

COURT OF APPEAL SITTING

TERRITORY OF THE VIRGIN ISLANDS

14th – 18th January 2013

APPLICATIONS AND APPEALS

Case Name:

Pacific China Holdings Limited

v

Grand Pacific Holdings Limited

[High Court Civil Appeal No. 39 of 2010]

Date:

Monday, 14th January 2013

Coram:

The Hon. Mde. Janice M. Pereira, Chief Justice

The Hon. Mr. Mario Michel, Justice of Appeal

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

Appearances:

**Appellant /
Respondent:**

Mr. Jack Husbands

**Respondent /
Applicant:**

Ms. Tameka Davis

Issues:

Application for final leave to appeal to Her Majesty in Council

Result:

The Order is made in terms of the draft order filed by the Intended Appellant / Applicant on 26th October 2012:

UPON THE NOTICE OF MOTION filed on behalf of the Appellant on 25 October 2012 for final leave to appeal to Her Most Excellent Majesty in Council against the order made by the Court of Appeal on 14 May 2012;

UPON READING the Seventh Affidavit of Andrew Chang, Exhibit AC6, the Second Affidavit of Kim Pemberton and Exhibit KP2;

UPON it being noted that the Respondent, Pacific

**China Holdings Limited, does not oppose the Application
AND UPON CONDITIONAL LEAVE to appeal having been given by the Court on 1 October 2012 IT IS HEREBY ORDERED AS FOLLOWS:**

- 1. The Appellant has final leave to appeal to Her Most Excellent Majesty in Council against the order made by the Court of Appeal on 14 May 2012.**
- 2. The costs of and occasioned by this application be costs in the appeal to Her Majesty in Council.**

Reason:

The terms of the order granting conditional leave to appeal to Her Majesty in Council had been complied with.

Case Name:

**Glen Henley (trading as Cane Garden Bay
Pleasure and Water Sports Equipment)
v
Poco Loco Enterprises Incorporated (A
Delaware Corporation)**

[High Court Civil Appeal No. 26 of 2011]

Date:

Monday, 14th January 2013

Coram:

**The Hon. Mde. Janice M. Pereira, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]**

Appearances:

**Appellant /
Applicant:**

Mr. John Carrington

Respondent:

Mr. Robert Nader

Issues:

Application for final leave to appeal to Her Majesty in Council

Result / Order: [Oral delivery]
1. The appellant has final leave to appeal to Her Most Excellent Majesty in Council from the order made by the Court of Appeal on 19th April 2012 that the matter be remitted to the High Court for a further assessment of damages before another master.
2. The costs of and occasioned by this application shall be costs in the Appeal to Her Majesty in Council.

Reason: The terms of the order granting conditional leave to appeal to Her Majesty in Council had been complied with.

Case Name: Irvine Fletcher Scatliffe
v
Dora Scatliffe

[High Court Civil Appeal No. 4 of 2012]

Date: Monday, 14th January 2013

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

Appearances:
Applicant: Ms. Charmaine Rosan-Bunbury
Respondent: No appearance

Issues: Application for removal from Record in Accordance with rule 63.6 of the Civil Procedure Rules 2000

Result / Order: [Oral delivery]
1. The application is adjourned to be placed on the case management list for hearing.

The application could not be considered until there was compliance with rule 63.6 of the Civil Procedure Rules 2000. There had been a failure to comply with this rule notwithstanding that two orders were served upon the applicant.

Case Name: [1] Kenneth M. Krys
[2] Joanna Lau
(as Joint Liquidators of Fairfield Sentry Limited (in Liquidation))
v
Stitching Shell Pensioenfonds
[High Court Civil Appeal No. 36 of 2011]

Date: Monday, 14th January 2013

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

Appearances:

Appellants / Respondents:	Ms. Catherine Newman, QC, with her, Ms. Arabella Di Iorio
Respondent / Applicant:	Mr. Andrew Westwood

Issues: Application for leave to appeal to Her Majesty in Council – Whether appeal lies as of right – Whether question involved is one of general public importance – Application for stay of execution

Result / Order: The matter is stood down to 2:00 p.m.

Reason: To allow the Court to deal with a few shorter matters.

Case Name: [1] Julian Willock (dba Advanced Marketing
and Professional Services)
[2] Carmelita Jamieson
v
Hubert O'Neal

[High Court Civil Appeal No. 37 of 2012]

Date: Monday, 14th January 2013

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

Appearances:
Applicants: Mr. Jamal Smith
Respondent: Mr. Terrance Neale, with him, Ms. Sonjah Smith

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

Result / Order: [Oral delivery]
With the leave of the Court the application filed on
13th November 2012 is hereby withdrawn with costs
agreed in the sum of \$1,500.00.

Reason: The order being appealed was an interlocutory order
requiring permission to appeal. The application did
not meet the criterion for leave to appeal.

Case Name: [1] Julian Willock (dba Advanced Marketing
and Professional Services)

[2] Carmelita Jamieson

v

Hubert O'Neal

[High Court Civil Appeal No. 37 of 2012]

Date: Monday, 14th January 2013

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

Appearances:

Applicants: Mr. Jamal Smith

Respondent: Mr. Terrance Neale, with him, Ms. Sonjah Smith

Issues: Application for leave to appeal costs order of \$750.00 made by master

Result / Order: [Oral delivery]
1. The application for leave to appeal is dismissed.
2. The costs to be paid by the appellant, agreed in the sum of \$1,000.00.

Reason: The applicant was not able to show that he had an arguable case which should be heard by the Court of Appeal.

Case Name: Nordic Investors Corp.

v

Field Investment Holdings Limited

[High Court Civil Appeal No. 38 of 2012]

Date: Monday, 14th January 2013

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

Appearances:

Applicant: Mr. Menelik Miller

Respondent: Mr. Malcolm Arthurs

Issues: Application for leave to appeal

Result: [Oral delivery]
The matter is stood over and adjourned pending receipt of the transcript.

Reason: The transcript was unavailable. When this matter came up for case management, there should have been an indication to the Registrar that it should not have been before the Court of Appeal as it was not yet ready for hearing.

