

CHAMBER HEARING

Tuesday 16th February 2010

BEFORE Hon. Ola Mae Edwards, Justice of Appeal

ST. LUCIA **HEARING**

Case Name The Bank of Nova Scotia Lucella Joseph
[Civ. App. No. 42 of 2009]

Appearances

Applicant Mr. Gerard Williams

Respondent No appearance

Issue: Application for leave to appeal

Result:

1. Leave is hereby granted for the applicant to file and serve an application for leave to appeal by 26th February 2010.
2. The application for leave to appeal to be determined at the next Chamber Hearing date being 30th March 2010.
3. A paginated Record of Appeal to be filed containing application for summary judgment and all other relevant documents determining the application for leave by 19th March 2010.

Case Name Gregory Aimable v Lennie Anthony
[Civ. App. No. 3 of 2010]

Appearances:

Appellant: Mr. Gerard Williams

Respondent: Ms. Vanessa Williams holding papers for Ms. Natalie Augustin

Issue: Application for leave to appeal

Result: Leave is hereby granted to the appellant to withdraw the application for leave to appeal with no order as to costs.

Reason: The application is pre-mature

Case Name Janice Martyr et al v Elwin Cox
[Civ. App. No. 3 of 2006]

Appearances:
Appellant: No appearance (On record Jeannot Walters)
Respondent: Mrs. Wauneen Louis-Harris holding for Mr. Vern Gill

Issue: Dismiss appeal for what of prosecution

Result: The application filed on 14/1/10 is granted and the appeal is dismissed with no order as to costs.

Reason: Application for leave has been filed over two years ago

Case Name Ruth Joseph v The Bank of Nova Scotia
[Civ. App. No. of 2010]

Appearances:
Appellant: Mrs. Wauneen Louis-Harris
Respondent: Mr. Horace Fraser

Issue: Application for leave to appeal

Result: **Directions:**
1. The applicant to transmit to the Court of Appeal and serve on all the parties a copy of the order of master Lanns and an application for leave with the correct title by the 26th February 2010
2. The respondent to file and serve on applicant submissions where the application is being opposed by 23rd March 2010
3. The application is adjourned to the next Chamber date being 30th March 2010.

Case Name **Reuben Ephraim Smith v Celestine Claudia Smith**
[Civ. App. Nos. 14 of 2009]

Appearances:
 Appellant: **Mrs. Veronica Barnard**
 Respondent: **Mr. Mark Maragh**

Issue: **Application for security for costs**

Result: **Upon the undertaking of counsel for the appellant to hold the manager's cheque for \$286,110.00 until the determination of the appeal the application is dismissed with no order as to costs.**

Reason: **No evidence that the appellant will not satisfy the appeal of the respondent is successful**

Case Name **Cyril Donnelly v Samuel Fletcher**
[Civ. App. No. 33 of 2009]

Appearances:
 Appellant: **Mrs. Petra Nelson**
 Respondent: **Mr. Horace Fraser**

Issue: **Application for extension of time to file Record of Appeal**

Result: **Oder:**
 1. The test for relief from sanctions having been satisfied the application is granted.
 2. The appellant to prepare and file with leave of the court office six sets of the Record of Appeal by the 4th march 2010.
 3. The appellant to comply with CPR 62.12 (3) (4) (5) (6) and the parties to comply with CPR 11 in relation to skeleton arguments.
 4. Appeals 33 and 34 of 2009 to be consolidated.
 5. Appeal set down for hearing during the next sitting in Saint Lucia for the week of March 22nd 2010.
 6. No order as to costs.

Reason: **The test for relief from sanctions has been satisfied.**

Case Name Frederick Augustus v The Mayor & Citizens of Castries
[Civ. App. No. 40 of 2009]

Appearances:
Appellant: Ms. Cynthia Hinkson-Oulah
Respondent: Mrs. Esther Greene-Ernest

Issue: Application for leave to appeal/striking out claim for constitutional motion on grounds that the wrong procedure was used.

Result: **Order:**
1. Having perused documentary exhibits presented at the hearing it is clear that the claim filed was not originating summons but fixed date claim in compliance of CPR 56.7 (1) (2).
2. Upon concession of Mrs. Ernest that an error occur in the court below and with consent of parties, the application for leave is granted and is hereby treated as the notice of appeal.
3. The appeal is allowed with no order as to costs.
4. Counsel for the appellant to transmit to the Court of Appeal a copy of the order to the Court made on 10th November, 2009 on or before 17th February, 2010.
5. The matter is remitted to the court below for hearing.

Reason: The test for reasonable success on appeal has been satisfied.

