles PC 190
[SLUMCRAP1999/001A]

Date: Monday, 7th April 2014

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

Appearances:

Appellant: No appearance

Respondent: Mr. Stephen Brette

Issues: Status of the matter – Directions

**Result / Order /
Reason:**

[Oral delivery]

1. This appeal shall be deemed no. 1A of 1999.
2. The appeal stands dismissed for want of prosecution.

Case Name: Randa Prospere
V
The Queen
[SLUMCRAP2009/0001]

Date: Monday, 7th April 2014

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

Appearances:

Appellant: In person

Respondent: Mr. Stephen Brette

Issues:

Status of the matter – Directions

Result / Order:

[Oral delivery]

- 1. The matter is remitted to the Senior Magistrate for the purpose of dealing with the recognizance as the Magistrate may deem fit under Section 733 of the Criminal Code.**
- 2. It is further directed that the Registrar of the High Court shall bring the same to the attention of the Senior Magistrate with a further direction that the issue of the recognizance be dealt with no later than Wednesday, 28th May 2014.**
- 3. It is further directed that the Registrar of the High Court request from Magistrate Smith the reasons for her decision to be transmitted to the Registrar of the High Court no later than Friday, 13th June 2014.**
- 4. The matter is listed for further hearing at the next sitting of the Court in Saint Lucia during the week commencing 14th July 2014.**

APPLICATIONS AND APPEALS

Case Name:

**Walter Pierre
v
Richardson Leon**

[SLUHCVP2013/0018]

Date:

Monday, 7th April 2014

Coram:

**The Hon. Mde. Louise E. Blenman, Justice of appeal
The Hon. Mr. Mario Michel, Justice
The Hon. Mde. Joyce Kentish-Egan, Justice of Appeal [Ag.]**

Appearances:

Appellant: Mr. Vern Gill holding papers for Mrs. Wauneen Louis-Harris

Respondent: Mr. Gerard Williams

Issues: Application for leave to appeal – Application for adjournment

Result / Order: [Oral delivery]
The application for leave to appeal is adjourned for hearing at the next sitting of the Court in Saint Lucia.

Reason: Counsel for the appellant requested the adjournment. There was no objection to the application by the respondent.

Case Name: Valentine James
V
Bank of Nova Scotia
[SLUHCVAP2013/0029]

Date: Monday, 7th April 2014

Coram: The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Joyce Kentish-Egan, Justice of Appeal [Ag.]

Appearances:
Appellant: Mr. Vern Gill holding papers for Mrs. Wauneen Louis-Harris

Respondent: Mr. Jonathan McNamara

Issues: Application for leave to appeal – Application for

adjournment

Result / Order:

[Oral delivery]

The application for leave to appeal is adjourned for hearing at the next sitting of the Court in Saint Lucia.

Reason:

Counsel for the appellant requested the adjournment. There was no objection to the application by the respondent.

Case Name:

Cameron Wayne Ernest

V

PC 490 George Leopold

[SLUMCRAP2002/0147]

[SLUMCRAP2002/0148]

Date:

Monday, 7th April 2014

Coram:

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

The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mde. Joyce Kentish-Egan, Justice of Appeal [Ag.]

Appearances:

Appellant:

Mr. Andie George

Respondent:

Mr. Leon France

Issues:

Criminal appeal against conviction – Possession of firearm and ammunition without license

Result / Order:

[Oral delivery]

The application for leave to appeal is adjourned

for hearing at the next sitting of the Court in Saint Lucia.

Reason:

Counsel for the appellant indicated that he has received the transcript of proceedings. However, he was unable to contact the appellant to take proper instructions as the appellant was previously working in Grenada. Counsel stated that he was not involved in the substantive matter before the High Court.

