

COURT OF APPEAL SITTING

**SAINT LUCIA
20th – 29th July 2011**

JUDGMENTS

Case Name: Alfa Telecom Turkey Limited v Cukurova
Finance International Limited et al
[High Court Civil Appeal No. 24 of 2010]

Date: Wednesday, 20th July 2011

Coram: The Hon. Mde. Ola Mae Edwards, Justice of Appeal
The Hon. Mde. Janice Pereira, Justice of Appeal
The Hon. Mr. Davidson Baptiste, Justice of Appeal

Appearances:

Appellant: Mr. Thomas Theobalds holding papers for Mr. Stephen Smith, QC, Mr. Robert Levy, QC, and Mr. Oliver Clifton

Respondent: Mr. Peter I. Foster holding papers for Mr. Kenneth MacLean, QC, Mr. James Nadin and Ms. Arabella Luisa di Iorio

Issues: Commercial appeal – Agreement for credit to be extended to respondents – Grant of equitable mortgages to the appellant over shares held by the respondents to secure loan – Whether the trial judge erred in finding that no events of default had occurred under the loan agreement – Whether the appellant had acted in bad faith in attempting to realise its security under the loan agreement

Result and Reason: Held: allowing the appeal and setting aside the judgment and order of the learned trial judge, granting the relief sought by the appellant in Claim No.: BVIHC (COM) 2007/072, dismissing the respondent's claim in Claim No.: BVIHC (COM) 2007/119, and therefore dismissing the cross-appeal

set out in the respondents' counter-notice advancing additional grounds for supporting the judgment, that:

1. The respondents, in failing to do what the appellants required them to do to perfect the security and then actively seeking to prevent the perfection of the security by Claim No. 119 of 2007, committed an act of default.
2. Based on the learning in the Privy Council decision in *Cukurova Finance International Limited et al v Alfa Telecom Turkey Limited* [2009] UKPC 19, as well as on the finding that an act of default had taken place on 27th April 2007, the English share charges were enforced by a valid appropriation of shares, referred to in the letter from the appellant's solicitors dated 27th April 2007.

Cukurova Finance International Limited et al v Alfa Telecom Turkey Limited [2009] UKPC 19 applied.

3. The Geneva arbitral award did constitute an Event of Default. Clause 17.16 of the Facility Agreement provides that it is an Event of Default if any event or circumstance occurs which in the opinion of the appellant, has had or is reasonably likely to have a Material Adverse Effect. Even if, as the trial judge suggested, the controlling mind and will of Alfa (for the purpose of deciding whether an event was likely to have a Material Adverse Effect) was expressed over the signature of the sole de jure director of the appellant company, that in and of itself does not make his signing of the acceleration letter any less valid (per Gordon JA [Ag.]).
4. The Geneva arbitration award was a material adverse effect because, irrespective of the fact that the precise extent of the financial impact remained to be finally determined, it potentially entitled TeliaSonera to an award of damages initially estimated to be in excess of US\$150 million. The acceleration letter itself was sufficient evidence that an agent of the appellant,

its sole director, had formed the contractually requisite opinion that a material adverse effect had occurred. It was not properly open to the judge to find that the signature of the acceleration letter by the appellant's agent was insufficient evidence that the lender had formed the opinion that a material adverse development had occurred. If, as the trial judge found, the letter's signatory only acted upon the instructions of other individuals (acting through a company named Altimo) who were the true directing minds of Alfa, then the letter could only have been sent under such individual's instructions (per Kawaley JA [Ag.]).

5. Having found that it was open to the appellant to conclude that a material adverse effect occurred, as the judge clearly did, it was not open to him to find that no opinion to this effect was formed by the lender in the face of the express assertion of this act of default in the acceleration letter. The position might have been otherwise had the letter not been signed by the appellant's sole director with undisputed authority to bind the company.
6. The specific actions of Alfa as set out by the respondents in their counter-notice do not amount to evidence of bad faith on the part of the appellants, as was alleged by the respondents.
7. The appellant was entitled to accelerate the loan pursuant to its letter dated April 16th 2007 in respect of at least one valid act of default, and to subsequently exercise its appropriation rights.
8. The learned judge erred in concluding that the acceleration letter of April 16th 2007 was vitiated because its reliance on invalid acts of default constituted a fundamental breach of contract. Service by a lender of a demand letter relying on acts of default which are disputed by the borrower and subsequently not made out cannot constitute a breach of contract unless there is an express or implied duty to rely on valid acts of default in the relevant lending agreement. While there may have been an implied duty for the

appellant to assert acts of default in good faith, there is no justification for construing the Facilities Agreement as containing an implied term that the lender would only assert such acts of default which might, if disputed by the borrower, be either agreed to be valid, or determined by a competent court to be valid.

