

# **COURT OF APPEAL SITTING**

**ANGUILLA  
26<sup>th</sup> – 28<sup>th</sup> November 2012**

## **APPLICATIONS AND APPEALS**

**Case Name:**

**Verne O’Flaherty  
v  
Regina**

**[High Court Criminal Appeal No. 6 of 2011]**

**Date:**

**Monday, 26<sup>th</sup> November 2012**

**Coram:**

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

**Appearances:**

**Appellant:**

**Mr. Verne O’Flaherty (in person)**

**Respondent:**

**Ms. Erica Edwards, with her, Mr. Ivor Greene  
(Attorney General’s Chambers)**

**Issues:**

**Application for extension of time to appeal – Time on  
remand not taken into account – Unlawful sexual  
intercourse**

**Result / Order  
& Reason:**

**[Oral delivery]  
The application for extension of time to appeal is  
dismissed.**

**Reason:**

**There was a delay of 6 years in making the  
application. The Court held that in all the  
circumstances there was no legal basis for taking  
into account in the sentence, the time the appellant  
had spent on remand.**

**Case Name:**

**Sheldon Brooks**

**v**

**Regina**

**[High Court Criminal Appeal No. 2 of 2008]**

**Date:**

**Monday, 26<sup>th</sup> November 2012**

**Coram:**

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

**Appearances:**

**Appellant:**

**Ms. Keesha Carty (instructed by K.C.W. et al) –  
amicus curiae**

**Respondent:**

**Ms. Erica Edwards, with her, Mr. Ivor Greene  
(Attorney General's Chambers)**

**Issues:**

**Appeal against conviction and sentence – Appellant  
to be assigned counsel**

**Result / Order:**

**[Oral delivery]**

**The Court assigns Ms. Keesha Carty as counsel for  
the appellant. This matter is adjourned to the week of  
22<sup>nd</sup> April 2013 when the Court of Appeal next sits in  
Anguilla.**

**Case Name:**

**Brilla Capital Investment Master Fund SPC  
Limited (a Cayman Island Segregated  
portfolio company, for and on behalf of Brilla  
Cap Juluca Segregated Portfolio M, a  
segregated Portfolio thereof)**

**v**

**[1] Registrar of Companies**  
**[2] Leeward Isles Resorts Limited (in Liquidation)**  
**[3] Maundays Bay Management Limited (in Liquidation)**  
**[4] William Tacon & Stuart Mackellar**  
**[5] Charles Hickox, Linda Hickox & Cap Juluca L & C Limited**

**[High Court Civil Appeal No. 2 of 2012]**

**Date:** Monday, 26<sup>th</sup> November 2012

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

**Appearances:**

**Appellant:** Mr. Robert Levy, QC, with him, Mr. Edward Knight and Mr. Ravi Bahadursingh (instructed by Alex Richardson & Associates)

**Respondents:** Mr. Ivor Greene (instructed by Attorney General's Chambers) for the 1<sup>st</sup> respondent  
Ms. Dahlia Joseph (instructed by) Daniel, Brantley & Associates) for the 2<sup>nd</sup> and 3<sup>rd</sup> respondents  
Ms. Joyce Kentish-Egan, with her, Ms. Tana'ania Small-Davis and Mr. Kerith Kentish (instructed by Joyce Kentish & Associates) on behalf of the fifth respondents

**Issues:** Application for leave to appeal paragraphs 1 to 3 of order dated 30<sup>th</sup> April 2012 by which the learned trial judge granted permission to the 4<sup>th</sup> respondents to sell certain assets of the 2<sup>nd</sup> and 3<sup>rd</sup> respondents to Mr. and Mrs. Hickox for the sum of US\$10,300.00

**Result / Order:** [Oral delivery]

1. As soon as practicable the Appellant/Third Interested Party shall inform all Respondents of the Notice of Appeal filed herein on 18<sup>th</sup> May, 2012.
2. The Respondents shall file and serve any Counter

Notices by no later than 17<sup>th</sup> December, 2012.