Case Name: Marian Walters
v
The Queen

[Magisterial Criminal Appeal No. 1 of 2011]

Date: Monday, 14th January 2013

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

Appearances:

Appellant: Ms. Charmaine Rosan-Bunbury

Respondent: Ms. Tiffany Scatliffe

Issues: Appeal against sentence – Unlawful importation of cocaine

Result: [Oral delivery]
The appeal against sentence is allowed. The sentence of 5 years is substituted by a sentence of 3 years running from the date of arrest of the appellant namely 27th April 2011.

Reason: The Magistrate failed to carry out a proper sentencing exercise or to have regard for sentences imposed in respect of similar type offences.

Case Name: [1] Kenneth M. Kryś
[2] Joanna Lau
(as Joint Liquidators of Fairfield Sentry Limited (in Liquidation))
v
Stitching Shell Pensioenfonds

[High Court Civil Appeal No. 36 of 2011]

Date: Monday, 14th January 2013

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

Appearances:

Appellants / Respondents:	Ms. Catherine Newman, QC, with her, Ms. Arabella di Iorio
Respondent / Applicant:	Mr. Andrew Westwood

Issues: Application for leave to appeal to Her Majesty in Council – Whether appeal lies as of right – Whether

**question involved is one of general public importance
– Application for stay of execution**

Result / Order:

[Oral delivery]

(In relation to application for conditional leave to appeal to Her Majesty in Council)

Conditional leave to appeal to Her Majesty in Council granted as of right pursuant to Section 3(1)(a) of the Virgin Islands (Appeals to the Privy Council) Order 1967 (S.I. No. 234 of 1967).

(In relation to application for stay of execution)

- 1. On the application for a stay the respondent is allowed 21 days for the filing and service of evidence in respect of the stay application.**
- 2. The applicant shall have 14 days after service of the respondent's evidence, for the filing and service of evidence in reply.**
- 3. The applicant shall file and serve written submissions within 21 days of the filing of the Reply evidence.**
- 4. The respondent shall file and serve written submissions within 21 days of the service of the applicant's submissions.**
- 5. The applicant to file a reply submission (if necessary) on any matters of law raised in the respondent's submissions, within 7 days of service by the respondent.**
- 6. The application to be heard on a day to be fixed shortly.**

Reason:

The Court was satisfied that the conditions contained in Section 3(1)(a) of Virgin Islands (Appeals to the Privy Council Order) 1967 had been satisfied (namely, that the issue involved related to a right of the value of £300 and upwards and that the order granting an anti-suit injunction was a final order in the circumstances of this case).

Case Name:

**JIPFA Investments Limited
v
[1] Natalie Brewley
[2] Alred Frett
[3] B & F Medical Complex Limited**

[High Court Civil Appeal No. 36 of 2012]

Date:

Monday, 14th January 2013

Coram:

**The Hon. Mde. Janice M. Pereira, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]**

Appearances:

Appellant: Mr. Gerard Farara, QC, with him, Ms. Tamara Cameron

Respondents: Mr. Frank Walwyn, with him, Ms. Astra Penn

Issues:

Application for leave to appeal to Her Majesty in Council – Whether appeal as of right – Question of general importance

Result / Order:

**[Oral delivery]
Leave to appeal the decision of Master Pearletta Lanns made on 31st October 2012 and contained in a written judgment of 5th November 2012 is hereby granted.**

Reason:

The Court was satisfied that arguable grounds for appeal were made out.

Case Name:

**[1] Attorney General
[2] Chairman, Public Service Commission**

[3] Director of Human Resources

v

Julian Willock

[High Court Civil Appeal No. 27 of 2011]

Date: Tuesday, 15th January 2013

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]
The Hon. Mr. Frederick Bruce-Lyle, Justice of Appeal [Ag.]

Appearances:

Appellant: Dr. Christopher Malcolm, Attorney General, with him,
Ms. Maya Barry

Respondent: Mr. Gerard Farara, QC

Issues: Whether a governor (either on his own or on the advice of the Public Service Commission) had the power to appoint a committee to investigate the allegations of misconduct against the respondent – Whether the learned judge erred in determining that the appointment of an Investigative Committee by the Governor was ultra vires the Virgin Islands Constitution Order 2007 and the Public Service Commission Regulations

Result / Order: [Oral delivery]

1. Respondent to file and serve skeleton arguments on or before the 28th February 2013. The hearing of the case is adjourned to the next sitting of the Court of Appeal in the Territory of the Virgin Islands during the week of 6th May, 2013. This is the final adjournment of this matter.
2. The Appellant is to file and serve a reply if necessary on or before the 15th March, 2013.

Reason: Counsel for the respondent requested an adjournment on the basis that he had not been fully instructed by his client as yet (counsel had

previously indicated to the court in writing why this was so). Counsel for the appellant requested that deadlines be given for filing and serving skeleton arguments.

Case Name:

Winston Blackette

v

The Queen

[High Court Criminal Appeal No. 5 of 2011]

Date:

Tuesday, 15th January 2013

Coram:

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

Appearances:

Appellant:

Mr. Patrick Thompson

Respondent:

Ms. Tiffany Scatliffe

Issues:

Appeal against conviction – Failing to give warning under 146(2) of Evidence Act, 2006 (Act No. 15 of 2006, Laws of the Virgin Islands) – Corroboration warning not given to jury – Whether the learned judgeUnlawful sexual intercourse – Whether the learned judge assisted the jury with

Result / Order:

**[Oral delivery]
Appeal against conviction is dismissed.**

Reason:

The Court held that while it was true that the virtual complainant's evidence was critical, it was also true that there was other supportive evidence given by the Crown against the appellant. This evidence came from the mother and stepmother of the virtual

complainant, and related to various conversations they had with him on the issue of the allegation that he had had sexual intercourse with the virtual complainant (who had in fact become pregnant by the reason of the intercourse). It was clear from this evidence that the appellant was spoken to about the issue of him causing the pregnancy and he indicated that he would take responsibility for his actions. The appellant had stated that he cared about the virtual complainant. The evidence also shows that on a subsequent occasion the appellant stated once again that he would take responsibility for his actions. He said however, that he did not want any charges to be brought against him. He said he did not want to get into trouble over his involvement with the virtual complainant. He spoke about him and the virtual complainant having an intimate relationship and said that he would have brought some money for the virtual complainant's family.

