

COURT OF APPEAL SITTING

**SAINT LUCIA
12th – 16th December 2011**

STATUS HEARING

Case Name: Simon Marius v The Queen
[High Court Criminal Appeal No. 7 of 2008]

Date: Monday, 12th December 2011

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

Appearances:

Appellant:	Mr. Leslie Mondesir holding for Mr. Lorne Theophilus
Respondent:	Mrs. Victoria Charles-Clarke, Director of Public Prosecutions

Issue: Status of the appeal

Result / Order: [Oral delivery]
This matter is adjourned to the next status hearing in Saint Lucia in the year 2012 to give the appellant an opportunity to have the Registrar instruct new counsel to represent him on his appeal.

Reason: The appellant who was present indicated, as he did previously in writing, that he intended to get new counsel.

Case Name: John Pierre v Saint Lucia Air & Sea Ports Authority
[High Court Civil Appeal No. 6 of 2002]

Date: Monday, 12th December 2011

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

Appearances:

Appellant:	No appearance
Respondent:	Ms. Nandi Deterville

Issue: Status of the appeal

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

Reason: The appellant did not appear and neither did he file the Notice of Intention to Proceed in accordance with the notice issued on 13th October 2011.

Case Name: Kate Wilson v Peter Lafitte
[High Court Civil Appeal No. 29 of 2003]

Date: Monday, 12th December 2011

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

Appearances:

Appellant:	No appearance
Respondent:	No appearance

Issue: To determine the status of the appeal.

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

Reason: A Notice of Discontinuance was filed on 16th November 2011. Further, there was no appearance of the parties.

Case Name: Sylvester Cox v John Emmanuel
[High Court Civil Appeal No. 19 of 2004]

Date: Monday, 12th December 2011

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

Appearances:

Appellant: Ms. Nandi Deterville

Respondent: No appearance

Issue: Status of the appeal – Application that counsel be removed from the record

Result / Order: [Oral delivery]
It is hereby ordered that:
1. The said application stands dismissed for failure to comply with CPR 63.6;
2. The appellant having not filed the Notice of Intention to Proceed in accordance with the notice issued herein by the Chief Registrar on 22nd November 2011, the appeal is dismissed.

Reason: The Court noted that there was no evidence of service on the appellant of the application filed on 15th November 2011. However, this appeal had been outstanding for a long time and the appellant had failed to file a Notice of Intention to Proceed.

Case Name: Benjamin Drakes v Trevor Jordan

[High Court Civil Appeal No. 14 of 2005]

Date: Monday, 12th December 2011

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

Appearances:

Appellant:	No appearance
Respondent:	Mr. Vern Gill

Issue: Status of the appeal

Result / Order: [Oral delivery]
The appeal is dismissed for want of prosecution.

Reason: Mr. Gill was no longer representing the respondent and the appellant, who was unrepresented by counsel, did not appear.

Case name: Rachel R. Atkinson v Gertrude Mathurin
[High Court Civil Appeal No. 2 of 2007]

Date: Monday, 12th December 2011

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

Appearances:

Appellant:	Mr. Ermin Moise
Respondent:	Ms. Lydia Faisal

Issue: Status of the appeal

Result / Order & Reason: [Oral delivery]
The appellant not having filed the Notice of Intention to Proceed in accordance with the notice issued

herein by the Chief Registrar on the 13th October 2011, it is hereby ordered that this appeal is dismissed.

**Further
Reasons:**

The appellant had not given instructions to counsel on this matter for a very long time.

Case name:

**Heirs of Avril Africain represented by LPR
Bendict Joseph v Estate of Adrienne Felicien
represented by Antonius Ralph Felicien
[High Court Civil Appeal No. 9 of 2007]**

Date:

Monday, 12th December 2011

Before:

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

Appearances:

Appellant:

No appearance

Respondent:

Mr. Dexter Theodore

Issue:

Status of the appeal

Result / Order:

[Oral delivery]

- 1. The matter is adjourned to the next status hearing in Saint Lucia in the year 2012;**
- 2. The Chief Registrar is to have the Bailiff serve a new Notice on counsel for the respondent and personally on Benedict Joseph, the representative of the appellants, whose address appears on the Notice of Appeal;**
- 3. The Bailiff is to file evidence of service on the parties accordingly.**

Reason:

The appellant was not served with a Notice from the Registrar requesting the filing of a Notice of Intention to Proceed.

Case name: Northwest Limited v Maryanna Emmanuel
[High Court Civil Appeal No. 17 of 2007]

Date: Monday, 12th December 2011

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

Appearances:

Appellant:	No appearance
Respondent:	No appearance

Issue: Status of the appeal

Result / Order: [Oral delivery]

1. The appellant not having been served with the Notice from the Registrar requesting Notice of Intention to Proceed, the matter is adjourned to the next status hearing in Saint Lucia in the year 2012;
2. The Chief Registrar is directed to have the Bailiff serve a new Notice on counsel for the respondent and personally on the appellant company;
3. The Bailiff is to file evidence of service on the parties accordingly.

Reason: No evidence of service on either party was filed.

Case Name: Vincent David and Others v Lawrence David and Others
[High Court Civil Appeal No. 19 of 2007]

Date: Monday, 12th December 2011

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

Appearances:		
	Appellant:	No appearance
	Respondent:	Mr. Dexter Theodore
Issue:		Status of the appeal
Result / Order:		[Oral delivery] The appellant not having filed the Notice of Intention to Proceed in accordance with the Notice issued herein by the Chief Registrar on 13th October 2011, it is ordered that this appeal is dismissed.
Reason:		There was no appearance of the appellant.
Case Name:		Marius Wilson v EC Global Insurance Co. Ltd. and Others [High Court Civil Appeal No. 43 of 2007]
Date:		Monday, 12th December 2011
Before:		The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]
Appearances:		
	Appellant:	No appearance
	Respondent:	Ms. Nandi Deterville (for the 1st respondent) Ms. Renee St. Rose (for the 2nd & 4th respondents)
Issue:		Status of the appeal
Result / Order:		[Oral delivery] The appellant not having filed the Notice of Intention to Proceed in accordance with the Notice from the Chief Registrar issued herein on 13th October 2011, it is hereby ordered that this appeal is dismissed.

Reason: The appellant did not appear.

Case Name: Maurice Pierre v Martha Phillips
[High Court Civil Appeal No. 7 of 2008]

Date: Monday, 12th December 2011

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

Appearances:
Appellant: No appearance

Respondent: No appearance

Issue: Status of the appeal

Result / Order: [Oral delivery]
The matter is dismissed for want of prosecution.

Reason: There was no appearance of the appellant.

Case Name: Maurice Pierre v Edgewedge Auguste Noel
[High Court Civil Appeal No. 11 of 2008]

Date: Monday, 12th December 2011

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

Appearances:
Appellant: No appearance

Respondent: Mr. Leslie Mondesir

Issue: **Status of the appeal**

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

Reason: **The appellant, via letter, indicated that he did not have counsel. Further, he requested an adjournment to February 2012 stating that he had not been informed of dates and schedules of the matter. He did not however, file the Notice of Intention to Proceed in accordance with the Notice of the Chief Registrar issued on 13th October 2011 and also, failed to appear at the hearing.**

Case Name: **Without Notice: Oliver Mathurin**
[High Court Civil Appeal No. 29 of 2008]

Date: **Monday, 12th December 2011**

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

Appearances:
Appellant: **No appearance**

Issue: **Status of the appeal**

Result / Order & Reason: **[Oral delivery]**
The appellant not having filed the Notice of Intention to Proceed in accordance with the Notice issued herein by the Chief Registrar on 13th October 2011, it is hereby ordered that this appeal is dismissed.

Case Name: **George Belmar v The Cabinet of St. Lucia and**

Others
[High Court Civil Appeal No. 30 of 2008]

Date: Monday, 12th December 2011

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

Appearances:

Appellant:	Ms. Diana M. Thomas
Respondent:	Mr. Raulston Glasgow

Issue: Status of the appeal

Result / Order: [Oral delivery]
1. The Chairman of the Board of Assessment is to produce to the appellant, a copy of the Transcript and Record on or before 20th January 2011;
2. The Rules of Court to apply thereafter.

Reason: The Court needed to make directions to allow this appeal to proceed.

Case Name: Allan Thomas and Another v Veronica St. Luce and Another
[High Court Civil Appeal No. 31 of 2008]

Date: Monday, 12th December 2011

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

Appearances:

Appellant:	Mr. Vern Gill
Respondent:	No appearance

Issue: Status of the appeal

**Result / Order
& Reason:** [Oral delivery]
The appellant not having filed the Notice of Intention to Proceed in accordance with the Notice from the Chief Registrar issued herein on 13th October 2011, it is hereby ordered that this appeal is dismissed.

**Further
Reasons:** The appellant failed to attend the hearing.

Case Name: Trevor St. Luce v Hilary Herman and Another
[High Court Civil Appeal No. 32 of 2008]

Date: Monday, 12th December 2011

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

Appearances:

Appellant: No appearance

Respondent: Mrs. Brender Portland-Reynolds

Issue: Status of the appeal

Result / Order: [Oral delivery]
The matter stands dismissed for want of prosecution.

Reason: No action had been taken by the appellant for three years, despite a request in writing from the Registrar. His last application was for an extension of time to appeal.

Case Name: Without Notice: Samson Descartes

[High Court Civil Appeal No. 36 of 2008]

Date: Monday, 12th December 2011

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

Appearances:

Appellant: No appearance

Issue: Status of the appeal

Result / Order & Reason: [Oral delivery]
The appellant not having filed the Notice of Intention to Proceed in accordance with the Notice from the Chief Registrar issued herein on 13th October 2011, it is hereby ordered that this appeal is dismissed.

Further Reasons: There was no appearance by the appellant.