3. The Respondents shall inform the Appellant/Third Interested Party of the contents of the Record of Appeal by no later than 17<sup>th</sup> December, 2012.
4. The Appellant/Third Interested Party shall file and serve the Record of Appeal by no later than 11<sup>th</sup> January, 2013.
5. The Appellant/Third Interested Party shall file and serve any further Skeleton Arguments along with copies of Authorities by no later than 21<sup>st</sup> January, 2013.
6. The Respondents shall file and serve any further Skeleton Arguments along with copies of Authorities by no later than 18<sup>th</sup> February, 2013.
7. The Applicant/Third Interested Party shall file and serve any Skeleton Arguments in Reply, along with copies of Authorities, by no later than 4<sup>th</sup> March, 2013.
8. The matter shall be set down to be heard by the Court at its next sitting in Anguilla commencing 22<sup>nd</sup> April, 2013.
9. The estimated time for arguments by Counsel shall be one (1) day.
10. The costs of the Appellant/Third Interested Party and the Fifth Respondents/Second Interested Parties to be costs in the Appeal.

**Reason:**

The order in respect of which leave to appeal was sought was a final order (by the application test) and as such, upon a proper construction of section 29(4) of the Eastern Caribbean Supreme Court (Anguilla) Act (Chap. E15, Revised Statutes of Anguilla) no leave to appeal is required.

**Case Name:**

**A,B,C,D  
v  
E**

**[High Court Civil Appeal No. 1 of 2011]**

**Date:**

**Monday, 26<sup>th</sup> November 2012**

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

**Appearances:**

**Appellants:** Mr. Gerhard Wallbank (instructed by Webster Dyrud Mitchell)

**Respondent:** Ms. Ayodeji Bernard (instructed by Alex Richardson and Associates)

**Issues:** Refusal of Norwich Pharmacal and Banker's Trust relief in court below – Whether learned trial judge erred in applying the legal tests appropriate to establish whether it is proper to exercise the Norwich Pharmacal jurisdiction to the appellants' application for Bankers Trust relief

**Result / Order:** [Oral delivery with written reasons to follow]  
The appeal is allowed. No order as to costs.

**Reason:** The Court was not of the view that this matter should be remitted to the High Court to be tried de novo as it was not in the interest of the parties, nor the other persons involved, to have to go through such an expensive and lengthy procedure.

**Case Name:** Elfrida Hughes  
v  
Clive Hodge

**[High Court Civil Appeal No. 4 of 2012]**

**Date:** Tuesday, 27<sup>th</sup> November 2012

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

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

**Appearances:**

**Appellant:** Ms. Tara Ruan (instructed by Caribbean Juris Chambers)

**Respondent:** Ms. Jenny Lindsay (of Jenny Lindsay and Associates)

**Issues:**

**Costs on application to strike out and on application for assessment of costs – Whether the master erred in the exercise of her discretion by taking into account matters she ought to have not, and failing to take into account matters she ought to have taken into account**

**Result / Order:**

**[Oral delivery]**

**1. Paragraph 72 immediately preceding the conclusion of the assessment of costs decision by the master delivered on 11<sup>th</sup> June 2012 is amended as follows:-**

|                                   |                      |
|-----------------------------------|----------------------|
| <b>i) Fees to Mark Brantley</b>   | <b>zero</b>          |
| <b>ii) Fees to Dahlia Joseph</b>  | <b>zero</b>          |
| <b>iii) Fees to Jenny Lindsay</b> |                      |
| <b>(a) Correspondence</b>         | <b>zero</b>          |
| <b>(b) Telephone</b>              | <b>zero</b>          |
| <b>(c) Preparation</b>            | <b>US \$1,000.00</b> |
| <b>(d) Court Attendance</b>       | <b>US \$250.00</b>   |
| <b>(e) Disbursements</b>          | <b>US \$250.00</b>   |
| <b>Sub Total</b>                  | <b>US \$1,500.00</b> |

|                                                            |                      |
|------------------------------------------------------------|----------------------|
| <b>iv) Cost of the application for assessment of costs</b> | <b>US \$500.00</b>   |
| <b>Total</b>                                               | <b>US \$2,000.00</b> |

**2. Each party bears its own costs in the appeal.**

**Reason:**

**There was a sound basis for saying that the master had erred in the exercise of her discretion and the Court was entitled to review the situation, having regard to CPR 65.11(4). The master clearly went way outside the application which was before the Court and considered matters which were irrelevant and failed to consider matters which were relevant. The master found some costs items unnecessary and still**

proceeded to award on those items. The master found other costs items to be unreasonable, and proceeded to reduce these amounts to an award that she found reasonable. The problem with this however, was that the master was in fact considering the entire case and not just the application before her.