

COURT OF APPEAL SITTING

ANTIGUA AND BARBUDA

19th – 23rd March 2012

SPECIAL SITTING

Coram:

**The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mr. Mario Michel
The Hon. Mde. Jennifer Remy**

Date:

Monday, 19th March 2012

As it would be the last time that His Lordship the Hon. Chief Justice, Hugh Anthony Rawlins, would be presiding in Antigua and Barbuda before demitting office in July 2012, a special sitting of the Court of Appeal was convened to pay tribute to the Chief Justice for his tremendous contribution to the Eastern Caribbean Supreme Court over the years as Master, High Court Judge, Justice of Appeal and Chief Justice. Tributes were given by members of the Antigua and Barbuda Bar.

JUDGMENT

Case Name:

**C.O. Williams Construction (St. Lucia) Limited v Inter-Island Dredging Co. Ltd
[High Court Civil Appeal No. 17 of 2011]
(Saint Lucia)**

Date:

Monday, 19th March 2012

Coram:

The Hon. Mr. Hugh A. Rawlins, Chief Justice

The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellant:

Mr. Hollis Francis Jr., holding papers for Floissac Fleming and Associates

Respondent:

Ms. Asheen Joseph, holding papers for Nelson Green and Associates

Issues:

Civil appeal – Application for leave to appeal order of learned judge denying application for extension of time to file defence – Whether application for relief from sanctions must accompany application for extension of time – Rules 26.7, 26.8, 27.8 and 26.9 of the Civil Procedure Rules 2000 – Criteria to be satisfied in making application for extension of time where there is no express sanction for non-compliance with rule, practice direction, statutory provision or court order which prescribes time limit

Result /
Reason:

Held: granting the application for leave to appeal and treating that application as the appeal, allowing the appeal, setting aside paragraphs 2 and 3 of the order of the learned judge, and giving the applicant 30 days from the date of delivery of this judgment within which to file its defence, that:

- 1. The learned judge erred in refusing to consider the merits of the application for extension of time because no application for relief from sanctions was filed.**
- 2. CPR 26.7(2) admits of only one interpretation and extending this rule to apply to CPR 10.3(1) and other factual situations which fit uncomfortably under the rule, having regard to the scheme of CPR 2000, produces results which are**

untenable and inconsistent with the overriding objective.

3. CPR 27.8 stipulates the circumstances that must exist for a party to apply for an extension of time and relief from sanctions. That party would have to be seeking to vary a date which the court has fixed for: a case management conference; or for a party to do something where the order specifies a sanction for non-compliance; or for pre-trial review, return of a listing questionnaire, or a trial; or for the variation of a date set by the court or the rules for doing any act which will affect any of the previously mentioned dates. It is only where those circumstances exist and the party seeks to vary a date set in the timetable after the deadline date has passed that CPR 27.8(4) requires that the party must apply for an extension of time and relief from the sanction to which the party has become subject under these Rules or any court order.

4. The circumstances envisaged in CPR 27.8 did not exist for the applicant. Neither was there any express sanction to which the applicant had become subject under CPR 2000 or any court order. The applicant would be subject to an implied sanction on the authority of *Sayers v Clarke Walker (a firm)*, only where the learned judge found the case to be complex; and the criteria to be applied to the application for extension of time in that case would be left to the discretion of the judge depending on how the judge saw it.

***Sayers v Clarke Walker (a firm)* [2002] EWCA Civ 645 applied.**

5. The instant case did not present any complex circumstances as to cause an

invocation of CPR 26.8 where the Sayers approach is applied. In such a case the learned judge would be exercising her case management powers to extend time under CPR 26.1(2)(k) only, and not under CPR 27.8(4). In that regard, CPR 26.9 would be applicable. The learned judge would be making an order to put matters right under CPR 26.9(3) in the absence of any stated consequence of failure stipulated by a rule, practice direction, or order.

