

**IN THE COURT OF APPEAL OF THE
EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES
APPEAL RESULTS
[22ND TO 26TH JUNE, 2009]**

Corum: The Honourable Chief Justice Hugh Rawlins
The Honourable Justice of Appeal Janice George-Creque
The Honourable Justice of Appeal Davidson Baptiste (Ag)

Date: Monday 22nd June 2009

HIGH COURT CRIMINAL APPEALS AGAINST CONVICTION

Case: Ewart Bacchus v The Queen
[Criminal Appeal No. 6 of 2008]

Appearances:

Appellant:- Mrs. Kay Bacchus-Browne for the Appellant.
Respondent:- Mr. Colin Williams, Director of Public Prosecutions, for the Respondent.

Issue: Murder – Appeal against conviction and sentence of 30 years imprisonment.

Result: By consent, the hearing of this matter is adjourned to the next sitting of the Court of Appeal in this jurisdiction.

Reason: On the application by Counsel for the Appellant.

HIGH COURT CRIMINAL APPEALS AGAINST SENTENCE
Kentish Campbell v The Queen
[Criminal Appeal No. 14 of 2008]

Appearances:

Appellant:- Mr. Ronald Marks for the Appellant.
Respondent:- Mr. Colin Williams, Director of Public Prosecutions, for the Respondent.

Issue: Robbery, Rape, Grievous Bodily Harm - Appeal against sentence – 15 years imprisonment for offence of rape and 5 years imprisonment for the offence of robbery – 12 years imprisonment for offence of robbery.

Result: Appeal having been withdrawn, is dismissed.

Reasons: On application by Counsel for Appellant.

Case: **Cyril Da Silva v The Queen**
[Criminal Appeal No. 2 of 2009]

Appearances:

Appellant:- Mr. Ronald Marks for the Appellant.
Respondent:- Mr. Colin Williams, Director of Public Prosecutions, for the Respondent.

Issue: Unlawful sexual intercourse - Appeal against sentence of 12 years imprisonment.

Result: By consent, the hearing of this appeal is traversed to the next sitting of the Court of Appeal in this jurisdiction.

Reason: On application by Counsel for the Appellant.

David Roberts v The Queen
[Criminal Appeal No. 8 of 2008]

Appearances:

Appellant: Ms. Samantha Robertson holding papers for Mr. Emery Robertson for the Appellant.

Respondent:- Mr. Colin Williams, Director of Public Prosecutions, for the Respondent.

Issue: Murder – Appeal against sentence of life imprisonment.

Result: Matter stood down until tomorrow Tuesday 23rd June 2009.

HIGH COURT CIVIL APPEALS

Case: **Harris Deane v Jennetha Lewis**
[Civil Appeal No. 22 of 2007]

Appearances:

Appellant:- Mr. Richard Williams for the Appellant.
Respondent:- Mr. Jaundy Martin for the Respondent.

Issue: The learned trial judge erred in finding that the defendant was in breach of contract.

Result: It is ordered by consent that the appellant/defendant forgoes the sum of \$5,126.30 in full and final settlement for the cost of the remedial works done to the respondent/claimant.

Reason: Parties have entered a consent order.

JUDGMENTS

Case: **Tortola Yacht Services Limited v Denroy Baptiste – British Virgin Islands [Civil Appeal No. 16 of 2008]**

Appearances:

Appellant:- Ms. N. Sylvester and Ms. P. Knights holding for Ms, Tana’ania Small-Davis for the Appellant.
Respondent:- Mr. Perry Joseph holding for John Carrington for the Respondent.

Issue: Damages for injuries sustained during the course of employment - whether the parties had arrived at a final and binding agreement to settle the claim - whether the trial judge erred in calculating the award for pain and suffering and loss of amenities - whether the judge erred in calculating loss of future earnings - whether the judge erred in the award of future medical expenses and in calculating special damages.

Result: Appeal is dismissed on all of the grounds. Order of the judge affirmed and the company to pay the costs of this appeal in accordance with Rule 65.15 (b) of CPR 2000, if not agreed.

APPLICATIONS

Case: **St. Vincent Insurance Limited v Thomas Ramage et al [Civil Appeal No. 5 of 2006]**

Appearances:

Appellant:- No appearance
Respondent:- Mr. Richard Williams for the First Respondent and Ms. Nicole Sylvester; Ms. Patina Knights for the Second and Third Respondents.
Issue: Application to attend oral examination.

Result: Application is withdrawn and accordingly dismissed.

Reason: On application by Counsel for the First Respondent.

Case: **Elwardo Lynch v Commissioner of Police [Magisterial Criminal Appeal No. 29 of 2008]**

Appearances:

Appellant:- Mrs. Kay Bacchus-Browne for the Appellant.
Respondent:- Mr. Colin Williams, Director of Public Prosecutions for the Respondent.

