

COURT OF APPEAL SITTING

**SAINT LUCIA
25th – 27th March 2013**

JUDGMENTS

Case Name:

**[1] Lennox Linton
[2] Island Communications Corporation Ltd
[3] Raglan Riviere
v
Kieron Pinard-Byrne**

**[DOMHCVAP2011/0017]
(Commonwealth of Dominica)**

Date:

Monday, 25th March 2013

Coram:

**The Hon. Mde. Janice M. Pereira, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal**

Appearances:

Appellants: Ms. Diana Thomas, holding papers for counsel for the appellants

Respondent: Mr. Anthony A. W. Astaphan, SC

Issues:

Civil appeal – Defamation – Libel – Slander – Distinction between – Words complained of contained in internet article and radio broadcast – Justification – Fair comment – Qualified privilege – Whether or not there was publication of material posted on website

Result and Reason:

Held: allowing the appeal, dismissing the respondent's counter appeal, and awarding the appellants prescribed costs here and in the court below in accordance with rules 65.5 and 65.13 of the Civil Procedure Rules 2000, that:

1. The words complained of were defamatory of the

respondent.

2. The appellants were not justified, based on the evidence adduced in the court below, in speaking, writing, broadcasting or publishing the words complained of.
3. Although the words complained of did relate to a matter of public interest, they were imputations of fact and not comment and no attempt was made by the appellants to establish their truth. The learned judge therefore rightly held that the words complained of did not constitute fair comment on a matter of public interest.

Tse Wai Chun Paul v Albert Cheng [2001] EMLR 31 applied.

4. The first appellant did in fact undertake an extensive investigation of the issues which he spoke about during the radio broadcast and in the internet article. It was therefore not open to the learned judge to make the finding that the first appellant did not make any enquiries and that this factor weighed heavily against him being able to rely on the defence of qualified privilege. The words complained of were not actuated by malice towards the respondent, but only by strong sentiments held by the first appellant on the respondent's involvement in the Layou river hotel project. On the evidence, it does appear that the first appellant honestly believed in the truth of the conclusions that he reached and in the words that he spoke and wrote about the respondent. Accordingly, the speaking, writing and publishing of the words complained of were done in circumstances which attracted qualified privilege.

Reynolds v Times Newspapers Ltd and Others [2001] 2 AC 127 applied.

5. The writing and publishing of defamatory words on an internet website constitute libel, while the speaking of defamatory words on a live radio broadcast constitutes libel when the broadcast is recorded for rebroadcast and, even if it constitutes

slander and not libel, is equated with libel when it is slander actionable per se because the words impute the commission of a crime by the respondent or disparages him in his office, profession, calling, trade or business.

6. The words complained of in the radio broadcast were published by the first and second appellants in Dominica, while the words complained of in the internet article were published in Dominica by the first and third appellants.

STATUS HEARING

Case name:

**Gilroy Satney
v
Saint Lucia Air & Sea Ports Authority**

[SLUHCVAP2009/0001]

Date:

Monday, 25th March 2013

Before:

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

Appearances:

Appellant: Mr. Duane Jean Baptiste

Respondent: Mr. Mark Maragh

Issue:

Status of matter

Result / Order:

**[Oral delivery]
The matter is adjourned to the next chamber hearing scheduled for 29th April 2013.**

Reason:

Both counsel indicated that they would no longer be representing the parties.

Case Name: Josephat Mathurin
v
Saint Lucia National Housing Corporation
[SLUHCVAP2010/0014]

Date: Monday, 25th March 2013

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

Appearances:
Appellant: No appearance
Respondent: Mr. Leslie Mondesir

Issue: Status of matter

Result / Order: [Oral delivery]
IT IS HEREBY ORDERED THAT:
1. The Registrar of the High Court shall cause the transcript of proceedings to be prepared;
2. The matter is adjourned to the next status hearing in Saint Lucia scheduled for the week commencing 8th July 2013 for report.

Reason: The appeal was filed in April 2010 and a stay was ordered by consent on 26th May 2010. However, nothing had happened since then. Counsel was unable to confirm whether or not the transcript had been prepared.

Case Name: Heirs of Avril Africain
Represented by LPR Benedict Joseph

V

- [1] Estate of Adrienne Felicien represented by
Antonius Ralph Felicien**
- [2] Estate of Medas Felicien represented by
Marie Felicien**
- [3] Estate of Emmanuel Felicien represented
by Thomas Walcott**
- [4] Estate of Edward Felicien represented by
David Moise**
- [5] Estate of Mary Felicien represented by
Andrew Felicien**
- [6] Estate of Arnold Felicien represented by
Joseph Felicien**
- [7] Estate of Lawrence Felicien represented
by S. Headley Felicien**
- [8] Samuel Felicien**
- [9] Estate of Marie Ambroise represented by
Simon Ambroise**
- [10] Heirs Ann Marie Modeste represented by
Simon Ambroise**
- [11] Bernadette Sylvester represented by
Augustin Sylvester**
- [12] The Attorney General**

[SLUHCVAP2007/0009]

Date: Monday, 25th March 2013

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

Appearances:

Appellant: In person (Mr. Benedict Joseph)

Respondents: Mr. Dexter Theodore (for the 1st, 4th, 5th, 6th, 10th and 11th respondents)
Mr. Alvin St. Clair (for the 3rd and 9th respondents)
Mr. Raulston Glasgow (for the 12th respondent)

Issue: Status of matter

Result / Order:

[Oral delivery]

IT IS HEREBY ORDERED THAT:

- 1. The appellants are to file notice of discontinuance of appeal.**
- 2. The respondents nos. 1, 3, 4, 5 & 10 have agreed to forgo costs in the appeal.**
- 3. The respondents nos. 2, 6, 7, 8, 9 & 11 are to file submissions on costs if not agreed on or before 14th May 2013.**

Reason:

The appellant made a proposal to withdraw the appeal if the respondents agreed to forgo the award of costs made in the lower court. Some respondents agreed, but others did not.

Case Name:

Leroy Butcher

v

The Attorney General of Saint Lucia

[SLUHCVP2008/0026]

Date:

Monday, 25th March 2013

Before:

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

Appearances:

Appellant:

Mr. Dexter Theodore

Respondent:

Mr. Deale Lee

Issue:

Status of matter – Application for extension of time by appellant – Application to strike out appeal by respondent

Result / Order:

[Oral delivery]

IT IS HEREBY ORDERED THAT:

- 1. The matter is adjourned to the next Chamber hearing on 29th April 2013.**
- 2. The Court will then consider the respondent's**

- proposed application to strike out the appeal.
3. The Court will also consider the appellant's application to extend the time to file the appeal.

Reason:

The appeal was originally filed in 2008 but Mr. Theodore did not have conduct of the matter at that time. The transcript had been available since 2009, but nothing had been done to move things forward. Mr. Theodore indicated that the appellant had had a series of medical crises and that he had been unable to contact him recently. He also said that the appellant had been on dialysis since 2002.