6. An application for extension of time to perform an interlocutory step in the proceedings prior to a scheduled case management conference, would require different considerations and a different approach from an application for extension of time involving a failure to comply with case management directions, or a failure to file an appeal against a decision on the merits after a trial, or a failure to make a timely application for leave to appeal an interlocutory decision.
7. The absence of express criteria in the Rules for applications for extension of time falling outside of the purview of CPR 26.7(2) and (3), CPR 26.8, and CPR 27.8(3) and (4), does not mean that there is no established criteria for determining applications for extension of time.
8. The Court has a very broad discretionary power under CPR 26.9 which cannot be exercised in a vacuum or on a whim, but must be exercised judicially in accordance with well-established principles. Overall, in the exercise of this discretion, the court must seek to give effect to the overriding objective which is to ensure that justice is done as between the parties. On applications for extension of time generally, where no sanction is

specified for failure to comply with the rule which prescribes the relevant time limit, the court, in the exercise of its discretion, will consider: (1) the length of the delay; (2) the reasons for delay; (3) the chances of the appeal succeeding if the extension is granted; and (4) the degree of prejudice if the application is granted.

Carleen Pemberton v Mark Brantley Saint Christopher and Nevis HCVAP 2011/009 (delivered 14th October 2011, unreported) followed; **John Cecil Rose v Anne Marie Uralis Rose Saint Lucia Civil Appeal No. 19 of 2003** (delivered 22nd September 2003, unreported) followed.

Case Name:

Romeo Cannonier v The Director of Public Prosecutions
[High Court Criminal Appeal No. 2 of 2008]

Ruedeney Williams v The Director of Public Prosecutions
[High Court Criminal Appeal No. 19 of 2008]

Sheldon Isaac v The Director of Public Prosecutions
[High Court Criminal Appeal No. 20 of 2008]

Romeo Cannonier v The Director of Public Prosecutions
[High Court Criminal Appeal No. 21 of 2008]

Louis Gardiner v The Director of Public

Prosecutions
[High Court Criminal Appeal No. 22 of 2008]
(Saint Christopher and Nevis)

Date: **Wednesday, 21st March 2012**

Coram: **The Hon. Mde. Janice M. Pereira, Justice of Appeal**
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellant: **Mrs. Stacy Saunders-Osborne, holding papers for Mr. Edward Fitzgerald Q.C., Mr. Julian Knowles Q.C. and Ms. Angela Inniss**

Respondent: **Mr. Anthony Armstrong, Director of Public Prosecutions, holding papers for the Director of Public Prosecutions of Saint Christopher and Nevis**

Issues: **Criminal appeal against conviction and sentence – Murder – Death penalty – Section 10(1) of Saint Christopher and Nevis Constitution Order 1983 – Whether section 52(2) of the Eastern Caribbean Supreme Court (Saint Christopher and Nevis) Act, Cap. 3:11, is unconstitutional and in contravention of section 10 of the Constitution – Whether time should be extended to file notice of appeal where appellant sentenced to death – Whether trial judge erred in refusing to admit alibi evidence – Joint enterprise – Whether trial judge erred in failing to give jury good character direction in relation to propensity when evidence of appellant's good character not adduced by counsel at trial**

Result
Reason:

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Held: (In the first appeal) dismissing Cannonier's appeal against conviction and upholding his conviction but quashing his sentence and imposing a sentence of life imprisonment instead; (and in the second appeal) allowing Isaac's appeal against conviction and accordingly quashing his conviction and sentence; dismissing Cannonier's appeal against conviction and affirming his conviction but allowing his appeal against sentence, setting aside the death sentence imposed on him and substituting a sentence of life imprisonment which is to run consecutive to the life sentence imposed on him in the first appeal (Mitchell J.A. [Ag.] and Edwards J.A. a majority, with Rawlins C.J. dissenting); dismissing Gardiner's appeal against conviction and affirming his conviction but allowing his appeal against sentence, setting aside the death sentence and substituting a sentence of life imprisonment; dismissing Williams' appeal against conviction and affirming his conviction but allowing his appeal against sentence, setting aside the death sentence and substituting a sentence of life imprisonment, that:

- 1. Article 6(1) of the European Convention on Human Rights and Fundamental Freedoms (1953) which is ratified and adopted in Saint Christopher and Nevis provides an accused with the right to a fair trial. Contained in that right is his entitlement to a public hearing within a reasonable time by an independent and impartial tribunal. Section 10(1) of the Saint Christopher and Nevis Constitution Order 1983 ("the Constitution") is similar. The power of the Court to refuse the appellants' application for extension of time was conferred by section 52(2) of the Court Act, which restricted the appellants' access to the Court of Appeal. The right to appeal is of particular importance in death penalty cases. In a civilized and democratic society,**

statutory restrictions must be shown to be reasonably justifiable. The objectives of these restrictions must be deemed sufficiently important to justify limiting a fundamental right; there must be a rational connection with the objective; and the means used to impair the right or freedom should be no more than is necessary to accomplish the objective. The time limit imposed by section 52(2) constituted an arbitrary limitation of the appellants' substantive right to appeal and has infringed upon their right of access to the Court of Appeal and the right to have the Court review the convictions and sentences. The phrase "except in the case of a conviction involving sentence of death" ought to be removed. The aim of a just and fair legal system is to ensure that citizens are afforded their guaranteed rights and protection. (per Mitchell J.A. [Ag.]

Sooriamurthy Darmalingum v The State [2000] 1 W.L.R. 2303 applied; De Freitas v Permanent Secretary of the Ministry of Agriculture, Fisheries, Lands and Housing and Others [1999] 1 A.C. 69 applied.

Section 10(1) of the Constitution did secure to the appellants the right to have their proposed appeal proceedings brought before the Court of Appeal. Notwithstanding that the appellants, who had already been convicted, could no longer be described as "charged" for the purposes of section 10(1) of the Constitution, the guarantee in this section would also apply to appellate proceedings. Section 10(1) of the Constitution embodies the "right to a court", which includes the right of access, that is, the right to institute appellate criminal proceedings before the Court of Appeal. Implicit in this right of

access to the Court of Appeal, are the guarantees laid down by section 10(1) of the Constitution as regards both the organization and composition of the court, and the conduct of the proceedings and together they make up the right to a fair hearing. The appellants' right of access to the Court of Appeal would also involve the right to present their case properly and satisfactorily to a court that is independent and impartial and has full jurisdiction over the subject matter and to have a hearing in this court so that their applications for extension of time and/or their complaints in their grounds of appeal may be resolved. This is to be implied in the meaning of fair hearing in the context of Article 10(1) of the Constitution, likewise Article 6(1) of the European Convention on Human Rights. To the extent that section 52(2) of the Court Act precludes the Court of Appeal from exercising jurisdiction to extend the time for convicted persons appealing or applying for leave to appeal their conviction involving the death sentence, that section has failed to respect the appellants' right to access the Court of Appeal as guaranteed by section 10(1) of the Constitution. Furthermore, any law not in conformity with the Constitution ought to be brought into conformity with it. (per Edwards J.A. and Rawlins C.J.).

De Freitas v Permanent Secretary of the Ministry of Agriculture, Fisheries, Lands and Housing and Others [1999] 1 A.C. 69 applied; Golder v United Kingdom (A/18) (1979-80) 1 E.H.R.R. 524 applied; Sooriamurthy Darmalingum v The State [2000] 1 W.L.R. 2303 applied; Delcourt v Belgium (A/11) (1979-80) 1 E.H.R.R. 355 applied; Tolstoy Miloslavsky v United Kingdom (A/323) (1995) 20 E.H.R.R. 442 cited.

2. **Section 33 of the Criminal Procedure Act governs the procedure for producing alibi evidence. Additionally, the judge has a further discretion to admit such evidence within the trial. The Court will not lightly upset the exercise by a trial judge of his judicial discretion unless it is clear that the exercise was wrong. In the first appeal, the appellant gave notice of an alibi to the police only and at the close of the prosecution's case requested permission to call two previously unmentioned witnesses. Judging from the evidence, this was seemingly a last-minute device being used by the appellant to assist his case, and therefore the trial judge rightly exercised his discretion in refusing to admit the alibi evidence. In the event that is wrong, the proviso should be applied on the basis that, even if the trial judge had admitted the alibi evidence, the overall evidence against the appellant was of such a magnitude that he still would have been convicted if the irregularity had not taken place and the alibi witnesses had turned up to testify. (per Mitchell, J.A. [Ag.]).**

R v Colin Thomas Sullivan [1970] 2 All E.R. 681 distinguished.