Case Name: Tanzanite International Limited v The Attorney General of Saint Lucia
[High Court Civil Appeal No. 39 of 2008]

Date: Monday, 12th December 2011

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

Appearances:

Appellant: Miss Renee St. Rose

Respondent: Mr. Raulston Glasgow

Issue: Status of the appeal

Result / Order: [Oral delivery]
1. Leave is given to the appellant to obtain a copy of

the Judge's Notes from the Registrar on or before 4th January 2012.

2. The Rules of Court are to apply thereafter.

Reason:

The appellant had done nothing for three years. Although a request was made by the appellant for the preparation of the transcript, a letter was sent by the Registrar indicating that the judge's notes were available. Counsel on both sides informed the Court that they had never seen this letter before.

Case Name:

**Isaline Antoine v Anse Chastanet Hotel Limited and Another
[High Court Civil Appeal No. 40 of 2008]**

Date:

Monday, 12th December 2011

Before:

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

Appearances:

Appellant:

No appearance

Respondent:

No appearance

Issue:

Status of the appeal

**Result / Order
& Reason:**

[Oral delivery]

The appellant not having filed the Notice of Intention to Proceed in accordance with the Notice issued herein by the Chief Registrar on 13th October 2011, it is hereby ordered that this appeal is dismissed.

**Further
Reasons:**

Neither of the parties appeared.

Case Name: Lloyd Jean v Public Service Commission
[High Court Civil Appeal No. 44 of 2008]

Date: Monday, 12th December 2011

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

Appearances:

Appellant:	Mr. Shawn Innocent
Respondent:	No appearance

Issue: Status of the appeal

Result / Order: [Oral delivery]

1. The matter is adjourned to the next status hearing in Saint Lucia in the year 2012;
2. The Chief Registrar is directed to have the Bailiff serve a new Notice on counsel for the respondent and personally on Mr. Lloyd Jean, the appellant;
3. The Bailiff is to file evidence of service on the parties accordingly.

Reason: Notice of intention to appeal (filed by the appellant in person) was served, apparently in error, on counsel Mr. Shawn Innocent, who was not properly on the record and was accordingly not interested in this appeal.

Case Name: Leontus Joseph v Heather Lionel-Joseph
[High Court Civil Appeal No. 2 of 2009]

Date: Monday, 12th December 2011

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

Appearances:

Appellant:	Mr. Horace Fraser
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Respondent: No appearance

Issue: Status of the appeal

Result / Order & Reason: [Oral delivery]
A Notice of discontinuance having been entered on 5th August 2009, the appeal is hereby dismissed.

Case Name: John Baptiste Trevor Honora v United International Holding Limited
[High Court Civil Appeal No. 19 of 2009]

Date: Monday, 12th December 2011

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

Appearances:

Appellant: No appearance

Respondents: Ms. Eugenia Dickson

Issue: Status of the appeal

Result / Order & Reason: [Oral delivery]
The appellant not having filed the Notice of Intention to Proceed in accordance with the Notice issued herein by the Chief Registrar on 13th October 2011, it is hereby ordered that this appeal is dismissed.

Further Reasons: There was no appearance of the appellant.

Case Name: Luke Edwin v Consolidated Contractors International (UK) Limited
[High Court Civil Appeal No. 28 of 2009]

Date: Monday, 12th December 2011

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

Appearances:

Appellant:	No appearance
Respondent:	Mrs. Petra Nelson

Issue: Status of the appeal

Result / Order: [Oral delivery]
The appeal is dismissed for want of prosecution.

Reason: The appellant did not appear despite the filing of a Notice of Intention to Proceed.

Case Name: Quality Motors Limited v Clarke Investments Limited and Others
[High Court Civil Appeal No. 37 of 2009]

Date: Monday, 12th December 2011

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

Appearances:

Appellant:	No appearance
Respondent:	No appearance

Issue: Status of the appeal

**Result / Order
& Reason:** [Oral delivery]
The Notice of Withdrawal having been entered on 31st October 2011, this appeal is dismissed.

Case Name: Jude Biscette v O'Neil Greene PC # 127
[Magisterial Criminal Appeal No. 3A of 2004]

Date: Monday, 12th December 2011

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

Appearances:
Appellant: No appearance
Respondent: Mrs. Victoria Charles-Clarke, Director of Public Prosecutions

Issue: Status of the appeal

Result / Order: [Oral delivery]
This appeal is dismissed for want of prosecution.

Reason: It appeared that the appellant had long served his sentence and was no longer interested in prosecuting his appeal.

Case Name: Earnie Severin v The Police
[Magisterial Criminal Appeal No. 8 of 2004]

Date: Monday, 12th December 2011

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

Appearances:
Appellant: No appearance

Respondent: Mrs. Victoria Charles-Clarke, Director of Public Prosecutions

Issue: Status of the appeal

Result / Order: [Oral delivery]
This appeal is dismissed for want of prosecution.

Reason: It appeared that the appellant had long served his sentence and was no longer interested in prosecuting his appeal.

Case Name: Eabran George v Commissioner of Police
[Magisterial Criminal Appeal No. 10 of 2004]

Date: Monday, 12th December 2011

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

Appearances:

Appellant: No appearance

Respondent: Mrs. Victoria Charles-Clarke, Director of Public Prosecutions

Issue: Status of the appeal

Result / Order: [Oral delivery]
This appeal is dismissed for want of prosecution.

Reason: It appeared that the appellant had long served his sentence and was no longer interested in prosecuting his appeal.

Case Name: Jeff McVane v Bertly Ferdinand WPC 152
[Magisterial Criminal Appeal No. 2 of 2010]

Date: Monday, 12th December 2011

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

Appearances:

Appellant:	No appearance
Respondent:	Mrs. Victoria Charles-Clarke, Director of Public Prosecutions

Issue: Status of the appeal

Result / Order: [Oral delivery]

1. The matter is adjourned to the next status hearing to be held in Saint Lucia in the year 2012;
2. The Registrar is to prepare a new request to the appellant to file a Notice of Intention to Proceed and of the adjournment to the date of the next status hearing;
3. The Registrar is to ensure that the Bailiff serves the Director of Public Prosecution's Chambers and the appellant personally (and not the Registrar's office) with the said renewed Notice;
4. The Bailiff is to file evidence of service accordingly.

Reason: There was no evidence of service by the Bailiff on the appellant personally as had previously been ordered by the Hon. Chief Justice on 27th July 2011. The Court therefore made the appropriate order.

Case Name: Elton Jean v The Police
[Magisterial Criminal Appeal No. 13 of 2011]

Date: Monday, 12th December 2011

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

Appearances:

Appellant:	No appearance
Respondent:	Mrs. Victoria Charles-Clarke, Director of Public Prosecutions

Issue: Status of the appeal

Result / Order: [Oral delivery]

1. The matter is adjourned to the next status hearing in Saint Lucia in the year 2012;
2. The Chief Registrar is to prepare a new request to the appellant to file a Notice of Intention to Proceed and of the adjournment to the date of the next status hearing; and
3. The Chief Registrar is to ensure that the Bailiff serves the Director of Public Prosecution's Chambers and the appellant personally with the said renewed Notice.

Reason: There was no evidence of service by the Bailiff on the appellant personally as had previously been ordered by the Hon. Chief Justice on 27th July 2011. The Court therefore made the appropriate order.

Case Name: Juliana Felix and Another v Marie Edward and Others
[Magisterial Civil Appeal No. 1 of 2003]

Date: Monday, 12th December 2011

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

Appearances:

Appellant: Mr. Dexter Theodore

Respondent: No appearance

Issue: Status of the appeal

Result / Order: [Oral delivery]
This matter is adjourned to the next status hearing in Saint Lucia in the year 2012 to give the appellant an opportunity to file any necessary application.

Reason: This matter came up at the status hearing eight years after the filing of the appeal. Although the file was requested from Magistrate's court, the said court indicated that the file could not be found. This Court, noting that there was no application for any relief or for any directions, therefore made the appropriate order.

Case Name: Earl Cenac and Another v Angela Amedee
[Magisterial Civil Appeal No. 1 of 2005]

Date: Monday, 12th December 2011

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

Appearances:
Appellant: Mr. Dexter Theodore

Respondent: No Appearance

Issue: Status of the appeal

Result / Order: [Oral delivery]
It is ordered that this appeal stands dismissed for want of prosecution.

Reason: The appellant is deceased and there have been no instructions from his estate.

Case Name: Thomas Matty Bray v Monica Maximin
[Magisterial Civil Appeal No. 34 of 2003]

Date: Monday, 12th December 2011

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

Appearances:

Appellant: No appearance

Respondent: No appearance

Issue: Status of the appeal

Result / Order: [Oral delivery]
It is ordered that this appeal stands dismissed for want of prosecution.

Reason: There was no appearance of the appellant and nothing had been done in relation to the appeal for a long time.

APPLICATIONS AND CASE
MANAGEMENT OF APPEALS LISTED
FOR SITTING

Case Name: Albert Herman v The Police
[Magisterial Criminal Appeal No. 17 of 2011]

Date: Monday, 12th December 2011

Coram: The Hon. Mde. Ola Mae Edwards, Chief Justice [Ag.]
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Jeannot-Michel Walters

Respondent: Mrs. Victoria Charles-Clarke, Director of Public Prosecutions

Issues: Criminal appeal against sentence – Possession of firearm and ammunition without licence

Result / Order: [Oral delivery]
The appeal, having been withdrawn, is accordingly dismissed.

Reason: The appellant is deceased.

Case Name: Carlos Anthony Augustin v Uni-V (St. Lucia)
Ltd. trading as Unique Vacations
[High Court Civil Appeal No. 44 of 2010]

Date: Monday, 12th December 2011

Coram: The Hon. Mde. Ola Mae Edwards, Chief Justice [Ag.]
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Applicant: Mr. Gerard Williams

Respondent: Mr. Mark Maragh

Issues: Application for leave to appeal to Her Majesty in Council – Leave to amend application

Result / Order: [Oral delivery]
1. Leave is hereby granted for the applicant to withdraw the application for conditional leave to appeal to the Her Majesty in Council and the application for leave to amend the application.
2. The applications are hereby withdrawn and accordingly dismissed.