Case Name:

**Joan Marquis
v
The Attorney General
[SLUHCVAP2012/0013]**

Date:

Monday, 25th March 2013

Before:

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

Appearances:

Appellant: Mr. Dexter Theodore

Respondent: Mr. Deale Lee

Issue:

Status of matter

Result / Order:

- [Oral delivery]**
- 1. The matter is struck off from this list.**
 - 2. Time for preparation of the appeal will start to run from the date when the notice of availability of transcript is issued by the Registrar.**

Reason:

A request for the transcript had already been made to the Registrar but the transcript had not been received

as yet. The appellant indicated to the Court that she was concerned that time for preparation of the appeal was running while they did not have a transcript to work with.

Case Name: Veroy Hilary Cole
v
[1] Inspector Lansiquot
[2] The Hon. Attorney General of Saint Lucia
[SLUHCVAP2010/0011]

Date: Monday, 25th March 2013

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

Appearances:
Appellant: Mr. Al Elliot
Respondents: Mr. Deale Lee

Issue: Status of matter

Result / Order & Reason: [Oral delivery]
The notice of discontinuance having been filed by the appellant on 20th March 2013, the appeal is accordingly dismissed.

Case Name: Laureen Fenelon
v
Solange Stanislaus
[SLUHCVAP2009/0038]

Date: Monday, 25th March 2013

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

Appearances:
Appellant /
Respondent: No appearance

Respondent /
Applicant: Ms. Sardia Cenac-Prospere

Issue: Status of matter – Application for appeal to be struck out for want of prosecution

Result / Order: [Oral delivery]
Hearing of the application to strike out the appeal filed on 15th March 2013 is adjourned to be heard at the next chamber hearing scheduled for 29th April 2013.

Reason: Mr. Leevie Herelle had informed Ms. Cenac-Prospere that he had made an application to the Court to be removed from the record in this matter. However, there was no such evidence on record. The matter was adjourned to be dealt with by a judge in chambers.

Case Name: Benny Samuel
v
The Police

[SLUMCRAP2011/0008]

Date: Monday, 25th March 2013

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

Appearances:
Appellant: Ms. Antonia Auguste

Respondent: Mr. Leon France

Issue: Status of matter

Result / Order: [Oral delivery]
1. Time is extended to 5th April 2013 for the appellant to file a notice of intention to prosecute the appeal.
2. The Senior Magistrate shall arrange the preparation of the Transcript of Proceedings in this matter.

Reason: The appellant indicated that the transcript had not been received as yet. He did however, intend to prosecute the appeal.

Case Name: Maurice Dantes
v
Cecile Bibiana Joseph
[SLUHCVAP2012/0016]

Date: Monday, 25th March 2013

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

Appearances:
Appellant: No appearance
Respondent: Ms. Antonia Auguste

Issue: Status of matter

Result / Order: [Oral delivery]
The matter is adjourned to the next Chamber hearing scheduled for 29th April 2013.

Reason: Counsel for the respondent informed the Court that counsel on record for the appellant, Ms. Beverly Downes, had indicated to her that the appellant intended to discontinued the appeal.

Case Name: Bernard Andre
v
The Queen
[SLUHCRA2009/0006]

Date: Monday, 25th March 2013

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

Appearances:
Appellant: Mr. Al Elliot and Mr. Daarsrean Greene holding papers for Mr. Shawn Innocent
Respondent: Mr. Leon France

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

Result / Order: [Oral delivery]
Hearing of the application is adjourned to a judge in chambers at the next chamber hearing scheduled for 29th April 2013.

Reason: Counsel for the respondent indicated that he had not had sight of the applications as yet.

Case Name: The Attorney General

V
Josephat Small

[SLUHCVAP2011/0027]

Date: Monday, 25th March 2013

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

Appearances:

Appellant: Ms. Brender Portland-Reynolds

Respondent: No appearance

Issue: Status of matter

Result / Order: [Oral delivery]
IT IS HEREBY ORDERED THAT:

1. The respondent Josephat Small be served personally with the notice of appeal.
2. The Registrar of the High Court shall arrange the preparation of the Transcript of Proceedings in this matter.
3. The matter is adjourned to the next status hearing in Saint Lucia commencing on 8th July 2013 for report.

Reason: Mr. Colin Foster, who was initially on record as acting for the respondent, had refused to accept service on the respondent's behalf. Directions were given for the respondent to be served personally.

Case Name: George Belmar

V

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

[SLUHCVAP2008/0030]

Date: Monday, 25th March 2013

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

Appearances:

Appellant: Ms. Diana Thomas

Respondents: Ms. Brender Portland-Reynolds

Issue: Status of matter

Result / Order: [Oral delivery]
The matter is adjourned to the next Chamber hearing in Saint Lucia scheduled for 29th April 2013.

Reason: The appellant had died. Counsel for the appellant was seeking instructions from the heirs at law as to how to proceed. She indicated that the heirs may choose to retain new counsel to represent them.

Case Name: **Tanzanite International Limited**
v
The Attorney General of Saint Lucia

[SLUHCVAP2008/0039]

Date: Monday, 25th March 2013

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

Appearances:

Appellant: Ms. Diana Thomas

Respondent: Ms. Brender Portland-Reynolds

Issue: **Status of matter**

Result / Order: **[Oral delivery]**
The matter is adjourned to the next status hearing in Saint Lucia for report.

Reason: **The Court had ordered the parties to produce notes to settle the file. The respondent indicated that they had only recently retrieved the file from their archives and so had only just found themselves in a position to settle it.**

Case Name: **Randa Prospere**
v
The Queen
[SLUHCRAP2009/0001]

Date: **Monday, 25th March 2013**

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

Appearances:

Appellant:	No appearance
Respondent:	Mr. Leon France

Issue: **Status of matter**

Result / Order: **[Oral delivery]**
1. The appellant is to indicate to the Court in writing whether he wishes to pursue the appeal.
2. The matter is adjourned to the next status hearing in Saint Lucia for report.

Reason: **Counsel for the respondent indicated that the appeal was filed on 3rd February 2009 and that the appellant**

had received a 2 year sentence. The sentence would therefore, have already been served. Furthermore, the transcript had not been prepared as yet. Counsel was unaware of whether the appellant intended to prosecute the appeal.

Case Name: Kink Charles aka Kurt
v
The Queen
[SLUHCRAP2010/0001]

Date: Monday, 25th March 2013

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

Appearances:
Appellant: No appearance
Respondent: Mr. Leon France

Issue: Status of matter

**Result / Order
& Reason:** [Oral delivery]
The notice of discontinuance having been filed on 20th March 2013, the appeal is dismissed.

Case Name: Boniface Christophe
v
The Queen
[SLUHCRAP2010/0002]

Date: Monday, 25th March 2013

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

Appearances:

Appellant: Mr. Jeannot-Michel Walters

Respondent: Mr. Leon France

Issue: Status of matter

Result / Order: [Oral delivery]
The matter is adjourned to the next status hearing in Saint Lucia.

Reason: The appellant had been unrepresented until only recently, when counsel Mr. Jeannot-Michel Walters indicated that he would assist him. Mr. Walters however, had not had an opportunity to take instructions from the appellant as yet and so in light of this fact, an adjournment was granted.