Issue: Extension of time for leave to comply with the order of the Court.

Result: (1) The application by the Appellant for extension of time to comply with order of the Honourable Justice Hariprasad Charles of 23rd December 2008 whilst she sat as single judge at this Court is granted.

(2) The Appellant will comply with that order by 4:00 p.m. Wednesday 24th June 2009.

Case: **Sheldon Bain v The Queen**
[Magisterial Criminal Appeal No. 8 of 2009]

Appearances:
Appellant:- In Person.
Respondent:- Colin Williams, Director of Public Prosecutions, for the Respondent.

Issue: **Application for** extension of time to appeal.

Result: Matter is dismissed being premature.

Reason: .Appellant has not been sentenced.

Christopher Wyllie v Hermus Cyrus
Civil Appeal No. 9 of 2009

Appearances:
Appellant:- Mr. Richard Williams for the Appellant.
Respondent:- Mr. Olin Dennie for the Respondent.

Issue: Application for leave to appeal.

Result: (1) By consent, the application for leave to appeal is treated as the appeal and accordingly judgment in default is set aside and the applicant has leave to defend claim on the Defence and Counterclaim filed herein on 7th January 2009.
(2) All further proceedings will be in accordance with Rules as if Defence was filed today.
(3) The applicant shall pay to the respondent \$1,000, costs for today's proceedings.

Reason: The slip rule can only be used for clerical errors and not where it changes the substance of an Order.

Case: **Elton Williams v The Commissioner of Police**
[Magisterial Criminal Appeal No. 14 of 2009]

Appearances:
Appellant:- In Person.
Respondent:- Mr. Colin Williams, Director of Public Prosecutions, for the Respondent.

Issue: Application for extension of time to appeal.

Result: (1) The Application for extension of time within which to appeal is granted.
(2) Further proceedings shall be in accordance with the relevant Rules.

Case: **Austin McDowall v Commissioner of Police**
[Magisterial Criminal Appeal No. 15 of 2009]

Appearances:

Appellant:- In Person.
Respondent:- Mr. Colin Williams, Director of Public Prosecutions, for the Respondent.

Issue: Application for extension of time to appeal.

Result: (1) The Application for extension of time within which to appeal is granted.
(2) Further proceedings shall be in accordance with the relevant Rules.

Case: **Doris Homer et al v Commissioner of Police**
[Magisterial Criminal Appeal No. 17 of 2008]

Appearances:

Appellant:- Mr. Jaundy Martin for the Appellant.
Respondent:- Mr. Colin Williams, Director of Public Prosecutions, for the Respondent.

Issue: Application for leave to appeal out of time.

Result: (1) The application for leave to appeal out of time is granted.
(2) The appellant to file appeal within 14 days of today's date.

Case: **Shamal Jackson v Commissioner of Police**
[Magisterial Criminal Appeal No. 23 of 2009]

Appearances:

Appellant:- Appellant In Person.
Respondent:- Mr. Colin Williams, Director of Public Prosecutions, for the Respondent.

Issue: Application for extension of time to appeal.

Result: (1) The Application for extension of time within which to appeal is granted.
(2) Further proceedings will be in accordance with the relevant Rules.

HIGH COURT CRIMINAL APPEALS AGAINST CONVICTION

Case: **Ezekiel Jacobs v The Queen**
[Criminal Appeal No. 21 of 2008]

Appearances:

Appellant:- In Person.
Respondent:- Mr. Colin Williams, Director of Public Prosecutions, for the Respondent.

Issues: Murder – Appeal against conviction and sentence of 30 years imprisonment.
Application for court appointed counsel.

Result: (1) The application by the appellant for counsel to be assigned by way of Legal Aid is granted given the nature of the matter.
(2) This Court appoints Mr. Ronald Marks to represent the appellant since he did the matter in the court below.
(3) The appeal is to be listed for hearing at the next sitting of the Court in this jurisdiction.

HIGH COURT CRIMINAL APPEALS AGAINST SENTENCE

Case: **Mitchell Isaacs v The Queen**
[Criminal Appeal No. 4 of 2007]

Appearances:

Appellant:- No appearance
Respondent:- Colin Williams Director of Public Prosecutions and Carl Williams Crown Counsel for the Respondent.

Issue: Wounding with intent – appeal against seven years imprisonment.

Result: **The** Appeal is dismissed for want of prosecution.

Reason: Appellant no longer in prison.

Case: **Whitney Williams v The Queen**
[Criminal Appeal No. 18 of 2007]

Appearances:

Appellant:- Samantha Robertson for the Appellant.
Respondent:- Colin Williams Director of Public Prosecutions and Carl Williams Crown Counsel for the Respondent.