Concord Trust v The Law Debenture Corpn plc [2005] 1 W.L.R. 1591 cited.

9. The fact that CFI was balance sheet insolvent as at December 2006 did constitute yet another Event of Default on the part of the respondent. The trial judge erred in finding that the respondent was not in fact insolvent, his reason for this being that the US\$574m appearing in the CFI's balance sheet in consequence of the funding which it had received on 24th November 2006, if not technically capital, was for all practical purposes to be treated as capital (per Gordon JA [Ag.]).
10. It was open to the trial judge, having regard to the oral evidence he heard and accepted and the factual matrix within which the Facilities Agreement was consummated read with its strict terms, to find in effect that the balance sheet insolvency upon which Alfa relied was wholly technical, easily capable of being remedied by and administrative act, and, accordingly, did not constitute to any material extent of an act of default (per Kawaley JA [Ag.]).
11. The trial judge's costs order of 22nd July 2010 should be set aside as an incident of the result on the main appeal. Unless either party applies by letter to the court within 28 days to be heard on the issue of costs, the judge's order as to costs is set aside and costs are awarded to the claimant below to be taxed if not agreed, and the costs of the appeals are awarded to the appellants in the main appeal, to be taxed if not agreed.

APPLICATIONS AND APPEALS

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

Date: Wednesday, 20th July 2011

Coram: The Hon. Mde. Ola Mae Edwards, Justice of Appeal
The Hon. Mde. Janice Pereira, Justice of Appeal
The Hon. Mr. Davidson Baptiste, Justice of Appeal

Appearances:

Appellant: In person

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

Issues: Appeal against conviction – Murder

Result / Order: [Oral delivery]
The matter is stood down.

Reason: In order to determine whether counsel on record was still acting for the appellant or had withdrawn from the matter. The appellant herself was unsure of the position in relation to her legal representation.

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

Date: Wednesday, 20th July 2011

Coram: The Hon. Mde. Ola Mae Edwards, Justice of Appeal
The Hon. Mde. Janice Pereira, Justice of Appeal
The Hon. Mr. Davidson Baptiste, Justice of Appeal

Appearances:

Appellant: Mr. Colin Foster, with him, Mr. Tonjaka Hinkson

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

Issues: Appeal against conviction – Murder

Result / Order: [Oral delivery]

1. The hearing of the appeal is traversed to the next sitting of the court scheduled for 12th to 16th December 2011.
2. The skeleton arguments of the appellant, with authorities, are to be filed and served on or before 18th November 2011.
3. The skeleton arguments of the respondent, with authorities, are to be filed and served on or before 2nd December 2011.

Reason: Mr. Hinkson, who was vital to the preparation of the matter, had recently been out of state seeking medical treatment. As a result, the appellants were not ready to proceed. The Director of Public Prosecutions was not in opposition to having the matter traversed to the next sitting of the Court in the territory.

Case Name: Saint Lucia Air and Seaports Authority v Leroy Mathurin et al
[High Court Civil Appeal No. 35 of 2008]

Date: Wednesday, 20th July 2011

Coram: The Hon. Mde. Ola Mae Edwards, Justice of Appeal
The Hon. Mde. Janice Pereira, Justice of Appeal
The Hon. Mr. Davidson Baptiste, Justice of Appeal

Appearances:

Intended Appellant / Applicant: Mrs. Kimberley Roheman holding papers for Mr. Mark Maragh

Respondent: Mr. Horace Fraser

Issue: Application for leave to appeal to Her Majesty in Council

Result / Order: [Oral delivery]
The application is adjourned for hearing on Thursday 21st July 2011.

Reason: Counsel for the applicant, Mr. Mark Maragh, was unwell and seeking medical treatment.