There is no evidence in the transcript which showed that the first appellant was informed about the provisions of Section 33 of the Criminal Procedure Act. Furthermore, there is no documentation of the judge's ruling on the appellant's late application to call the two alibi witnesses and no indication that he took into account section 33(3) of the Criminal Procedure Act in exercising his discretion to refuse the application. As such, it can be concluded that the learned trial judge exercised his discretion in refusing to allow the alibi evidence

wrongly. On the issue of whether the trial judge's refusal prevented the appellant from presenting his defence, the trial judge mitigated for any possible prejudice resulting from his ruling by giving proper and adequate directions concerning the appellant's defence of alibi. The other evidence on the prosecution's case pointing to the guilt of the appellant, leads to the conclusion that no substantial miscarriage of justice occurred and the proviso should be applied. (per Edwards J.A. and Rawlins C.J.).

3. A trial judge has a discretionary power to discharge a jury, and it is incumbent upon him to consider exercising this power whichever party might invite him to do so or though no party invited him to do so, or even where both parties opposed the discharge of a jury. A mere reminder to the jury of the statutory basis for the admissibility of a deceased's statement does not give rise to a real possibility or danger that the jury would have been prejudiced against the deceased's evidence.

Barnes, Desquottes and Johnson v R; Scott and Walters v R (1989) 37 WIR 330, [1989] A.C. 1242 at 1255 to 1260; [1989] 2 All E.R. 305, [1989] 2 W.L.R. 924; (1989) 89 Cr. App. R. 153 applied.

4. Good practice and good procedure ought to prevail throughout the entirety of a trial, for an accused is innocent until proven guilty. However it is not every departure from good practice which renders a trial unfair. An accused is entitled to a fair trial, not to an unblemished one. Intervention by the judge to clear up ambiguities and to enable him to make certain that he is making an accurate note are perfectly

justifiable. The harsh words used by the trial judge in the first appeal during defence's closing speech did not amount to a breach of the principles relating to judicial intervention. For that reason, Cannonier was not deprived of his right to a fair trial.

Michel v The Queen [2009] UKPC 41 applied.

5. Donell Stevens' evidence was not the only or even the main evidence against Cannonier, Williams and Gardiner. There was an abundance of other evidence which tended to implicate the three of them. However, the learned judge failed to direct the jury properly or adequately in relation to the acts and declarations of those of the appellants which were relied upon, as evidence as against other of the appellants. Notwithstanding this, applying the Maxo Tido principles, the evidence against the appellants in this case was sufficiently overwhelming that the jury would have convicted them if they had been properly directed as to the inapplicability of the statements made by one accused as evidence against another accused. The proviso should therefore be applied.

Maxo Tido v The Queen [2011] UKPC 16 applied.

6. It is trite law that when a defendant is of good character he is entitled to the benefit of a good character direction from the judge when summing up to the jury. This direction is essential in every case in which it is appropriate for such a direction to be given. It is a necessary part of counsel's duty to his client to ensure that a good character direction is obtained where the defendant is entitled to it and likely to benefit from it. The duty

of raising the issue is to be discharged by the defence, not by the judge, and if it is not raised by the defence the judge is under no duty to raise it himself. In the instant case, the circumstances did not arise for the judge to give a good character direction on behalf of the appellant in the second appeal namely, Louis Gardiner. Such circumstances include where the defendant has testified, called witnesses or where there were suggestions made in cross-examination of prosecution witnesses about the defendant's character. None of these circumstances arose. Moreover, the evidence presented against the appellant was so insurmountable that, even with a good character direction given to the jury, his conviction was inevitable.

R v Vye and Others (1993) 97 Cr. App. R. 134 applied; Eversley Thompson v The Queen [1998] A.C. 811 applied; Teeluck and John v The State of Trinidad and Tobago [2005] UKPC 14; [2005] 2 Cr. App. R. 25; [2005] 1 W.L.R. 2421 applied.