Issue: Robbery – Appeal against sentence of 7 years imprisonment.

Result: **The** Appeal is dismissed. Sentence of 7 years imposed by trial judge is affirmed.

Reason: **The** Court cannot find any guideline or reason to disturb the exercise of the discretion used by the trial judge.

Before: **The Honourable Justice of Appeal, Ola-Mae Edwards**

FOR STATUS HEARING

HIGH COURT CRIMINAL APPEALS

Case: **James Welcome v The Queen**
[Criminal Appeal No. 27 of 2004]

Appearances:

Appellant:- No appearance
Respondent:- Mr. Carl Williams Crown Counsel holding papers for the Director of Public Prosecutions for the Respondent.

Issue: Wounding – Appeal against conviction and sentence of fine of \$10,000 to be paid in 3 months and placed on a bond to keep the peace for 5 years in default 5 years imprisonment.

Result: Proceedings stand dismissed. Appellant **has already** served his sentence.

Case: **Alphaeus Nanton v The Queen**
[Criminal Appeal No. 32 of 2007]

Appearances:

Appellant:- Ms. Samantha Robertson for the Appellant.
Respondent:- Mr. Carl Williams Crown Counsel holding for the Director of Public Prosecutions for the Respondent.

Issue: Rape – Appeal against conviction and sentence of 10 years imprisonment.

Result: Upon the Registrar's notice to the parties that the transcript is ready, the record of appeal and skeleton arguments of Appellant with authorities to be filed and served by 7th September 2009. The Respondent to file skeleton arguments and authorities to be filed and served on or before 21st September 2009. Appellant's Skeleton arguments in reply to be filed and served by 28th September 2009. The appeal is set down for hearing 5th to 9th October 2009

HIGH COURT CIVIL APPEALS

Case: **Leon Joseph v Janetta Joseph and the Housing & Land Development Corporation**
[Civil Appeal No. 17 of 2002]

Appearances:

Appellant:- Ms. Nicole Sylvester for the Appellant.
Respondent:- Ms. Michelle Fife for the Second Respondent

Issue: Striking out the claim and counterclaim in accordance with Part 15.2 of the Civil Procedure Rules 2000.

Result: Leave is granted for the withdrawal of the application filed on 21st March 2003 and notice of appeal filed on 19th December 2002 which stand dismissed

Case: **Blockmakers Ltd. V Alinda Harry**
[Civil Appeal No. 2 of 2004]

Appearances:

Appellant:- No appearance
Respondent:- In Person.

Issue: The award of \$1,000.00 cost inordinately low.

Result: Adjourned to Wednesday 24th June 2009 for service.

Case: **Reliance Press Limited v National Properties Limited**
[Civil Appeal No. 7 of 2005]

Appearances:

Appellant:- No appearance.
Respondent:- No appearance .

Issue: Setting aside of judgment in default of defence.

Result: Matter adjourned to Wednesday 24th June 2009 for service.

Case: **National Quarries Limited et al v Gregory McMillan**
[Civil Appeal No. 14 of 2007]

Appearances:

Appellant:- Mr. Stephen Williams for Appellant.
Respondent:- Ms. Paula David for the Respondent.

Issue: Excessive award of damages.

Result: Mr. Williams seeks leave to withdraw the appeal. Ms. David has no objections. Leave granted for notice of appeal filed on 16th May 2007 to be withdrawn.

Case: **Chatham Bay Club et al v Judith Jones-Morgan**
[Civil Appeal No. 21 of 2007]

Appearances:

Appellant:- Mr. Parnel R. Campbell Q.C. for the Appellant.
Respondent:- Ms. Michelle Fife for the Respondent.

Issue: Breach of conditions of A.L.H.L. costs.

Result:

- (1) Upon the receipt of notice under Part 62.9(b) Civil Procedure Rules 2000, the Respondent must communicate to the appellant within 7 days the document she wishes to include in the record bundle.
- (2) The appellant to prepare and file 6 sets of records in compliance with Part 62.12 (3), (4) and (5) within 14 days of being informed that the transcript is ready.
- (3) Any application to correct the record to be made within 7 days after service of the record.
- (4) Skeleton arguments with authorities to be filed and served by the appellant by 11th September 2009.

- (5) Respondent to file and serve skeleton arguments with authorities by 25th September 2009.
- (6) This appeal is set down for hearing during the sitting 5th to 9th October 2009.

Case: **The First St. Vincent Bank Ltd. v Arthur Williams**
[Civil Appeal No. 26 of 2007]

Appearances:

Appellant:- Mr. Stanley K. John for Appellant.
Respondent:- Mr. Parnel R. Campbell Q.C. for Respondent.

