

CHAMBER HEARING

29th – 30th April 2013

HEARING (SAINT LUCIA)

Date: Tuesday, 30th April 2013

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

Case Name:

- [1] David Bray
- [2] Caroline Bray
- [3] Mark Stewart Hutton
- [4] Henry Magrill
- [5] Rachel Magrill
- [6] Ermanno Zanghirella
- [7] Mirella Strbac
- [8] Gerald Irwin
- [9] Bruce Anthony Gill
- [10] Donald James Scarborough
- [11] Betty Jane Scarborough
- [12] Adrian Chappell
- [13] Stephanie Chappell
- [14] Sandeep Bhatia
- [15] Alastair Quinn Taylor
- [16] Nichola Quinn Taylor
- [17] James Mc. Dougall
- [18] Angella Mc. Dougall
- [19] Julian Bernard Nutbrown
- [20] Natalie Ann Nutbrown
- [21] John Jackson Miller
- [22] Stuart Sells
- [23] Ann Sells
- [24] William Rose
- [25] Jane Rose
- [26] Sean David McMurrin
- [27] Jane Emma Louise McMurrin
- [28] Lawrence Bailey

[29] Latchmie Bailey
[30] David Rushmer
[31] Linda Carey-Rushmer
[32] Graham Fender
[33] Elizabeth Fender
[34] William Burt
[35] Jennifer Thompson

v

[1] Sunset Village Inc. (in Liquidation)
[2] First Caribbean International Bank
(Barbados) Limited
[3] Oliver Jordan (Liquidator)

[SLUHCVAP2013/0004]

Appearances:

Appellant: Mr. Thaddeus M. Antoine, with him, Mr. Colin Foster
Respondent: Mr. Bota McNamara (for the 1st and 3rd named respondents)

Issues:

Special leave to appeal – Application for extension of time to file notice of appeal – Appellants not notified of order of court below until well after time for appealing order had passed – Directions – Application for liquidator to approve sale – Application to strike out appeal

**Result / Order
& Reason:**

[Oral delivery]
1. By consent, High Court Civil Appeal No. 4 of 2013 is struck out for non-compliance with CPR 2000 62.51(c).
2. The Registrar of the High Court is to assign a correct number for the application for special leave to appeal.
3. The applicant is to file and serve skeleton arguments in support of the application within 7 days of this order.
4. The respondents are granted 7 days leave thereafter to file and serve skeleton arguments in opposition.
5. The matter is adjourned to be determined during

the next Chamber Hearing scheduled for 21st May 2013.

Case Name:

**Gilroy Satney
v
Saint Lucia Air and Sea Ports Authority
[SLUHCVAP2009/0001]**

Appearances:

Appellant: Mr. Duane Jean Baptiste

Respondent: Mr. Mark Maragh

Issue:

Status update – Dismissal of application for judicial review and/or administrative relief – Legitimate expectation

Result / Order:

**[Oral delivery]
IT IS HEREBY ORDERED THAT:
Unless the appellant take the necessary steps to prosecute the appeal within 21 days of this order, the appeal shall stand dismissed.**

Reason:

The appeal was filed on 5th January 2009. The appellant however, had taken no steps thereafter to prosecute the appeal until the Court sent out a status hearing notice requesting an indication of an intention to proceed. It was only then, in February 2013, that the appellant took steps to proceed with the appeal. The transcript of proceedings had already been available for several years.

Case Name:

[1] George Belmar

v
[1] The Cabinet of St. Lucia
[2] The Chief Surveyor
[3] The Attorney General

[SLUHCVAP2008/0030]

Appearances:

Appellant: Ms. Diana Thomas

Respondent: Ms. Brender Portland-Reynolds

Issues:

Status update – Appeal against decision of the Board of Assessment appointed under the Land Acquisition Act (Cap. 5:04, Revised Laws of Saint Lucia 2001)

Result / Order:

IT IS HEREBY ORDERED THAT:
Unless the appellant actively prosecutes the appeal within 28 days of this order, the appeal shall stand dismissed.

Reason:

The appellant had died and no steps had been taken as yet to have a representative substituted as a party.

Case Name:

Natalie Glitzenhirn Augustin

v
[1] Nicholas Welch
[2] Jasmine Welch
[3] Tropica Ltd.