The Court further stated that the witness Ms. Powell said the appellant admitted that he had sex with the virtual complainant on a few occasions. She said that he did not say how many times it had happened though. He had also mentioned that there were other persons involved. Ms. Powell indicated that they had spoken for about half hour before he left, and the appellant told her that when the child is born he will take a DNA test and, if the child is his, he would support it.

The Court also pointed to the evidence of the Inspector, who said that when she cautioned the appellant, he said he was surprised because when he had spoken to the virtual complainant's mother, she said she "would not do anything about [his involvement with the virtual complainant]". He said he had told the mother that he will give money to assist the virtual complainant with her medical bill, and that she (the virtual complainant's mother) had told him "No problem."

The Court opined that the Crown had produced supporting evidence in relation to the conduct of the appellant in relation to the charges against him and that this evidence was critical. The Crown also

provided corroborative support of the case against the appellant. His conduct was critical. Apart from that, the appellant himself gave evidence which mirrored in material particulars the evidence of the virtual complainant with respect to him going to her home on at least 5 occasions and their drives to various parts of Tortola.

The Court was satisfied that the evidence of the prosecution against the appellant was quite strong. The Court, noting that the trial judge did not give the section 146 warning, applied the test set out in Andrew Milton v The Queen and Dennis Campbell v The Queen (Territory of the Virgin Islands High Court Criminal Appeals BVIHCRA2009/0006 & 0007 (delivered 12th November 2012, unreported)) where this court considered the failure to give a s.146 warning: does the absence of the s. 146 warning render the conviction unsafe? Generally, the failure to give this warning does not inexorably lead to the conclusion that the conviction is unsafe. Much would depend on whether the evidence of the witness in respect of which the warning was not given, is supported by other evidence. In applying this test to the present case, the Court was satisfied that the failure to give the warning did not result in the conviction being unsafe. The Court further held that even if the warning had been given, the jury, on the strength of the evidence against the appellant, would inevitably have convicted him.

Case Name:

**In the Matter of the Insolvency Act 2003
AND In the Matter of TS Multi-Strategy Fund,
Limited (In Liquidation)**

**John Ayres (Liquidator of TS Multi-Strategy
Fund, Limited)**

[High Court Civil Appeal No. 33 of 2012]

Date:

Tuesday, 15th January 2013

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]
The Hon. Mr. Frederick Bruce-Lyle, Justice of Appeal [Ag.]

Appearances:
Appellant: Mr. Robert Nader, with him, Mr. Sam Robertson

Issues: Insolvency – Appeal against order of High Court judge made in relation to assessment of fees and expenses payable to liquidator out of the assets of the insolvent estate of the appellant for failing to exercise discretion and refusing to give sanction – Insolvency

Result / Order: [Oral delivery]
The Order of the learned trial judge is hereby varied allowing the payment of US\$10,283.71 from the estate of TS Multi-Strategy Fund as a disbursement properly incurred by the Liquidator in the Liquidation.

Reason: The learned judge erred in the exercise of his discretion in refusing to allow the payment of US\$10,283.71 as a disbursement from the assets of the company in liquidation, in relation to an expert report provided to the liquidator of that fund. The judge provided no proper reason for his decision.

Case Name: Liao Chen Toh
v
Liao Hwang Hsiang

[High Court Civil Appeal No. 21 of 2012]

Date: Tuesday, 15th January 2013

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

The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]
The Hon. Mr. Frederick Bruce-Lyle, Justice of Appeal [Ag.]

Appearances:

Applicant: Mr. Jeremy Child

Respondent: Ms. Nadine Whyte

Issues:

Application for stay of execution

Result / Order:

[Oral delivery]
The matter is adjourned to Thursday, 17th January 2013 for mention at 2:15 p.m.

Case Name:

[1] Ecedro Thomas
[2] Alfred Thomas
[3] Elsair Thomas Malone
[4] Alice Thomas

v

[1] Daisy Stoutt
[2] Fairfield Stout
[3] Iona Stout Forbes (Executrix of the Will of Essir Stout)
[4] Grethel Stout (Administratrix of the Estate of Richard Cardinal Stout)

[High Court Civil Appeal No. 19 of 2012]

Date:

Tuesday, 15th January 2013

Coram:

The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]
The Hon. Mr. Frederick Bruce-Lyle, Justice of Appeal [Ag.]

Appearances:

Appellants: Ms. Tamara Cameron, with her, Mr. Gerard Farara, QC

Respondents: Ms. Akilah Anderson (for the 1st and 2nd respondents)
Ms. Willa Tavernier, with her, Ms. Rhonda Brown (for the 3rd and 4th respondents)

Issues: Application for prescriptive title – Service of prescriptive title – Application for extension of time refused in court below

Result / Order: [Oral delivery]
1. The appeal is allowed.
2. Costs in the amount of two-thirds of the amount to be assessed in the court below to the appellants.

Reason: The learned trial judge erred in the exercise of her discretion in refusing to grant an extension of time to serve the fixed date claim form and notice of appeal. In coming to her decision, the judge failed to take into account the relevant factor of the prejudice to the appellants. Although there was evidence of prejudice to the appellants before her, she erroneously concluded that there was nary a submission made by counsel for the appellants on the applicable law. The judge found that this was “telling”, suggesting that she placed a lot of emphasis on this factor.