Case Name: RBTT Bank Caribbean Limited v Michael Joseph et al
[High Court Civil Appeal No. 45 of 2010]

Date: Wednesday, 20th July 2011

Coram: The Hon. Mde. Ola Mae Edwards, Justice of Appeal
The Hon. Mde. Janice Pereira, Justice of Appeal
The Hon. Mr. Davidson Baptiste, Justice of Appeal

Appearances:
Appellant / Respondent: Mrs. Kimberley Roheman holding papers for Mr. Mark Maragh

Respondents / Applicants: Mr. Horace Fraser (1st Respondent)
Mrs. Kim St. Rose, with her, Ms. Isabella Shillingford (2nd Respondent)

Issue: Application for the notice of appeal to be struck out

Result / Order: [Oral delivery]
This matter is adjourned for one final time to

Thursday 21st July 2011.

Reason: Counsel for the respondent in the application, Mr. Mark Maragh, was unwell and seeking medical treatment.

Case Name: Aloysius Hyacinth also known as Al Hyacinth
v 1st National Bank St. Lucia Limited et al
[High Court Civil Appeal No. 34 of 2010]

Date: Wednesday, 20th July 2011

Coram: The Hon. Mde. Ola Mae Edwards, Justice of Appeal
The Hon. Mde. Janice Pereira, Justice of Appeal
The Hon. Mr. Davidson Baptiste, Justice of Appeal

Appearances:
Appellant / Mr. Eghan Modeste
Respondent:

Respondent / Ms. Sardia Cenac
Applicant:

Issue: Application for notice of appeal to be struck out as a nullity

Result / Order: [Oral delivery]
The matter is stood down.

Reason: To allow transcript to be obtained to determine whether leave to appeal had been granted to the appellant / respondent by the learned judge.

Case Name: Frederick Augustus v Mayor & Citizens of

**Castries
[High Court Civil Appeal No. 25 of 2009]**

Date: Wednesday, 20th July 2011

Coram: The Hon. Mde. Ola Mae Edwards, Justice of Appeal
The Hon. Mde. Janice Pereira, Justice of Appeal
The Hon. Mr. Davidson Baptiste, Justice of Appeal

Appearances:

Appellant: Mr. Andie George holding papers for Mrs. Cynthia Hinkson-Ouhla

Respondent: Mrs. Petra Nelson

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]
1. The hearing of the appeal is adjourned to the next sitting of the court scheduled for 12th to 16th December 2011.
2. The submissions of the respondent in the court below filed on 27th May 2009 are to be filed by counsel for the respondent on or before 31st October 2011.

Reason: Counsel for the appellant, Mrs. Hinkson-Ouhla, requested an adjournment because there had been a death in the family.

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

Date: Wednesday, 20th July 2011

Coram:	The Hon. Mde. Ola Mae Edwards, Justice of Appeal The Hon. Mde. Janice Pereira, Justice of Appeal The Hon. Mr. Davidson Baptiste, Justice of Appeal
Appearances:	
Appellant / Applicant:	Mr. Horace Fraser, with him, Ms. Isabella Shillingford
Respondent:	Mrs. Petra Nelson
Issue:	Application for an extension of time to file record of appeal
Result / Order:	[Oral delivery] 1. The hearing of the application for an extension of time and the substantive appeal are adjourned to the next sitting of the court in Saint Lucia scheduled for 12th to 16th December 2011. 2. The respondent is to file and serve a response to the application for extension of time on or before 27th July 2011. 3. The applicant is to file a reply by way of evidence or submissions on or before 5th August 2011.
Reason:	Notification that the matter would be heard during this sitting of the Court was only received by counsel for the respondent on 15th July 2011. Thus, the 7 clear days notice (stipulated by rule 11.11(1)(b) of the Court Civil Procedure Rules 2000) was not given. As a result, counsel for the respondent did not have sufficient time to respond to the application and was not in a position to proceed during this sitting.
Case Name:	Jesse St. Cyr v The Queen [High Court Criminal Appeal No. 2 of 2008]
Date:	Wednesday, 20th July 2011

Coram: The Hon. Mde. Ola Mae Edwards, Justice of Appeal
The Hon. Mde. Janice Pereira, Justice of Appeal
The Hon. Mr. Davidson Baptiste, Justice of Appeal

Appearances:

Appellant: Mr. Shawn Innocent holding papers for Mr. Lorne Theophilus

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

Issues: Criminal appeal against conviction – Murder

Result / Order: [Oral delivery]
1. The skeleton arguments and additional grounds of appeal for the appellant which were filed out of time on 13th and 15th July 2011 are deemed to be validly filed.
2. The skeleton arguments of the respondent are to be filed and served on or before 30th September 2011.
3. The appellant has liberty to file and serve skeleton arguments in reply on or before 20th October 2011.
4. The appeal is set down for hearing at the next sitting of the court in Saint Lucia scheduled for 12th-16th December 2011.