Case name: Cynthia Joseph Francis
v
Edward Slim Francis
[SLUHCVAP2009/0039]

Date: Monday, 25th March 2013

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

Appearances:

Appellant: No appearance

Respondent: No appearance

Issue: Status of matter

Result / Order: [Oral delivery]
The notice of discontinuance having been filed the appeal is dismissed.

Reason: A notice of discontinuance was filed on 14th February 2013.

Case name: Natalie Glitzenhirn Augustin
v
[1] Nicholas Welch
[2] Jasmine Welch
[3] Tropica Ltd.
[SLUHCVAP2010/0005]

Date: Monday, 25th March 2013

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

Appearances:
Appellant: No appearance

Respondents: No appearance

Issue: Status of matter

Result / Order: [Oral delivery]
The matter is adjourned to the next chamber hearing scheduled for 29th April 2013.

Reason: There was no appearance for any of the parties.

Case Name: Martin Devaux

V
Mark Goddard

[SLUHCVAP2010/0028]

Date: Monday, 25th March 2013

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

Appearances:

Appellant:	No appearance
Respondent:	No appearance

Issue: Status of matter

Result / Order: [Oral delivery]
The matter is adjourned to the next status hearing scheduled for the week commencing 8th July 2013.

Reason: There was no appearance for either of the parties.

APPLICATIONS AND APPEALS

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 McMurran
[27] Jane Emma Louise McMurran
[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]

Date: Monday, 25th March 2013

Coram: The Hon. Mde. Janice M. Pereira, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Appearances:

Appellants /	Mr. Thaddeus M. Antoine
Applicants /	

Respondents:

**Respondents /
Applicants:**

**Mr. Bota McNamara (for the 1st and 3rd respondents)
Ms. Renee St. Rose (for the 2nd respondent)**

Issues:

**Application for stay of execution – Application to
strike out appeal – Withdrawal of appeal**

Result / Order:

**[Oral delivery]
The application is discontinued with no order as to
costs.**

Reason:

**A notice of discontinuance of the application for stay
of execution had been filed by the appellants.**

Case Name:

**[1] Eugene Nelson
[2] Ferlyn Nelson
[3] Orilda Nelson**

v

**First Caribbean International Bank (Barbados)
Limited formerly CIBC Caribbean Limited**

[SLUHCVAP2011/0022]

Date:

Monday, 25th March 2013

Coram:

**The Hon. Mde. Janice M. Pereira, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]**

Appearances:

**Intended Appellants /
Applicants:** **Ms. Lydia Faisal**

Respondent: **Ms. Renee St. Rose**

Issues:

Application for final leave to appeal to Her Majesty in

Council

**Result / Order
& Reason:**

**[Oral delivery]
Referring to the order for conditional leave to appeal to Her Majesty in Council made on 27th August 2012, the appellants are hereby granted final leave to appeal to Her Majesty in Council, the Court being satisfied that the conditions have been met.**

Case Name:

**Sabina James Alcide
v
[1] Marguerite Desir
[2] Marguerite Desir (Qua Executrix of the
estate of Alberta Bella Butcher)**

[SLUHCVAP2011/0030]

Date:

Monday, 25th March 2013

Coram:

**The Hon. Mde. Janice M. Pereira, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]**

Appearances:

**Intended Appellants
/ Applicants /
Respondents:**

Mr. Peter I. Foster, QC, with him, Ms. Diana Thomas

**Respondent /
Intended Appellant /
Applicant:**

Mr. Dexter Theodore, with him, Mr. Eghan Modeste

Issues:

Application for final leave to appeal to Her Majesty in Council (the appellants and the respondents both appealing on separate grounds)

**Result / Order
& Reason:**

**[Oral delivery]
Referring to the order for conditional leave to appeal**

to Her Majesty in Council made on 10th December 2012, and the Court being satisfied there has been full compliance with the conditions, the appellants/applicants Marguerite Desir and Margurite Desir (as Executrix of the Will of the late Albertha Bella Butcher) and the respondent/applicant Sabina James Alcide are granted final leave to appeal to Her Majesty in Council.

Case Name:

**Conrad Charles
v
The Attorney General
[SLUHCVP2012/0009]**

Date:

Monday, 25th March 2013

Coram:

**The Hon. Mde. Janice M. Pereira, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Ms. Cynthia Hinkson-Ouhla

Respondent:

Ms. Brender Portland-Reynolds, with her, Ms. Jan Drysdale

Issues:

Application to vary the order of a single judge – Whether evidence which was not before the court below could now be admitted at the appellate stage and form part of the record of appeal – s. 148 of the Evidence Act, Cap. 4.15, Revised Laws of Saint Lucia 2008

Result / Order:

[Oral delivery]

- 1. The record of appeal will be amended by the filing of a supplemental record. Save for that variation, the order of Michel JA made on 18th December 2012 stands.**
- 2. The supplemental record shall be filed and served**

on or before Thursday, 4th April 2013.
3. There shall be no order as to costs.

Reason:

Section 148 of the Evidence Act could not be interpreted to mean that a party is entitled to adduce fresh evidence at *any* stage of the proceedings, in particular, at the appellate level. The Court could not be persuaded that this section on its own could trump the well-established rule in the English case of *Ladd v Marshall* [1954] 1 WLR 1489. To allow such an interpretation of s. 148 would be tantamount to converting the appellate court into a court of first instance in relation to matters of evidence before it. The Court held that the purport of s. 148 was exceedingly clear.

Case Name:

**Cotton Bay Resorts Limited
v
Marilyn Stewart Consulting Group Ltd.
[SLUHCVAP2012/0033]**

Date:

Monday, 25th March 2013

Coram:

**The Hon. Mde. Janice M. Pereira, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]**

Appearances:

**Intended Appellant /
Applicant: Mr. Kenneth Monplaisir, QC**

Respondent: Ms. Shellone Surage

Issues:

Application for leave to appeal – Whether judge erred in dismissing the applicant’s application to set aside judgment in default of acknowledgment of service

Result / Order:

[Oral delivery]

1. The application for leave to appeal is refused as the Court is not satisfied that the application and the grounds contained therein disclose any realistic prospect of success.
2. Costs to the respondent agreed in the sum of \$750.00.

Reason:

The Court was satisfied that the evidence which the judge had before him was not sufficient to satisfy the criteria to set aside the default judgment. The requirements of rule 13.3 of the Civil Procedure Rules 2000 were not met.