In striking out the application, the judge erroneously reasoned that rule 26.8 of the Civil Procedure Rules 2000 strictly applied, and that the appellants were mandated to seek relief from sanctions as well as an extension of time. The judge found that the appellants had failed to satisfy the requirements of CPR 26.8 in that the application for an extension of time was not made promptly, having been made 4 months after service of the claim on the respondents, and that the appellants had no good explanation for the failure to serve on time. However, the judge found that the failure to serve on time was not intentional, and further that the appellants had generally complied with all other relevant rules and orders. She held that although CPR 60.5 did not expressly stipulate a sanction for non-compliance, the sanction was implied. The Privy Council has held

in the recent case of The AG v Keron Matthews [2011] UKPC 38 that where the rules do not impose a sanction, the court is not to imply one.

At paragraph 18 of her judgment, the judge went on to consider the criteria applicable to applications for leave to appeal, and in particular, the prospects of the appeal succeeding. The judge considered the case of CO Williams Construction (St. Lucia) Limited v Inter-Island Dredging Co. Ltd. (Saint Lucia High Court Civil Appeal SLUHCVP2011/0017 (delivered 19th March 2012, unreported)) where it was held that the court must seek to give effect to the overriding objective that justice is done between the parties. The judge mentioned the criteria of length of delay, the reasons for delay, the chances of the appeal succeeding if the extension was granted, the degree of prejudice if the application is granted, and, where the case is a complex one, the overriding objective in conjunction with the checklist under CPR 26.8. Having done that, the judge failed to consider the degree of prejudice to the respondent if the application was granted or to the appellant if it was refused. This was a relevant factor, since some of the respondents had already filed their defences, some had applied for an extension of time to file their defence, and no trial date had been set. In dismissing the appeal, the learned trial judge took a step which was draconian and disproportionate. The appellants may in her view have had little chance of succeeding, but they were entitled to their day in court in the circumstances of this case.

STATUS HEARING

Case Name:

Bebo Investments Limited

v

The Attorney General

[High Court Civil Appeal No. 1 of 2008]

Date: Tuesday, 15th January 2013

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

Appearances:

Appellant: Ms. Jo-Ann Williams-Roberts

Respondent: Ms. Hazelann Hannaway-Boreland

Issues: Status of matter

Result / Order: The matter is stood down.

Reason: Counsel was not aware of the matter.

Case Name: O'Carol Williams
v
Gene Maduro

[Magisterial Civil Appeal No. 4 of 2008]

Date: Tuesday, 15th January 2013

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

Appearances:

Appellant: Mr. Robert Nader

Respondent: No appearance

Issues: Status of matter

Result / Order: [Oral delivery]
It is directed that the Registrar send notice of the next status hearing in BVI in May 2013 to the respondent.

Reason: There was no evidence that the respondent had received notice of the hearing.

Case Name: Cyntelia Todman-Doswell
v
[1] Clifford Johnson
[2] Andrew Reid
[High Court Civil Appeal No. 9 of 2008]

Date: Tuesday, 15th January, 2013

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

Appearances:
Appellant: No appearance
Respondents: No appearance

Issues: Status of matter

Result / Order: The matter is stood down.

Reason: To ascertain who should have been appearing in this matter.

Case Name: [1] Robelco Limited
[2] Oleg Zharebstov
[3] Vladimir Senkin
[4] Mikhail Leschenko
Appellants

v

[1] Svoboda Corporation

[2] August Meyer

[3] Dmitry Kostygin

[4] Sergei Yuschenko

[5] Loren David Bough

[6] Robert Voss

[7] Greg Lykins

[9] Alexander Easton

[10] Edward Graham Nicholson

[12] Mem (Pe) Limited

[13] Steep Rock Russia Fund Limited

[14] Steep Rock Russia Fund II Limited

[15] Bowden Holdings Limited

[16] Home Bush Overseas Limited

[17] Periwinkle Limited

[18] Four Runners Fund III LLC

[19] Tricor Services (BVI) Limited

Respondents

v

[1] Sevki Acuner

**[2] European Bank for Reconstruction and
Development**

Intervener Respondents

[High Court Civil Appeal No. 5 of 2008]

Date:	Tuesday, 15th January 2013
Before:	The Hon. Mde. Janice M. Pereira, Chief Justice
Appearances:	
Appellants:	Mr. Robert Nader
Respondents:	No appearance
Issues:	Status of matter
Result / Order & Reason:	[Oral delivery] Appellant to file notice of discontinuance today. The

matter was settled.

Case Name:

**[1] Irene Ashley
[2] Chrisene Wilson Merrill
[3] Justine Ney Wilson
v
Donald Ashley**

[High Court Civil Appeal No. 19 of 2008]

Date:

Tuesday, 15th January 2013

Before:

The Hon. Mde. Janice M. Pereira, Chief Justice

Appearances:

Appellants:

Dr. Joseph S. Archibald, QC

Respondent:

Ms. Hazelann Hannaway-Boreland

Issues:

Status of matter

**Result / Order
& Reason:**

[Oral delivery]

**This matter has been concluded. Notice of
discontinuance to be filed.**

Case Name:

**Percival Williams
v
Elihu Rhymer**

[High Court Civil Appeal No. 17 of 2009]

Date:

Tuesday, 15th January 2013

Before:

The Hon. Mde. Janice M. Pereira, Chief Justice

Appearances:
Appellant: Dr. Joseph S. Archibald, QC
Respondent: Mr. Richard Rowe

Issues: Status of matter

Result / Order: [Oral delivery]
1. It is hereby ordered that the appellant files and serves the record of appeal no later than Monday, 4th February, 2013 and that he files and serves skeleton arguments no later than 25th February 2013.
2. In the event that the appellant fails to serve and file the record of appeal in accordance with paragraph 1 hereof the appeal herein shall stand dismissed.

Reason: The appellant had failed to take steps to file the record of appeal.

Case Name: Ocean Conversion (BVI) Limited
v
The Attorney General of the Virgin Islands
[High Court Civil Appeal No. 1 of 2010]

Date: Tuesday, 15th January 2013

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

Appearances:
Appellant: Dr. Joseph S. Archibald, QC
Respondents: Dr. Christopher Malcolm

Issues: **Status of matter**

Result / Order: **[Oral delivery]**
Appeal discontinued.