[SLUHCVAP2010/0005]

Appearances:

Applicant: Ms. Kristian Henry holding papers for Mr. Leevie Herelle

Respondent: No appearance

Issue: Status update – Sale of property – Company in receivership

Result / Order: IT IS HEREBY ORDERED THAT:
The appeal is struck out for want of prosecution.

Reason: Counsel for the applicant informed the Court that the appointed receiver, Ms. Glitzenhirn Augustin, was no longer interested in being a receiver.

MATTERS DEALT WITH ON PAPER

Case Name: Calefacion y Ventilacion, S.A. de C.V.
v
Flag Luxury Properties (Anguilla) LLC

[AXAHCVAP2010/0004]
(Anguilla)

Date: Monday, 29th April 2013

On paper:

Appellant: Astaphan's Chambers

Respondent: Webster Dyrud Mitchell

Issues: Application to discharge injunction and continue claim

Result / Order: IT IS HEREBY ORDERED BY CONSENT THAT:
1. Leave is granted for the claim herein, Civil Appeal No. 4 of 2010 to be discontinued and accordingly

- dismissed.
2. Each party to bear its own costs.

Reason: The parties consented to the above order.

Case Name: Hallman Holding Limited
v
[1] James Ronald Webster
[2] Cleopatra Leola Webster
[AXAHCVAP2013/0002]
(Anguilla)

Date: Monday, 29th April 2013

On paper:

Applicant: Mr. J. Alex Richardson (Alex Richardson & Associates)

Respondent: Joyce Kentish & Associates

Issues: Application for leave to appeal – Contract – Property – Agreement containing clause which granted appellant option to purchase property – Correct construction of agreement – Judgment registered against land by third party – Whether respondents in breach of implied term of contract by allowing this to happen

Result / Order: IT IS HEREBY ORDERED THAT:
1. Leave to appeal is granted to the applicant.
2. The applicant is to file and serve his notice of appeal within 21 days of this order.

Reason: The Court was satisfied that the appeal had a real prospect of success.

Case Name:

**Leroy Butcher
v
The Attorney General of Saint Lucia**

**[SLUHCVAP2008/0026]
(Saint Lucia)**

Date:

Monday, 29th April 2013

On paper:

**Appellant /
Respondent:**

Theodore & Associates

**Respondent /
Applicant:**

**Mr. Raulston Glasgow, Solicitor General, and Mr.
Deale Lee**

Issues:

**Whether the appellant's termination was contrary to
the rules of natural justice – Breach of contract –
Application for appeal to be struck out – Status
update**

**Result / Order
& Reason:**

IT IS HEREBY ORDERED THAT:

- 1. The notice of appeal filed on 30th June 2008 is
struck out on the basis of the appellant's failure
to comply with CPR 2000 and the want of
prosecution of the appearances.**
- 2. No order as to costs.**

Case Name:

**Bernard Andre
v
The Queen**

**[SLUHCRAP2009/0006]
(Saint Lucia)**

Date: Monday, 29th April 2013

On paper:

Appellant: Mr. Shawn Innocent

Respondent: Office of the Director of Public Prosecutions

Issue: Murder – Application for transcript to be provided free of charge – Application for counsel to be assigned to the appellant – Status update

Result / Order: IT IS HEREBY ORDERED THAT:

1. The costs associated with obtaining the transcript of the proceedings in Case No. SLUHCR2008/0082 be waived.
2. The Registrar of the High Court of Saint Lucia shall cause to be furnished to the appellant, a copy of the transcript of the record of proceedings. A copy is also to be furnished to the Director of Public Prosecutions.
3. Mr. Shawn Innocent is assigned as counsel for the appellant pursuant to Rule 53(1)(4) of the Eastern Caribbean Supreme Court Act (Saint Lucia) for the purpose of the appeal.

Reason: The applicant had satisfied the Court that legal aid was required for counsel to be appointed by the State to prosecute his appeal.