Case Name:

[1] Neville Cenac
[2] Julita Cenac
[3] John Smith
[4] Linda Smith
v
Robert Schafer

[SLUHCVCAP2012/0036]

Date:

Monday, 25th March 2013

Coram:

The Hon. Mde. Janice M. Pereira, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Appearances:

Applicants: Mr. Dexter Theodore, with him, Mr. Leslie Prospere and Mr. Seryozha Cenac

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

Issues:

Application for the review or discharge of the order of a single judge – Dismissal (by single judge) of application for stay of execution pending determination of the appeal or alternatively the order for an entry of an inhibition on the property – Whether

the applicant has a real prospect of success – Whether the appellants were bona fide purchasers without notice – s. 30 of the Land Registration Act, Cap. 5:01, Revised Laws of Saint Lucia 2008 – Liability of forfeiture of property – Apparent bias by learned trial judge

Result / Order:

[Oral delivery]

- 1. The application for stay and inhibition is refused.**
- 2. The application to review or discharge the order of a single judge is dismissed and the order of Baptiste JA dated 21st February 2013 is confirmed.**
- 3. The costs of the application to the respondent are fixed by the Court in the sum of \$2,500.00.**

Reason:

The single judge of the court was correct in arriving at the conclusion that he arrived at. In respect of the various heads advanced for the purpose of showing the Court the applicants' realistic prospect of success, the Court was of the view that none of those grounds, whether taken individually or collectively, showed that the applicants had a realistic prospect of success.

The first and second applicants could not be considered as bona fide purchasers for value without notice given the clear wording of section 30 of the Land Registration Act of Saint Lucia, and so the first and second applicants would have known by virtue of s. 87 of the Act, that so long as the caution remained, no disposition could have been registered without the consent of the cautioner or by order of the court.

The applicants' point regarding whether the land was liable to forfeiture was not one which the Court found to be convincing, as the mere fact government has evinced an intention to forfeit does not even amount to the commencement of proceedings to forfeit. Several authorities show that forfeiture is at the option of the government, and nothing touches on the contractual arrangement with respect to the land in question, or touches on the value of the land. There is no authority that says where land is liable to

forfeiture the land thereby becomes valueless. So, that ground would not succeed.

With regard to the issues of tax evasion and land speculation, the Court also found the various factors put forward by counsel to be unconvincing. They did not lead to the conclusion, without more, that there was any deliberate involvement by the respondent in land speculation or evasion of the laws with regard to taxes to be paid on a conveyance.

The Court opined that the learned trial judge, in paragraphs 125 and 127 of his judgment, encapsulated the very essence of this case. It was further noted that the learned judge, at paragraph 126, stated that applicant counsel's due diligence was selective and this was what led him into error. The Court shared this view.

The Court therefore held that the applicants' application had no reasonable prospect of success.

Case Name:

Cecelia Deterville

v

Foster & Ince Cruise Services (St. Lucia) Ltd.

[SLUHCVAP2011/0015]

Date:

Monday, 25th March 2013

Coram:

**The Hon. Mde. Janice M. Pereira, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Mr. Horace Fraser

Respondent:

Mr. Mark Maragh

Issues: Termination of employment – Unfair dismissal

Result / Order: [Oral delivery]
Order by consent:
The appeal is withdrawn with no order as to costs.

Reason: The parties consented to the above order.

Case Name: Frinsted Consultancy Services (St. Lucia) Ltd.
v
Gustave General Construction Ltd.
[SLUHCVAP2012/0025]

Date: Monday, 25th March 2013

Coram: The Hon. Mde. Janice M. Pereira, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Appearances:
 Applicant: Mr. Horace Fraser
 Respondent: Ms. Kimberley Roheman

Issues: Application for leave to restore the appeal –
Application for extension of time to file record of
appeal

Result / Order: [Oral delivery]
1. The application for an extension of the time for the
filing of the record of appeal is refused.
2. The appeal is accordingly dismissed.
3. Costs to the respondent agreed in the sum of
\$1,000.00.

Reason: The applicant had clearly failed to satisfy his

evidential burden to the court to allow for the grant of an extension of time.

In assessing whether or not a delay is inordinate, one must look not only at the time it has taken to file the application, but also the reasons offered to the court as to why the delay has taken place. The applicant had failed to discharge this burden. No medical certificate was exhibited as proof that the applicant was ill and neither was any evidence produced to support the contention that the applicant was financially unable to pay for the transcript. The Court opined that the applicant filed the appeal so he was under a duty to prosecute it. In order for the court to exercise its discretion in such circumstances, there must be some good explanation for the delay which stands up to scrutiny and puts the court in a position to see that the applicant's situation is genuine. (Dicta of Rawlins JA in *Paget Lake v LIAT (1974) Limited (Antigua & Barbuda High Court Civil Appeal ANUHCVP2003/0004 (delivered 30th July 2004, unreported))* cited).

Case Name:

**Anthony Joseph aka Tony or Roachy
v
The Queen**

[SLUHCVP2009/0004]

Date:

Monday, 25th March 2013

Coram:

**The Hon. Mde. Janice M. Pereira, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Mr. Horace Fraser

Respondent:

Ms. Victoria Charles-Clarke, Director of Public Prosecutions, with her, Ms. Tina Mensah

Issues: Appeal against conviction – Murder – Whether the appellant received a fair trial – Whether the trial was conducted by trial counsel in a manner which prejudiced the appellant's case and rendered the conviction unsafe and unsatisfactory

Result / Order: The matter is stood down.

Reason: To allow the appellant to be transported to the court.

Case Name: Anthony Joseph aka Tony or Roachy
v
The Queen

[SLUHCRA2009/0004]

Date: Monday, 25th March 2013

Coram: The Hon. Mde. Janice M. Pereira, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Appearances:

Appellant:	Mr. Horace Fraser
Respondent:	Ms. Victoria Charles-Clarke, Director of Public Prosecutions, with her, Ms. Tina Mensah

Issues: Appeal against conviction – Murder – Whether the appellant received a fair trial – Whether the trial was conducted by trial counsel in a manner which prejudiced the appellant's case and rendered the conviction unsafe and unsatisfactory

Result / Order: [Oral delivery]
The appeal is dismissed and the conviction and sentence are affirmed.

Reason: The Court was not of the view that there was any merit whatsoever in the ground of appeal advanced by the appellant, namely, that he did not receive a fair trial because of the incompetence of counsel who represented him at trial. There was simply no evidence before the Court to support this contention. The judge's summation was well balanced. The evidence in this case was clearly overwhelming.

Case Name: Terry Charles
v
PC 56 Allyn Prospere
[SLUMCRAP2011/0019]

Date: Monday, 25th March 2013

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Francis Belle, Justice of Appeal [Ag.]

Appearances:
Appellant: Mr. Colin Foster
Respondent: Ms. Tina Mensah

Issues: Possession of unlicensed firearm – Application for adjournment of matter

Result / Order: [Oral delivery]
The appeal is traversed to next sitting of the Court of Appeal in St Lucia during the week of 8th July 2013.

Reason: Counsel for the appellant requested that the matter be traversed to the next Court of Appeal sitting. Counsel for the respondent indicated that she had no objection.

Case Name:

PC 124 Kelvin Hennecart

v

Barthelmy Delice

[SLUMCRAP2011/0011]

Date:

Monday, 25th March 2013

Coram:

The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mr. Francis Belle, Justice of Appeal [Ag.]