Reason: Counsel for the respondent did not have an opportunity to respond to the skeleton arguments of counsel for the appellant, which were filed out of time, on 13th and 15th July 2011. Counsel for the appellant stated that the appeal was on a novel area of the law and that because of this, he would be grateful if sufficient time were allowed for counsel on both sides to properly prepare for the hearing of the appeal.

Case Name: Huggins Neal Nicholas v The Attorney

General
[High Court Civil Appeal No. 18 of 2008]

Date: Wednesday, 20th July 2011

Coram: The Hon. Mde. Ola Mae Edwards, Justice of Appeal
The Hon. Mde. Janice Pereira, Justice of Appeal
The Hon. Mr. Davidson Baptiste, Justice of Appeal

Appearances:

Intended Appellant / Applicant: Mr. Horace Fraser

Respondent: Mrs. Brender Portland-Reynolds

Issue: Application for an extension of time to file application to Her Majesty in Council

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

Case Name: Mark Goddard as personal representative of the estate of John Bertram Goddard v Paula Calderon
[High Court Civil Appeal No. 40 of 2010]

Date: Wednesday, 20th July 2011

Coram: The Hon. Mde. Ola Mae Edwards, Justice of Appeal
The Hon. Mde. Janice Pereira, Justice of Appeal
The Hon. Mr. Davidson Baptiste, Justice of Appeal

Appearances:

Intended Appellant / Applicant: Mr. Tonjaka Hinkson

Respondent: Mr. Thomas Theobalds

Issue: Application for an extension of time to apply for leave to appeal – Application for leave to appeal

Result / Order: [Oral delivery]
1. The application for extension of time and leave to appeal filed on 12th November 2010 is dismissed.
2. Costs agreed at \$2,000.00 awarded to the respondent.

Reason: The application for leave to appeal the order of the learned trial judge was filed out of time. Moreover, the appellant could provide no good reason for the late filing of the application.

Case Name: Natiana Marquis v Laretta Marquis et al
[High Court Civil Appeal No. 7 of 2011]

Date: Wednesday, 20th July 2011

Coram: The Hon. Mde. Ola Mae Edwards, Justice of Appeal
The Hon. Mde. Janice Pereira, Justice of Appeal
The Hon. Mr. Davidson Baptiste, Justice of Appeal

Appearances:
Intended Appellant / Applicant: In person (unrepresented)

Respondent: Ms. Veronica Barnard

Issue: Application for an extension of time to file application for leave to appeal

Result / Order: [Oral delivery]
1. The application for an extension of time is treated as the appeal and the appeal is allowed.
2. The order of the learned trial judge dated 5th April 2011 is set aside.

3. Costs in the sum of \$750.00 awarded to the applicant / appellant.

Reason: A party cannot have default judgment entered for them on a fixed date claim. In the court below, the respondents did not acknowledge service of or file a defence to the claim, and neither were they present for the delivery of their judgment. They should however, have had that judgment properly set aside under CPR 39.5.

Case Name: Diana Anius v Lennox Mondesir
[High Court Civil Appeal No. 16 of 2011]

Date: Wednesday, 20th July 2011

Coram: The Hon. Mde. Ola Mae Edwards, Justice of Appeal
The Hon. Mde. Janice Pereira, Justice of Appeal
The Hon. Mr. Davidson Baptiste, Justice of Appeal

Appearances:
Intended Appellant / Applicant: Mr. Horace Fraser
Respondent: Mr. Vernantius James

Issue: Application for leave to appeal the case management order of the learned master

Result / Order: [Oral delivery]
The application for leave to appeal is dismissed with no order as to costs.

Reason: The court could find no fault with the manner in which the learned master had exercised her discretion. Having regard to the overriding objective (CPR 1.1), it was important that the matter be allowed to proceed so that it could be determined on its

merits.