Reason: **A notice of discontinuance was filed and served on 10th January 2013.**

Case Name: **[1] Sylvia Maduro-Dale**
[2] Lucia Chalwell
v
The Registrar of Lands

[High Court Civil Appeal No. 22 of 2010]

Date: **Tuesday, 15th January 2013**

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

Appearances:

Appellant: **Dr. Joseph S. Archibald, QC**

Respondent: **Ms. Jo-Ann Williams-Roberts**

Issues: **Status of matter**

Result / Order: **[Oral delivery]**
It is hereby ordered and directed that the transcript in the proceedings be prepared, and notice of availability be sent to the parties by the Registrar of the High Court, no later than Monday, 4th February 2013, and thereafter the appeal is to proceed in accordance with the Rules of Court.

Reason: **The transcript of proceedings had not been prepared as yet.**

Case Name:

**Melvin Rymer
v
Clearlie Todman-Brown**

[High Court Civil Appeal No. 28 of 2011]

Date:

Tuesday, 15th January 2013

Before:

The Hon. Mde. Janice M. Pereira, Chief Justice

Appearances:

Appellant:

Dr. Joseph S. Archibald, QC

Respondent:

Mr. John Carrington

Issues:

Status of matter

Result / Order:

[Oral delivery]

Parties are hereby notified that the transcript is available for collection by letter dated June 27th, 2012. The Appeal is to proceed in accordance with the Rules of Court as from today's date.

Reason:

The parties were made aware of a letter advising of the availability of the transcript.

Case Name:

**[1] Lucien Callwood
[2] Urman Callwood
[3] Gertrude Callwood-Coakley
[4] Wendell Callwood
v
[1] Registrar of Lands**

[2] Sheila Callwood Shulterbrandt
[3] Beatrice Innis Orr
[4] Estate of Sheradina Callwood alias
Geraldine Callwood (deceased)
[5] Estate of Doris Kelly (deceased)
[6] Estate of Keturah Callwood (deceased)
[7] Estate of Theophilous Callwood
(deceased)

[High Court Civil Appeal No. 8 of 2012]

Date: Tuesday, 15th January 2013

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

Appearances:

Appellants: Dr. Joseph S. Archibald, QC

Respondents: Ms. Jo-Ann Williams-Roberts

Issues: Status of matter

Result / Order: [Oral delivery]
It is hereby ordered and directed that the transcript of the proceedings be prepared and Notice of availability be given by the Registrar of the High Court to the parties no later than Monday, 4th February 2013. Thereafter the appeal is to proceed in accordance with the Rules of Court.

Reason: The transcript of proceedings had not been prepared as yet.

Case Name: Greenfield Property Holdings Limited
v
Elizabeth Beach Resort Limited

[High Court Civil Appeal No. 29 of 2009]

Date: Tuesday, 15th January 2013

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

Appearances:

Appellant:	Mr. Gerard Farara, QC
Respondent:	Mr. Robert Nader

Issues: Status of matter

Result / Order & Reason: [Oral delivery]
The matter is stood down until Friday, 18th January 2013 to allow Mr. Nader of Forbes Hare to take instructions from the Liquidator. The appellant was placed in liquidation.

Case Name:

Virginia Callwood
v
Glenn Callwood

[High Court Civil Appeal No. 29 of 2010]

Date: Tuesday, 15th January 2013

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

Appearances:

Appellant:	Mr. Gerard Farara, QC
Respondent:	No appearance

Issues: Status of matter

Result / Order: [Oral delivery]

Appeal discontinued.

Reason: A notice of discontinuance was filed on 8th January 2013.

Case Name: Charmaine Rosan-Bunbury
v
[1] The Judicial and Legal Services Commission
[2] Governor of the British Virgin Islands William Boyd McCleary
[3] Senior Magistrate Valerie Stephens
[4] Permanent Secretary in the Deputy Governor's Office David Archer
[5] Additional Magistrate Tamia Richards
[6] The Attorney General of the British Virgin Islands

[High Court Civil Appeal No. 72 of 2011]

Date: Tuesday, 15th January 2013

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

Appearances:
Appellant: Ms. Charmaine Rosan-Bunbury

Respondents: Dr. Christopher Malcolm

Issues: Status of matter – Preparation of transcript

Result / Order: [Oral delivery]
1. It is directed that the Registrar of the High Court request from the Court Reporter, the Transcript of the Proceedings no later than Friday, 18th January 2013.
2. It is further directed, that upon receipt of the

request by the Registrar that the transcript of the proceedings be prepared and notice of availability given to the parties no later than 20th February 2013.

3. Thereafter, the appeal is to proceed in accordance with the Rules of Court.

Reason: To facilitate preparation of the transcript.

Case Name: The Attorney General of the Virgin Islands
v
Daphnie Alves
[High Court Civil Appeal No. 27 of 2008]

Date: Tuesday, 15th January 2013

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

Appearances:
Appellant: Ms. Vareen Vanterpool, with her, Ms. Maya Barry
Respondent: Mr. John Carrington

Issues: Status of matter

Result / Order: [Oral delivery]
Respondent is to file skeleton arguments in accordance with the Rules of Court. The appeal is to proceed in accordance with Rules of Court.

Reason: The record of evidence was filed on Tuesday, 8th January 2013 and the skeleton arguments of the appellant had also been filed. It was necessary however, to give directions for the filing of the respondent's skeleton arguments.

Case Name:

The Attorney General

v

**IN THE MATTER OF sections 6(2) and 7(3) of
the Drug (Prevention of Misuse) (Amendment)
Act 1995 (No 1 of 1995) of the laws of the
Virgin Islands**

AND

**IN THE MATTER of the Constitution of the
Virgin Islands Order 2007**

AND

**IN THE MATTER of an application by Dale
Nibbs for redress pursuant to section 31 of
the said Constitution for contraventions of
section 16(2)(a) and 16(6) thereof in relation to
him**

[High Court Civil Appeal No. 19 of 2010]

Date:

Tuesday, 15th January 2013

Before:

The Hon. Mde. Janice M. Pereira, Chief Justice

Appearances:

Appellant:

**Ms. Jo-Ann Williams-Roberts, with her, Ms. Maya
Barry**

Respondent:

No appearance

Issues:

Status of matter – Preparation of transcript

Result / Order:

[Oral delivery]

1. It is hereby ordered and directed that the transcript in the proceedings be prepared and that notice of availability be given by the Registrar to the parties no later than 20th February 2013.
2. Thereafter the appeal shall proceed in accordance with the Rules of Court.