Appearances:

Appellant:

Mr. Mark Maragh

Respondent:

Mr. Horace Fraser

Issues:

Contravene lawful direction – Assaulting police officer – Use of indecent language

Result / Order:

[Oral delivery]

- 1. The appeal is allowed on the count of use of offensive language and a retrial is ordered on that count.**
- 2. The appeal is dismissed on all other counts.**

Reason:

It was not established by the prosecution that the presence of the respondent in the particular place where he was, was improper such that a direction to him by the Ports Police to remove himself was lawful. The Court believed that it was incumbent on the Ports Police Officer to have acted in a manner to have clearly identified to the respondent why his presence at La Place Carenage at the particular place where he was and the time was improper such that his directive was lawful and ought to have been given. The Court found that there was no basis upon which it could properly interfere with the decision of the magistrate which stated that there was no case for the respondent to answer.

Since the directive given by the appellant was not a lawful directive, then the respondent could not properly be charged for assaulting the appellant in the execution of his duty.

The charge of using offensive language was a charge that could have been brought by anybody to whom language like that was used. If therefore, there was evidence before the magistrate in relation to the charge of using obscene language then the magistrate ought properly to have allowed the respondent to answer that charge.

Case Name: Murgenvie Estaphane
v
The Police

[SLUMCRAP2012/0008]

Date: Monday, 25th March 2013

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Francis Belle, Justice of Appeal [Ag.]

Appearances:
Appellant: Mr. Alberton Richelieu
Respondent: Mr. Giovanni James

Issues: Stealing

Result / Order: [Oral delivery]
1. The appeal is allowed on sentencing.
2. The custodial sentence made by the learned magistrate is substituted and varied to a fine in the sum of \$2,000.00 to be paid by the appellant within one (1) month in default six (6) months imprisonment.

Reason: The respondent conceded that a custodial sentence was inappropriate in the circumstances and that a fine should be substituted.

Case Name: Jeff McVane
v
Bertly Ferdinand
[SLUMCRAP2010/002]

Date: Monday, 25th March 2013

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Francis Belle, Justice of Appeal [Ag.]

Appearances:
Appellant: No appearance
Respondent: Mr. Giovanni James

Issues: Possession of firearm without licence

Result / Order: [Oral delivery]
Matter is adjourned to Wednesday, 27th March 2013.

Reason: Counsel for the respondent indicated to the Court that there was an outstanding bench warrant and that various steps had been taken in attempting to locate the appellant up until that very morning. The appellant no longer resided at his last known address.

Nevertheless, the investigating officer has received information over the weekend relating to the possible whereabouts of the appellant. The information was that the appellant frequented a bar on particular days so the investigating officer intended to visit that location during the course of the week with a view to attempting to execute the warrant. In the

circumstances the respondent requested an adjournment so that a follow up report can be done in relation to the execution of the bench warrant.

Case Name:

Germain Tobie

v

The Police

[SLUMCRAP2011/0004]

Date:

Monday, 25th March 2013

Coram:

The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mr. Francis Belle, Justice of Appeal [Ag.]

Appearances:

Appellant:

Mr. Leslie Mondesir

Respondent:

Mr. Giovanni James

Issues:

Possession of firearm without licence or permit

Result / Order:

[Oral delivery]

The hearing of this appeal is stood down to 2 p.m.

Reason:

Counsel for respondent who had conduct of the matter, Mr. Stephen Brette, was unable to be present in court during the morning session for personal reasons but would be able to proceed with the matter in the afternoon.

Case Name:

Elvis King

v

The Police

[SLUMCRAP2011/0014]

Date: Monday, 25th March 2013

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Francis Belle, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Al Elliot

Respondent: Mr. Giovanni James

Issues: Possession of a controlled drug

Result / Order: [Oral delivery]
Matter is adjourned to Wednesday, 27th March 2013 at 9 a.m.

Reason: Counsel for the appellant indicated to the Court that he was unable to locate the appellant. Counsel indicated also that he intended to take a certain course of action. As a result, he needed an opportunity to communicate with the appellant.

Case Name: David Pilgrim
v
The Police

[SLUMCRAP2011/0021]

Date: Monday, 25th March 2013

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Francis Belle, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Al Elliot

Respondent: Mr. Giovanni James

Issues: Forfeiture proceedings

Result / Order: [Oral delivery]
Matter is adjourned to 2:00 p.m.

Reason: Counsel for the appellant made certain representations to the Court which the Court needed clarification on from Crown Counsel.

Case Name: Magdaline Joseph
v
The Police

[SLUMCRAP2012/0006 & 0006A]

Date: Monday, 25th March 2013

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Francis Belle, Justice of Appeal [Ag.]

Appearances:
Appellant: Mr. Jeannot-Michel Walters

Respondent: Ms. Tina Mensah

Issues: Abandonment of juvenile

Result / Order: [Oral delivery]
The appeal is traversed to the next sitting of the Court of Appeal in St. Lucia during the week of 8th July 2013.

Reason: Counsel for the appellant was only able to secure the

record of appeal two and a half weeks before the hearing, even though it had been available from 22nd December 2012. Counsel indicated to the Court that he did not have phone contact details of the appellant as she had no cell phone and that he had not seen the appellant for the past two weeks. Further, the record was incomplete; the pre-sentence report had not yet been located and no submissions or authorities had been filed as yet by the appellant. In the circumstances, counsel requested an adjournment. Counsel was confident that if an adjournment was granted the appellant would be prepared the next time the appeal comes up for hearing. The respondent did not object to the application for adjournment.

Case Name:

**Dwain Peter
v
Felix Eddison**

[SLUMCVAP2012/0004]

Date:

Monday, 25th March 2013

Coram:

**The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Francis Belle, Justice of Appeal [Ag.]**

Appearances:

Appellant: Ms. Wauneen Louis-Harris

Respondent: In person

Issues:

Contract

**Result / Order
& Reason:**

**[Oral delivery]
Matter adjourned to 2:30 p.m. for the lunch break.**

Case Name:

Germain Tobie

V

The Police

[SLUMCRAP2011/0004]

Date:

Monday, 25th March 2013

Coram:

The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mr. Francis Belle, Justice of Appeal [Ag.]

Appearances:

Appellant:

Mr. Leslie Mondesir

Respondent:

Mr. Stephen Brette

Issues:

Possession of firearm without licence or permit

Result / Order:

[Oral delivery]

- 1. The appeal against conviction is dismissed.**
- 2. The appeal against sentence is allowed only to the extent of taking into account the period of 12 months already spent in custody. The sentence of seven (7) years made by the learned magistrate is substituted with a term of six (6) years imprisonment to run from today's date.**

Reason:

It was a deliberate decision of the prosecution not to charge the appellant under section 47(3) of the Firearms Act (Cap. 14.12, Revised Laws of Saint Lucia 2008). The Court stated that it would not know all the reasons for that decision but it appeared as though the prosecution wanted to make the point that the officer was threatened or intimidated by the use of the firearm and the section that stipulates such was 47(4); 47(3) does not go so far. Taking into consideration that 47(3) encompasses all the situations, taking into account that the appellant was convicted under section 60, the Court was of the opinion that it was not appropriate to substitute 47(4) with 47(3).