Issue: Striking out of fixed date claim.

Result: Mr. S.K. John seeks leave to withdraw appeal. Mr. P.R. Campbell has no objections. Leave is granted for notice of appeal filed on 23rd October 2007 to be withdrawn.

Case: **Daniel Cummings v Director of Public Prosecutions**
[Civil Appeal No. 28 of 2007]

Appearances:

Appellant:- No appearance
Respondent:- No appearance.

Issue: Exercise of judicial discretion - denial of costs.

Result: Adjourned to 23rd June 2009 for service.

Case: **Douglas O'Neal Creese v Vibert Creese**
[Civil Appeal No. 1 of 2008]

Appearances:

Appellant:- Mr. Perry Joseph for the Appellant.
Respondent:- Mrs. Kay Bacchus-Browne for the Respondent.

Issue: Unfair award by the court. Wrongful application of sections 34 and 39 of Administration of Estates Act 377.

Result: Further Case Management of this appeal adjourned to Wednesday 24th June for proof of service of notice of appeal on Respondent and information concerning transcript of proceedings.

MAGISTERIAL CRIMINAL APPEALS

Case: **Gregory De Caul v Commissioner of Police**
[Magisterial Criminal Appeal No. 25 of 2006]

Appearances:

Appellant:- In Person
Respondent:- Mr. Carl Williams Crown Counsel holding papers for the Director of Public Prosecutions for the Respondent.

Issue: Escaping lawful custody – Appeal against conviction and sentence

Result: **Appeal** Proceedings stand dismissed. Appellant has already served time and no notice of appeal has been filed pursuant to the order of Barrow J.A. on the 16th May 2006.

Case: **Stedman Adams v Commissioner of Police**
[Magisterial Criminal Appeal No. 36 of 2006]

Appearances:

Appellant:- No appearance.
Respondent:- Mr. Carl Williams Crown Counsel holding papers for the Director of Public Prosecutions for the Respondent.

Issue: Possession of a controlled drug with intent to supply to another – Appeal against sentences of 15 months imprisonment and 9 months; fine of \$5,000.00 in default 9 months imprisonment, sentences to run concurrently.

Result: Appellant has served his time. Appeal stands dismissed.

Case: **Godwin Sam v Commissioner of Police**
[Magisterial Criminal Appeal No. 38 of 2006]

Appearances:

Appellant:- Appellant In Person.
Respondent:- Mr. Carl Williams Crown Counsel holding papers for the Director of Public Prosecutions for the Respondent.

Issue: Criminal trespass – Appeal against sentence of 2 years imprisonment.

Result: Appellant withdraws appeal. Appeal stands dismissed.

Case: **Kaashif Ottley v Commissioner of Police**
[Magisterial Criminal Appeal No. 40 of 2006]

Appearances:

Appellant:- No appearance of Appellant.
Respondent:- Mr. Carl Williams Crown Counsel holding papers for the Director of Public Prosecutions for the Respondent.

Issue: Whether leave to appeal should be granted.

Result: Appeal stands dismissed.

Reason: Appellant has served his sentence.

Case: **Elvis Browne v Commissioner of Police**
[Magisterial Criminal Appeal No. 41 of 2006]

Appearances:

Appellant:- No appearance

Respondent:- Mr. Carl Williams Crown Counsel holding papers for the Director of Public Prosecutions for the Respondent.

Issue: Burglary – Appeal against conviction and sentence

Result: Appeal stands dismissed.

Reason: Appellant has served his sentence

Case: **Iso Lynch v Commissioner of Police**
[Magisterial Criminal Appeal No. 45 of 2006]

Appearances:

Appellant:- No appearance

Respondent:- Mr. Carl Williams Crown Counsel holding papers for the Director of Public Prosecutions for the Respondent.

Issue: Appeal against sentence of 4 years imprisonment.

Result: Appeal stands dismissed.

Reason: **Appellant has served his time**

Case: **Havid Hurst v Commissioner of Police**
[Magisterial Criminal Appeal No. 47 of 2006]

Appearances:

Appellant:- No appearance.

Respondent:- Mr. Carl Williams Crown Counsel holding papers for the Director of Public Prosecutions for the Respondent.

Issue: Trespassing and theft – Appeal against sentence of 4 years imprisonment.

Result: Appeal stands dismissed.

Reason: Appellant has served his time

MAGISTERIAL CIVIL APPEAL

Case: **P.H. Veira & Co Ltd v West India Development Co. Ltd**
[Civil Appeal No. 12 of 1997]

Appearances:

Appellant:- No appearance .
Respondent:- No appearance .

Issue: Court file not available.

Result: Matter adjourned to 24th June 2009 for service.