Case Name:

**River Doree Holdings Limited
v
The Attorney General of St. Lucia**

[SLUHCVP2012/0029]

Date:

Monday, 7th April 2014

Coram:

**The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Joyce Kentish-Egan, Justice of Appeal [Ag.]**

Appearances:

**Applicant
Appellant:**

/ Ms. Jans Drysdale

Respondent:

Ms. Kimberly Roheman

Issue:

Application for conditional leave to appeal to Her Majesty in Council

Result / Order:

[Oral delivery]

- 1. The applicant is granted leave to appeal to Her Majesty in Council on the following conditions:**

- (a) The applicant do within 90 days of the date hereof enter into good and sufficient security in the sum equivalent to 500 pound sterling pursuant to section 5(a) of the West Indies Associated States (Appeals to the Privy Council) Order 224 of 1957 for the due prosecution of the appeal, such security to consist of a deposit of the said amount at the court office.
 - (b) The applicant do within 90 days hereof take the necessary steps for the purposes of procuring the preparation of the record, the settling of the same and certification of the record by the Registrar of the Court of Appeal.
 - (c) The Record shall be prepared in accordance with rules 18 to 20 of the Judicial Committee Rules 2009 and Practice direction 4.3.1 and 4.3.2 and Practice Direction 5 as amended in 2013 and shall be transmitted to the Registrar of the Privy Council without delay when final permission to appeal has been granted.
- 2. The applicant 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:

There was no objection to the application by the respondent. Further the appeal was as of right pursuant to section 108 of the Constitution of Saint Lucia, Cap. 1.01 of the Revised Laws of Saint Lucia 2001.

Case Name:

[1] Neville Cenac

[2] Julita Cenac

[3] John Smith

[4] Lina Smith

V

[1] Robert Schafer

[SLUHCVP2012/0036]

Date:

Monday, 7th April 2014

Coram:

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

The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mde. Joyce Kentish-Egan, Justice of Appeal [Ag.]

Appearances:

Applicant

/ Mr. Dexter Theodore

Appellant:

Respondent:

Mr. Peter Foster, QC with him Ms. Renee St. Rose

Issue:

Application for conditional leave to appeal in Her Majesty in Council

Result / Order:

[Oral delivery]

1. The applicant is granted leave to appeal to Her Majesty in Council on the following conditions:

(a) The applicant do within 90 days of the date hereof enter into good and sufficient security in the sum equivalent to 500 pound sterling pursuant to section 5(a) of the West Indies Associated States (Appeals to the Privy Council) Order 224 of 1957 for the due prosecution of the appeal, such security to consist of a deposit of the said amount at the court office.

(b) The applicant do within 90 days hereof

take the necessary steps for the purposes of procuring the preparation of the record, the settling of the same and certification of the record by the Registrar of the Court of Appeal.

- (c) The Record shall be prepared in accordance with rules 18 to 20 of the Judicial Committee Rules 2009 and Practice direction 4.3.1 and 4.3.2 and Practice Direction 5 as amended in 2013 and shall be transmitted to the Registrar of the Privy Council without delay when final permission to appeal has been granted.
2. The applicant 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:

There was no objection to the application from the respondent.

Case Name:

Richard Frederick

v

Kenny D. Anthony

[SLUHCVAP2013/0002]

Date:

Monday, 7th April 2014

Coram:

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

The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mde. Joyce Kentish-Egan, Justice of Appeal [Ag.]

Appearances:

Applicant / Mr. Horace Fraser
Appellant:

Respondent: Mr. Peter Foster, QC with him Ms. Allana-Joseph

Issues:

Application for conditional leave to appeal to Her Majesty in Council – Oral application for adjournment

Result / Order:

[Oral delivery]

1. Leave is granted to the applicant to file and serve written submissions in support of the application within three (3) days of today's date.
2. The respondent is granted leave to file and serve a reply to the submissions within three (3) days of receipt of the applicant's submissions.
3. The application is adjourned to a date to be notified by the Chief Registrar.

Reason:

Counsel for the respondent objected to the application for leave to appeal. Moreover, that application was filed without any skeleton submissions.

Case Name:

[1] Cecile Beryl Ryan-Cox

[2] Theobald Cox

v

[1] Rhona aka Lorna Cox

[SLUHCVP2013/0003]

Date:

Monday, 7th April 2013

Coram: The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Joyce Kentish-Egan, Justice of Appeal [Ag.]