Case Name: C.O. Williams Construction (St. Lucia)
Limited v Inter-Island Dredging Co. Ltd.
[High Court Civil Appeal No. 17 of 2011]

Date: Wednesday, 20th July 2011

Coram: The Hon. Mde. Ola Mae Edwards, Justice of Appeal
The Hon. Mde. Janice Pereira, Justice of Appeal
The Hon. Mr. Davidson Baptiste, Justice of Appeal

Appearances:

Intended Appellant / Applicant:	Ms. Shan Greer, with her, Mr. Michael Du Boulay
Respondent:	Mrs. Petra Nelson

Issues: Application for leave to appeal – Applicability of CPR 26.8 in relation to applications for extensions of time

Result / Order: [Judgment reserved]

Reason: The full court thought it necessary to deliver a decision in writing or a reasoned oral judgment on this matter.

Case Name: Aloysius Hyacinth also known as Al Hyacinth
v 1st National Bank St. Lucia Limited et al
[High Court Civil Appeal No. 34 of 2010]

Date: Wednesday, 20th July 2011

Coram: The Hon. Mde. Ola Mae Edwards, Justice of Appeal

**The Hon. Mde. Janice Pereira, Justice of Appeal
The Hon. Mr. Davidson Baptiste, Justice of Appeal**

Appearances:

**Appellant /
Respondent:**

Mr. Eghan Modeste

**Respondent /
Applicant:**

Ms. Sardia Cenac

Issue:

**Application for the notice of appeal to be struck out
as a nullity**

Result / Order:

[Oral delivery]

**The appeal, having been withdrawn, stands
dismissed with agreed costs to the respondent /
applicant in the sum of \$1,500.00.**

Reason:

**Mr. Modeste, after having taken a look at the
transcript, decided to withdraw the appeal.**

Case Name:

**Francis Lewis v Marcella De Freitas
[High Court Civil Appeal No. 14 of 2011]**

Date:

Wednesday, 20th July 2011

Coram:

**The Hon. Mde. Ola Mae Edwards, Justice of Appeal
The Hon. Mde. Janice Pereira, Justice of Appeal
The Hon. Mr. Davidson Baptiste, Justice of Appeal**

Appearances:

**Intended Appellant /
Applicant:**

Mrs. Petra Nelson

Respondent:

Mr. Peter I. Foster, with him, Ms. Diana Thomas

Issues:

**Application for leave to appeal – Application for a
stay of proceedings and/or execution of order**

Result / Order:

[Oral delivery]

- 1. The application for extension of time for leave to appeal and for stay of execution is refused.**
- 2. Costs in the sum of \$2,000.00 are awarded to the respondent.**

Reason:

A litigant is under a duty to keep in touch with his lawyer when he has a matter pending in the courts. The court was of the view that the applicant should have provided more information in his affidavit about the circumstances that contributed to his failure to learn about the delivery of his judgment on time, which in turn caused him to apply for leave to appeal out of time. The court refused to automatically conclude that these circumstances were wholly extraneous such that the situation could not have been avoided. Thus, the applicant merely stating in his affidavit that his lawyer did not inform him early enough of the delivery of his judgment in the court below was not seen as a good enough reason to allow the application for leave which was filed out of time.

Case Name:

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

Date:

Wednesday, 20th July 2011

Coram:

**The Hon. Mde. Ola Mae Edwards, Justice of Appeal
The Hon. Mde. Janice Pereira, Justice of Appeal
The Hon. Mr. Davidson Baptiste, Justice of Appeal**

Appearances:

Appellant:

In person (unrepresented)

Respondent:

Mr. Giovanni James holding papers for Mrs. Victoria Charles Clarke, Director of Public Prosecutions

Issues: Appeal against conviction – Murder – Whether the appellant qualifies for legal aid

Result / Order: [Oral delivery]

1. Pursuant to s. 46 of the ECSC (St. Lucia) Act Cap 2:01 and Rule 53 of the COA Rules 1968 as amended, the court directs that legal aid and counsel be assigned to the appellant for the hearing or preparation of hearing of the appeal.
2. Mrs. Wauneen Louis-Harris is assigned as counsel for the appellant.
3. Pursuant to s. 50 (2) of the ECSC Saint Lucia Act Chap 2:01 and Rules 48(10) and 47(2) of the Court of Appeal Rules 1968, a copy of the transcript of proceedings and summing up shall be supplied free of charge to counsel assigned to the appellant.
4. Skeleton arguments for the appellant are to be filed and served on or before 31st October 2011.
5. Skeleton arguments for the respondent are to be filed and served on or before 30th November 2011.
6. Skeleton arguments in reply if necessary are to be filed and served by the appellant on or before 2nd December 2011.
7. The matter is traversed to the next sitting of the court in Saint Lucia during the week of 12th-16th December 2011.