Reason:

The transcript had not been prepared as yet.

Case Name:

**Maureen Peters
v
The Attorney General**

[High Court Civil Appeal No. 38 of 2010]

Date:

Tuesday, 15th January 2013

Before:

The Hon. Mde. Janice M. Pereira, Chief Justice

Appearances:

Appellant:

Ms. Jo-Ann Williams-Roberts

Respondent:

Mr. Robert Nader (of Forbes Hare)

Issues:

Status of matter

Result / Order:

[Oral delivery]

1. The Appellant to file the Record of Appeal by Friday 18th January, 2013.
2. The Respondent to file and serve skeleton arguments by Tuesday, 19th February 2013.
3. The Appeal is to proceed in accordance with the Rules of Court.

Reason:

The record of appeal had not been filed as yet. The appellant had however, filed and served skeleton

arguments in January 2011.

Case Name: **Mark Vanterpool**
v
Crowley Caribbean Services, LLC
[High Court Civil Appeal No. 9 of 2010]

Date: **Tuesday, 15th January 2013**

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

Appearances:
Appellant: **Ms. Marie-Lou Creque**
Respondent: **Mr. John Carrington**

Issues: **Status of matter**

Result / Order: **[Oral delivery]**
The appeal is discontinued.

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

Case Name: **Elizabeth Beach Resort Limited**
v
[1] The Attorney General
[2] Joseph Lettsome
[3] Clarita Lettsome
[4] Lilly Belle Chandler
[High Court Civil Appeal No. 17 of 2008]

Date: Tuesday, 15th January 2013

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

Appearances:

Appellant: Ms. Jo-Ann Williams-Roberts

Respondents: Ms. Hazelann Hannaway-Boreland

Issues: Seek withdrawal of Notice of Appeal

Result / Order: [Oral delivery]
With leave of the Court – Notice of Appeal filed herein on 8th July 2008 is hereby withdrawn.

Reason: The appellant sought leave to withdraw the appeal.

Case Name: Bebo Investments Limited
v
The Attorney General

[High Court Civil Appeal No. 1 of 2008]

Date: Tuesday, 15th January 2013

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

Appearances:

Appellant: Ms. Hazelann Hannaway-Boreland

Respondent: No appearance

Issues: Status of matter – Withdrawal of appeal

Result / Order: [Oral delivery]

With leave of the Court – The notice of appeal filed herein on 29th February 2008 is hereby withdrawn.

Reason: The appellant sought leave to withdraw the notice of appeal.

Case Name: Telltop Holdings Limited
v
Tarquin Limited

[High Court Civil Appeal No. 2 of 2010]

Date: Tuesday, 15th January 2013

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

Appearances:
Appellant: Ms. Sara-Jane Knock
Respondent: Ms. Victoria Ann Lord

Issues: Status of matter

Result / Order: [Oral delivery]
The notice of appeal filed herein on 19th January 2010 is struck out and the appeal dismissed.

Reason: The appellant company no longer existed.

Case Name: Arlington Assets Investment Ltd.
v
ING Bank N.V.

[High Court Civil Appeal No. 17 of 2010]

Date: Tuesday, 15th January 2013

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

Appearances:

Appellant: Ms. Sara-Jane Knock, with her, Mr. Jeremy Child

Respondent: Ms. Victoria Ann Lord

Issues: Status of matter – Appellant in liquidation

Result / Order & Reason: [Oral delivery]
Matter stood over until to Friday 18th January, 2013 to determine the course to be adopted by liquidator.

Case Name:

**American Eagle Airlines
v
Colen Corea**

[High Court Civil Appeal No. 33 of 2010]

Date: Tuesday, 15th January 2013

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

Appearances:

Appellant: Ms. Akilah Anderson

Respondent: Dr. Christopher Malcolm

Issues: Status of matter

Result / Order: [Oral delivery]
IT IS HEREBY ORDERED THAT:
1. The Senior Magistrate cause to be prepared and

filed with the Registrar of the High Court the notes of evidence in respect of the Magisterial proceedings in Suit No. 13 of 2009, entitled Colen Corea v American Eagle Airlines, no later than February 20th 2013.

2. The Registrar of the High Court shall cause a copy of this order is to be served upon the Senior Magistrate aforesaid by Tuesday 22nd January 2013.

Reason: There was no transcript of the proceedings conducted by the magistrate.

Case Name: Shivaughn Hodge
v
The Queen

[High Court Civil Appeal No. 2 of 2010]

Date: Tuesday, 15th January 2013

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

Appearances:
Appellant: Dr. Joseph S. Archibald, QC
Respondent: Dr. Christopher Malcolm

Issues: Status of matter

Result / Order: [Oral delivery]
1. The appellant shall either by herself or by her legal practitioners file a notice of intention to proceed with this appeal no later than Friday, 15th February 2013.
2. In the event that the appellant, or her legal practitioners fail to file the said Notice as referred to in paragraph 1, the appeal herein will stand

dismissed.

Reason: The appellant had already served her prison sentence. There were no instructions on whether she intended to proceed with the appeal.

Case Name: Elton Georges
V
The Commissioner of Police

[Magisterial Criminal Appeal No. 12 of 2010]

Date: Tuesday, 15th January 2013

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

Appearances:
Appellant: Dr. Joseph S. Archibald, QC
Respondent: Ms. Tiffany Scatliffe

Issues: Status of matter

Result / Order: [Oral delivery]
IT IS HEREBY ORDERED THAT:
1. The Magistrate is directed to proceed with sentencing of the appellant, no later than 1st February 2013, the Magistrate having recorded a conviction by virtue of her decision given on 1st December, 2010.
2. That the Magistrate takes and completes the recognizance for prosecution of the appeal, forthwith.
3. The appellant shall be at liberty to amend his grounds of appeal, following sentencing and shall do so within 14 days of the date of sentencing.
4. The Magistrate prepares and files with the Registrar of the High Court, the Notes of

evidence and all other documents and exhibits relevant to the proceedings, no later than 14th March, 2013.