Appearances:
Appellant: Mr. Winston Hinkson
Respondent: Mr. Leslie Prospere

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

Result / Order: [Oral delivery]
1. The applicant is granted leave to appeal to Her Majesty in Council on the following conditions:
(a) The applicant do within 90 days of the date hereof enter into good and sufficient security in the sum equivalent to 500 pound sterling pursuant to section 5(a) of the West Indies Associated States (Appeals to the Privy Council) Order 224 of 1957 for the due prosecution of the appeal, such security to consist of a deposit of the said amount at the court office.
(b) The applicant do within 90 days hereof take the necessary steps for the purposes of procuring the preparation of the record, the settling of the same and certification of the record by the Registrar of the Court of Appeal.
(c) The Record shall be prepared in accordance with rules 18 to 20 of the Judicial Committee Rules 2009 and Practice direction 4.3.1 and 4.3.2 and Practice Direction 5 as amended in 2013 and shall be transmitted to the Registrar of the Privy Council without delay when final permission to appeal has been granted.
2. The applicant 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:

Counsel for the respondent had no objection to the application for leave. Further, the appeal was as of right pursuant to section 108(1)(a) of the Constitution of Saint Lucia, Cap. 1.01 of the Revised Laws of Saint Lucia 2001.

Case Name:

**Bernard Piltie
v
The Attorney General
[SLUHCVAP2013/0016]**

Date:

Monday, 7th April 2014

Coram:

**The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Joyce Kentish-Egan, Justice of Appeal [Ag.]**

Appearances:

Applicant / Intended Appellant: Ms. Lydia Faisal

Respondent: Ms. Jans Drysdale with her Ms. Brenda Portland-Reynolds

Issues:

Application for extension of time – Application for leave to appeal

Result / Order:

[Oral delivery]

- 1. The application for extension of time to apply for leave to appeal is dismissed.**
- 2. The application for leave to appeal is dismissed having been filed without leave.**
- 3. No order as to costs.**

Reason:

This is an application by the appellant for leave to appeal against the decision of Justice Francis Belle which decision was made on 25th July 2013 by virtue of which Justice Belle denied leave to apply for judicial review of a decision of the Customs Department. The applicant made an application for leave to appeal the decision of Justice Belle on 9th August 2013, a period of some 12 or 13 days after the decision of the learned judge. Rule 62.28 of the Civil Procedure Rules 2000 (“CPR”) provides that where leave to apply for judicial review has been refused at a hearing in the court below, an applicant may apply to the court for leave to appeal that decision. Such an application must be made within 7 days of the decision of the court below to refuse leave to apply for judicial review.

In this case, the applicant proceeded to apply for leave outside of the 7 day period and without any application for an extension of time to apply for leave to appeal. The respondent then filed an affidavit to the application for leave to appeal in which affidavit the respondent pointed out that in fact the application for leave to appeal was made outside of time. Thereafter, the applicant sought to amend the application for leave and by an amended application on 9th December 2013 added to the application for leave to appeal an extension of time to file notice of application.

Before this Court learned counsel for the applicant has sought to argue that the filing of the application for leave to appeal after the 7 day period was an account of counsel not being

aware of the change in the CPR effected some two years prior to the date of application. This Court has on several occasions in several cases, namely John Cecil Rose v Anne Marie Uralis Rose (Saint Lucia, High Court Civil Appeal SLUHCVAP2003/0019, delivered September 2003), Casimir v Shillingford and Pinard ((1967) WIR 10 269), Carleen Pemberton v Mark Brantley (Saint Christopher and Nevis, High Court Civil Appeal SKBHCVAP2011/0009, delivered 14th October 2011, unreported) etc., spoken clearly to the issue of fault by counsel, errors by counsel, default by counsel's chambers and have unequivocally stated that these are not considered by the Court to be good explanations for any violation of rules of court. In this case, the submission of counsel is exactly the kind of decision the Court has spoken to and has determined that it is not acceptable for a delay.