Reason: The attorney who was previously acting for the appellant had withdrawn from the case and the court was of the view that it was in the interests of justice that the appellant should have legal aid since she did not have sufficient means to enable her to afford the services of a lawyer.

Case Name: Mitchell Joseph v The Queen
[High Court Criminal Appeal No. 1 of 2011]

Date: Wednesday, 20th July 2011

Coram:	The Hon. Mde. Ola Mae Edwards, Justice of Appeal The Hon. Mde. Janice Pereira, Justice of Appeal The Hon. Mr. Davidson Baptiste, Justice of Appeal
Appearances:	
Appellant:	Mr. Al Elliot
Respondent:	Mr. Giovanni James, holding papers for Mrs. Victoria Charles-Clarke, Director of Public Prosecutions
Issues:	Application for the transcript to be provided to the appellant – Application for counsel to be assigned to the appellant
Result / Order:	[Oral delivery] The matter is adjourned to tomorrow morning.
Reason:	To allow the applicant to be present for the hearing of the matter. The court refused to deal with the application in the appellant's absence.
Case Name:	Keith Auguste v Gevona Marcellin [Magisterial Civil Appeal No. 1 of 2011]
Date:	Wednesday, 20th July 2011
Coram:	The Hon. Mde. Ola Mae Edwards, Justice of Appeal The Hon. Mde. Janice Pereira, Justice of Appeal The Hon. Mr. Davidson Baptiste, Justice of Appeal
Appearances:	
Appellant / Respondent / Applicant:	Mr. Leslie Prospere
Applicant / Respondent:	Ms. Carol Gideon-Clovis

Issues: Application for removal of attorney from the record –
Application for leave for substituted service

Result / Order: [Oral delivery]

Application for Removal of Attorney from Record:
The application is granted.

Application for Leave for Substituted Service:

The order in this matter is made in terms of the draft order provided by counsel for the appellant:

1. The appellant / applicant is granted leave to serve the respondent with a copy of the notice of application with the accompanying documents as well as any other related documents in Magisterial Civil Appeal No. 1 of 2011 by prepaid registered mail at 1310, Pinecrest Road, 1406, Ottawa, ON K2C 3N8, Canada.
2. The respondent must, within twenty eight days from receipt of the notice of application with the accompanying documents file a written response to the same.
3. The application for an extension of time is set down for hearing at the next sitting of the court during the week commencing 12th December 2011.
4. No order is made as to costs.

Reason: The learned magistrate exercised his jurisdiction pursuant to the Affiliation Act (Cap 4.08 Revised Laws of Saint Lucia 2006), which did not deal with substituted service. Having regard to the timeline requested for a response, the court was prepared to make an order giving leave to serve by registered mail in the manner indicated by Mr. Prospere.

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

Date: Wednesday, 20th July 2011

Coram: The Hon. Mde. Ola Mae Edwards, Justice of Appeal
The Hon. Mde. Janice Pereira, Justice of Appeal
The Hon. Mr. Davidson Baptiste, Justice of Appeal

Appearances:

Appellant: Mr. Colin Foster holding papers for Mr. Kenneth Foster, QC

Respondent: Mr. Giovanni James, holding papers for Mrs. Victoria Charles-Clarke, Director of Public Prosecutions

Issues: Criminal appeal against conviction – Rape and indecent assault

Result / Order: [Oral delivery]

1. The skeleton arguments, with authorities, are to be filed and served by the appellant's counsel on or before 30th September 2011
2. The skeleton arguments, with authorities, are to be filed and served by respondent on or before 31st October 2011.
3. The appellant has liberty to file skeleton arguments in reply on or before 10th November 2011.
4. The appeal is set down for hearing at the next sitting of the court in St. Lucia scheduled for 12th to 16th December 2011.

Reason: In order to allow the transcript to be served on the Director of Public Prosecutions.