7. The trial judge has a discretion whether or not to sentence an accused to death. This discretion must be exercised in light of recent decisions taken on this issue. A trial judge, in deciding whether or not a case would fall into the "worst of the worst" category, ought also to determine the question of an accused's possibility of reform. The murders committed in both of these appeals are not considered as the "worst of the worst" so as to have the imposition of the death penalty. (per Mitchell, J.A. [Ag.] and Edwards, J.A.; Rawlins, C.J. dissenting).

Daniel Dick Trimmingham v The Queen [2009] UKPC 25 applied; Ernest Lockhart v The Queen [2011] UKPC 33 applied.

8. A particular murder may not in its actual revolting and sadistic execution be rendered the worst of the worst or the rarest of the rare so that those who actually executed it may not be liable for the death penalty. This does not prevent the role of another participant in that murder, say a mastermind who plans and orders the murder, from causing that person's role to fall within the category that constitutes the worst of the worst. It would be necessary to look at all of the circumstances. In the present appeals where the actual killing of Gilbert was not sadistic, the role of those who carried it out does not render their acts to the worst of the worst attracting the death sentence. It does not however preclude the role of Cannonier, the mastermind, from falling into the worst of the worst category. That role, in all of the circumstances of this case did fall into the worst of the worst category in relation to the death of Gilbert and the evidence and reports are not convincing that Cannonier has a reasonable possibility of reform. (per Rawlins, C.J.).

APPLICATIONS AND APPEALS

Case Name:

**Kevil Nelson v The Queen
[High Court Criminal Appeal No. 15 of 2009]**

Date:

Monday, 19th March 2012

Coram:

**The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal**

[Ag.]

Appearances:

Appellant:

Sir Richard Cheltenham, with him, Mr. Cosbert Cumberbatch and Ms. Sally-Ann Wenderlyn Seecharan

Respondent:

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

Issue:

Application for adjournment by the DPP

Result / Order:

[Oral Delivery]

1. Application for adjournment is granted; accordingly the hearing of this appeal is scheduled for the next sitting of the Court of Appeal in Antigua and Barbuda in October 2012.
2. Solicitor for the respondent shall file and serve written submissions on or before Tuesday 29th May 2012.

Reason:

Amended grounds for appeal were filed on 9th March 2012 and further grounds were filed on 12th March 2012. As a consequence of this the DPP requested time to reply to the new grounds of appeal.

Case Name:

**Paget Lake v LIAT (1974) Ltd.
[Industrial Appeal No. 4 of 2003]**

Date:

Monday, 19th March 2012

Coram:

**The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal
[Ag.]**

Appearances:

Appellant: Mrs. Laurie Freeland-Roberts, with her, Ms. E. Denecia Thomas

Respondent: Mr. John Carrington, with him, Mrs. Stacy Richards-Anjo

Issue: Application to discharge 2004 judgment of single judge

☐ **Result / Order:** The matter is adjourned to Wednesday 21st March 2012.

Case Name: Carlton Lewis v Elderfield Gomes
[High Court Civil Appeal No. 23 of 2005]

Date: Monday, 19th March 2012

Coram: The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal
[Ag.]

☐ **Appearances:**

Appellant: Ms. Kema Benjamin

Respondent: Dr. David Dorsett

Issue: Rectifying Certificate of Result of Appeal

Result / Order: [Oral Delivery]
The Certificate of Result of Appeal dated 14th September 2008 is corrected to read "appeal is allowed, judgment and award is set aside."

Reason: The Certificate of result of the appeal did not

accurately reflect the result of the appeal.

Case Name: **Everton Welch v The Attorney General
[High Court Civil Appeal No. 5 of 2011]**

Date: **Monday, 19th March 2012**

Coram: **The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal
[Ag.]**

Appearances:

Appellant: **Dr. David Dorsett**

Respondent: **Mrs. Carla Brookes-Harris**

Issue: **Final leave to appeal to Her Majesty in Council**

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

Reason: **All conditions required for final leave had been
complied with.**

Case Name: **Leroy King v The Director of Public
Prosecutions et al
[High Court Civil Appeal No. 4 of 2012]**

Date: **Monday, 19th March 2012**

Coram: **The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mde. Janice M. Pereira, Justice of**

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

Appearances:

Appellant: **Mr. Dane Hamilton, Q.C.**

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

Issue:

Stay of Execution

Result / Order:

[Oral delivery]
The matter is adjourned to Wednesday 21st March 2012.