Although counsel for respondent ought properly to have gone beyond indications in the affidavit that there was noncompliance with rule 62.28, the fact that the respondent has not filed a notice of objection does not remove from the Court the responsibility to determine whether the application is a proper one to exercise its discretion to grant an extension of time within which to appeal. The Court was of the view that it was not a proper application to exercise its discretion to grant an extension of time to file leave to appeal; once the application for extension of time is declined the application for leave to appeal falls away.

Case Name:

Angus Jn. Baptiste

v

Oliver Sampson

[SLUMCVAP2013/0001]

Date: Monday, 7th April 2014

Coram: The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Joyce Kentish-Egan, Justice of Appeal [Ag.]

Appearances:

Appellant: No appearance

Respondent: No appearance

Issues: Civil appeal – For mention

Result / Order: [Oral delivery]
The application to set aside decision of a single judge is adjourned for hearing at the next sitting of the Court in Saint Lucia.

Reason: Counsel for the appellant, Mr. Alfred Alcide, wrote to the Chief Registrar and indicated that he would be unable to attend the sitting as he is currently out of the jurisdiction on an urgent personal matter. Counsel requested that this matter be adjourned.

Case Name: Mariander Tisson
V
The Police
[SLUMCRAP2013/0021]

Date: Monday, 7th April 2014

Coram: The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Joyce Kentish-Egan, Justice of Appeal

Appeal [Ag.]

Appearances:

Appellant: In person

Respondent: Mr. Leon France with him Ms. Tina Mensah

Issues: Criminal appeal against sentence – Assault

Result / Order: [Oral delivery]
The appeal is adjourned for hearing at the next sitting of the Court in Saint Lucia.

Reason: Counsel for the appellant, Mr. Alfred Alcide, wrote to the Chief Registrar and indicated that he would be unable to attend the sitting as he is currently out of the jurisdiction on an urgent personal matter. Counsel requested that this matter be adjourned. Further, there was no objection by the respondent.

Case Name: Terry Charles
V
The Police (PC 56 Allyn Prospere)
[SLUMCRAP2011/0019]

Date: Monday, 7th April 2014

Coram: The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Joyce Kentish-Egan, Justice of Appeal

Appearances:

Appellant: Mr. Colin Foster

Respondent: Ms. Tina Mensah

Issues: Criminal appeal against conviction – Possession of unlicensed firearm

Result / Order: [Oral delivery]
1. The appellant is granted leave to file and serve further skeleton submissions together with authorities on or before 3:00 p.m. on Tuesday, 8th April 2014.
2. The respondent is granted leave to file and serve further skeleton submissions in reply, if necessary, on or before 3:00 p.m. Wednesday, 9th April 2014.
3. The continuation of this appeal is fixed for 2:00 p.m. on Thursday, 10th April 2014.

Reason: Matter adjourned to allow counsel to furnish the Court with a copy of his speaking notes.

Case Name: Wayne Philogene
v
The Police

[SLUMCRAP2012/0002]

Date: Monday, 7th April 2014

Coram: The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Joyce Kentish-Egan, Justice of Appeal [Ag.]

Appearances:

Appellant: No appearance

Respondent: Mrs. Tamara Foster Cauldron

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

Result / Order: [Oral delivery]
The appeal is adjourned for hearing at the next sitting of the Court of Appeal in Saint Lucia.

Reason: Counsel for the appellant, Mr. Alfred Alcide, wrote to the Chief Registrar and indicated that he would be unable to attend the sitting as he is currently out of the jurisdiction on an urgent personal matter. Counsel requested that this matter be adjourned. Further, there was no objection by the respondent.

Case Name: Magdaline Joseph
v
The Police

[SLUMCRAP2012/0006]
[SLUMCRAP2012/006A]

Date: Monday, 7th April 2014

Coram: The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Joyce Kentish-Egan, Justice of Appeal

Appearances:

Appellant: No appearance

Respondent: Mrs. Tamara Foster-Cauldron

Issues: Criminal appeal against conviction –
Abandonment of Juvenile

Result / Order:	[Oral delivery] Matter is struck out for want of prosecution.
Reason:	Both counsel for the appellant and the appellant failed to appear for the due prosecution of the appeal.
Case Name:	Peter Charles v The Police [SLUMCRAP2013/0001]
Date:	Monday, 7th April 2014
Coram:	The Hon. Mde. Louise E. Blenman, Justice of Appeal The Hon. Mr. Mario Michel, Justice of Appeal The Hon. Mde. Joyce Kentish-Egan, Justice of Appeal [Ag.]
Appearances:	
Appellant:	In person
Respondent:	Ms. Tina Mensah holding papers for Mr. Stephen Brette
Issues:	Criminal appeal against conviction – Possession of a controlled drug – Possession with intent to supply
Result / Order:	[Oral delivery] The appeal is adjourned for hearing at the next sitting of the Court of Appeal in Saint Lucia.
Reason:	Counsel for the appellant, Mr. Alfred Alcide, wrote to the Chief Registrar and indicated that

he would be unable to attend the sitting as he is currently out of the jurisdiction on an urgent personal matter. Counsel requested that this matter be adjourned. Further, there was no objection from the respondent.

Case Name:

**Eastern Caribbean Collective
Organisation for Music Rights (ECCO)
Inc. (Formerly Hewanorra Musical
Society Limited (HMS))**

v

Mega Plex Entertainment Corporation

[SLUHCVAP2013/0012]

Date:

Tuesday, 8th April 2014

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:

**Mr. Thaddeus M. Antoine with him Ms. Shervon
Phillips**

Respondent:

**Mr. Gregory Delzin with him Ms. Diana Thomas
and Mr. Carlos Michel**

Issues:

**Civil appeal – Whether trial judge erred in
striking out application before case
management stage – Whether trial judge erred
in exercise of her discretion**

Result / Order:

[Oral delivery]

- 1. The appeal is allowed.**
- 2. The appellant is to amend its statement of
case providing details as to the works which
are the subject of the alleged infringement**

together with details of the members and affiliates of the appellant to whom it says the said works belong to.

3. The amended statement of case is to be filed and served on the respondent no later than Wednesday, 23rd April 2014.
4. In the event that the amendment of the statement of case providing the requisite details and particulars is not forthcoming within the time as herein stated the appellant's statement of case shall stand as struck out.
5. There be no order as to costs.

Reason:

The proceedings had not reached the stage of the first case management conference and as such it was open to the appellant to amend its statement of case without permission of the court. The Court was satisfied, following the principles as set out in the cases of *Citco Global Custody NV v Y2K Finance Inc* (Territory of the British Virgin Islands, High Court Civil Appeal BVIHCVAP2008/0022, delivered 19th October 2009, unreported) and *Morgan Crucible Co. plc v Hill Samuel & Co. Ltd* ([1991] Ch 295), that the general nature of the appellant's case was set out in the pleaded case and accordingly, accepting the statements contained therein to be true even if somewhat unrealistic, a cause of action had been made out.

As the learned trial judge found, at page 15 of the transcript contained in the ruling of her decision, it was only fair and necessary that the appellant further particularize its claim. However, having regard to the entire scheme of the Civil Procedure Rules 2000 ("CPR"), the learned trial judge faced with the application to strike ought to have addressed her mind to the question whether that course, which is a draconian one, was the only course available in the exercise of her discretion in seeking to further the overriding objective of the CPR to deal with cases justly.

The Court noted that part 34 of CPR allows a party to request information. This option did not appear to have been exercised by the respondent in this case. However, notwithstanding that the respondent did not exercise this option, there was available to the learned trial judge the option under part 34 to order the furnishing of such details as well as the plentitude of powers contained in CPR 26.1(2)(w) which could also be engaged for the purpose of furthering the overriding objective.

CPR 26.1(2)(w) states that the court may take any other step, give any other direction or make any other order for the purpose of managing the case and furthering the overriding objective. This means that the court could have ordered that the appellant amend its case so as to ensure that those particulars required for focusing the appellant's case on the specific works claimed as the subject of the copyright as well as the specific members and affiliates who claimed ownership in the said specific works be set out in order to enable the respondent to plead thereto without being embarrassed in so doing.

The Court was of the opinion that the learned trial judge did not address her mind to those alternatives which in the Court's view would have been a more proportionate response on the application having regard to all the circumstances of the case.