Case Name: Laureen Fenelon
v
Solange Stanislaus

[SLUHCVP2009/0038]
(Saint Lucia)

Date:

On paper:

**Appellant /
Respondent:**

Mr. Leevie Herelle

**Respondent /
Applicant:**

**Ms. Sardia Cenac Prospere (Floissac Fleming &
Associates)**

Issues:

**Status update – Application for appeal to be struck
out for want of prosecution**

**Result / Order
& Reason:**

IT IS HEREBY ORDERED THAT:

- 1. Insofar as no notice of appeal has been filed pursuant to the Order of the Court granting leave to appeal, the matter is struck off the list. There is no exact appeal filed in accordance with Part 62.4 and Part 62.5(b) of CPR 2000.**
- 2. No order as to costs.**

Case Name:

**Maurice Dantes
v
Cecile Bibiana Joseph
[SLUHCVP2012/0016]
(Saint Lucia)**

Date:

Monday, 29th April 2013

On paper:

Appellant:

Ms. Beverley Downes

Respondent:

Ms. Antonia Auguste (Greene Nelson & Associates)

Issues:

Status update

**Result / Order
& Reason:**

IT IS HEREBY ORDERED THAT:

- 1. The appeal stands dismissed due to the**

- appellant's non-compliance with CPR 2000 and for want of prosecution.
2. Costs are assessed in the sum of \$600.00.

Case Name:

**Jewel Thornhill
v
The Attorney General**

**[SLUHCVAP2012/0035]
(Saint Lucia)**

Date:

Monday, 29th April 2013

On paper:

Appellant:

Fraser and Company

**Respondent /
Applicant:**

Mr. Dwight Lay (Attorney General's Chambers)

Issues:

**Application for security for costs – Discontinuance
of application**

**Result / Order
& Reason:**

**IT IS HEREBY ORDERED THAT:
The application for security for costs having been
discontinued by the respondent it is accordingly
dismissed.**

Case Name:

**Savita Indira Salisbury
v
The Director of the ONDCP**

**[ANUHCVAP2012/0044]
(Antigua and Barbuda)**

Date: Monday, 29th April 2013

On paper:

Applicant: Ms. Leslie-Ann Brissett George (Rika Bird & Associates)

Respondent: Attorney General's Chambers

Issues: Application for extension of time to file notice of appeal

Result / Order: IT IS DIRECTED THAT:
The application for an extension of time to file the notice of appeal or alternatively to deem the notice of appeal which was filed out of time to be properly filed, is adjourned to the next Chamber hearing scheduled for 21st May 2013.

Reason: The respondent had been short served with the applicant's submissions and authorities.

Case Name:

[1] The Attorney General
[2] Norman Parillon George
v
Anton Tonge

[ANUHCVP2013/0005]
(Antigua and Barbuda)

Date: Monday, 29th April 2013

On paper:

Applicants: Ms. Alicia Aska

Respondent: No appearance

Issues: Application for leave to appeal

Result / Order:

IT IS HEREBY ORDERED THAT:

1. Leave is granted to the applicants to appeal against the order of the Court made on 8th March 2013 in awarding costs against the appellants.
2. The notice of appeal is to be filed and served within 14 days of this order.

Reason:

The Court was satisfied that the appeal had a real prospect of success.

Case Name:

Marcella Pierre

v

Phillip Sampson

**[DOMMCVAP2012/0002]
(Commonwealth of Dominica)**

Date:

Monday, 29th April 2013

On paper:

**Appellant /
Respondent:**

Elijah Law Chambers

**Respondent /
Applicant:**

Dyer & Dyer

Issues:

Application to strike out notice of appeal

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The notice of appeal filed on 16th October 2012 and lodged at the High Court on 25th January 2013 is struck out.
2. The appellant/respondent is to pay costs of \$1,000.00 to the respondent/applicant.

Reason: In accordance with section 4(9) of the Tenancies and Rent Control Act (Chap. 54:72 of the Revised Laws of Dominica 1990), an appeal from a decision of a tribunal involving notices to quit and the delivery of rented premises should properly be made to a judge in Chambers in the High Court. The notice of appeal however was filed in the Magistrates' Court (as an appeal to the Court of Appeal).

Case Name: Kyle David
v
The Attorney General of the Commonwealth
of Dominica
[2] Oscar George
[3] Josiah Cornelius
[4] Egbert Charles
[DOMHCVAP2013/0004]
(Commonwealth of Dominica)

Date: Monday, 29th April 2013

On paper:
Applicant: Dyer & Dyer
Respondents: Attorney General's Chambers

Issues: Application for leave to appeal

Result / Order: IT IS HEREBY ORDERED THAT:
1. The applicant is granted leave to appeal against the judgment of Cottle J delivered on 21st January 2013.
2. The applicant shall file and serve the notice of appeal within 21 days of the date of this Order.