Case Name:

Ordinance Land Company Limited v The Attorney General of Antigua and Barbuda
[High Court Civil Appeal No. 32 of 2010]

Date:

Monday, 19th March 2012

Coram:

The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal
[Ag.]

Appearances:

Appellant: **Ms. Samantha Marshall**

Respondent: **Mrs. Carla Brookes-Harris**

Issue:

Breach of covenants in lease agreement

Result / Order / Reason:

[Oral delivery]
By consent, appeal dismissed with no order as

to costs.

Case Name: **Stanford Development Company Limited
v The Attorney General of Antigua and
Barbuda
[High Court Civil Appeal No. 20 of 2011]**

☐ **Date:** **Tuesday 20th March, 2012**

Coram: **The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mde. Janice M. Pereira, Justice of
Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal
[Ag.]**

Appearances:

Appellant: **Mr. David Joseph, Q.C., with him, Mr. Hugh
Marshall Jr.**

Respondent: **Mr. Justin L. Simon, Q.C., Attorney General**

☐ **Issue:** **Interpretation of Section 44 of the Antigua and
Barbuda Sales Tax Act (2006)**

Result / Order: **The matter is stood down to obtain copies of
the Statute.**

Case Name: **Umberto Schenato v Edda Schenato
[High Court Civil Appeal No. 27 of 2010]**

Date: **Tuesday 20th March, 2012**

Coram: **The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mde. Janice M. Pereira, Justice of
Appeal**

**The Hon. Mr. Don Mitchell, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

Mrs. Stacy Richards-Anjo

Respondent:

**Ms. Asheen Joseph, with her, Mrs. Georgice
Mendes-Blackman**

Issue:

Appeal against decision of trial judge

Result / Order:

[Oral delivery]

- 1. Appeal is allowed. The case is remitted to the High Court for trial on the merits of the claim.**
- 2. The witness statement of the claimant which was filed under seal and which was subsequently served is deemed to have been properly filed and served.**
- 3. The counterclaim in this case is reinstated as if it were not withdrawn.**
- 4. The respondent shall have \$1000.00 costs on the application below and the appellant \$1000.00 costs in this appeal.**

Reason:

The CPR 2000 does not permit the trial judge on the day set for trial to strike out the statement of case of a party and to give judgment without a trial based on an oral application made by one of the parties on the basis that witness statements were not filed in the time required by previous case management decisions. In a suitable case, e.g., where an adjournment is occasioned by a default by one of the parties in complying with a case management order, a penalty in costs would suffice.

Case Name:

**Stanford Development Company Limited
v The Attorney General of Antigua and**

Barbuda
[High Court Civil Appeal No. 20 of 2011]

Date: Tuesday 20th March, 2012

Coram: The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal
[Ag.]

Appearances:

Appellant: Mr. David Joseph, Q.C., with him, Mr. Hugh Marshall Jr.

Respondent: Mr. Justin L. Simon, Q.C., Attorney General

Issue: Interpretation of Section 44 of the Antigua and Barbuda Sales Tax Act (2006)

Result / Order:

[Oral delivery]

1. Appeal is allowed, the decision of the Master dated 5th May 2011 is set aside and accordingly the defence herein is struck out.
2. Judgment is entered for the appellant in the sum of \$11,240,412.47 and the additional sum of \$7,429,100.74.
3. The respondent/defendant shall also pay 5% judgment interest on sums in paragraph 2 with effect from today's date.
4. The appellant shall have prescribed costs in the Court below up to the stage of case management in the amount of \$120,778.66 and in this Court at 2/3 of those costs in the amount of \$80,519.11.