Coram: **The Honourable President Justice of Appeal Ola Mae Edwards**
The Honourable Justice of Appeal Janice George-Creque
The Honourable Justice of Appeal Davidson Baptiste (Ag)

Date: **Tuesday 23rd June 2009**

HIGH COURT CIVIL APPEAL

Case: **Julia Stowe v Berthia Stowe**
[Civil Appeal No. 19 of 2007]

Appearances:

Appellant:- Mr. Perry Joseph for the Appellant.
Respondent:- Mr. Olin Dennie for the Respondent.

Issue: The learned trial judge erred in law in his application of the principle adumbrated in Stonich v Stonich and Green v Green.

Results: Appeal allowed. Matter remitted to the High Court to be determined by a different judge
based on the principles under section 34 of the Matrimonial Causes Act Cap. 176 of the Laws of St Vincent and the Grenadines Revised edition (1990) . No order as to costs.

Reason: The Court was of the view that the court below did not apply the correct principles under Section 34 in determining the action, no doubt because the court received no assistance or help from counsel for the parties. Justice dictates in the circumstances therefore that the appeal be allowed and remit the matter to the court below for re-hearing before a different judge.

Corum: **The Honourable Chief Justice Hugh Rawlins**
The Honourable Justice of Appeal Davidson Baptiste (Ag.)
The Honourable Justice of Appeal Frederick Bruce-Lyle (Ag.)

HIGH COURT CRIMINAL APPEAL AGAINST SENTENCE

Case: **David Roberts v The Queen**

[Criminal Appeal No. 8 of 2008]

Appearances:

Appellant:- Ms. Samantha Robertson, Ms. Nicole Sylvester and Ms. Patina Knights for the Appellant.
Respondent:- Mr. Colin Williams, Director of Public Prosecutions and Mr. Carl Williams, Crown Counsel for the Respondent.

Issue: Murder – Appeal against sentence of life imprisonment.

Result: (1) The decision in the appeal is reserved to a day to be notified.
(2) Counsel for the parties shall present written submissions by filing the same within 21 days of today's date.
(3) The Director of Public Prosecutions shall provide in an appropriate affidavit evidence of the working of the parole system in Saint Vincent and the Grenadines the same to be filed within one month of today's date.

HIGH COURT CIVIL APPEALS

Case: **Earle Wilson v Stephanie Wilson**
[Civil Appeal No. 8 of 2008]

Appearances: **Appellant:-** Mr. Samuel Commissiong for the Appellant.
Respondent:- Ms. Nicole Sylvester and Ms. Patina Knights for the Respondent.

Issue: The learned trial judge erred as he awarded a life interest in the disputed Property to the respondent.

Results: The court being informed that the parties will conclude a final settlement of this appeal, the parties shall file a consent order on or before 23rd July 2009.

Case: **Rosalind Williams v Lennox Creese**
[Civil Appeal No. 1 of 2007]

Appearances: **Appellant:-** Mr. Emery Robertson Snr. for the Appellant.
Respondent:- Dr. Linton Lewis with him Ms. Andreas Coombs for the Respondent.
Ms. Nicole Sylvester with her Ms. Patina Knights for the Respondent.

Issue: The learned master erred in law when he struck out No. 162 of 2006 and the learned master erred in holding that Suit 415 of 2006 was barred by res judicata.

Result: (1) The parties shall agree on all of the documents that are to be in the Record on or before 30th June 2009.
(2) Solicitors for the appellant shall file and serve a supplemental Record of Appeal containing all of the documents agreed on or before 6th July 2009.
(3) If there are documents that are not agreed solicitors for the appellant shall file these in a separate record on or before 6th July 2009.
(4) This appeal is traversed to the next sitting of this Court in Saint Vincent and

the Grenadines during the week 5th October 2009.

(5) Cost for today shall be in the appeal.

Reason: Parties are unable to agree as to what document should be in Record of Appeal.

Corum: **The Honourable President Ola Mae Edwards**
The Honourable Justice of Appeal Janice George-Creque
The Honourable Justice of Appeal Davidson Baptiste (Ag)

Case: **Luella Mitchell v Maurice Jones**
[Civil Appeal No. 16 of 2006]

Appearances:

Appellant:- Mr. Emery Robertson Snr. for the Appellant.
Respondent:- Mr. Joseph Delves for the Respondent.

Issue: (1) Application to strike out appeal.
(2) The learned trial judge erred when he decided who was in actual possession of the land.

Result: Order on application – Application is withdrawn. Judgment reserved on substantive matter.

Corum: **The Honourable President Janice George-Creque**
The Honourable Justice of Appeal Davidson Baptiste (Ag.)
The Honourable Justice of Appeal Frederick Bruce-Lyle (Ag.)