Section 22(3) does provide the option of the fine. However, the Court, guided by the principles of sentencing, believed that the magistrate may not have had much discretion unless the circumstances were very different in relation to the sentence. The Court found that the sentence handed down under section 22(3) would have been appropriate and still remained appropriate and was to be mitigated by the sentence of 12 months already served by the appellant. Although the section carried the option of a fine, the guidelines were very clear when it came to the use of a firearm in the circumstances and an individual could not expect less than some kind of custodial sentence. The Court held that it would substitute the sentence of 7 years with 6 years imprisonment.

Case Name:

David Pilgrim

v

The Police

[SLUMCRAP2011/0021]

Date:

Monday, 25th March 2013

Coram:

The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mr. Francis Belle, Justice of Appeal [Ag.]

Appearances:

Appellant:

Mr. Al Elliot

Respondent:

Mr. Giovanni James

Issues:

Forfeiture proceedings

Result / Order:

[Oral delivery]

- 1. The Court Administrator in the District Court is hereby directed to cause to be produced and be made available to counsel for the appellant and respondent within six (6) weeks of the making of**

this order, the notes of evidence and reasons for decision for the forfeiture proceedings which took place on 14th September 2011.

2. The appellant is ordered to file and serve written submissions / skeleton arguments with authorities within two (2) weeks of receiving the aforesaid notes of evidence and reasons for decision.
3. The respondent is to file and submit written submissions / skeleton arguments within two (2) weeks of receiving the appellant's skeleton arguments.
4. The hearing of the matter is adjourned to the next sitting of the Court of Appeal in St. Lucia during the week of 8th July 2013.

Reason:

The transcript of the forfeiture hearing was not available.

Case Name:

**Dwain Peter
v
Felix Eddison**

[SLUMCVAP2012/0004]

Date:

Monday, 25th March 2013

Coram:

**The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Francis Belle, Justice of Appeal [Ag.]**

Appearances:

Appellant: Ms. Wauneen Louis-Harris

Respondent: In person

Issues:

Contract

Result / Order:

- [Oral delivery]**
1. The appeal is allowed.
 2. The Court finds that Article 1163 of the Civil Code

- was incorrectly applied by the learned magistrate.
3. The matter is remitted to the magistrate for a determination of what amount, if any, is due and owing by the respondent to the appellant and for consequential orders.
 4. Costs in the sum of \$300.00 to be paid by the respondent to the appellant.

Reason:

The Court found that article 1163 of the Civil Code (Cap. 4.01, Revised Laws of Saint Lucia 2008) was not correctly applied by learned magistrate.

The Court ultimately felt that the evidence given by the respondent was evidence which it could not then receive as it is not a court which determines issues of fact and rehears a matter.

Case Name:

**[1] Alexis Alcide as Heir to the Estate of
Gerald Alcide aka Gerald Alcide Jn Marie aka
George Alcide**

**[2] Alexis Alcide as Administrator of the
Estate of Emilienne Alcide (nee Gilbert)**

v

**[1] Josephine Lansiquot as Executrix of the
Estate of Joseph Alcide c/o Monica Alcide of
Bagatelle, Castries**

**[2] John Cherubin as Administrator of the
Estate of Veronica Alcide of Monchy**

[3] Monica Alcide of Bagatelle, Castries

[SLUHCVP2012/007]

Date:

Tuesday, 26th March 2013

Coram:

**The Hon. Mde. Janice M. Pereira, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]**

Appearances:

Appellants: Mr. Alexis Alcide in person

Respondents: Mr. Vern Gill

Issues: Property dispute – Subdivision of land

Result / Order: [Oral delivery]
The appeal not being ready for hearing today due to lack of service on the respondents and counsel for the respondents having accepted service of the notice of appeal and record of appeal as of today, it is ordered that the respondents shall file and serve skeleton arguments in this appeal on or before Friday, 26th April 2013.

Reason: Counsel for the respondents informed the Court that the appellant's process server had served him rather than the respondents personally, before he (counsel) had been formally instructed by his clients. The matter was therefore not properly before the Court. Counsel indicated however, that he had since received instructions from his clients and they were prepared to accept service of the appeal documents. Directions were given for the prosecution of the appeal.

Case Name: [1] Margaret Mary Lynch
[2] Anthea Lynch
v
[1] Bernard Prospere
[2] Justin Prospere
[SLUHCVP2011/0046]

Date: Tuesday, 26th March 2013

Coram: The Hon. Mde. Janice M. Pereira, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal

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

Appearances:

Appellants: Mr. Horace Fraser

Respondents: Ms. Leonne Theodore-John, with her, Ms. Eugenia Dickson

Issues: Correct ownership of land – Mistake in description of land conveyed – Land adjudication process – Whether the delay of delivery of judgment rendered the trial unfair

Result / Order: The matter is adjourned until 2:00 p.m.

Reason: Lunch adjournment.

Case Name:

**[1] Margaret Mary Lynch
[2] Anthea Lynch**

v

**[1] Bernard Prospere
[2] Justin Prospere**

[SLUHCVP2011/0046]

Date: Tuesday, 26th March 2013

Coram: The Hon. Mde. Janice M. Pereira, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Appearances:

Appellants: Mr. Horace Fraser

Respondents: Ms. Leonne Theodore-John

Issues: Correct ownership of land – Land occupied by

appellants recorded as having been sold to respondents – Whether sale of land (occupied by appellants) to the respondents occurred by mutual mistake – Ownership of land settled by Land Adjudication Process – No appeal from Adjudication Process – Whether respondents are registered proprietors (with absolute title) of land occupied by appellants – Whether the learned judge erred in ordering that the appellants give up possession to the respondents – Whether delay of delivery of learned judge’s judgment rendered the trial unfair – Whether the learned judge failed to deal with the issue of mistake as was pleaded

Result / Order:

[Oral delivery]

The appeal is dismissed with costs to the respondents in the amount of two-thirds of the costs awarded in the court below.

Reason:

The appellants were originally the owners of two parcels of land. They had constructed a house on (and occupied) one parcel, and claimed to have sold the other parcel to the respondents (which they subsequently occupied). The original Deed of Sale however, described the very land occupied by the appellants, as having been sold to the respondents.

Subsequent to the Land Adjudication Process in 1986, with all parties making their respective claims, the appellants were recorded as proprietors of the land occupied by the respondents and the respondents were recorded as proprietors of the land occupied by the appellants. There was no appeal from that adjudication process pursuant to the Land Adjudication Act (Cap. 5.06 of the Revised Laws of Saint Lucia 2008) and the appellants and respondents had since then remained registered as proprietors of the respective parcels of land. Upon registration with absolute title and the passing of the appeal period, the titles of the parties became indefeasible pursuant to s. 23 of the Land Registration Act (Cap. 5.01 of the Revised Laws of Saint Lucia 2008).

In relation to the issue of the delay of delivery of the

judgment, the Court held that an excessive delay, without more, is insufficient to render a judgment unfair. There must be cogent evidence that the delay affected the quality of the judgment. The Court further held that it did not appear as though the delay in the delivery of the judgment had caused the learned judge to have erroneously inserted a paragraph from another case from which he had attempted to extract the principles dealing with indefeasibility of title.