Case Name Romiel Martelly v The Queen
[Mag. Crim. App. No. 2 of 2009]

Appearances:
Appellant: No appearance (Mr. Alfred Alcide on Record)
Respondent: Mr. Seryozha Cenac

Issue: Application for extension of time

Result: The application for extension of time to appeal against conviction and sentence imposed by the district court for indecent assault on the 16th September 2008 is dismissed.

Reason: The proper protocol in notifying the court that Mr. Alcide was ill was not followed. The court insists that medical certificates should be submitted.

CASE MANAGEMENT

ANGUILLA

Case Name Edwin McLaurence Hughes v La Baia Limited
[Civ. App. No. 8 of 2006]

Appearances:
Appellant: Ms. Jenny Lindsay
Respondent: Keithley Lake & Associates

Issue: Abridgment of time for this application to be heard, security for costs/stay of execution

Result: IT IS ORDERED THAT:

The respondent's application filed on 27th January, 2010 and the appellant's application filed on 1st February, 2010 are adjourned to be determined along with the application for leave to appeal to Her Majesty in Council by teleconference on 23rd February, 2010 at 10:00 am.

ANTIGUA AND BARBUDA

Case Name Robin K.M. Yearwood v Christian Yearwood
[Civ. App. No. 26 of 2009]

Appearances:
Appellant: Marshall & Co.

Respondent: Sylvia N. Camacho O'Mard

Issue: Application for discontinuance of appeal

Result: IT IS ORDERED THAT:

Leave is hereby granted to discontinue the appeal which stands dismissed subject to a cost order application being made within 14 days from the date of this order.

Case Name: American International Bank (In Receivership) v Landmark Ltd. et al
[Civ. App. No. 3 of 2010]

Appearances:

Appellant: Marshall & Co.

Respondent: Hamilton & Associates

Issue: Injunction from withholding services

Result: IT IS ORDERED THAT:

1. The respondents are hereby restrained in terms of the attached approved draft order as amended.
2. The matter is adjourned to the 5th March 2010 for inter parties hearing by teleconference at 11:00 am.
3. The respondents in the event of opposing the continuation of the injunction until the determination of the appeal, to file and serve and transmit to the Court of Appeal a notice in opposition with supporting affidavit where necessary and submissions on or before 1st March, 2010.
4. The appellant to file, serve and transmit to the Court of Appeal submissions in reply on or before 3rd March, 2010.

DOMINICA

Case Name: Royal George v Dominica Agricultural Industrial and Development Bank
[Civ. App. No. 9 of 2007]

Appearances:

Appellant **Not on Record**

Respondent: **Not on Record**

Issue: **Application for extension of time to file and serve submissions**

Result: **IT IS ORDERED THAT:**

1. The Registrar of the High Court in Dominica is to transmit to the Court of Appeal copies of the case files for Suits Nos. 281, 282 of 1995 and No. 361 of 2000 on or before 9th March, 2010.
2. The application of the appellant is granted and he is to file skeleton arguments and serve a copy on the respondent on or before 5th March, 2010.
3. The respondent may file and serve skeleton arguments in reply on or before 27th March, 2010.
4. The appeal is set down for case management before Edwards, J.A. as soon as the files have been transmitted to the Court of Appeal on a date to be fixed by the Chief Registrar.
5. The appeal is set down for hearing at the next sitting of the Court in Dominica during the week of 19th – 23rd April, 2010.

Case Name: **J. Astaphan & Co. (1970) Limited v Alfred Dib**
 [Civ. App. No. 7 of 2009]

Appearances:

Appellant: **de Freitas, de Freitas & Johnson**

Respondent: **Gerald Burton Chambers**

Issue: **Application to extend time to file skeleton arguments and record of appeal**

Result: **IT IS ORDERED THAT:**

1. Time is extended to 9th March, 2010 for the filing and service of skeleton arguments and record of appeal by the appellant.
2. The appellant is hereby granted relief from sanctions.

Case Name: Shirley Lee Dorsett v Thomas Bernard Dorsett
[Civ. App. No. 12 of 2009]

Appearances:
Appellant: Thomas Bernard Dorsett
Respondent: David Bruney

Issue: Application for extension of time to appeal

Result: IT IS ORDERED THAT:

1. The applicant/respondent is to file and serve on or before the 15th March, 2010 an amended application by motion with supporting affidavit seeking: (i) leave to appeal the decree absolute pursuant to section 30 (2)(e) of the Eastern Caribbean Supreme Court (Dominica) Act, Cap. 4:02 of the Dominica Revised Laws 1990 and Rule 62.2 of Civil Procedure Rules 2000; and (ii) permission to appeal out of time pursuant to the Supreme Court Rules Ord. 59 r.4 and Ord. 59. r.14.
2. The respondent has liberty to file and serve an affidavit in opposition to the amended application by way of motion and skeleton arguments on or before 29th March, 2010.
3. A copy of the amended application by motion, the relevant certificates of the Registrar, the decree nisi, decree absolute, and all of the documents that were filed by the petitioner after the petition was served on the respondent/applicant, must be exhibited with the application by motion and together with the respondent's documents filed in opposition and the submissions and authorities of both counsel, must be collated in a paginated and indexed bundle for the hearing of the application.
4. The paginated and indexed bundle must be filed and served by the applicant on or before 6th April, 2010 for transmission to the Court of Appeal.
5. The summons seeking a declaration filed on the 20th August, 2009 and the amended application by motion will be heard by the Full Court at the next sitting of the Court in Dominica on the 19th – 23rd April, 2010.