Reason: Counsel for the appellant no longer wished to pursue the matter.

Case Name: Gregory Aimable v Lennie Anthony
[High Court Civil Appeal No. 43 of 2011]

Date: Monday, 12th December 2011

Coram: The Hon. Mde. Ola Mae Edwards, Chief Justice [Ag.]
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:
Intended Appellant / Applicant: Mr. Gerard Williams
Respondent: Ms. Vanessa William

Issues: Application for leave to appeal

Result / Order: [Oral delivery]
The application for leave to appeal is adjourned to Wednesday, 14th December 2011.

Reason: Counsel for the appellant had a funeral to attend.

Case Name: Olvin Jn. Baptiste v The Police
[Magisterial Criminal Appeal No. 20 of 2011]

Date: Monday, 12th December 2011

Coram: The Hon. Mde. Ola Mae Edwards, Chief Justice [Ag.]
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Appellant:	Mr. Huggins Nicholas
Respondent:	Mr. Giovanni James

Issues: Criminal appeal against sentence – Possession of stolen item

Result / Order: [Oral delivery]
The hearing of this appeal is adjourned to Friday, 16th December 2011 so that the skeleton arguments can be filed and served by counsel for the respondent.

Reason: Counsel for the respondent needed some more time to address the appellant's amended grounds of appeal.

Case Name: Samuel Amakye v The Police
[Magisterial Criminal Appeal No. 22 of 2011]

Date: Monday, 12th December 2011

Coram: The Hon. Mde. Ola Mae Edwards, Chief Justice [Ag.]
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Appellant:	No appearance
Respondent:	Mr. Giovanni James holding papers for Mr. Seryozha Cenac
Issues:	Criminal appeal against sentence – Possession of controlled drug
Result / Order:	The matter is stood down.
Reason:	To allow counsel for the respondent to inquire about the status of the matter.
Case Name:	Malcolm Victorin v The Police [Magisterial Criminal Appeal No. 3 of 2010]
Date:	Monday, 12th December 2011
Coram:	The Hon. Mde. Ola Mae Edwards, Chief Justice [Ag.] The Hon. Mr. Davidson K. Baptiste, Justice of Appeal The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]
Appearances:	
Appellant:	In person
Respondent:	Mr. Stephen Brette
Issues:	Criminal appeal against conviction and sentence – Indecent assault
Result / Order:	[Oral delivery] The matter is adjourned to Thursday, 15th December 2011.
Reason:	Counsel who was previously on record as acting for the appellant, Mr. Huggins Nicholas, informed the

Court that he had sent in an application to withdraw from the matter but apparently had not yet communicated his reasons for doing so to the appellant. The matter was therefore adjourned to allow counsel and the appellant to resolve the issue of representation with each other.

Case Name: Titula Chulan v The Police
[Magisterial Criminal Appeal No. 4 of 2010]

Date: Monday, 12th December 2011

Coram: The Hon. Mde. Ola Mae Edwards, Chief Justice [Ag.]
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Appellant:	No appearance
Respondent:	Mr. Stephen Brette holding papers for Mr. Seryozha Cenac

Issues: Criminal appeal against conviction – Possession of controlled drug with intent to supply

Result / Order: [Oral delivery]
The matter is adjourned to Thursday, 15th December 2011.

Reason: To ascertain whether the appellant had been served with a Notice of Hearing.

Case Name: Auguste Cools v The Police
[Magisterial Criminal Appeal No. 5 of 2010]

Date: Monday, 12th December 2011

Coram: The Hon. Mde. Ola Mae Edwards, Chief Justice [Ag.]
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Appellant: No appearance (unrepresented)

Respondent: Mr. Giovanni James

Issues: Criminal appeal against conviction – Indecent assault

Result / Order & Reason: [Oral delivery]
The matter is adjourned to Thursday, 15th December 2011 to ascertain whether the appellant was served for this sitting.

Case Name: Gerald Joseph v The Police
[Magisterial Criminal Appeal No. 2 of 2011]

Date: Monday, 12th December 2011

Coram: The Hon. Mde. Ola Mae Edwards, Chief Justice [Ag.]
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Horace Fraser

Respondent: Ms. Tina Mensah

Issues: Criminal appeal against conviction – Stealing

Result / Order: [Oral delivery]
The hearing of the appeal is adjourned to Thursday, 15th December 2011.

Reason: The Court, in exercising its case management powers, noted that the appeal was ready to proceed.

Case Name: Said Christopher Talal Tome v The Police
[Magisterial Criminal Appeal No. 6 of 2011]

Date: Monday, 12th December 2011

Coram: The Hon. Mde. Ola Mae Edwards, Chief Justice [Ag.]
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Appellant:	In person (unrepresented)
Respondent:	Ms. Tina Mensah holding papers for Mr. Seryozha Cenac

Issues: Criminal appeal against conviction – Possession of ammunition

Result / Order & Reason: [Oral delivery]
The hearing of this appeal is adjourned to Thursday, 15th December for service on appellant to be proved.

Case Name: Kendy Canaii v The Police
[Magisterial Criminal Appeal No. 12 of 2011]

Date: Monday, 12th December 2011

Coram: The Hon. Mde. Ola Mae Edwards, Chief Justice [Ag.]
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Horace Fraser

Respondent: Mr. Stephen Brette

Issues: Criminal appeal against conviction – Wounding

Result / Order: [Oral delivery]
The matter is adjourned to Thursday, 15th December 2011 for the hearing of the appeal.

Reason: The Court, in exercising its case management powers, noted that the appeal was ready to proceed.

Case Name: Magnus Louisy v The Police
[Magisterial Criminal Appeal No. 16 of 2011]

Date: Monday, 12th December 2011

Coram: The Hon. Mde. Ola Mae Edwards, Chief Justice [Ag.]
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Jeannot-Michel Walters

Respondent: Mr. Stephen Brette, holding papers for Mr. Seryozha Cenac

Issues: Criminal appeal against conviction – Assault

Result / Order: [Oral delivery]
1. The hearing of the appeal is adjourned to the next sitting of the Court in Saint Lucia scheduled for 13th to 17th February 2012.
2. The skeleton arguments are to be filed and served by the appellant on or before 31st January 2012.

3. The skeleton arguments are to be filed and served by the respondent no later than 3rd February 2012.

Reason:

Counsel for the appellant indicated that he had not yet received notice that the record from the magistrates' court was ready. The Court pointed out that it is the duty of the High Court Registrar to issue a notice to the parties when the record has been received from the magistrates' court. Rule 62.9(c) of the Civil Procedure Rules 2000, which is only triggered after the record is ready, should be read in conjunction with rule 734 of the Criminal Code, Cap. 3.01, Revised Laws of Saint Lucia 2008.

Case Name:

Elvis King v The Police
[Magisterial Criminal Appeal No. 14 of 2011]

Date:

Monday, 12th December 2011

Coram:

The Hon. Mde. Ola Mae Edwards, Chief Justice [Ag.]
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Appellant:

No appearance (unrepresented)

Respondent:

Mrs. Victoria Charles-Clarke, Director of Public Prosecutions

Issues:

Criminal appeal against conviction – Possession of a controlled drug

**Result / Order
& Reason:**

[Oral delivery]
The matter is adjourned to Thursday, 15th December 2011 to prove service on the appellant.

Case Name: PC 124 Kelvin Hennecart v Barthelemy Delice
[Magisterial Criminal Appeal No. 11 of 2011]

Date: Monday, 12th December 2011

Coram: The Hon. Mde. Ola Mae Edwards, Chief Justice [Ag.]
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Appellant:	Mr. Mark Maragh
Respondent:	Mr. Horace Fraser

Issues: Criminal appeal against conviction – Contravention of lawful direction

Result / Order: The matter is stood down.

Reason: To allow counsel for the respondent to appear. Counsel for the appellant indicated that Mr. Fraser was attending the status hearing in a different courtroom.

Case Name: Keith Auguste v Gevona Marcellin
[Magisterial Civil Appeal No. 1 of 2011]

Date: Monday, 12th December 2011

Coram: The Hon. Mde. Ola Mae Edwards, Chief Justice [Ag.]
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Appellant:	Mr. Leslie Prospere
Respondent:	No appearance

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

Result / Order & Reason: [Oral delivery]
The hearing of this matter is adjourned to Thursday, 15th December 2011 for report and hearing of the application for an extension of time.

Case Name: PC 124 Kelvin Hennecart v Barthelemy Delice
[Magisterial Criminal Appeal No. 11 of 2011]

Date: Monday, 12th December 2011

Coram: The Hon. Mde. Ola Mae Edwards, Chief Justice [Ag.]
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Mark Maragh

Respondent: Mr. Horace Fraser

Issues: Criminal appeal against conviction – Contravention of lawful direction

Result / Order: [Oral delivery]
1. The hearing of the appeal is adjourned to the next sitting of the Court scheduled for 13th to 17th February 2012.
2. The skeleton arguments are to be filed and served by the appellant on or before 31st January 2012.
3. The skeleton arguments are to be filed and served by the respondent on or before 3rd February 2012.

Reason: To allow counsel to obtain the notes of evidence (in its complete form). The Court noted that rule 62.9(c) of the Civil Procedure Rules 2000 and section 734 of

the Criminal Code, Cap. 3.01, Revised Laws of Saint Lucia 2008, was the applicable law in this matter. Counsel for respondent was to obtain the record and other documents from the High Court Registrar upon payment of the prescribed fee.