In relation to the appellants' contention that the learned judge misdirected himself in totally rejecting their claim based on mutual mistake without any lawful reason, the Court held that the learned judge did apply his mind to the issue of mistake, and this is evident from paragraphs 45-47 of his judgment. In paragraph 46, the learned judge stated:

"The [Land Adjudication Act] and the [Land Registration Act] are the statutes which govern the registration process, and by virtue of section 98 of the [Land Registration Act], the [respondents'] title is indefeasible except upon proof of mistake or fraud in the registration process. Mistake or fraud in the registration process of entry of the [respondents] on the Land Register has never been argued by the [appellants] ..." (emphasis added).

The Court opined that the Privy Council case of *Sylvina Louisien v Joachim Rodney Jacob* [2009] UKPC 3 relied on by the appellants was distinguishable, as it did not extend the principle of the types of mistake that may be challenged post-adjudication process to take account of a mistake which occurred pre-adjudication, and which was not connected with the adjudication process (which is the kind of mistake on which the appellants seek to rely for the purpose of rectification of the Land Register). However, the Court of Appeal case of *Skelton and Others v Skelton* (1986) 37 WIR 177 makes it clear that rectification is not intended to be an alternative remedy for a claimant under the Land Adjudication Act who, having failed in a contested claim before the adjudication officer, omitted to use the avenues of

review and appeal provided for by sections 20 and 24 of the Land Adjudication Act. Even though their Lordships referred to “a contested claim” in Skelton, the same principle would apply in respect of a claim that was not contested. The Court further stated that counsel for the appellants cited no authority for the proposition that a mistake made in a transaction, such as the sale and purchase of land between parties, which has found itself onto the Land Register having undergone an adjudication and registration process which has not been flawed, can be used thereafter as a basis to rectify the register, the process having been finalised.

The Court accordingly held that the trial judge’s statement of the principle at paragraph 46 (referred to above) was quite correct and on that basis, he would have been justified, given the nature of the mistake grounding the claim, to reject the claim of the appellants.

Case Name:

Paul Cadette

v

Jane Kangal

[SLUHCVAP2012/0024]

Date:

Tuesday, 26th March 2013

Coram:

**The Hon. Mde. Janice M. Pereira, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Mr. Dexter Theodore

Respondent:

Mr. Eghan Modeste

Issues:

**Beneficial interest in house on appellant’s land –
Whether the learned trial judge erred in holding that
the respondent had a 50% beneficial interest in house**

– Common intention – Whether respondent made direct and/or indirect contributions to the construction of the house or whether monies given to appellant by respondent were merely loans which she expected would be repaid

Result / Order:

[Oral delivery]

- 1. The appeal is allowed.**
- 2. The matter is remitted to the High Court to be retried before a different judge.**
- 3. There shall be no order as to costs.**

Reason:

There had been very little analysis of the evidence carried out in the court below, particularly where there was conflicting evidence from the parties. The learned trial judge ought to have properly assessed the evidence and made it clear what evidence he had accepted and what he had rejected, and his basis for so doing. It was also necessary for the learned judge to state his reasons for awarding the respondent a 50% beneficial interest in the appellant's house – whether it was because of the finding of an express agreement between the parties or the finding of a common intention between them – and the legal principles followed in arriving at his decision.

Case Name:

**[1] Norina Cooper
[2] Lanthorn Cooper
Both of Piaye in the quarter of Laborie in the
state of Saint Lucia**
Appellants

v

**Boniface Son
Of Piaye in the quarter of Laborie in the state
of Saint Lucia**
Respondent

v

**[1] Attorney General of Saint Lucia
[2] Office of the Commissioner of Crown
Lands
Ancillary Respondents**

[SLUHCVAP2012/0010]

Date: Tuesday, 26th March 2013

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Francis Belle, Justice of Appeal [Ag.]

Appearances:

Appellants:	Ms. Maureen John-Xavier
Respondent:	Ms. Carol Gideon-Clovis
Ancillary Respondents / Appellants (in the counter appeal):	Ms. Brender Portland-Reynolds, with her, Ms. Cagina Foster-Lubrin

Issues: Occupation – Licencee – Land Registration Act

Result / Order: Decision reserved until after lunch.

Case Name:

[1] Norina Cooper [2] Lanthorn Cooper Both of Piaye in the quarter of Laborie in the state of Saint Lucia	Appellants
v	
[1] Boniface Son Of Piaye in the quarter of Laborie in the state of Saint Lucia	

Respondent

v

**[1] Attorney General of Saint Lucia
[2] Office of the Commissioner of Crown
Lands**

Ancillary Respondents

[SLUHCVP2012/0010]

Date: Tuesday, 26th March 2013

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Francis Belle, Justice of Appeal [Ag.]

Appearances:

Appellant: Ms. Maureen John-Xavier

Respondents: Ms. Carol Gedeon-Clovis

**Ancillary
Respondent /
Appellant (in the
counter appeal):** Ms. Brender Portland-Reynolds, with her, Ms. Cagina
Foster-Lubrin

Issues: Occupation – Licencee – Land Registration Act

Result / Order:

[Oral delivery]

- 1. The appeal is allowed and the order of the trial judge made on 14th February 2012 is quashed.**
- 2. The appellant is granted vacant possession of the property.**
- 3. The respondent is to vacate the premises within 21 days of this order.**
- 4. The ancillary respondents' counter appeal is allowed.**
- 5. The compensation awarded by the court below is set aside.**
- 6. Costs in the sum of \$6,000.00 is awarded to the appellants in the court below and 2/3 of that sum**

in the appeal.

7. The ancillary respondents are awarded costs in the sum of \$5,000.00 in the court to the ancillary respondents in the court below and 2/3 on appeal.

Reason:

The main contention was whether respondent was entitled to compensation for improvements which he made to property which he occupied at Piaye and which was subsequently purchased by the appellants.

The learned trial judge made a finding that the respondent has an overriding interest pursuant to section 28(g) of the Land Registration Act (Cap. 5.01 of the Revised Laws of Saint Lucia 2008). The Court did not agree with that conclusion. The Court held that the respondent was a mere licensee, there was no evidence that he was given permission by owners of Balenbouche Estate to operate and stay on land. When the Government came to own the land, he became a licensee of the Government. The respondent could have purchased the land but did not do so. Counsel for the respondent said that Mr. Son is a licensee with rights. However, counsel for the ancillary respondents referred the Court to the case of *Andre Winter et al v Charles Richardson* (Antigua and Barbuda High Court Civil Appeal ANUHCVP2006/0025 (delivered 22nd April 2008, unreported)) where the court held that rights of persons in actual occupation of section 28(g) of the Registered Land Act – section 28(g) of the Registered Land Act of Antigua & Barbuda is the same as section 28(g) of the Land Registration Act of Saint Lucia – are not protected where the person is a bare licensee. The respondent had a bare licence, and therefore, he did not have a right to be on the land.