Reason: The Court was satisfied that the applicant had a real prospect of success on appeal.

Case Name:

[1] Francis St. Romain

[2] Kenrick Yearwood

v

**Louis Copiel c/o Customs and Excise
Division**

**[DOMMCVAP2013/0007]
(Commonwealth of Dominica)**

Date:

Monday, 29th April 2013

On paper:

Applicant: Dyer & Dyer

Respondent: Office of the Director of Public Prosecutions

Issues:

Application for extension of time to appeal

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The defendants/applicants are granted an extension of time to appeal against the order of His Honour Ossie Lewis made on 25th January 2013.**
- 2. The notice of appeal is to be filed and served on or before Wednesday, 15th May 2013.**
- 3. The defendants/applicants are to enter into recognizance in the sum of EC\$500.00 each on or before 15th May 2013.**

Reason:

The solicitors for the appellant were only served with the order (which is the subject of the present appeal) after the time for appealing had expired.

Case Name:

**[1] Francis St. Romain
[2] Kenrick Yearwood**

v

**Louis Copiel c/o Customs and Excise
Division**

**[DOMMCVAP2013/0008]
(Commonwealth of Dominica)**

Date:

Monday, 29th April 2013

On paper:

Applicants:

Dyer & Dyer

Respondent:

Office of the Director of Public Prosecutions

Issues:

Application for extension of time to appeal

Result / Order:

IT IS HEREBY ORDERED THAT:

- 4. The defendants/applicants are granted an extension of time to appeal against the order of His Honour Ossie Lewis made on 25th January 2013.**
- 5. The notice of appeal is to be filed and served on or before Wednesday, 15th May 2013.**
- 6. The defendants/applicants are to enter into recognizance in the sum of EC\$500.00 each on or before 15th May 2013.**

Reason:

The solicitors for the appellant were only served with the order (which is the subject of the present appeal) after the time for appealing had expired.

Case Name:

C. O. Williams Construction Ltd.

v

Adrien Mitchel

**[DOMHCVAP2013/0008]
(Commonwealth of Dominica)**

Date: Tuesday, 30th April 2013

On paper:

Appellant: Gerald D. Burton's Chambers

Respondent: Dyer & Dyer

Issues: Application for stay of execution – Application to strike out appeal – Application for extension of time to apply for leave to appeal

Result / Order: IT IS ORDERED AND DIRECTED THAT:
The applications are adjourned to the next Chamber Hearing scheduled for 21st May 2013 for determination.

Reason: The appellant company indicated that it had only been served with the application to strike out on 24th April 2013 and so it was only able to file the notice of opposition to this application on 29th April 2013.

Case Name: Margaret Blackburn
v
James Bristol

**[GDAHCVAP2012/0019]
(Grenada)**

Date: Monday, 29th April 2013

On paper:

**Appellant /
Respondent:** Renwick & Payne

Respondent / The Law Office of Alban M. John

Applicant:

Issues: Application for extension of time to file counter notice of appeal

Result / Order: IT IS HEREBY ORDERED THAT:
1. The application for an extension of time to file a counter-notice of appeal is refused.
2. Costs in the sum of \$700.00 to the appellant/respondent.

Reason: Judgment was rendered in the substantive appeal in favour of the respondent / applicant.

Case Name: Diane Wilson
v
Albert Castle (Executor of the will of Bernard Castle, Deceased)
[GDAHCVAP2013/0005]
(Grenada)

Date: Monday, 29th April 2013

On paper:
Applicant: Ms. Anyika A. Johnson (Ciboney Chambers)
Respondent: Wilkinson, Wilkinson & Wilkinson

Issues: Application for leave to appeal

Result / Order: IT IS HEREBY ORDERED THAT:
The application for leave to appeal is adjourned to the next sitting of the Full Court in Grenada commencing on 28th October 2013.

Reason: The Court was minded to refuse the applicant leave to appeal and therefore made the above order in accordance with CPR 62.2(5)(b).