Case Name: Barbara McQuilkin and Another v Sylvester Devaux
[High Court Civil Appeal No. 43 of 2010]

Date: Monday, 12th December 2011

Coram: The Hon. Mde. Ola Mae Edwards, Chief Justice [Ag.]
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Appellant:	Mr. Horace Fraser
Respondent:	Mr. Peter I. Foster

Issues: Road traffic accident – Findings of fact made by the learned trial judge – Whether the trial judge’s finding that the second appellant was 100% liable for the accident was unreasonable, having regard to the evidence

Result / Order: [Oral delivery]
1. The matter is adjourned to the next sitting of the Court scheduled for the week of 13th to 17th February 2012.
2. The relevant rules are to be complied with in relation to the filing and serving of skeleton arguments.

Reason: The appeal had not yet been perfected for hearing.

Case Name: Norton Gaspard and Others v Suzanna Isidore (acting on behalf of the heirs of Zephirin Mathieu)
[High Court Civil Appeal No. 29 of 2011]

Date: Monday, 12th December 2011

Coram: The Hon. Mde. Ola Mae Edwards, Chief Justice [Ag.]
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Appellant:	Mr. Horace Fraser
Respondents:	Mr. Alvin St. Clair

Issues: Rectification of land register – Whether the learned trial judge erred in law by failing to consider whether the unlawful act of the land adjudicator was a mistake – Whether the trial judge’s ruling that the appellant’s failure to appeal the decision of the Land Adjudication Tribunal is a bar for seeking a remedy in the court is plainly wrong

Result / Order: [Oral delivery]
The hearing of this appeal is adjourned to Wednesday, 14th December 2011.

Reason: To allow counsel to submit to the Court a draft consent order.

Case Name: Pacific China Holdings Limited v Grand Pacific Holdings Limited
[High Court Civil Appeal No. 39 of 2010]
(Territory of the Virgin Islands)

Date: Monday, 12th December 2011

Coram: The Hon. Mde. Ola Mae Edwards, Chief Justice [Ag.]
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Mark Forte, with him, Ms. Tameka Davis (of the law firm Conyers Dill & Pearman)

Respondents: No appearance (Walkers on record for the respondent)

Issues: Application to adduce fresh evidence

Result / Order: [Oral delivery]
These matters are adjourned to Wednesday, 14th December 2011.

Reason: The Court was merely indicating to the parties when the matter would be heard.

Case Name: Eugene Nelson and Others v First Caribbean International Bank Limited
[High Court Civil Appeal No. 22 of 2011]

Date: Monday, 12th December 2011

Coram: The Hon. Mde. Ola Mae Edwards, Chief Justice [Ag.]
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Appellants: Ms. Lydia Faisal

Respondent: Ms. Renee St. Rose

Issues: Loan agreement – Whether the learned judge erred in

law in upholding the respondent's personal action against the appellants despite Article 1942 of the Civil Code, Cap. 4.01, Revised Laws of Saint Lucia 2008 – Quantum – Whether the learned judge failed to recognize the effect of prescription on the respondent's claim

Result / Order:

[Oral delivery]

1. The matter is adjourned to the next sitting of the Court in Saint Lucia scheduled for the week of 13th to 17th February 2012.
2. The respondent having been served with the record of appeal on 22nd November 2011, the filing and serving of skeleton arguments is to proceed in accordance with the relevant rules.

Reason:

The appeal had not yet been perfected for hearing.

Case Name:

**The Bay View Proprietors Unit v Phillipe Chalono and Another
[High Court Civil Appeal No. 26 of 2011]**

Date:

Monday, 12th December 2011

Coram:

**The Hon. Mde. Ola Mae Edwards, Chief Justice [Ag.]
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]**

Appearances:

**Appellant /
Respondent:**

Mr. Horace Fraser

**Respondent /
Applicant:**

Mr. Mark Maragh

Issues:

Application to vary or discharge the order of a single judge

**Result / Order
& Reason:**

[Oral delivery]

1. The application to vary the order of a single judge filed on 2nd November 2011 is withdrawn and stands dismissed.
2. The parties agree that the Notice of Appeal filed on 31st October 2011 should be determined by way of a consent order approved by the Court.
3. It is hereby ordered by consent:
 - a) That the parties agree that the appeal be allowed.
 - b) Costs in the appeal in the sum of \$800.00.
 - c) That the matter be remitted to the High Court for case management directions.

Case Name:

**Alvin Edward v Eddie Monlouis and Another
[High Court Civil Appeal No. 44 of 2011]**

Date:

Monday, 12th December 2011

Coram:

**The Hon. Mde. Ola Mae Edwards, Chief Justice [Ag.]
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]**

Appearances:

**Intended Appellant /
Applicant:** Ms. Cynthia Hinkson-Ouhla

Respondent: Ms. Jan Drysdale

Issues:

Application for leave to appeal

Result / Order:

[Oral delivery]

1. The hearing of the application is adjourned to 24th January 2012, the next chamber hearing date for the Court of Appeal.
2. The Registrar of the High Court is to facilitate the preparation of the transcript of proceedings for the hearing and oral decision of the learned judge.
3. The applicant is to file and serve a copy of the

transcript along with the pleadings and application for extension of time on or before 18th January 2012.

4. The skeleton arguments of the applicant are to be filed and served on or before 18th January 2012.
5. The respondents have leave to file and serve skeleton arguments in response where necessary, no later than 20th January 2012.

Reason:

To allow counsel for the applicant to obtain a copy of the oral decision of the learned judge, as well as a copy of the transcript, pleadings and application for an extension of time that was made in the court below.

Case Name:

**Pauline Poleon (Executrix of George Poleon)
v North (St. Lucia) Contracting Ltd.
[High Court Civil Appeal No. 24 of 2011]**

Date:

Monday, 12th December 2011

Coram:

**The Hon. Mde. Ola Mae Edwards, Chief Justice [Ag.]
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Mr. Mark Maragh

Respondent:

Ms. Vanessa William

Issues:

Application for an extension of time – Relief from sanctions

Result / Order:

[Oral delivery]

1. The application is adjourned to the next chamber hearing on 24th January 2012.
2. The applicant is to file and serve the application for injunction and the pleadings which are necessary to assess the prospect of success of

the proposed appeal on or before 18th January 2012.

3. The applicant is to file and serve skeleton arguments on or before 18th January 2012.

4. The respondent is to file and serve skeleton arguments on or before 20th January 2012.

Reason: The application was not ready for hearing.

Case Name: Marguerite Desir and Another v Sabina James Alcide
[High Court Civil Appeal No. 30 of 2011]

Date: Monday, 12th December 2011

Coram: The Hon. Mde. Ola Mae Edwards, Chief Justice [Ag.]
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Appellant / Applicant:	Mr. Peter I. Foster, with him, Ms. Diana Thomas
Respondent:	Mr. Dexter Theodore, with him, Mr. Eghan Modeste

Issues: Application for stay of execution – Appellants applying for stay of an order affecting persons who are not parties to the claim – Jurisdiction of the Court to grant a stay where there is a third party interest or property claim – Rule 42.12 of the Civil Procedure Rules 2000 – Articles 381-383 of the Code of Civil Procedure, Cap. 243, Revised Laws of Saint Lucia 1957 – Practice and procedure where the legal practitioner in the appellate proceedings is different from the legal practitioner on record at the trial

Result / Order: The matter is stood down.

Reason: To allow the Court to go through documents which had been properly filed by counsel for the respondent, but did not form part of the judge's bundles.

Case Name: Fabian Cherubin v The Honourable Attorney General
[High Court Civil Appeal No. 17 of 2009]

Date: Monday, 12th December 2011

Coram: The Hon. Mde. Ola Mae Edwards, Chief Justice [Ag.]
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Appellant / Applicant:	Mr. Shawn Innocent
Respondent:	Mr. Raulston Glasgow, with him, Ms. Jan Drysdale

Issues: Application for an extension of time to file record of appeal and skeleton arguments – Whether the Backing of Warrants Act, Cap. 3.15, Revised Laws of Saint Lucia 2008, had violated the appellant's constitutional rights – Whether the procedural irregularities of the appellant ought to be relied on to prevent the appellant from prosecuting his appeal

Result / Order: [Oral delivery]

1. The application for extension of time to file the record of appeal is granted.
2. The appellant shall file and serve the record of appeal on or before 18th January 2012.
3. The time for filing skeleton arguments under the rules is abridged, and the skeleton arguments of the appellant are to be filed on or before 18th January 2012.
4. The skeleton arguments of the respondent are to be filed and served on or before 25th January

2012.

5. The appeal is set down for hearing at the next sitting of the Court scheduled for the week of 13th to 17th February 2012.
6. Unless the appellant complies with this order, the Notice of Appeal filed on 5th May 2009 stands dismissed.

Reason:

The Court noted that the appellant's application showed that the notice in relation to the availability of the transcript of proceedings was served in October 2009 but nothing was done until the Court, at a status hearing, indicated that they required the appellant to decide whether or not he intended to proceed with the appeal. The appellant, in his application, pleaded impecuniosity as the reason for not obtaining the record of appeal and complying with the rules in relation to prosecuting his appeal.

The Court was of the view that rule 26.8 of the Civil Procedure Rules 2000 should not be applied to the application in deciding whether or not to extend time, having regard to previous observations made by the Court of Appeal in relation to applications made concerning non-compliance with rules which provide no sanction, and also, in particular, having regard to the recent judgment of the Privy Council in the case of *The Attorney General v Keron Matthews* [2011] UKPC 38, from the Court of Appeal of the Republic of Trinidad & Tobago.

The Court further indicated that it was clear that the Overriding Objective was applicable to the application, and that in exercising its discretion, the Court ought to look at the length of the delay, the reason for the delay, the chance of appeal succeeding, and the degree of prejudice to the respondent that would result if the appeal were allowed to proceed.

The Court noted that the respondent did not provide any evidence to establish that the respondent was going to be prejudiced, were the appeal to proceed. The Court further noted that in applying the Overriding Objective, it had to bear in mind the

paramountcy of the constitutional rights of the appellant and the nature of the challenge to the Backing of Warrants Act that was determined by the learned trial judge.