The Court relied on the statements made by the Privy Council in the case of *Real Time Ssystems Limited v Renwar Investments Limited* al [2014] UKPC 6, in particular, the pronouncements contained at paragraphs 14-18 in the judgment of Lord Mance which the Court adopted and applied to the circumstances of the case.

The Court was of the view that the alternative to striking out the case of the appellant on a

proper exercise of discretion and had the learned trial judge addressed her mind to it would have been to order that the appellant amend its statement of case to provide the required particulars as alluded to earlier and to further provide that if the required particulars were not provided as ordered the appellant's statement of case be struck out as the proportionate sanction for failure to amend as ordered. The Court concluded that the learned trial judge did err in principle in the exercise of her discretion.

In respect of costs on this appeal, the Court was mindful that the general rule is that the successful party is entitled to costs. However, in the circumstances of this particular case, where the Court did not accede to the view that the order striking out the case was a proportionate response given all the circumstances but that rather an alternate order ought to have been made in furthering the overriding objective and thus allowing the appellant to make good its case by further particularizing its case, the appropriate order as to costs in those circumstances would be that there be no order as to costs in this appeal.

Case Name:

Denys Barrow

v

The Attorney General of St. Lucia

[SLUHCVAP2013/0001]

Date:

Tuesday, 8th April 2014

Coram:

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

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

The Hon. Mde. Joyce Kentish-Egan, Justice of Appeal [Ag.]

Appearances:

Appellant: In person with him Mr. Eamon Courteney, SC and Ms. Naima Barrow

Respondent: Mr. Deale Lee with him Ms. Cagina Foster

Issues: Civil appeal – Whether appellant needed to serve a specific number of years before pension can be paid

Result / Order: Judgment reserved.

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. Cathereine aka Semepher Camselle

[SLUHCVAP2013/0006]

Date: Wednesday, 9th April 2013

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
[Ag.]

Appearances:

Appellant: Mr. Dexter Theodore with him Mr. Alberton Richelieu

Respondent: Ms. Lydia Faisal for first respondent
Ms. Esther Greene-Ernest for second, third and

fourth respondents

Issues: Civil appeal – Deed of sale – Default judgment – Setting aside or varying order of coordinate jurisdiction

Result / Order: Judgment reserved.

Case Name: Bernard Andre aka Korean
V
The Queen
[SLUHCRA2009/0006]

Date: Wednesday, 9th April 2014

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. Shawn Innocent

Respondent: Mrs. Victoria Charles-Clarke with her Mr. Stephen Brette

Issues: Criminal appeal against conviction and sentence – Murder – Provocation – Whether learned trial judge erred in his directions to the jury on provocation – Whether learned trial addressed his mind to the time the appellant spent on remand at the time of sentencing the appellant

Result / Order: [Oral delivery]
1. The appeal against conviction is dismissed.
2. The appeal against sentence is allowed so as

to vary the sentence to take into account the 5 years spent on remand.

Reason:

On 30th November 2009, the appellant was convicted by the jury for the offence of murder and sentenced to 18 years imprisonment. He has since appealed his conviction and sentence on a number of grounds.

The Court's conclusion:

In relation to the proceedings being conducted on the basis that the Criminal Code 2004 was applicable to the proceedings, although learned counsel for the appellant did submit that he was relying on his written submissions, learned counsel did not pursue this ground. In any event the Court did not consider that there was any merit in this ground.

In relation to provocation, the Court was in agreement with the submissions of the learned Director of Public Prosecutions ("DPP") that based on the evidence the issue of provocation did not arise. There was simply no evidence of loss of self-control. The incident at Gros Islet could not have given rise to provocation which could have caused the appellant to shoot the deceased. In addition, there were no acts of provocation of the appellant at the home of the deceased where the shooting occurred sometime later. The Court applied the case of *R v Acott* ([1997] 1 WLR 306).

In relation to *res gestae*, specifically in relation to the evidence of Kurt Sylvester, the learned trial judge correctly applied the common law principles and did not err in the exercise of the discretion in allowing that evidence.