Counsel for the respondent said that respondent had earned a right to be compensated. However, the Court agreed with counsel for the appellant with her submission that this right is only granted to a person in possession with good faith. Article 367 of the Civil Code (Cap. 4.01, Revised Laws of Saint Lucia 2008) states that a person cannot hold in good faith if he did not hold title to land, consequently the

respondent is not entitled to compensation. The construction of pig pens took place prior to acquisition of the Government and a number of crops were planted after the Government revoked the licence by notice to quit. The respondent was not entitled to any compensation from the Government or the appellants.

Case Name: **River Doree Holdings Limited**
v
The Attorney General of Saint Lucia

[SLUHCVAP2012/0028]

Date: **Tuesday, 26th March 2013**

Coram: **The Hon. Mr. Davidson K. Baptiste, Justice of Appeal**
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Francis Belle, Justice of Appeal [Ag.]

Appearances:

Appellant:	Mr. Stanley Marcus, SC, with him, Ms. Debra James and Ms. Kimberley Roheman
Respondent:	Mr. Raultson Glasgow, with him, Ms. Jan Drysdale

Issues: **Lease agreement – Whether option to purchase lands which formed subject of lease validly exercised by appellant – Interpretation of terms of lease agreement – Whether covenants contained in lease agreement breached by appellant**

Result / Order: **[Oral delivery]**
Matter adjourned until tomorrow, Wednesday, 27th March 2013.

Case Name:

**In the matter of the Attorney General's
Reference (Constitutional Questions) Act Cap.
17.18 of the Revised Laws of Saint Lucia**

And

**In the matter of the Attorney General referring
to the Court for hearing and consideration of
important questions relating to sections 41(2),
41(7), 107 and 108 of Saint Lucia Constitution
Order**

The Attorney General of Saint Lucia

[SLUHCVAP2012/0018]

Date:

Wednesday, 27th March 2013

Coram:

**The Hon. Mde. Janice M. Pereira, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]**

Appearances:

**Representing the
interests of the
Attorney General:**

Mr. Anthony Astaphan, SC, with him, Mr. Deale Lee

**Representing the
interests of some
members of the Bar
Association of
Saint Lucia**

**Mr. Hilford Deterville, QC, with him, Ms. Renee St.
Rose, Ms. Diana Thomas and Ms. Shellone Surage**

**Representing the
interests of the
Office of the Leader
of the Opposition:**

**Ms. Petra Nelson, with her, Ms. Esther Greene-Ernest
and Ms. Lydia Faisal**

**Representing the
interests of the
majority of the Bar
Association of
Saint Lucia**

**Mr. Andie George, with him, Ms. Barbara Vargas, Mr.
Ermin Moise and Ms. Sardia Cenac-Prospere**

Issues:

The following important questions were approved by Cabinet for referral to the Court:

1. Whether the reference in section 41(7)(a) of the Constitution should properly be to section 108 instead of section 107. If yes, was the reference to section 107 an error?
2. If the answer to question (1) is yes, whether the error may be judicially corrected merely upon the determination of this application of the Attorney General or by an application by the Attorney General to a judge of the High Court or must the error be corrected by an alteration of the Constitution?
3. If the answer to question (1) is yes, whether the Agreement establishing the Caribbean Court of Justice signed on February 14, 2001, ratified by Saint Lucia on July 5, 2002 and enacted into the laws of Saint Lucia as the Caribbean Court of Justice (Agreement) Act, No. 34 of 2003 constitutes an international agreement to which Saint Lucia is a party for the purpose of the provisions of section 41(7)(b)?
4. If the answers to questions (1) and (2) are both yes, whether for the purposes of an alteration to the Constitution to replace appeals to Her Majesty in Council with appeals to the Caribbean Court of Justice, the Agreement between Saint Lucia and the United Kingdom referenced in section 41(7)(a):
 - i) may validly be entered into by Saint Lucia alone or in common with one or more other States of the Organisation of the Eastern Caribbean which may have similar constitutional provisions?
 - ii) may validly be entered into prior to the passage of the Bill referred to in section 41(2)?
 - iii) and, if the answer to question 4(ii) is no, at what point in the process of any such

alteration of the Constitution pursuant to section 41 may the said international agreement be entered into?

5. If the answer to question (1) is no, which “Court (or Courts) having jurisdiction in Saint Lucia” is referenced by section 41(7) of the Constitution?

Additionally the Attorney General of Saint Lucia sought:

A declaration pursuant to section 6 of the Attorney General’s Reference (Constitutional Questions) Act Cap. 17.18 of the Revised Laws of Saint Lucia as to which other persons are to be notified as persons interested and/or representatives of a class of persons interested and entitled to be heard in these proceedings.

Result / Order:

The judgment in this matter is reserved.

Case Name:

**River Doree Holdings Limited
v
The Attorney General of Saint Lucia
[SLUHCVAP2012/0028]**

Date:

Wednesday, 27th March 2013

Coram:

The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Francis Belle, Justice of Appeal [Ag.]

Appearances:

Appellant:

Mr. Stanley Marcus, SC, with him, Ms. Debra James and Ms. Kimberley Roheman

Respondent:

Mr. Raultson Glasgow, with him, Ms. Jan Drysdale

Issues:

Lease agreement – Whether option to purchase lands

which formed subject of lease validly exercised by appellant – Interpretation of terms of lease agreement – Whether covenants contained in lease agreement breached by appellant

Result / Order:

[Oral delivery]

The hearing of the appeal is adjourned to the next sitting of the Court scheduled for the week commencing 8th July 2013.

Reason:

An issue arose which prevented the Court from dealing with the matter.

Case Name:

Elvis King

v

The Police

[SLUMCRAP2011/0014]

Date:

Wednesday, 27th March 2013

Coram:

The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mr. Francis Belle, Justice of Appeal [Ag.]

Appearances:

Appellant:

Mr. Al Elliot

Respondent:

Mr. Stephen Brette

Issues:

Possession of controlled drug

Result / Order:

[Oral delivery]

- 1. The appeal against conviction is hereby withdrawn and dismissed.**
- 2. By agreement of counsel for the respondent, the sentence of the magistrate is varied to the extent that the appellant shall be required to pay the fine of \$25,000.00 imposed by the magistrate within 60**

days of today's date, in default of which the appellant shall serve a term of one year imprisonment in default of payment of the fine.

Reason:

Counsel for the appellant sought leave to withdraw the appeal against conviction and to proceed with the appeal against sentence. The respondent did not object to that oral application.

The Court, having determined that the sentence of the magistrate was appropriate, acceded to the request of counsel for the appellant to allow for the appellant to be given time to pay. The Court indicated that this request was granted with the agreement of the respondent.

Case Name:

**Jeff McVane
v
Bertly Ferdinand**

[SLUMCRAP2010/002]

Date:

Wednesday, 27th March 2013

Coram:

**The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Francis Belle, Justice of Appeal [Ag.]**

Appearances:

Appellant: No appearance

Respondent: Mr. Giovanni James

Issues:

Possession of firearm without licence

Result / Order:

[Oral delivery]

The hearing of this appeal is adjourned to the next sitting of the Court of Appeal in St. Lucia during the week commencing 8th July 2013 to facilitate the execution of the bench warrant to secure the

attendance of the appellant.

Reason:

Efforts were made to locate the appellant. However, they proved futile.