Ultimately, the Court was of the view that the grounds of appeal raised compelling issues for determination by the Court of Appeal. This was an appeal as of right and so no leave was required to appeal.

Case Name: Marguerite Desir and Another v Sabina James Alcide
[High Court Civil Appeal No. 30 of 2011]

Date: Monday, 12th December 2011

Coram: The Hon. Mde. Ola Mae Edwards, Chief Justice [Ag.]
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Appellant:	Mr. Peter I. Foster, with him, Ms. Diana Thomas
Respondent:	Mr. Dexter Theodore, with him, Mr. Eghan Modeste

Issues: Application for stay of execution – Appellants applying for stay of an order affecting persons who are not parties to the claim – Jurisdiction of the Court to grant a stay where there is a third party interest or property claim – Rule 42.12 of the Civil Procedure Rules 2000 – Articles 381-383 of the Code of Civil Procedure, Cap. 243, Revised Laws of Saint Lucia 1957 – Practice and procedure where the legal practitioner in the appellate proceedings is different from the legal practitioner on record at the trial

Result / Order: [Oral delivery]
The decision in this matter will be delivered on Wednesday, 14th December 2011.

Case Name: Jesse St. Cyr v The Queen
[High Court Criminal Appeal No. 2 of 2008]

Date: Monday, 12th December 2011

Coram: The Hon. Mde. Ola Mae Edwards, Chief Justice [Ag.]
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Shawn Innocent

Respondent: Mrs. Victoria Charles-Clarke, Director of Public Prosecutions

Issues: Criminal appeal against conviction – Murder

Result / Order: Judgment in this matter is reserved (to be delivered on Wednesday, 14th December 2011).

Case Name: Justin Thomas v The Queen
[High Court Criminal Appeal No. 1 of 2008]

Date: Monday, 12th December 2011

Coram: The Hon. Mde. Ola Mae Edwards, Chief Justice [Ag.]
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Horace Fraser holding papers for Mr. Colin Foster

Respondents: Mrs. Victoria Charles-Clarke, Director of Public Prosecutions

Issues: Criminal appeal against conviction – Rape and indecent assault

Result / Order: [Oral delivery]
The hearing of this appeal is adjourned to the next sitting of the Court in Saint Lucia, scheduled for the week of 13th to 17th February 2012.

Reason: Counsel for the appellant, Mr. Colin Foster, was ill (a medical certificate was presented to the Court).

Case Name: Christopher Jn. Paul v The Queen
[High Court Criminal Appeal No. 6 of 2008]

Date: Monday, 12th December 2011

Coram: The Hon. Mde. Ola Mae Edwards, Chief Justice [Ag.]
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Appellant:	Mr. Horace Fraser holding papers for Mr. Colin Foster
Respondent:	Ms. Tina Mensah

Issues: Criminal appeal against conviction – Murder

Result / Order: [Oral delivery]
The hearing of this appeal is adjourned to the next sitting of the Court in Saint Lucia, scheduled for the week of 13th to 17th February 2012.

Reason: Counsel for the appellant, Mr. Colin Foster, was ill (a medical certificate was presented to the Court). The

Court noted that counsel had however, complied with directions previously given in relation to this matter.

JUDGMENTS

Case Name: Marguerite Desir and Another v Sabina James Alcide
[High Court Civil Appeal No. 30 of 2011]

Date: Wednesday, 14th December 2011

Coram: The Hon. Mde. Ola Mae Edwards, Chief Justice [Ag.]
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Appellant / Applicant:	Mr. Peter I. Foster, with him, Ms. Diana Thomas
Respondent:	Mr. Dexter Theodore, with him, Mr. Eghan Modeste

Issues: Application for stay of execution – Appellants applying for stay of an order affecting persons who are not parties to the claim – Jurisdiction of the Court to grant a stay where there is a third party interest or property claim – Rule 42.12 of the Civil Procedure Rules 2000 – Articles 381-383 of the Code of Civil Procedure, Cap. 243, Revised Laws of Saint Lucia 1957 – Practice and procedure where the legal practitioner in the appellate proceedings is different from the legal practitioner on record at the trial

Result / Order & Reason: Held: refusing the application for stay of execution and awarding costs to the respondent to be agreed, and failing agreement, to be assessed, that:

1. The court's jurisdiction to grant a stay is based upon the principle that justice requires

that the court should be able to take steps to ensure that its judgments are not rendered valueless. The essential question for the court is whether there is a risk of injustice to one or both parties if it grants or refuses a stay. Further, the evidence in support of the application for stay of execution should be full, frank and clear. The normal rule is for no stay and if a court is to consider a stay, the applicant has to make out a case by evidence which shows special circumstances for granting one. The mere existence of arguable grounds of appeal is not, by itself, a good enough reason.

Hammond Suddard Solicitors v Agrichem International Holdings Limited [2001] EWCA 2065 applied; Peggy Huggins and Others v Jozeyl Morris Saint Vincent and the Grenadines HCVAP 2008/009 (delivered 24th February 2009, unreported) followed; Section 15 of the Eastern Caribbean Supreme Court (Saint Lucia) Act Chap. 2:01, Revised Laws of Saint Lucia 2008 cited; Rule 62.16 of the Civil Procedure Rules 2000 cited.

2. In the absence of any evidence establishing that Commercial Warehouse Limited and the Bank of Saint Lucia have filed any third party interest or property claim in these proceedings or in the court below, the law and rules governing the available redress to third parties who have an interest in property which is the subject of a judgment or order and are not parties to the claim, are to be found in Articles 381-383 of the Code of Civil Procedure, and CPR 42.12.

Articles 381-383 of the Code of Civil Procedure Cap. 243, Revised Laws of Saint Lucia 1957 considered and applied; Rule 42.12 of the Civil Procedure Rules 2000 considered and applied.

3. The inherent jurisdiction of the Court to grant a stay in the circumstances ought not to be invoked because of the existing rules in

Articles 381-383 of the Code of Civil Procedure and CPR 42.12, which adequately cover the issue. Having weighed the advantages and disadvantages to both parties and taken into account the applicable principles, and despite an arguable case being made out by the appellants/applicants in their application and amended grounds of appeal, no stay of the order should be made.

4. It is consistent with good practice and the overriding objective of the Civil Procedure Rules 2000 for a new legal practitioner in appellate proceedings to file a notice of acting to facilitate the service of documents, effective case management of interlocutory proceedings at the appellate level, and to ensure that the appeal is dealt with expeditiously.

Case Name:	Jesse St. Cyr v The Queen [High Court Criminal Appeal No. 2 of 2008]
Date:	Wednesday, 14th December 2011
Coram:	The Hon. Mde. Ola Mae Edwards, Chief Justice [Ag.] The Hon. Mr. Davidson K. Baptiste, Justice of Appeal The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]
Appearances:	
Appellant:	Mr. Shawn Innocent
Respondent:	Mrs. Victoria Charles-Clarke, Director of Public Prosecutions
Issues:	Criminal appeal against conviction – Murder
Result / Order:	[Oral delivery with written reasons to follow] 1. The appeal against conviction is dismissed and the conviction is affirmed.

2. The appeal against sentence is dismissed and the sentence is affirmed.

APPLICATIONS AND APPEALS

Case Name: Norton Gaspard and Others v Suzanna Isidore (acting on behalf of the heirs of Zephirin Mathieu)
[High Court Civil Appeal No. 29 of 2011]

Date: Wednesday, 14th December 2011

Coram: The Hon. Mde. Ola Mae Edwards, Chief Justice [Ag.]
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Appellant:	No appearance (counsel on record is Mr. Horace Fraser)
Respondent:	Mr. Alvin St. Clair

Issues: Rectification of land register – Whether the learned trial judge erred in law by failing to consider whether the unlawful act of the land adjudicator was a mistake – Whether the trial judge’s ruling that the appellant’s failure to appeal the decision of the Land Adjudication Tribunal is a bar for seeking a remedy in the court is plainly wrong

Result / Order: [Oral delivery]
The result of the appeal is in terms of the approved draft consent order which reads as follows:

1. The appeal is allowed.
2. The matter is remitted to the High Court and the parties are required to attend a mediation session with a mediator within three (3) months of today’s

date.

3. The mediator is Cynthia Combie and the alternate is Mr. Francis Compton.
4. That should the mediation session fail, the parties agree that the issue of title to Parcels 1253B 138 and 142 is to be determined by a High Court Judge upon production by each party of their respective title deeds and other relevant facts and evidence.
5. No order as to costs.

Reason: The parties managed to come to an agreement on a way forward.

Case Name: Theresa Ann Marie Justin v The Queen
[High Court Criminal Appeal No. 5 of 2008]

Date: Wednesday, 14th December 2011

Coram: The Hon. Mde. Ola Mae Edwards, Chief Justice [Ag.]
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Appellant:	No appearance (counsel on record is Mrs. Wauneen Louis-Harris)
Respondent:	Mrs. Victoria Charles-Clarke, Director of Public Prosecutions

Issues: Criminal appeal against conviction – Murder

Result / Order: The matter is stood down.

Reason: Counsel for the appellant, Mrs. Louis-Harris, was not present when the matter was called. Counsel for the respondent informed the Court that she had stepped out of the courtroom momentarily.