Reason:

On the clear wording of section 44, of the Antigua and Barbuda Sales tax Act, the appellant was entitled to a refund by the Commissioner based on the returns submitted by the appellant. At the relevant time the Commissioner had not served a Notice of assessment on the appellant. The respondent's

defence was therefore bound to fail.

Case Name: Estlyn Prophet v Royal Antiguan Beach
Resort Ltd.
[High Court Civil Appeal No. 22 of 2011]

Date: Tuesday 20th March, 2012

Coram: The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mde. Janice M. Pereira, Justice of
Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal
[Ag.]

Appearances:

Appellant: Mr. Hugh Marshall Jr.

Respondent: Ms. Veronica Thomas

Issue: Appeal against decision of trial judge

Result / Order: [Oral delivery]
The matter is adjourned to Wednesday 21st
March 2012.

Case Name: Ethlyn Simon v The Industrial
Development Board et al
[High Court Civil Appeal No. 56 of 2010]

Date: Tuesday 20th March, 2012

Coram: The Hon. Hugh A. Rawlins, Chief Justice
The Hon. Mde. Janice M. Pereira, Justice of
Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal

[Ag.]

Appearances:

Appellant: Mrs. E. Ann Henry.

Respondent: Mrs. Carla Brookes-Harris

Issue: Appeal against decision of the Industrial Court

Result / Order:

[Oral delivery]

- 1. Appeal is allowed and the case is remitted to the Industrial Court for the assessment of the amount of compensation due to the appellant on the basis that the appellant was unfairly dismissed.**
- 2. There is no order as to costs.**

Reason:

On the undisputed facts before the court, it was clear that the appellant had been constructively dismissed. The dismissal was accordingly unfair.

Case Name:

**Paget Lake v LIAT (1974) Ltd.
[Industrial Appeal No. 4 of 2003]**

Date:

Wednesday, 21st March 2012

Coram:

**The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal
[Ag.]**

Appearances:

Appellant: Mrs. Laurie Freeland-Roberts, with her, Ms. E. Denecia Thomas

Respondent: Mr. John Carrington, with him, Mrs. Stacy Richards-Anjo

Issue: Application to discharge 2004 judgment of single judge

Result / Order: [Oral delivery]
The application is dismissed and the appeal filed in this matter on 8th July 2003 is struck out.

Reason: Inordinate and inexcusable delay in excess of six years. It was not shown that the appeal has merit.

Case Name: HMB Holdings Limited v The Attorney General of Antigua and Barbuda
[High Court Civil Appeal No. 7 of 2010]

Date: Wednesday, 21st March 2012

Coram: The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:
Appellant: Mr. John Carrington, with him, Mrs. Stacy Richards-Anjo
Respondent: Mr. Justin L. Simon Q.C., Attorney General

Issue: Conditional leave to appeal to Her Majesty in Council

Result / Order: [Oral delivery]
1. The application of the applicant/intended appellant for conditional leave to appeal to

Her Majesty in Council against the judgment of the Court of Appeal of the Eastern Caribbean Supreme Court dated 5th day of December 2011 is hereby granted on the following conditions:

- (a) The applicant/intended appellant shall within 90 days of the date hereof enter into good and sufficient security to the satisfaction of the Registrar in the sum of £500.00 sterling for the due prosecution of the appeal, the payment of all costs as may become payable by the applicant/intended appellant in the event of not obtaining an order granting final leave to appeal or of the appeal being dismissed for want of prosecution or in the event that the Privy Council orders the applicants to pay the costs of appeal.**
 - (b) The applicant/intended appellant shall take all necessary steps to prepare the Record of Appeal in accordance with the provisions of rules 18 to 20 of the Judicial Committee Rules 2009 and Practice Directions 4.2.1 to 4.3.2 and 5: the same to be transmitted to the Registrar of the Court immediately upon final leave to appeal being granted and shall include a copy of the orders granting conditional and final leave.**
 - (c) The applicant/intended appellant shall apply to this Court within 30 days of receipt of the certificate of the Registrar that the security for costs ordered herein had been given within the time prescribed to the satisfaction of the Registrar and that the applicant/intended appellant have otherwise complied with this order, for an order for final leave to appeal to Her Majesty in Council which application shall be supported by the certificate of the Registrar.**
- 2. The costs in this application shall be costs in the application to Her Majesty in Council.**

Reason:

The applicant satisfied the requirements under the Constitution for leave to appeal to Her Majesty in Council as of right.