Case Name: Ezekiel Joseph v The Queen
[High Court Criminal Appeal No. 6 of 2007]

Date: Wednesday, 20th July 2011

Coram: The Hon. Mde. Ola Mae Edwards, Justice of Appeal

**The Hon. Mde. Janice Pereira, Justice of Appeal
The Hon. Mr. Davidson Baptiste, Justice of Appeal**

Appearances:

Appellant: Mrs. Wauneen Louis-Harris

Respondent: Mr. Giovanni James, holding papers for Mrs. Victoria Charles-Clarke, Director of Public Prosecutions

Issues:

Criminal appeal against conviction – Murder – Admissibility of the appellant’s caution statement – Whether the learned trial judge should have gone further than he did on the issue of identification evidence – Whether the appellant’s conviction is unsafe having regard to inconsistencies in the evidence – Whether the appellant’s sentence was excessive

Result / Order:

[Oral delivery]

- 1. The appeal against conviction is dismissed and the appellant’s conviction for murder is affirmed.**
- 2. The appeal against sentence is allowed to the extent that the sentence should run from the date of remand.**

Reason:

The appellant’s first ground of appeal, regarding the taking of the caution statement when police knew him to have a history of mental health problems, failed. The court held that the evidence coming from the caution statement of the appellant was reliable and thus admissible, as the learned trial judge had determined; the tests under section 76 of the Police and Criminal Evidence Act (“PACE”) were satisfied.

The appellant’s ground of appeal concerning the evidence on identification, also failed. The court did not agree with counsel for the appellant that the learned trial judge should have gone further than he did at trial.

In relation to the inconsistencies in the evidence, the court was of the view that these arguments were without merit.

In relation to the issue concerning diminished responsibility, counsel for the respondent assisted the court in showing that the learned trial judge had in fact adequately addressed this issue.

Finally, in relation to the sentence imposed on the appellant, the court accepted that the learned trial judge did not take into account the time of 2 ½ years which the appellant had already spent on remand, since there was no evidence of him having mentioned it in his speech on sentencing. The court therefore found it proper to vary the appellant's sentence.

Case Name:	Saint Lucia Air and Seaports Authority v Leroy Mathurin et al [High Court Civil Appeal No. 35 of 2008]
Date:	Thursday, 21st July 2011
Coram:	The Hon. Mde. Ola Mae Edwards, Justice of Appeal The Hon. Mde. Janice Pereira, Justice of Appeal The Hon. Mr. Davidson Baptiste, Justice of Appeal
Appearances:	
Intended Appellant / Applicant:	Mr. Mark Maragh
Respondent:	Mr. Horace Fraser
Issue:	Application for leave to appeal to Her Majesty in Council
Result / Order:	[Oral delivery] The conditional leave order shall be in the following terms: 1. Leave to appeal to Her Majesty in Council is hereby granted provided that:

- a) the applicant, within ninety (90) days of the date of hearing of the application for leave to appeal, enter into good and sufficient security in the sum of 500 pounds sterling for the due prosecution of the appeal such security to consist of a deposit of the said amount in the court.
 - b) within 90 days of the date of this hearing, of the application for leave to appeal filed by the appellant, the appellant do take the necessary steps for the purposes of procuring the preparation of the records, the settling of such records with the solicitors for the respondent, and the certification of the record by the Chief Registrar of the Court of Appeal.
 - c) The record shall be prepared in accordance with rules 18-20 of the Judicial Committee Appellate Jurisdiction Rules order 2009 and its practice direction 4.2.1-4.3.2 and Practice Direction 5 and to be transmitted to the Registrar of the Judicial Committee of the Privy Council without delay when final permission to appeal has been granted.
2. The appellant shall make an application to the court for final permission to appeal to her majesty in council supported by the certificate of the registrar that the security for costs ordered herein has been given within the time prescribed by this order to the satisfaction of the Chief Registrar.
 3. The costs in the application be costs in the appeal.

Reason:

The applicant met the criteria for the grant of conditional leave to appeal to Her Majesty in Council. Furthermore, the application was unopposed by counsel for the respondent.