5. The Registrar of the High Court shall cause a copy of this order to be served on the Magistrate no later than Tuesday 22nd January, 2013.

Reason:

The magistrate had failed to proceed to sentencing following the recording of a conviction and failed to take and complete the recognizance for the prosecution of the appeal.

Case Name:

**Vernon Paddy
v
The Queen**

[High Court Criminal Appeal No. 2 of 2011]

Date:

Tuesday, 15th January 2013

Before:

The Hon. Mde. Janice M. Pereira, Chief Justice

Appearances:

Appellant:

Mr. Patrick Thompson

Respondent:

No appearance

Issues:

Status of matter

Result / Order:

**[Oral delivery]
The appeal is hereby dismissed.**

Reason:

The appeal was discontinued. A notice of abandonment was filed on 11th January 2013.

Case Name:

**Camillus Parris
v
The Queen**

[High Court Criminal Appeal No. 3 of 2011]

Date:

Tuesday, 15th January 2013

Before:

The Hon. Mde. Janice M. Pereira, Chief Justice

Appearances:

Appellant: Mr. Patrick Thompson

Respondent: Ms. Tiffany Scatliffe

Issues:

Status of matter

Result / Order:

[Oral delivery]

- 1. The appellant to file and serve skeleton arguments in relation to the appeal, within 45 days of receipt of Notice by the appellant's legal practitioners that the record of appeal is available.**
- 2. The respondent shall file and serve its skeleton arguments within 45 days of service of the appellant's skeleton arguments.**

Reason:

It was necessary for directions to be given for the due prosecution of the appeal.

Case Name:

**John Bally
v
The Queen**

[High Court Criminal Appeal No. 7 of 2011]

Date: Tuesday, 15th January 2013

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

Appearances:

Appellant:	Mr. Patrick Thompson
Respondent:	Ms. Tiffany Scatliffe

Issues: Status of matter

Result / Order: [Oral delivery]

1. The appellant to file and serve skeleton arguments in relation to the appeal, within 45 days of receipt of Notice by the appellant's legal practitioners that the record of appeal is available.
2. The respondent shall file and serve its skeleton arguments within 45 days of service of the appellant's skeleton arguments.

Reason: It was necessary for directions to be given for the due prosecution of the appeal.

Case Name:

[1] Freddy Lopez Peralta
[2] Edward Bueno Beltran
v
The Commissioner of Police

[Magisterial Criminal Appeal No. 9 of 2010]

Date: Tuesday, 15th January 2013

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

Appearances:

Appellants:	No appearance
Respondent:	Ms. Tiffany Scatliffe

Issues:	Status of matter
Result / Order:	[Oral delivery] The appellants whether by themselves or their legal practitioners shall file a Notice of intention to proceed with this appeal no later than 31st January 2013 failing which the appeal herein shall stand dismissed.
Reason:	The appellants did not appear and therefore it was not clear whether they intended to proceed with the appeal.

Case Name:	Donald Rogers v The Queen
	[High Court Criminal Appeal No. 7 of 2010]

Date:	Tuesday, 15th January 2013
Before:	The Hon. Mde. Janice M. Pereira, Chief Justice

Appearances:	
Appellant:	No appearance
Respondent:	Ms. Tiffany Scatliffe

Issues:	Status of matter
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Result / Order:	[Oral delivery] The appellant whether by himself or his legal practitioners shall file a Notice of Intention to proceed with this appeal no later than 28th February 2013 failing which the appeal shall stand dismissed.
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Reason: The appellant was no longer in the Territory. The sentence had already been served.

Case Name: Craig Stoddard
v
The Queen

[High Court Criminal Appeal No. 8 of 2010]

Date: Tuesday, 15th January 2013

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

Appearances:
Appellant: Mr. Patrick Thompson
Respondent: Ms. Tiffany Scatliffe

Issues: Status of matter

Result / Order: [Oral delivery]
1. That the appellant files with the High Court, a Notice of Intention to proceed with this appeal no later than Thursday, 28th February 2013 failing which, the appeal shall stand dismissed.
2. The Registrar of the High Court shall cause a copy of this Order to be served on the appellant, within 14 days of the date hereof.

Reason: It was not clear whether the appellant intended to proceed with the appeal.

Case Name: Juan Valdez

v
The Attorney General

[Magisterial Criminal Appeal No. 10 of 2011]

Date: Tuesday, 15th January 2013

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

Appearances:

Appellant:	No appearance
Respondent:	Ms. Tiffany Scatliffe

Issues: Status of matter

Result / Order: [Oral delivery]
The appeal is hereby dismissed.

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

APPLICATIONS AND APPEALS

Case Name:

Pengor Limited
v
Lester Anderson

[High Court Civil Appeal No. 24 of 2012]

Date: Tuesday, 15th January 2013

Coram: The Hon. Mr. Davidson Baptiste, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]
The Hon. Mr. Frederick Bruce-Lyle, Justice of Appeal [Ag.]

Appearances:

Appellant / Respondent:	Mr. Terrance Neale, with him, Ms. Sonjah Smith
Respondent / Applicant:	Mr. Richard Rowe

Issues:

Negligence – Breach of contract of employment – Duty of care owed to employee by employer – Employee injured at workplace – Whether the learned judge’s findings were against the weight of the evidence – Damages awarded to respondent – Application for an adjournment by respondent

Result / Order:

[Oral delivery]
The hearing of this appeal is adjourned to the next sitting of the Court of Appeal in the Territory of the Virgin Islands during the week of 6th May 2013.

Reason:

The application for an adjournment was not opposed by the appellant.

Case Name:

Cukurova Holding A.S.
v
Sonera Holding B.V.