Case Name: **Treasure Bay (St. Lucia) Limited v The Gaming Authority and Others**
[High Court Civil Appeal No. 45 of 2011]

Date: **Wednesday, 14th December 2011**

Coram: **The Hon. Mde. Ola Mae Edwards, Chief Justice [Ag.]**
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Applicant: **Mr. Anthony W. Astaphan, Senior Counsel, with Mr. Peter I. Foster (instructed by Ms. Renee St. Rose)**

Respondent: **Mr. Garth Patterson, QC, with him Ms. Candace Polius and Ms. Eugenia Dixon (for Cage St. Lucia Limited)**
Ms. Esther Greene-Ernest (for the 1st respondent, The Gaming Authority)
Mr. Dwight Lay (for the 2nd respondent, The Attorney General)
Mr. Dwight Lay holding papers for Mr. Vern Gill (for the 3rd respondent, The National Lotteries Authority)

Issues: **Application to discharge the orders of a single judge**

Result / Order: **Judgment in this matter is reserved.**

Case Name: **Pacific China Holdings Limited v Grand Pacific Holdings Limited**
[High Court Civil Appeal No. 39 of 2010]
(Territory of the Virgin Islands)

Date: **Wednesday, 14th December 2011**

Coram: The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Appearances:
Appellant: Mr. Richard Millett, QC, instructed by Mr. Mark Forte and Ms. Tameka Davis (of the law firm of Conyers Dill & Pearman)

Respondent: Mr. Matthew Hardwick, instructed by Ms. Rowena Lawrence (of the law firm of Walkers)

Issues: Application to adduce fresh evidence

Result / Order: Judgment in this matter is reserved.

Case Name: Gregory Aimable v Lennie Anthony
[High Court Civil Appeal No. 43 of 2011]

Date: Thursday, 15th December 2011

Coram: The Hon. Mde. Ola Mae Edwards, Chief Justice [Ag.]
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:
Intended Appellant / Application: Mr. Gerard Williams

Respondent: Ms. Vanessa William

Issues: Application for leave to appeal

Result / Order: [Oral delivery]
The application for leave to appeal is adjourned to the chamber hearing scheduled for Tuesday 24th January 2012.

Reason: The Court held that the application for leave to appeal should have first been dealt with by a single judge of the Court of Appeal. Counsel for the appellant indicated however that the adjournment was welcome since the appellant and respondent had recently agreed to attempt to resolve the matter between themselves and needed an opportunity to do so.

Case Name: Theresa Ann Marie Justin v The Queen
[High Court Criminal Appeal No. 5 of 2008]

Date: Thursday, 15th December 2011

Coram: The Hon. Mde. Ola Mae Edwards, Chief Justice [Ag.]
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Appellant:	Mrs. Wauneen Louis-Harris
Respondent:	Mrs. Victoria Charles-Clarke, Director of Public Prosecutions

Issues: Criminal appeal against conviction – Murder –
Application to file additional grounds of appeal (oral)

Result / Order: [Oral delivery]

Application to amend grounds of appeal
The application to file additional grounds of appeal is granted.

Substantive appeal
Judgment in this matter is reserved.

Case Name: Victor Delices v Lindley Lubin and Others
[High Court Civil Appeal No. 18 of 2011]

Date: Thursday, 15th December 2011

Coram: The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Appearances:

Appellant: Mrs. Petra Nelson holding papers for Mrs. Esther Greene-Ernest

Respondent: Mr. Kenneth Monplasir, QC (for the 3rd, 4th and 5th respondents)
Mr. Evans Calderon (for the 1st and 2nd respondents)

Issues: Application for declaration of title by prescription dismissed in the court below – Whether the learned judge erred in law by adjudicating the full case without hearing the parties and without cross-examination, after having been moved by the parties to hear and determine a preliminary point on the issue of locus standi

Result / Order: [Oral delivery]
The hearing of the appeal is adjourned to the next sitting of the Court in Saint Lucia scheduled for the week of 13th to 17th February 2012.

Reason: Counsel for the appellant, Mrs. Esther Greene-Ernest, was not present because she was ill. Her colleague, Mrs. Nelson, indicated to the Court that that she was not certain whether Mrs. Greene-Ernest would be able to make it to court the following day either, which was the final day of the sitting. Counsel for the respondents were not in opposition to having the appeal adjourned to the next sitting of the Court.

Case Name: The Heirs of Oliver Chedy and Others v
Petronille Cangal and Others
[High Court Civil Appeal No. 34 of 2011]

The Heirs of Oliver Chedy and Others v
Petronille Cangal and Others
[High Court Civil Appeal No. 41 of 2011]

Date: Thursday, 15th December 2011

Coram: The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Appearances:

Appellants / Applicants:	Mr. Peter I. Foster, with him, Ms. Renee St. Rose
Respondents:	Ms. Mary Juliana Charles, with her, Ms. Thea Alexander

Issues: Application to vary the order of a single judge of the Court – Application for an extension of time to file an application for leave to appeal

Result / Order: [Oral delivery]
 1. The order of the single judge dismissing the application for leave to appeal is set aside.
 2. Leave is granted to appeal on the grounds set out in the draft notice of appeal.
 3. The appeal is to proceed in accordance with the relevant rules of court.
 4. Costs of this application shall be in the appeal.

Reason: The Court took the view that the striking out of the appellant's notice of application for leave to appeal was a draconian response to the grounds of appeal not being stated in it, having regard to the fact that it included a draft notice of appeal which clearly set out the grounds of appeal. It was held that to shut

out a litigant in circumstances such as these merely because form was not strictly adhered to would be wholly disproportionate.

The Court made the distinction between the facts of this case and one in which the grounds of appeal have not been clearly set out and are not known to the respondent. The Court further recognised that an arguable case had been disclosed by the grounds of appeal in this matter. Accordingly, it was held that the proper exercise of the Court's discretion would be to apply rule 26.9 of the Civil Procedure Rules 2000.

Case Name:	Frederick Augustus v Mayor & Citizens of Castries [High Court Civil Appeal No. 25 of 2009]
Date:	Thursday, 15th December 2011
Coram:	The Hon. Mde. Janice M. Pereira, Justice of Appeal The Hon. Mr. Davidson K. Baptiste, Justice of Appeal The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]
Appearances:	
Appellant:	No appearance (counsel on record is Ms. Cynthia Hinkson-Ouhla)
Respondent:	Mrs. Petra Nelson holding papers for Ms. Esther Greene-Ernest
Issues:	Constitutionality of section 33 of the Castries Corporation Bye-laws No. 87 of 2008 – Seizure of goods being offered for sale in a prohibited area – Whether the learned trial judge erred in dismissing the appellant's application for constitutional redress for wrongful seizure of his goods
Result / Order:	The matter is stood down.

Reason: To allow counsel who was holding papers for Mrs. Hinkson-Ouhla in this matter to obtain instructions from her.

Case Name: Harry Edwards Jewellers Limited v
Antoinette James
[High Court Civil Appeal No. 18 of 2010]

Date: Thursday, 15th December 2011

Coram: The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Shawn Innocent

Respondent: Ms. Zinaida McNamara holding papers for Mr. Mark Maragh

Issues: Whether the trial judge erred in holding that the respondent had been wrongfully dismissed by the appellant company without notice or pay in lieu thereof – Whether the findings of fact made by the trial judge were heavily and unreasonably weighted in favour of the respondent

Result / Order: [Oral delivery]
The hearing of the appeal is adjourned to the next sitting of the Court scheduled for the week of 13th to 17th February 2012.

Reason: Counsel for the respondent, Mr. Mark Maragh, was unwell and not able to be present (a medical certificate was presented to the Court). Ms. McNamara requested that the matter be adjourned to the next sitting of the Court. The Court noted however, that Mr. Maragh had not complied with

certain directions which had been given the last time that this matter came up for hearing.

Case Name: Mathuna Kisna v Cable & Wireless (West Indies) Ltd.
[High Court Civil Appeal No. 32 of 2010]

Date: Thursday, 15th December 2011

Coram: The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Appearances:

Appellant:	No appearance (Mr. Fraser is counsel on record for the appellant)
Respondent:	Ms. Zinaida McNamara holding papers for Mr. Mark Maragh

Issues: Whether the learned judge erred in holding that the appellant was fairly summarily dismissed for disclosing confidential information to a third party

Result / Order: The matter is stood down.

Reason: The Court was informed that counsel for the appellant, Mr. Fraser, was just about to begin a magisterial criminal matter in another courtroom.

Case Name: Frederick Augustus v Mayor & Citizens of Castries
[High Court Civil Appeal No. 25 of 2009]

Date: Thursday, 15th December 2011

Coram: The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Appearances:

Appellant: Ms. Wauneen Louis-Harris holding papers for Ms. Cynthia Hinkson-Ouhla

Respondent: Ms. Petra Nelson holding papers for Ms. Esther Greene-Ernest

Issues: Constitutionality of section 33 of the Castries Corporation Bye-laws No. 87 of 2008 – Seizure of goods being offered for sale in a prohibited area – Whether the learned trial judge erred in dismissing the appellant’s application for constitutional redress for wrongful seizure of his goods

Result / Order: [Oral delivery]
The matter is adjourned to the next sitting of the Court in Saint Lucia scheduled for the week of 13th to 17th February 2012.

Reason: Mrs. Louis-Harris informed the Court that the parties were undergoing settlement negotiations which they believed would be fruitful.

Case Name: Mathuna Kisna v Cable & Wireless (West Indies) Ltd.
[High Court Civil Appeal No. 32 of 2010]

Date: Thursday, 15th December 2011

Coram: The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Horace Fraser

Respondent: Ms. Zinaida McNamara holding papers for Mr. Mark Maragh

Issues: Whether the learned judge erred in holding that the appellant was fairly summarily dismissed for disclosing confidential information to a third party

Result / Order: [Oral delivery]
The hearing of the appeal is adjourned to the next sitting of the Court scheduled for the week of 13th to 17th February 2012.

Reason: Counsel for the respondent, Mr. Mark Maragh, was unwell and not able to be present (a medical certificate was presented to the Court). Ms. McNamara requested that the matter be adjourned to the next sitting of the Court.