Date: **Wednesday 24th June 2009**

Case: **Carmina Williams v Gweneth Shallow**
[Civil Appeal No. 10 of 2008]

Appearances:

Appellant:- Mr. Olin Dennie for the Appellant.
Respondent:- Mr. Stephen Williams for the Respondent.

Issue: The learned trial judge erred in law when he found that the Claimant was not estopped from claiming a share in matrimonial property.

Results: Appeal allowed. The cost to be borne by the respondent, agreed in the sum of \$2,000.00.

Reasons: (1) The court was of the view that the learned judge applied principles governing Part 3 of the Matrimonial Causes Act to this matter, which was not an ancillary proceeding brought pursuant to the provisions of the Matrimonial Causes Act.
(2) The appeal was allowed for the reason that those principles are not applicable to this case.

(3) Based on these findings, it becomes clear that the respondent's claim would have failed on an application of the principles in respect of the constructive trusts upon which the claim as pleaded was grounded.

Case: **Gershom Robertson v Baldwin King et al**
[Civil Appeal No. 20 of 2008]

Appearances:

Appellant:- Mr. Emery Robertson Snr. for the Appellant.
Respondent:- Mr. Andrew Cummings Q.C. for the Respondent.

Issue: Learned trial judge erred in law when they failed to appreciate that there were two different legal estates where root of respective title was pleaded by the claimant.

Result: Matter adjourned to the next sitting of the Court in Saint Vincent and the Grenadines.

Reason: Record of Appeal incomplete.

Corum: **The Honourable President Ola-Mae Edwards**
The Honourable Justice of Appeal Janice George-Creque
The Honourable Justice of Appeal Davidson Baptiste (Ag.)

Case: **Ulric White v Agnes White nee St. Hillaire**
[Civil Appeal No. 25 of 2007]

Appearances:

Appellant:- Mr. Olin Dennie for the Applicant.
Respondent:- Mr. Ronald Marks for the Respondent.

Issue: The learned master erred in his application of Section 34 of the Matrimonial Causes Act.

Results: Appeal allowed. Respondent to pay the appellant the sum of \$18,000.00 and Costs of \$3,330.00 being two-thirds of the \$5,000.00 awarded in the court below.

Reasons: The court was of the view that the judgment of the master does not reflect that he considered and applied the factors to be taken into account under Section 34 of the Matrimonial Causes Act in arriving at his decision not to make any property adjustment order and thus concluded that the master erred in the exercise of his discretion. On applying these principles to the evidence that was before the learned master in the fresh exercise of its discretion, the court came to its decision.

Corum: **The Honourable President Ola-Mae Edwards**
The Honourable Justice of Appeal Davidson Baptiste (Ag.)

The Honourable Justice of Appeal Frederick Bruce-Lyle (Ag.)

MAGISTERIAL CRIMINAL APPEALS AGAINST CONVICTION

Case: **Oscar Samuel v The Commissioner of Police**
[Magisterial Criminal Appeal No. 30 of 2008]

Appearances:

Appellant:- In Person.
Respondent:- Mr. Colin Williams Director of Public Prosecutions and Mr. Carl Williams Crown Counsel for the Respondent.

Issue: Possession of a firearm without a licence - Appeal against conviction and sentences of the following: - 2 years and 3 months imprisonment. 6 months imprisonment. Sentences to run consecutively.

Results: Appeal allowed and sentence reduced to 15 months imprisonment for unlawful possession of the .32 pistol with this sentence and the sentence of 6 months for unlawful possession of ammunition running concurrently.

Reason: There is a principle in law that once sentence has been passed it cannot be increased. It can only be decreased. Since the learned Magistrate recalled the appellant and increased his sentence from 15 months to 2 years and 3 months the original sentence of 15 months must stand.

Case: **Jamille Telemaque v Commissioner of Police**
[Magisterial Criminal Appeal No. 8 of 2009]

Appearances:

Appellant:- Mr. Ronald Marks for the Appellant.
Respondent:- Mr. Colin Williams Director of Public Prosecutions and Mr. Carl Williams Crown Counsel for the Respondent.

Issue: Possession of firearm without licence – Appeal against conviction and sentence of the following: - 2 years imprisonment - 3 months imprisonment to run concurrently.

Result: Leave is hereby granted for the Notice of Appeal dated 20th November 2008 to be amended to show that the appeal is against conviction only on the following grounds:- (1) That the chain of custody in relation to the weapon was broken from the evidence (2) that the gun exhibit was incorrectly labeled with regards to the serial number of the weapon. The appeal to be heard at the next sitting of this court in Saint Vincent on the 5th to 9th October 2009.

Reason: On application by the Appellant to substitute appeal against sentence for appeal against conviction.