[High Court Civil Appeal No. 29 of 2012]

Date:

Wednesday, 16th January 2013

Coram:

The Hon. Mde. Janice M. Pereira, Chief Justice
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant:	Mr. Kenneth MacLean, QC, with him, Ms. Arabella di Iorio
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Respondent: Mr. Ben Valentin, with him, Mr. John Carrington

Issues: Appeal against decision of judge refusing to set aside order for enforcement of New York Convention arbitral award – Excess of jurisdiction – Natural justice – Public policy

Result / Order: [Judgment reserved]

Case Name: Featherwood Trading Limited
v
Fraunteld Management Limited

[High Court Civil Appeal No. 20 of 2012]

Date: Thursday, 17th January 2013

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]
The Hon. Mr. Frederick Bruce-Lyle, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Paul McGrath, QC, with him, Mr. Callum McNeil

Respondent: Mr. John Jarvis, QC, with him, Mr. Jeffrey Elkinson and Mr. Jerry Samuel

Issues: Contract – Unjust enrichment – Whether consideration had wholly failed – Whether judge was right to accept the pleadings as he did

Result / Order: [Judgment is reserved]

Case Name:

**Liao Chen Toh
v
Liao Hwang Hsiang**

[High Court Civil Appeal No. 21 of 2012]

Date:

Thursday, 17th January 2013

Coram:

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

Appearances:

Applicant:

Mr. Jeremy Child

Respondent:

Mr. Paul Dennis, with him, Ms. Nadine Whyte

Issues:

Application for stay of execution

**Result / Order
& Reason:**

**[Oral delivery]
The transcript not being ready, the matter is traversed
to the next sitting of the Court of Appeal in the
Territory of the Virgin Islands during the week of 6th
May 2013.**

STATUS HEARING

Case Name:

**Greenfield Property Holdings Limited
v
Elizabeth Beach Resort Limited**

[High Court Civil Appeal No. 29 of 2009]

Date:

Friday, 18th January, 2013

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

Appearances:

Appellant: Mr. Robert Christie

Respondent: Mr. Robert Nader

Issues: Seek dismissal of the appeal

Result / Order: [Oral delivery]
The appeal is hereby dismissed.

Reason: The appellant requested that the appeal be dismissed.

Case Name: Arlington Assets Investment Ltd.
v
ING Bank N.V.

[High Court Civil Appeal No. 17 of 2010]

Date: Friday, 18th January 2013

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

Appearances:

Appellant: Ms. Sara-Jane Knock, with her, Mr. Jeremy Child

Respondent: Ms. Victoria Ann Lord

Issues: Status of matter – Appeal not proceeding

Result / Order: [Oral delivery]
The appeal is dismissed.

Case Name: Cyntelia Todman-Doswell
v
[1] Clifford Johnson
[2] Andrew Reid
[High Court Civil Appeal No. 9 of 2008]

Date: Friday, 18th January 2013

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

Appearances:

Appellant:	No appearance
Respondents:	No appearance

Issues: Status of matter

Result / Order: The matter is stood down.

APPLICATIONS AND APPEALS

Case Name: Euro Industries Ltd.
v
[1] Dr. Wolfgang Hertel
[2] Visoka Energy Corporation
[High Court Civil Appeal No. 2 of 2011]

Date: Friday, 18th January 2013

Coram: The Hon. Mde. Janice M. Pereira, Chief Justice
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal

**The Hon. Mr. Frederick Bruce-Lyle, Justice of Appeal
[Ag.]**

Appearances:

Appellant: Mr. John Carrington

Respondent: Ms. Rowena Lawrence

Issues:

Whether claimant entitled to summary judgment on cases as pleaded and evidence produced – Appeal against judge’s order granting summary judgment to claimant

Result / Order:

[Oral delivery]

- 1. The appeal is allowed and the matter is remitted to the court below for trial on the question as to whether the first respondent remains a Director in respect of the second respondent.**
- 2. Costs in in this appeal (including leave to appeal) and in the court below to be assessed by the master in the absence of agreement in 21 days.**

Reason:

The court was of the view that the learned trial judge ought not to have granted summary judgment given the clear conflicts disclosed on the affidavit evidence and the pleaded cases. The crux of the case in determining the status of the first respondent as a director required a detailed ventilation of the facts and circumstances in respect of the shareholding of the company in the face of the assertion by the appellant that its appointment as director was made by the shareholders of the company. A clear finding resolving these factual issues, given the evidence, would have necessitated oral evidence and cross examination. Further, the granting of summary judgment on behalf of the first respondent implicitly amounted to a final determination against the alleged shareholders to the effect that they were not shareholders of the company, thereby affecting their interest without having been heard, or of their being joined as parties to the proceedings for the purpose.

STATUS HEARING

Case Name:

Cyntelia Todman-Doswell

V

[1] Clifford Johnson

[2] Andrew Reid

[High Court Civil Appeal No. 9 of 2008]

Date:

Friday, 18th January 2013

Before:

The Hon. Mde. Janice M. Pereira, Chief Justice

Appearances:

Appellant:

No appearance

Respondents:

No appearance

Issues:

Status of matter

**Result / Order
& Reason:**

[Oral delivery]

Notice of discontinuance entered on 18th January 2013. Accordingly, the matter is discontinued.

APPLICATIONS AND APPEALS

Case Name:

Irvine Fletcher Scatliffe

V

Dora Scatliffe

[High Court Civil Appeal No. 4 of 2012]

Date:

Friday, 18th January 2013

Coram: The Hon. Mde. Janice M. Pereira, Chief Justice
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Frederick Bruce-Lyle, Justice of Appeal
[Ag.]

Appearances:

Appellant:	Ms. Charmaine Rosan-Bunbury
Respondent:	No appearance

Issues: Application for removal from record in accordance with rule 63.6 of the Civil Procedure Rules 2000

Result / Order and Reason: [Oral delivery]
The Affidavit of Service having been filed today 18th January 2013, and showing service as of 16th January 2013, the application is adjourned to be placed on the case Management List for hearing due to short service.