Case Name:

Landmark Limited, Woods Development Limited v American International Bank [High Court Civil Appeal No. 23 of 2010]

Date:

Wednesday, 21st March 2012

Coram:

The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellant:

Mr. Hugh Marshall Jr.

Respondent:

Mr. Dane Hamilton, Q.C.

Issue:

Application to amend order of Court

Result / Order:

[Oral delivery]
Matter to be listed on Chamber hearing list of the Court and notice served on the parties.

Reason:

Notice of listing was not given to the other party.

Case Name:

Leroy King v The Director of Public Prosecutions et al

[High Court Civil Appeal No. 4 of 2012]

Date:

Wednesday, 21st March 2012

Coram:

**The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Mr. Dane Hamilton, Q.C.

Respondent:

Mr. Anthony Armstrong, Director of Public Prosecutions

Issue:

Stay of Execution

Result / Order:

[Oral delivery]

The decision of the High Court is affirmed and accordingly the application for stay of execution is dismissed.

Reason:

The judgment of the Privy Council in The Government of the United States v Bowe is still good law and therefore the decision is not one which is appealable under the provisions of the Supreme Court Act of Antigua and Barbuda.

Case Name:

**Estlyn Prophet v Royal Antiguan Beach Resort Ltd.
[High Court Civil Appeal No. 22 of 2011]**

Date:

Wednesday, 21st March 2012

Coram:

**The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]**

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

Appearances:

Appellant: Mr. Hugh Marshall Jr.

Respondent: Ms. Veronica Thomas

Issue: Appeal against decision of trial judge

Result / Order:

[Oral delivery]

The appeal is dismissed with costs. The appellant is to pay prescribed costs of \$14,000.00 and 2/3 of this amount on the appeal.

Reason:

At paragraph 14 of his judgment the learned trial judge said that the court did not find that there was any evidence that the defendant in this case, a company which came into existence only in February 2005, did any act which amounted to conversion of the claimant's chattel building. There was an evidential basis for this finding, and the judge was not wrong in so finding. Further, the pleading in the defence is sufficient.

Case Name:

**Pascal Williams et al v Tyrone Herbert et al
[High Court Civil Appeal No. 27 of 2009]**

Date:

Wednesday, 21st March 2012

Coram:

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

Appearances:

Appellant: Ms. E. Denecia Thomas

Respondent: Mr. Lawrence Daniel

Issue: Appeal against decision of trial judge

Result / Order:

[Oral delivery]

1. Hearing of this appeal is adjourned to the next sitting of the Court of Appeal in Antigua and Barbuda in October 2012 on the application of counsel for the respondent.
2. Counsel for the respondent to pay costs of \$2,500.00 to the appellant occasioned by the application for adjournment.

Reason:

Counsel for the respondent applied for an adjournment.

Case Name:

**Delvin Longford et al v Randall Buckley
[High Court Civil Appeal No. 49 of 2010]**

Date:

Wednesday, 21st March 2012

Coram:

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

Appearances:

Appellant: Mr. Steadroy Benjamin

Respondent: Ms. E. Denecia Thomas

Issue: Appeal against decision of the Master

Result / Order:

[Oral delivery]

- 1. Appeal is dismissed and the decision of the Master is affirmed.**
- 2. The applicant will pay costs of \$7,500.00 on the appeal.**

Reason:

The main plank of the appeal concerns a challenge to the discretion of the Master in using a multiplier of 10. The appellant contends that comparable cases in this jurisdiction indicate a multiplier in the range of between 4 and 8 and the Master should have used a multiplier of 8 at most rather than 10. The multiplier of 10 used by the Master was not so outrageous; it was not a multiplier which exceeded the generous ambit within which reasonable disagreement is possible. There is no reason to upset the exercise of the discretion of the Master. There is no error in her decision.