Case Name: Rain Forest Sky Rides Ltd. v Sherma Mathurin
[High Court Civil Appeal No. 6 of 2011]

Date: Thursday, 15th December 2011

Coram: The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Appearances:

Appellant: Ms. Renee St. Rose, with her, Ms. Shellone Surage

Respondent: Mr. Gerard Williams

Issues: Personal injury – Whether the learned judge’s assessment of damages was excessive

Result / Order:

[Oral delivery]

- 1. The appeal is dismissed, save that the error in the order entered on 21st January 2011 with respect to costs is corrected to read:
“Prescribed costs shall be on the sum of \$166,000.00 calculated at 75% of that amount which amounts to \$24,900.00.”**
- 2. Costs on appeal are awarded to the respondent on the prescribed costs basis in accordance with CPR 65.13 (a) which is two thirds of what was awarded in the court below.**

Reason:

The Court was guided by the principles set out in the case of Alphonso and Others v Deodat Ramnath (1997) 56 WIR 183, in which Singh J.A. stated that in such appeals, “it must be recognised that the burden on the appellant who invites interference with an award of damages that has commended itself to the trial judge is indeed a heavy one. The assessment of those damages is peculiarly in the province of the judge. A Court of Appeal has not the advantage of seeing the witnesses, especially the injured person, a matter which is of grave importance in drawing conclusions as to the quantum of damage from the evidence that they give. If the judge had taken all the proper elements of damage into consideration and had awarded what he deemed to be fair and reasonable compensation under all the circumstances of the case, [the Court] ought not, unless under very exceptional circumstances, to disturb his award. The mere fact that the judge’s award is for a larger or smaller sum than [the Court] would have given is not of itself a sufficient reason for disturbing the award.

“But, [the Court is] powered to interfere with the award if [it] is clearly of the opinion that, having regard to all the circumstances of the case, [it] cannot find any reasonable proportion between the amount awarded and the loss sustained, or if the damages are out of all proportion to the circumstances of the case. This court will also interfere if the judge misapprehended the facts, took

irrelevant factors into consideration, or applied a wrong principle of law, or applied a wrong measure of damages which made his award a wholly erroneous estimate of the damage suffered.”

In particular, the Court stressed that the award of damages is a matter for the exercise of the trial judge’s judicial discretion and unless it can be said that the judge’s award “exceeded the generous ambit within which reasonable disagreement is possible and was therefore clearly and blatantly wrong” the Court will not interfere.

The Court was of the view that the trial judge in this matter, having had the benefit of the medical report as well as other evidence that was before him, applied the correct principles and did not misapprehend the facts of the case. The threshold for interfering with the award of damages that he made was not reached.

Case Name:	Francis Monroe also known as Hileron Francis Jn. Pierre v Bank of Saint Lucia Limited [High Court Civil Appeal No. 11 of 2011]
Date:	Thursday, 15th December 2011
Coram:	The Hon. Mde. Janice M. Pereira, Justice of Appeal The Hon. Mr. Davidson K. Baptiste, Justice of Appeal The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]
Appearances:	
Appellant:	Ms. Wauneen Louis-Harris, with her, Ms. Raquel Willie-Trotman
Respondent:	Mr. Thaddeus M. Antoine, with him, Ms. Thea Alexander and Ms. Mary Juliana Charles
Issues:	Private sale of properties owned by the appellant – Whether or not a judgment creditor in Saint Lucia

has two options available to him in relation to the procedure to be followed when selling the land of a judgment debtor (the first having to do with the provisions of the Civil Code, Cap. 4.01, Revised Laws of Saint Lucia 2008 and the Code of Civil Procedure, Cap. 243, Revised Laws of Saint Lucia 1957, and the second relating to Part 55 of the Civil Procedure Rules 2000) – Articles 1493 and 1496 of the Civil Code

Result / Order: The decision is reserved and the parties will be informed of the date of delivery.

Case Name: Keith Auguste v Genova Marcellin
[Magisterial Civil Appeal No. 2 of 2011]

Date: Thursday, 15th December 2011

Coram: The Hon. Mde. Ola Mae Edwards, Chief Justice [Ag.]
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Appellant:	Mr. Leslie Prospere
Respondent:	No appearance

Issues: Application for extension of time to file Notice of Appeal – Application for extension of time to file an amended Notice of Appeal.

Result / Order: [Oral delivery]

1. The application for extension of time to file Notice of Appeal is granted; Notice of Appeal filed on 28th December 2010 is deemed validly filed;
2. Leave is hereby granted to amend the grounds of appeal as necessary and the Notice of amended grounds to be served on the respondent by registered post at address on record;
3. A copy of the transcript of proceedings is to be

forwarded to the Court of Appeal by the Court Administrator of the Family Court on or before 31st January 2012.

4. Notice of the availability of the transcript of proceedings is to be served on the respondent who is in Canada at the following address: 215 Pembroke Street West, Pembroke, Ontario, K8A 5N1, Canada.
5. An affidavit of service on the respondent is to be filed.
6. The appeal is set down for hearing at the next sitting of the Court in Saint Lucia scheduled for 13th – 17th February 2012.

Reason:

The application made by counsel met the criteria for granting an extension of time. The Court then thought it necessary to give further directions.

Case Name:

**Said Christopher Talal Tome v The Police
[Magisterial Criminal Appeal No. 6 of 2011]**

Date:

Thursday, 15th December 2011

Coram:

**The Hon. Mde. Ola Mae Edwards, Chief Justice [Ag.]
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Miss Zinaida McNamara holding papers for Mr. Mark Maragh

Respondent:

Mr. Seryozha Cenac

Issues:

Possession of ammunition

Result / Order:

[Oral delivery]

1. The appeal is adjourned to next sitting of the Court in February 2012.
2. The Court Administrator of the Magistrate's Court is to communicate formally with Magistrate Smith

and file affidavit evidence as to the result of such communication on or before 31st January 2012.

Reason: The magistrate's notebook could not be located. A portion of the notes of evidence taken at the trial was missing from the record. The Court therefore allowed the parties time to locate the notebook.

Case Name: Malcolm Victorin v The Police
[Magisterial Criminal Appeal No. 3 of 2010]

Date: Thursday, 15th December 2011

Coram: The Hon. Mde. Ola Mae Edwards, Chief Justice [Ag.]
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Appellant:	No appearance (unrepresented)
Respondent:	Mr. Stephen Brette

Issues: Appeal against conviction and sentence – Indecent Assault

Result / Order: [Oral delivery]
1. The appeal against conviction is allowed.
2. The conviction and sentence are set aside.
3. The appellant is discharged.

Reason: The matter was initially part-heard in the magistrates' court. When it was nearing completion, Magistrate Gardener informed the appellant that regrettably the file had gotten lost and that another magistrate would have to start the matter over.

The Court was of the opinion that there were material irregularities with the way in which the case was conducted before the new magistrate. The appellant

did not have a fair trial. The irregularities included a witness relating to the alibi defence of the appellant giving evidence in the absence of the appellant over 5 months after the appellant was convicted and sentenced. Also, the appellant, who was unrepresented at the trial, alleged that he never told the court that the purported alibi witness was his alibi witness in support of his defence. The record supported the appellant's contention. The record also disclosed that the appellant was never called on to state his defence in accordance with the relevant provision of the Criminal Code, Cap. 3.01, Revised Laws of Saint Lucia 2008. A retrial was not ordered because the appellant had already served a substantial part of the sentence imposed, and he had about thirty more days left to serve.

Case Name:	Titula Chulan v The Police [Magisterial Criminal Appeal No. 4 of 2010]
Date:	Thursday, 15th December 2011
Coram:	The Hon. Mde. Ola Mae Edwards, Chief Justice [Ag.] The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]
Appearances:	
Appellant:	No appearance
Respondent:	Mr. Seryozha Cenac
Issues:	Possession of controlled drug with intent to supply
Result / Order:	[Oral delivery] 1. The appeal is adjourned to the next sitting of the Court from 13th to 17th February 2012. 2. The Record of Appeal and the Notice of Hearing of the Appeal are to be served on the appellant and evidence of service is to be filed by no later than 3rd February 2012.

Reason: There was no evidence of service on the appellant.

Case Name: **Auguste Cools v The Police**
[Magisterial Criminal Appeal No. 3 of 2010]

Date: Thursday, 15th December 2011

Coram: The Hon. Mde. Ola Mae Edwards, Chief Justice [Ag.]
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Appellant: No appearance

Respondent: Mr. Giovanni James

Issues: Indecent assault

Result / Order: [Oral delivery]
The appeal is dismissed for want of prosecution.

Reason: The bailiff who personally effected service on the appellant appeared and testified to that fact. The appellant however, failed to attend court on the dates that this matter had been called, on Monday 12th and Thursday 15th December 2011.

Case Name: **Gerald Joseph v The Police**
[Magisterial Criminal Appeal No. 2 of 2011]

Date: Thursday, 15th December 2011

Coram: The Hon. Mde. Ola Mae Edwards, Chief Justice [Ag.]
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Horace Fraser

Respondent: Ms. Tina Mensah

Issues: Stealing

Result / Order: [Oral delivery]
 1. The appeal is allowed.
 2. The conviction and sentence are quashed and the appellant is discharged.

Reason: The magistrate failed to provide reasons for her decision. Further, the transcript of proceedings revealed that the appellant did not have a fair trial, given the element of bias which appeared to exist and which prejudiced the appellant. These factors therefore rendered the conviction unsafe.

Case Name: Kendy Canaii v The Police
 [Magisterial Criminal Appeal No. 12 of 2011]

Date: Thursday, 15th December 2011

Coram: The Hon. Mde. Ola Mae Edwards, Chief Justice [Ag.]
 The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Horace Fraser

Respondent: Mr. Stephen Brette

Issues: Wounding

Result / Order: [Oral delivery with written reasons to follow]
 1. The appeal is allowed.
 2. The conviction is quashed and the sentence is set

aside.

3. The appellant is discharged.

Reason:

The magistrate made substantial errors in arriving at the conclusion that the appellant was guilty.