Case Name: Daniel Andrew Dubissette
v
Grenada Co-operative Bank Limited
[GDAHCVAP2009/0012]
(Grenada)

Date: Monday, 29th April 2013

On paper:

Appellant:	Justis Chambers
Respondent / Applicant:	Ms. Deborah St. Bernard (Lewis & Renwick)

Issues: Application to rectify time line for the filing of submissions in reply

Result / Order: IT IS HEREBY ORDERED THAT:

1. The application for an extension of time filed on the 10th April 2013, together with the submissions filed on 5th April 2013 by the respondent is to be served on the appellant within 7 days of today's date.
2. The appellant is to file and serve submissions in response, if any, within 7 days of service by the respondent.
3. The matter will thereafter be adjourned to the next chamber hearing scheduled for 21st May 2013 for determination.

Reason: There was no evidence of service of the application and submissions on the appellant.

Case Name: **West Indies Power (Nevis) Limited**
v
Nevis Island Administration

[SKBHCVAP2013/0003]
(Saint Christopher and Nevis)

Date: **Monday, 29th April 2013**

On paper:

Applicant: **Mr. Terence V. Byron**

Respondent: **Daniel, Brantley & Associates**

Issues: **Application for leave to appeal – Whether respondent entitled to terminate Geothermal Resources contract made between them – Ability of the appellant to pay its debts**

Result / Order: **IT IS HEREBY ORDERED THAT:**
The application for leave to appeal is referred for hearing to the Full Court sitting of the Court of Appeal in St. Kitts and Nevis scheduled for the week commencing 10th June 2013.

Reason: **The Court was minded to refuse the applicant leave to appeal and therefore made the above order in accordance with CPR 62.2(5) (a) and (b).**

Case Name: **[1] Andriy Malitskiy**
[2] Igor Filipenko
v
Applicants

Oledo Petroleum Ltd
Respondent

Oledo Petroleum Ltd
Claimant

v

[1] Andrey Grigoryevych Adamovsky
[2] Stockman Interhold S.A.
Defendants / Respondents

[BVIHCVAP2013/0006]
(Territory of the Virgin Islands)

Date: **Tuesday, 30th April 2013**

On paper:

Applicants /
Respondents: **Martin Kenney & Co.**

Defendants /
Respondents /
Applicants: **Mr. Andrew Willins (Appleby)**

Issues: **Application for leave to appeal – Application for security for costs (respondents)**

Result / Order: **IT IS HEREBY ORDERED THAT:**
The matter is adjourned to be determined by the Court during its sitting scheduled for the week of 6th May 2013.

Case Name: **Dwen Jones**
v
[1] Shunette Thompson
[2] Ronisha Foyle (By her mother and next friend Shunette Thompson)
[3] Laticia Foyle (By her mother and next

friend Shunette Thompson)

**[SVGHCVAP2012/0009]
(Saint Vincent and the Grenadines)**

Date: **Thursday, 29th April 2013**

On paper:

Intended Appellant / Respondent: **Mr. Grant M. B. Connell**

Intended Respondents / Applicants: **Ms. Patricia P. Marks (Marks & Marks)**

Issues: **Application to strike out notice of appeal**

Result / Order: **IT IS HEREBY ORDERED THAT:**
1. The intended appellant having failed to apply for leave to appeal, the notice of appeal filed on 31st December 2012 is struck out as a nullity.
2. Costs in the sum of \$1,000.00 in favour of the intended respondent / applicant.

Reason: **The order of the master made on 20th November 2012 was an interlocutory order. The intended appellant failed to apply for leave to appeal this order which was a necessary pre-requisite in accordance with section 32(2)(g) of the Eastern Caribbean Supreme Court (Saint Vincent and the Grenadines) Act (Cap. 24 of the Revised Laws of Saint Vincent and the Grenadines 2009), as well as the decision in Antigua Commercial Bank v Louise Martin (as widow and executrix of the estate of Alexis Martin, deceased) (Antigua and Barbuda High Court Civil Appeal ANUHCVAP2007/0022 (delivered 15th January 2008, unreported)).**

Case Name: **Dwen Jones**

v
Natasha Charles

[SVGHCVAP2012/009A]
(Saint Vincent and the Grenadines)