In relation to Kim Charles' evidence, it was common ground that the learned judge did not hold a *voir dire*. Notwithstanding this, the Court was of the view that that omission was not fatal and did not result in a miscarriage of justice as

there was sufficient evidence on which the jury could have properly convicted the appellant.

The Court noted the concessions of the learned DPP that the learned trial judge omitted to give the jury a full direction on how to consider the truthfulness of words spoken by the deceased. The Court agreed with the learned DPP and held that this omission did not prejudice the appellant as there was other evidence on which the jury could have concluded that the appellant shot the deceased which resulted in his death.

The Court also agreed with the submission of the learned DPP that the learned trial judge's direction to the jury that they ought to treat Kim Charles' evidence with extreme caution and to treat it the same way they would treat Kurt Sylvester's evidence was adequate warning to the jury in relation to this particular evidence.

In relation to the appeal against sentence, the Court was of the opinion that there was no indication on the record which showed that the learned trial judge, in imposing sentence, specifically took into account the 5 years the appellant spent on remand. The Court applied the principles in *Shonovia Thomas v The Queen* (Territory of the British Virgin Islands, High Court Criminal Appeal BVIHCRA2010/0006, delivered 27th August 2012, unreported) and *Romeo Da Costa Hall v The Queen* (CCJ Appeal No. CR1 of 2010, [2011] CCJ 6, delivered 15th April 2011) and allowed the appeal against sentence. The sentence was varied to take into account the 5 years the appellant spent on remand.

Case Name:

Conrad Charles
v
The Attorney General

Date: Thursday, 10th April 2014

Coram: The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Ms. Gertel Thom, Justice of Appeal [Ag.]
The Hon. Ms. Joyce Kentish-Egan, Justice of Appeal [Ag.]

Appearances:

Appellant: Mrs. Cynthia Hinkson-Ouhla

Respondent: Mrs. Brender Portland-Reynolds with her Ms. Jans Drysdale

Issues: Civil appeal – Whether appellant should have utilized the adjudication process – Whether adjudicator erred in awarding Crown the land – Whether learned trial judge erred in dismissing the appellant’s claim

Result / Order: [Oral delivery]
1. The appeal is dismissed.
2. Costs agreed to the respondent in the sum of \$4000.00.

Reason: In arguing this appeal, counsel for the appellant indicated to the Court that she was no longer proceeding with the improbation point of appeal. The Court accepted counsel’s submission.

The Court summarised the appellant’s grounds of appeal in this way: “whether the appellant had brought an appeal against the land adjudicator’s decision within the framework as set down in section 20 of the Land Adjudication Act Cap. 5:06 of the Revised Laws of Saint Lucia 2001 and that having failed to do so the appellant cannot come before the Court seeking the reliefs which he sought”.

The appellant was seeking rectification of the land register. The Court found that the learned trial judge was correct in the findings he made at paragraphs 33 and 34 of his judgment, which states that:

“[33] The significant aspects of these arguments are firstly that the Claimant has ignored due process but now wants the Court to afford him special treatment of due process against the Crown which obtained the ownership of the disputed land by due process in the first place. In my view to go that route one would have to have compelling evidence of fraud or mistake. See Section 98 of the Land Registration Act. However in this case there is evidence of neither.

“[34] The Claimant failed to prove his entitlement at the time of the Adjudication exercise and failed to do so at trial. There is no evidence of any mistake or fraud.”

In addition the Court applied the case of *Sylvina Louisien v Joachim Rodney Jacob* [2009] UKPC 3.

Further, counsel for the appellant conceded that the appellant, who is the representative of the estate of the deceased, did not participate or file a claim in the adjudication process. The Court therefore held that the appellant, having not participated in the process and having taken no steps to appeal the decision of the adjudication officer within the 90 days, who at the time had several claims before him and adjudicated on the claims before him, cannot come before the Court to seek the reliefs which he sought. The Court found no error on the part of the learned trial judge in dismissing the claim and holding that the land was correctly registered in the name of the Crown.