Case: **Niclan King v Commissioner of Police**
[Magisterial Criminal Appeal No. 31 of 2008]

Appearances:

Appellant:- No appearance
Respondent:- Mr. Colin Williams Director of Public Prosecutions and Mr. Carl Williams Crown Counsel for the Respondent.

Issue: Burglary – Appeal against conviction and sentence of 6 months imprisonment.

Result: Notice of Appeal dated 18th March 2009 is dismissed.

Reason: Appellant has served time.

**Fitzroy Welcome v Commissioner of Police
Magisterial Criminal Appeal No. 19 of 2009**

Appearances:

Appellant:- In Person.
Respondent:- Mr. Colin Williams Director of Public Prosecutions and Mr. Carl Williams Crown Counsel for the Respondent.

Issue: Possession of unlicensed firearm - Appeal against conviction and sentence of the following – 3 years imprisonment. – 18 months imprisonment, to run concurrently.

Result: Appeal against conviction is withdrawn and dismissed. Appeal against sentence is allowed to the extent that the sentence is varied to reflect that time runs from the date of remand being 15th December 2008.

Reason: Remand time was not taken into consideration when sentenced.

Corum: **The Honourable President Janice George-Creque
The Honourable Justice of Appeal Davidson Baptiste (Ag.)
The Honourable Justice of Appeal Frederick Bruce-Lyle (Ag.)**

MAGISTERIAL CRIMINAL APPEALS AGAINST SENTENCE

Case: **Devon Ashton v Commissioner of Police
[Magisterial Criminal Appeal No. 27 of 2008]**

Appearances:

Appellant:- In Person
Respondent:- Mr. Colin Williams Director of Public Prosecutions and Mr. Carl Williams Crown Counsel for the Respondent.

Issue: Possession of unlicensed firearm - Appeal against sentence of the following:-
2 years and 6 months imprisonment – 6 months imprisonment, sentences to run concurrently.

Result: Appeal withdrawn and accordingly dismissed.

Reason: Appeal withdrawn by appellant.

Case: **Bernard Prescott v Commissioner of Police**
[Magisterial Criminal Appeal No. 3 of 2009]

Appearances:

Appellant:- In Person.
Respondent:- Mr. Colin Williams Director of Public Prosecutions and Mr. Carl Williams Crown Counsel for the Respondent.

Issue: Confiscation of weapon – Appeal against sentence of 2 years imprisonment.

Result: Appeal allowed. Sentence is varied to the extent that sentence will run from date of arrest, 3rd August 2008.

Reason: Remand time was not taken into consideration when sentenced.

Case: **Rodel Hazelwood v Commissioner of Police**
[Magisterial Criminal Appeal No. 4 of 2009]

Appearances:

Appellant:- In Person.
Respondent:- Mr. Colin Williams Director of Public Prosecutions and Mr. Carl Williams Crown Counsel for the Respondent.

Issue: Unlawful wounding – Appeal against sentence of 2 years imprisonment.

Result: Appeal dismissed. Conviction and sentence affirmed.

Reason: The court recognizes that every person has the guaranteed right to a fair trial in the circumstances of this case it cannot be said that the trial was unfair due to the lack of appearance of counsel. The record shows that the appellant did not indicate that he felt unable to present his defence to the Court. To the contrary, the record shows that the appellant engaged in and conducted his defence fully before the court. The court is of the view given the overwhelming facts adduced that even had counsel been present the result would have been the same. With that, there is no reason to disturb the sentence which is well within the guidelines of such an offence.

Case: **Gregory Allick v Commissioner of Police**
[Magisterial Criminal Appeal No. 18 of 2009]

Appearances:

Appellant:- In Person
Respondent:- Mr. Colin Williams Director of Public Prosecutions and Mr. Carl Williams Crown Counsel for the Respondent.

Issue: Possession of unlicensed firearm - Appeal against sentence of the following:-

– 2 years imprisonment;– 1 ½ years imprisonment; -
4 ½ years imprisonment;– 2 years imprisonment; all sentences are
concurrent.

Result: Appeal is withdrawn and accordingly dismissed.

Reason: Appellant withdraws appeal.

Case: **Mark Shallow v Commissioner of Police**
[Magisterial Criminal Appeal No. 20 of 2009]

Appearances:

Appellant:- Mr. Ronald Marks for the Appellant.
Respondent:- Mr. Colin Williams Director of Public Prosecutions and Mr. Carl Williams
Crown Counsel for the Respondent.

Issue: Possession of a controlled drug - Appeal against sentence of the following:-
– fined \$8,500 to be paid in 3 months, in default 15 months
imprisonment. – Fined \$2,500 to be paid in 2 days or 8 months
imprisonment. Sentences to run concurrently.