Case Name: The Attorney General et al v Stewco Construction Company Limited et al
[Civ. App. No. 3 of 2010]

Appearances:
Appellant: Attorney General Chambers
Respondent: Not on Record

Issue: Application for leave to appeal

Result: IT IS HEREBY ORDERED AND DIRECTED THAT:

6. The respondent to file and serve a notice indicating whether the application for leave to appeal is being opposed, in compliance with Practice Directions No. 2 of 2008 PD2(b)(ii) and No. 3 of 2008 PD3(c) on or before 10th March, 2010; and any evidence on which it intends to rely along with skeleton arguments on or before 10th March, 2010 if the application is being opposed.
7. The applicant to file and transmit to the Court of Appeal a copy of the judgment entered by the Registrar, the application to set aside the judgment, and the order of Master Mathurin on or before 6th March, 2010.
8. The applicant to file and serve an affidavit in reply where necessary with submissions on or before 17th March, 2010.
9. The application is adjourned to the 30th March, 2010 to be determined by a single judge on paper without a hearing.

GRENADA

Case Name: Eslee Carberry v Law Office of Raphael Baptiste et al
[Civ. App. No. 10 of 2009]

Appearances:
Appellant: Not on Record
Respondent: Not on Record

Issue: Permission to oppose the notice of appeal

Result: IT IS ORDERED THAT:

The appeal is adjourned to the next sitting of court in Grenada during the week 3rd to 7th May, 2010.

Case Name: Faban Cadore v Claris Gay et al
[Civ. App. No. 17 of 2009]

Appearances:

Appellant: G.E.D. Clyne

Respondent: George & Ventour

Issue: Application for leave to appeal and strike out appeal

Result: IT IS HEREBY ORDERED BY CONSENT THAT:

1. The applicant/defendant is hereby granted leave to appeal to the Court of Appeal from the viva voce order of the Learned Master Cheryl Mathurin dated 8th December, 2009.
2. The proceedings pursuant to the viva voce order of the Learned Master Cheryl Mathurin dated 8th December, 2009 be stayed until the appeal therefrom is heard and determined.
3. The counter-notice of appeal filed herein on the 5th day of January 2010 be struck out.
4. The applicant is to file and serve the order of Master Mathurin, the notice of appeal and written submissions on or before 9th March, 2010.
5. The respondent to file and serve opposing submissions on or before 17th March, 2010.
6. The procedural appeal to be determined by a single judge on paper.
7. Costs are in the appeal.

Case Name: SGL Holdings Inc. v Aiham Shammas
[Civ. App. No. 2 of 2010]

Appearances:

Appellant: G.E.D. Clyne

Respondent: Mr. Anselm Clouden

Issue: Application for leave to appeal and stay of proceedings

Result: IT IS ORDERED THAT:

1. The application for leave to appeal filed on the 2nd February, 2010 is adjourned to the next sitting of the court in Grenada during the week 3rd – 7th May, 2010 for hearing by the Full Court.
2. The applicant to prepare, file and serve:
(1) 5 copies of a paginated and indexed bundle for the hearing containing: (a) the pleadings, (b) the application for summary judgment, (c) the witness statements of the applicant that the learned Master considered in arriving at her decision, (d) the application for leave to appeal with submissions of applicant, and (e) the opposing evidence and submissions of respondent.

3. The parties are to consider and communicate to the Chief Registrar whether they wish the hearing to be treated as both the hearing of the application and the hearing of the appeal.

**SAINT KITTS
AND NEVIS**

Case Name: Nevis Island Administration et al v Caribbean Cable Communications (Nevis) Limited
[Civ. App. No. 7 of 2005]

Appearances:
Appellant: Attorney General Chambers
Respondent: Brantley, Daniel & Associates

Issue: Application for extension of time to appeal

Result: IT IS DIRECTED THAT:

1. The appellants are to file and serve and transmit to the Court of Appeal proof service of the notice of appeal on the respondent on or before 26th February, 2010.
2. A copy of the transcript of the proceedings and or the notes evidence taken by His Lordship Belle J at the inter parties hearing on the 11th December are to be obtained and transmitted to the Court of Appeal on or before 2nd March, 2010.
3. The record of appeal in the (prescribed copies) comprising all the applications and documents that were before Belle J, opposing affidavits, orders, and submissions from counsel for the parties are to be prepared, filed and served by appellants' counsel on or before 2nd March, 2010.
4. The appeal is set down for further case management in St. Kitts and where possible will be heard at the next sitting of the Court in St. Kitts during the week of 15th – 19th March, 2010.