Case Name:

**Terry Charles
V
The Police (PC 56 Allyn Prospere)
[SLUMCRAP2011/0019]**

Date:

Wednesday, 10th April 2014

Coram:

**The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Joyce Kentish-Egan, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Mr. Colin Foster

Respondent:

Ms. Tina Mensah with her Ms. Tamara Foster-Cauldron

Issues:

Criminal appeal against conviction and sentence of 7 years – Possession of unlicensed firearm – Whether magistrate adverted her mind to relevant principles in relation to identification evidence – Whether sentence was excessive

Result / Order:

[Oral delivery]

- 1. The appeal against conviction is dismissed.**
- 2. The appeal against sentence is hereby varied and a sentence of 5 years is substituted.**
- 3. The 18 months spent on remand be deducted from the sentence of 5 years.**

Reason:

This is an appeal by Terry Charles against a conviction of a firearm in which he was sentenced to 7 years in prison. Learned counsel on behalf of the appellant appealed on various grounds with the main focus being that the learned magistrate failed to advert her mind

to the relevant identification principles set out in *R v Turnbull* ((1977) QB 224) and to specifically state how she arrived at the conclusion which she did. Learned counsel relied on *R v Turnbull* and *R v Hunte* ((2011) 78 WIR 301).

Counsel for the Crown submitted that the learned magistrate did address her mind to the relevant principles under *Turnbull*. In regard to the appellant's critique of the magistrate's reasons, counsel submitted the case of *Lester Charles et al v The Commissioner of Police (Antigua and Barbuda, Magisterial Criminal Appeal ANUMCRAP2009/0001*, delivered 15th March 2010, unreported). In that case the magistrate had simply stated that he preferred the evidence of the prosecution. Baptiste JA, on behalf of the Full Court, held that the magistrate had the advantage of seeing and hearing the witnesses as they testified as well as hearing and seeing the defendants give their evidence. He went further to state that the magistrate was ideally placed to assess issues of credibility and reliability and draw the relevant inferences from the facts. As such the Court in that case dismissed the appeal against the magistrate's decision. Learned counsel for the Crown commended this case for this appeal.

The Court reviewed the submissions of counsel and while the Court was of the view that the reasons for the decision were not as expansive as they could have been, the Court concluded that the magistrate did address her mind to the overwhelming and cogent evidence before her. The magistrate had the advantage of seeing and hearing the witnesses give their evidence. Further, on a perusal of the evidence before it, the Court found that there was enough evidence on which the magistrate could have come to the conclusion that the prosecution had proven their case beyond a reasonable doubt. The Court concluded that the conviction was safe and held that there was no reason to quash the

conviction.

In relation to the appeal against sentence, albeit the minimum sentence of possession of a firearm is 7 years, the Court had regard to the case of *Thelbert Edwards v The Queen* (Saint Lucia, High Court Criminal Appeal, SLUHCRA2006/0003, delivered 15th January 2007, unreported). In that case the Court of Appeal approved the obiter statement made by Sir Dennis Byron CJ in the case of *Newton Spence v The Queen* (Saint Vincent and the Grenadines, High Court Criminal Appeal SVGHCRAP1998/0020, delivered 2nd April 2001, unreported) where he stated that “whereas it is for Parliament to set sentencing policy, it is the duty of the courts to evaluate whether the laws passed by Parliament contravene the Constitution, without fear or favour”. Gordon JA, on behalf of the Court, in *Thelbert Edward v The Queen* gave meaning to Byron CJ’s words, “[t]o put it another way, each such law must be examined by the courts to see whether the fundamental rights and freedoms are observed or contravened”. On that basis, the Court held that the sentence of 7 years imposed by the magistrate was excessive in all the circumstances of the case.

The Court looked at the mitigating and aggravating factors in the case. The Court considered that the aggravating factor was that the appellant had a previous conviction of the same type; the mitigating factors were the appellant’s young age at the time of the offence, he was the only breadwinner of the family who took care of his sick elderly mother, he was a father of two children, his socio economic background. The Court held that taking into account all the circumstances of the case a term of 5 years in prison would be more appropriate with the 18 months spent on remand to be deducted from that 5 year term.