Result: Appeal allowed to the extent that the sentence is varied that further time should
be granted to the appellant to make payment of the fines and so time is
extended until Friday 30th October 2009, provided that he makes a payment of
\$1,000 on account of the said fines no later than 3:00 p.m. Thursday 25th June
2009, failing which the custodial sentences will remain as they are.

Reasons: The court was mindful of the principle that once a fine is imposed that it should
not be whereby a person should not be given a proper opportunity within which
to pay the fine in accordance with their means, because it may appear that in
essence you are giving it in one hand and taking it back with the other.

Case: **Joseph Marshall v Commissioner of Police**
[Magisterial Criminal Appeal No. 21 of 2009]

Appearances:

Appellant:- Mr. Stephen Williams for the Appellant.
Respondent:- Mr. Colin Williams Director of Public Prosecutions and Mr. Carl Williams
Crown Counsel for the Respondent.

Issue: Possession of a controlled drug - Appeal against sentences as follows:-
– fined \$25,000 – pay \$3,000 forthwith remainder in 3 months or 2
years imprisonment – fined \$1,500 in 2 months or 6 months
imprisonment to run concurrently.

Result: Appeal allowed to the extent that the sentence is varied that the time for
payment remaining outstanding on the fine be extended until Friday 30th
October 2009 on condition that the appellant pay on account of the said fines
the sum of \$2,000 no later than Friday 26th June 2009. Failing payment the
custodial sentences as imposed shall take effect there being no reason to

disturb the periods so given.

Reason: The court is of the view that time should be extended for the payment of the remainder due on the fine in light of the fact that the record does not reflect that a means test was conducted.

Case: **Kevin Robinson v Commissioner of Police**
[Magisterial Criminal Appeal No. 22 of 2009]

Appearances:
Appellant:- In Person.
Respondent:- Mr. Colin Williams Director of Public Prosecutions and Mr. Carl Williams Crown Counsel for the Respondent.

Issue: Possession of unlicensed firearm - Appeal against sentences as follows:-
240 of 2009 – 2 years 3 months imprisonment; 241 of 2009 – 3 months imprisonment; 242 of 2009 – 1 year imprisonment; 243 of 2009 – 1 year imprisonment, to run concurrently.

Result: Appeal is withdrawn and accordingly dismissed.

Reason: Appellant withdrew the appeal.

Before: **The Honourable Justice of Appeal, Ola-Mae Edwards**

FOR STATUS HEARING
HIGH COURT CIVIL APPEALS

Case: **Daniel Cummings v Director of Public Prosecutions**
[Civil Appeal No. 28 of 2007]

Appearances:
Appellant:- Mr. Emery Robertson for the Appellant.
Respondent:- In Person.

Issue: Exercise of judicial discretion - denied of costs.

Result: The notice of appeal is struck out and dismissed.

Reason: The appeal is against an interlocutory order for which leave to appeal is required and so the notice of appeal is a nullity.

Case: **Blockmakers Ltd. v Alinda Harry**
[Civil Appeal No. 2 of 2004]

Appearances:
Appellant:- Mr. Carlyle Dougan Q.C. for the Appellant.

Respondent:- In Person.

Issue: The award of \$1,000.00 cost inordinately low.

Result: Matter is reported settled. Leave granted for withdrawal of the appeal.

Case: **Reliance Press Limited v National Properties Limited**
[Civil Appeal No. 7 of 2005]

Appearances:

Appellant:- Mr. Carlyle Dougan Q.C. for the Appellant.

Respondent:- Mr. Stephen Williams holding for Mr. Grahame Bollers for the Respondent.

Issue: Setting aside of judgment in default of defence.

Result: **The** appeal stands dismissed as no leave was given to appeal.

Reason: **The** appeal is against an interlocutory order and so is a nullity.

Case: **Douglas O'Neal Creese v Vibert Creese**
[Civil Appeal No. 1 of 2008]

Appearances:

Appellant:- Mrs. Ada Johnson holding papers for Mr. Perry Joseph for the Appellant.

Respondent:- Mrs. Kay Bacchus-Browne for the Respondent.

Issue: Unfair award by the court. Wrongful application of Sections 34 and 39 of Administration of Estates Act 377.

Result: **The** notice of appeal having not been served on respondent since 1st February 2008 the date of filing, the appeal stands dismissed.

MAGISTERIAL CIVIL APPEAL

Case: **P.H. Veira & Co Ltd v West India Development Co. Ltd**
[Civil Appeal No. 12 of 1997]

Appearances:

Appellant:- No appearance.

Respondent:- No appearance.

Issue: Court file not available and cannot be found in the Magistrates Court. No Evidence that appellant intends to pursue the appeal.

Result: Notice of appeal dated 31st March 1995 stands dismissed.