Date: Monday, 29th April 2013

On paper:

Appellant: Mr. Grant M. B. Connell

Respondent: Ms. Patricia P. Marks (Marks & Marks)

Issues: Application to strike out notice of appeal

Result / Order:

IT IS HEREBY ORDERED THAT:

- 3. The intended appellant having failed to apply for leave to appeal, the notice of appeal filed on 31st December 2012 is struck out as a nullity.**
- 4. Costs in the sum of \$1,000.00 in favour of the intended respondent / applicant.**

Reason:

The order of the master made on 20th November 2012 was an interlocutory order. The intended appellant failed to apply for leave to appeal this order which was a necessary pre-requisite in accordance with section 32(2)(g) of the Eastern Caribbean Supreme Court (Saint Vincent and the Grenadines) Act (Cap. 24 of the Revised Laws of Saint Vincent and the Grenadines 2009), as well as the decision in *Antigua Commercial Bank v Louise Martin* (as widow and executrix of the estate of Alexis Martin, deceased) (Antigua and Barbuda High Court Civil Appeal ANUHCVAP2007/0022 (delivered 15th January 2008, unreported)).

Case Name:

Ollie Clarke
v

The Queen

**[SVGHCRAP2013/0005]
(Saint Vincent and the Grenadines)**

Date: Monday, 29th April 2013

On paper:

Applicant: In person

Respondent: The Office of the Director of Public Prosecutions

Issues: Application for leave to appeal

Result / Order:

IT IS DIRECTED THAT:

1. The Registrar of the High Court shall obtain the minute of conviction and sentence of the intended appellant and forward the same to the Court of Appeal Headquarters within 14 days of today's date.
2. The application is adjourned to the Full Court Sitting in Saint Vincent and the Grenadines during the week commencing May 27th 2013.

Reason: The application did not provide information on the applicant's date of conviction and sentence.

Case Name:

Anil George

v

The Commissioner of Police

**[SVGMCRAP2013/00007]
(Saint Vincent and the Grenadines)**

Date: Monday, 29th April 2013

On paper:

Applicant: In person

Respondent: The Office of the Director of Public Prosecutions

Issues: Application for an extension of time to appeal

Result / Order: IT IS DIRECTED THAT:
The intended appellant is granted 14 days from today's date to file and serve a notice of appeal on the Commissioner of Police.

Reason: The Court was of the view that it was in the interests of justice for the appellant to be given time to file and serve the notice of appeal.

Case Name: Devindra Singh
v
The Commissioner of Police

[SVGMCRAP2013/0012]
(Saint Vincent and the Grenadines)

Date: Monday, 29th April 2013

On paper:

Applicant: In person

Respondent: The Office of the Director of Public Prosecutions

Issues: Application for an extension of time to appeal

Result / Order: IT IS DIRECTED THAT:
The intended appellant is granted 14 days from today's date to file and serve a notice of appeal.

Reason: The Court was satisfied that the intended appellant

had provided sufficiently good reasons to allow the Court to exercise its discretion in his favour.

Case Name: **Mohamed Aslam Kayum**
v
The Commissioner of Police
[SVGMCRAP2013/0014]
(Saint Vincent and the Grenadines)

Date: **Monday, 29th April 2013**

On paper:

Applicant: **In person**

Respondent: **The Office of the Director of Public Prosecutions**

Issues: **Application for an extension of time to appeal**

Result / Order: **IT IS DIRECTED THAT:**
The intended appellant is granted 14 days from today's date to file and serve a notice of appeal on the Commissioner of Police.

Reason: **The Court was satisfied that the intended appellant had provided sufficiently good reasons to allow the Court to exercise its discretion in his favour.**

Case Name: **Kevin McLennan**
v
The Commissioner of Police
[SVGMCRAP2013/0013]

(Saint Vincent and the Grenadines)

Date: Monday, 29th April 2013

On paper:

Appellant: In person

Respondent: The Office of the Director of Public Prosecutions

Issues: Application for extension of time to appeal

Result / Order: IT IS DIRECTED THAT:
The intended appellant is granted 14 days from today's date to file and serve a notice of appeal.

Reason: The Court was satisfied that the intended appellant had provided sufficiently good reasons to allow the Court to exercise its discretion in his favour.