Case Name: Dion Newman v The Licensing Authority
[Mag. Crim. App. No. 7 2009]

Appearances:
Appellant: Hesketh W. Benjamin

Respondent: Director of Public Prosecution

Issue: Application for extension of time to appeal

Result: IT IS ORDERED THAT:

1. The application for extension of time to file and serve a notice of appeal against the conviction and sentence imposed on the applicant by the Magistrate in Case Number DB184/2009 for driving without due care and attention is granted.
2. The applicant shall file and serve the notice of appeal on the Magistrate and the other party within 14 days of the date of this order is served on the applicant.
3. An affidavit proving service of the notice of appeal shall be filed and transmitted to the Court of Appeal within 10 days of such service.
4. Within 3 days of serving the notice of appeal the appellant shall enter into recognizance before a Magistrate with or without sureties as the Magistrate may direct on condition that the appellant shall appear before the Court of Appeal and pay such costs as may be awarded by the said Court; or if the Magistrate thinks it expedient the Magistrate may direct that instead of entering into recognizance the appellant is to give such other security by payment of money into Court or otherwise as the Magistrate deems sufficient.
5. The Magistrate shall within 10days of being served with the notice of appeal transmit to the Registrar of the Court of Appeal a copy of the proceedings and all papers relating to the appeal together with a concise memorandum of his/her reason for decision.

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Case Name: Dillano Olive v The Commissioner of Police
[Mag. Crim. App. No. 2 of 2010]

Appearances:
Appellant: In Person

Respondent: Director of Public Prosecutions

Issue: Application for extension of time to appeal

Result: IT IS ORDERED THAT:

1. The application is adjourned to the next sitting in St. Vincent during the week of 31st May – 4th June 2010 to be heard by the Full Court
2. The application and notice of appeal is to be transmitted to the Director of Public Prosecutions by the Deputy Chief Registrar on or before 5th March, 2010.

Case Name: Trevor Perotte v Commissioner of Police
[Mag. Crim. App. No. 3 of 2010]

Appearances:

Appellant: In Person

Respondent: Director of Public Prosecutions

Issue: Application for extension of time to appeal

Result: IT IS ORDERED THAT:

3. The application is adjourned to the next sitting in St. Vincent during the week of 31st May – 4th June 2010 to be heard by the Full Court
4. The application and notice of appeal is to be transmitted to the Director of Public Prosecutions by the Deputy Chief Registrar on or before 5th March, 2010.

Case Name: Ayton Limited et al v Andrew Popely
[Civ. App. No. 16 of 2009]

Appearances:

Appellant: P.R. Campbell & Co.

Respondent: Stanley K. John

Issue: Application for permission to file record of appeal and skeleton arguments out of

time

Result:

IT IS DIRECTED THAT:

The notice of application is defective for referring to the grounds in the affidavit instead of setting out the grounds in the notice as specified by the Rules and for failing to apply for relief from sanction and is accordingly dismissed.

Case Name:

**First Caribbean International (Barbados) Limited v Carlos Maloney & Company Limited
[Civ. App. No. 19 of 2009]**

Appearances:

Appellant: P.R. Campbell & Co

Respondent: S.E. Commissiong & Co

Issue:

Application for permission to grant Record of Appeal and skeleton argument out of time

Result:

IT IS ORDERED THAT:

The notice of application is defective for referring to the grounds in the affidavit instead of setting out the grounds in the notice as specified by the Rules and for failing to apply for relief from sanction and is accordingly dismissed.

**BRITISH
VIRGIN
ISLAND**

Case Name:

**Percival Williams v Elihu Rhymer
[Civ. App. No. 17 of 2009]**

Appearances:

Appellant: Orion Law

Respondent: Samuel Richardson & Co.

Issue:

Application for stay of execution

Result:

IT IS ORDERED THAT:

1. The application for stay filed on the 6th January, 2010 by the appellant/applicant is granted.
2. The Orders of the court dated 22nd July, 2009 and 18th November, 2009 are stayed pending the determination of the appeal.
3. The appellant, his servants or agents are restrained from carrying out any further construction on, addition to, alteration or demolition of his residential building which is the subject of the 2 orders until the appeal is determined.
4. Costs be in the appeal.