In particular, she erred in her interpretation of section 100 of the Evidence Act, Cap. 4.15, Revised Laws of Saint Lucia 2008. She relied on the evidence of identification to convict the appellant, contrary to section 102 of the Evidence Act. There was no other evidence apart from this identification evidence. This evidence however, was highly unreliable for a number of reasons. The appellant was unknown to the complainant and the identification was made on the basis of an unusual characteristic of the appellant, which was never disclosed prior to the identification parade. The Court was of the view that the record did not reflect that the magistrate properly weighed the evidence that was before her.

Case Name:

**William Clerfond v Foshlan Incorporated
[High Court Civil Appeal No. 26 of 2010]**

Date:

Friday, 16th December 2011

Coram:

**The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]**

Appearances:

**Appellant /
Applicant:**

Mr. Horace Fraser, with him Ms. Isabella Shillingford

Respondent:

Mrs. Petra Nelson

Issues:

Contract – Agreement between the appellant and respondent for the purchase of a truck – Whether the trial judge wrongly rejected the appellant’s evidence at trial – Challenge to the factual findings of the trial

judge – Whether the matter ought to be remitted to the court below

Result / Order:

[Oral delivery]

- 1. The application for an extension of time for filing the record of appeal is granted.**
- 2. The record of appeal is deemed to be properly filed as of 27th May 2011.**
- 3. Costs of the application for extension of time are awarded to the respondent, but are reserved pending the hearing and determination of the appeal.**

Substantive Appeal

- 1. The appeal is dismissed.**
- 2. The costs of the appeal shall be borne by the appellant in two thirds of the amount awarded as prescribed costs in the court below in accordance with CPR 65.5(2)(b)(i).**
- 3. Costs agreed on the application for an extension of time in the agreed sum of \$1,000.00, to be paid by the appellant to the respondent.**

Reason:

Having regard to the well-established principles set out in cases such as Watt (or Thomas) v Thomas [1947] 1 All E.R. 582 with respect to disturbing the findings of fact of a trial judge (particularly where the issue in determination rests upon the making of factual findings as distinct from legal findings), the Court held that once it can be shown that there is a basis upon which the factual findings could have been made by the trial judge and that the inferences drawn are reasonable, then an appellate court should be slow to interfere with that decision.

The appellate court cannot just substitute its view for those findings of fact, even though it may have arrived at a different conclusion. The test is whether it was open to the learned trial judge to arrive reasonably, at his conclusion.

The Court observed that there was a clear conflict of evidence in the court below in relation to the critical issue in the matter, and the learned trial judge, upon

coming to the decision that the appellant had not been completely truthful, concluded that he was not to be believed when there were discrepancies between the evidence of the appellant and that of the respondent.

It was therefore held that this Court cannot, just because it may hold a different view, disturb these findings of the trial judge who enjoyed the benefit of seeing and hearing the witnesses.

Case Name:	Samora Johnson v Pancrace Eleza [High Court Civil Appeal No. 33 of 2010]
Date:	Friday, 16th December 2011
Coram:	The Hon. Mde. Janice M. Pereira, Justice of Appeal The Hon. Mr. Davidson K. Baptiste, Justice of Appeal The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]
Appearances:	
Appellant:	Mr. Horace Fraser
Respondent:	No appearance
Issues:	Road traffic accident – Assessment of damages by the learned trial judge – Whether the appellant should have been compensated for distress and inconvenience
Result / Order:	The matter is stood down.
Reason:	To allow counsel for the appellant to get a copy of the affidavit of service from his office.

Case Name: Giovanni James v Ministry of Education, Human Resource Development, Youth & Sports and Another
[High Court Civil Appeal No. 2 of 2011]

Date: Friday, 16th December 2011

Coram: The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Horace Fraser

Respondents: Mr. Dwight Lay, with him, Ms. Jan Drysdale

Issues: Discontinuance of scholarship funding – Whether the appellant should be awarded damages to recover the money spent on tuition fees for the final year of his course – Whether the trial judge should have awarded the appellant costs in the court below

Result / Order: [Oral delivery]
1. The appeal is dismissed
2. No order as to costs.

Reason: The Court was satisfied that that the trial judge fully considered the procedure as set out in the Civil Procedure Rules 2000 (“CPR”) as well as the authorities grounding such a claim and therefore correctly concluded that no award of damages could have been made to the appellant.

With regard to the challenge in respect of costs, the Court found that there was no claim for costs before the trial judge and neither was the issue raised during the appellant’s oral submissions. It was held that when one considers the provision in CPR 56.13(6), and also, given the very nature of Judicial Review proceedings and having regard to the fact that an award of costs is discretionary, the trial judge cannot be blamed for not making a costs award in favour of the appellant. The appellant’s challenge on

this issue accordingly failed.

Case Name: Samora Johnson v Pancrace Eleza
[High Court Civil Appeal No. 33 of 2010]

Date: Friday, 16th December 2011

Coram: The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Appearances:

Appellant:	Mr. Horace Fraser
Respondent:	In person

Issues: Road traffic accident – Assessment of damages by the learned trial judge – Whether the appellant should have been compensated for distress and inconvenience suffered as well as for the down payment made towards the purchase of the vehicle

Result / Order: The matter is stood down.

Reason: To allow the court to adjourn for lunch. The matter had only been called to ascertain whether the counsel for the appellant and the respondent were ready to proceed with the appeal.

Case Name: Samora Johnson v Pancrace Eleza
[High Court Civil Appeal No. 33 of 2010]

Date: Friday, 16th December 2011

Coram: The Hon. Mde. Janice M. Pereira, Justice of Appeal

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

Appearances:

Appellant: Mr. Horace Fraser

Respondent: In person

Issues:

Road traffic accident – Assessment of damages by the learned trial judge – Whether the appellant should have been compensated for distress and inconvenience suffered as well as for the down payment made towards the purchase of the vehicle

Result / Order:

[Oral delivery]

- 1. The appeal is dismissed.**
- 2. The appellant shall pay to the respondent costs in the sum of \$1,652.80, being two-thirds of the sum awarded in the court below.**

Reason:

The trial judge was correct in not awarding to the appellant any money to reimburse him for the down payment made on the vehicle towards its purchase as a recoverable head of loss. This was wholly different from a claim based on the pre-accident value of the vehicle, which in any event had been satisfied by the Insurers. He also rightly refused to award any damages for distress and inconvenience. No peculiar factual circumstances were pleaded or proved which justified such an award.

Case Name:

**Samuel Amayke v The Police
[Magisterial Criminal Appeal No. 22 of 2011]**

Date:

Friday, 16th December 2011

Coram:

**The Hon. Mde. Ola Mae Edwards, Chief Justice [Ag.]
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]**

Appearances:

Appellant: In person (unrepresented)

Respondent: Mr. Seryozha Cenac

Issues:

Possession of a controlled drug

Result / Order:

[Oral delivery]

- 1. The appeal against sentence is allowed to the extent that the sentence of three years is set aside and a sentence of eight months is substituted.**
- 2. The sentence of eight months is to run from the date of conviction and sentence which is 18th October 2011.**
- 3. The period of remand from the 9th day of October 2011 to the 18th October 2011 is to be part of the 8 month sentence imposed.**

Reason:

Counsel for the respondent conceded that the sentence imposed by the magistrate was excessive, taking into account the mitigating factors which included his early guilty plea, that he was a first time offender and that he had a medical condition. There was no evidence on the record that the magistrate took these mitigating factors above into account.

The learned magistrate also failed to apply the applicable principles. The Court was of the view that his decision showed a lack of appreciation of the sentencing guidelines enunciated by this court and the numerous cases which follow. The Court found that the sentence was extremely excessive and took the view that 8 months imprisonment would have been appropriate.

Case Name:

**Elvis King v The Police
[Magisterial Criminal Appeal No. 14 of 2011]**

Date: Friday, 16th December 2011

Coram: The Hon. Mde. Ola Mae Edwards, Chief Justice [Ag.]
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Al Elliott holding papers for Mr. Marcus Foster

Respondent: Mr. Giovanni James

Issues: Possession with intent to apply

Result / Order: [Oral delivery]

1. Unless the appellant no later than 20th January 2012 files an application with supporting evidence concerning the absence of an executed recognizance to prosecute the appeal, the notice of appeal filed on 14th November 2006 stands struck out and dismissed.
2. Where the application with supporting evidence is filed in a timely manner, the respondent shall file and serve an affidavit in response no later than 31st January 2012
3. The matter is set down for report at the next sitting of the Court scheduled for 13th – 17th February 2012.

Reason: The appellant's vehicle was forfeited on the charge and he failed to file a recognizance and surety in accordance with the law to allow the appeal to be prosecuted. There was therefore no proper Notice Of Appeal before the court to allow the prosecution of the appeal.

Case Name: Olvin Jn. Baptiste v The Police
[Magisterial Criminal Appeal No. 20 of 2011]

Date: Friday, 16th December 2011

Coram: The Hon. Mde. Ola Mae Edwards, Chief Justice [Ag.]
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Appellant:	Mr. Huggins Nicholas
Respondent:	Mr. Giovanni James

Issues: Possession of stolen item – Whether the amendment of the charge was lawful

Result / Order: [Oral delivery with written reasons to follow]
1. The appeal is allowed.
2. The conviction is quashed and the sentence set aside.
3. The appellant is discharged.

Reason: The Court held that the amendment of the charge was not lawful as it created a new charge, in both type and substance, changing an indictable offence into a summary offence. Section 671 of the Criminal Code, Cap. 3:01, Revised Laws of Saint Lucia 2008, provides a 6 month limitation period for bringing summary offences.

There is no jurisdiction to switch a charge from indictable to summary. The method of bringing the claim was also not correct as it was not done in accordance with section 661 of the Criminal Code.

The magistrate had no jurisdiction to function under section 776 of the Criminal Code. Even with jurisdiction, the limitation period still operates.

The defendant made a statement to the court being unaware of his rights and it appeared that the magistrate convicted on such. The Court found this to be a material irregularity which impacted on the fairness of the trial.