Case Name: **RBTT Bank Caribbean Limited v Michael Joseph et al**
[High Court Civil Appeal No. 45 of 2010]

Date: **Thursday, 21st July 2011**

Coram: **The Hon. Mde. Ola Mae Edwards, Justice of Appeal**
The Hon. Mde. Janice Pereira, Justice of Appeal
The Hon. Mr. Davidson Baptiste, Justice of Appeal

Appearances:

Appellant / Respondent:	Mr. Mark Maragh
Respondents / Applicants:	Mr. Horace Fraser (1st Respondent) Mrs. Kim St. Rose, with her, Ms. Isabella Shillingford (2nd Respondent)

Issue: **Application for notice of appeal to be struck out**

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

- 1. The application of the appellant for leave to file skeleton arguments out of time is refused.**
- 2. The sanction of the Court for failing to comply with CPR 62.10(1) is that the procedural appeal will be heard by the full Court on the 26th day of July 2011, without the written oral submissions of counsel for the appellant.**
- 3. The respondents shall file their skeleton arguments on or before 25th July 2011.**
- 4. The appellants do pay to the first and second respondents costs in the sum of \$2,000.00.**

Reason: **Counsel for the appellant could provide no good reason for the delay in filing his skeleton arguments.**

Case Name: **Mitchell Joseph v The Queen**
[High Court Criminal Appeal No. 1 of 2011]

Date: Thursday, 21st July 2011

Coram: The Hon. Mde. Ola Mae Edwards, Justice of Appeal
The Hon. Mde. Janice Pereira, Justice of Appeal
The Hon. Mr. Davidson Baptiste, Justice of Appeal

Appearances:

Appellant / Applicant:	Mr. Al Elliot
Respondent:	Mrs. Victoria Charles-Clarke, Director of Public Prosecutions

Issues: Application for the transcript to be provided and for counsel to be assigned to the appellant

Result / Order: [Oral delivery]

1. The Court is of the opinion that it is desirable in the interests of justice that the applicant should get legal aid.
2. Pursuant to s.46 of the ECSC (St. Lucia) Act Cap. 2.01 and Rule 53 of the CoA Rules 1968 as amended, the Court directs that legal aid and counsel be assigned to the appellant for the preparation and hearing of the appeal.
3. The Registrar of the High Court is directed to select the counsel to be assigned.
4. Pursuant to sections 50(2) of the ECSC (St. Lucia) Act, Cap. 2.01 and Rules 48(10) and 47(2) of the Court of Appeal Rules 1968, a copy of the transcript of proceedings and summing up shall be assigned free of charge to the counsel assigned to the appellant.

Reason: The appellant was neither able to meet the cost of his appeal, nor the cost of obtaining his transcript.

Case Name: Harry Edwards Jewellers Limited v Antoinette

James
[High Court Civil Appeal No. 18 of 2010]

Date: Thursday, 21st July 2011

Coram: The Hon. Mde. Ola Mae Edwards, Justice of Appeal
The Hon. Mde. Janice Pereira, Justice of Appeal
The Hon. Mr. Davidson Baptiste, Justice of Appeal

Appearances:

Appellant	Mr. Shawn Innocent
Respondent:	
Respondent / Applicant:	Mr. Mark Maragh

Issue: Application to strike out appeal

Result / Order: [Oral delivery]
1. The application for relief from sanctions is granted.
2. The record of appeal is deemed properly filed.
3. Costs agreed in the sum of \$1,500.00 are awarded to the respondent.
4. The hearing of the appeal is adjourned to the next sitting of the court in Saint Lucia during the week of 12th-16th December 2011.

Reason: The court was of the view that although inadvertence of an attorney's clerk is not usually a satisfactory explanation for a delay in filing submissions, that pronouncement of the court does not operate in a vacuum; one has to look at the circumstances of the individual case. In this matter, the court was of the opinion that the delay was inevitable given the circumstances that had caused it. The court was satisfied however, that counsel for the appellant had acted promptly in taking the proper steps to file and serve the necessary legal documents as soon as he had learnt that the transcript was available.

Case Name: Anne Marie Mac Leish et al v Avison “Bert”
Marryshow
[High Court Civil Appeal No. 12 of 2010]
(Grenada)

Date: Thursday, 21st July 2011

Coram: The Hon. Mde. Ola Mae Edwards, Justice of Appeal
The Hon. Mde. Janice Pereira, Justice of Appeal
The Hon. Mr. Davidson Baptiste, Justice of Appeal

Appearances:

Appellant: Mr. Leslie Haynes, QC (Ms. Denise Haynes from the
firm of Henry Henry & Bristol also present)

Respondent: Dr. Francis Alexis, QC, with him, Mr. Ian Sandy

Issues: Civil appeal – Succession – Circumstances
surrounding the making of one of the two wills which
formed the subject matter of this appeal – Whether
the later will was properly executed by the testatrix –
If the will was properly executed, whether the
testatrix had testamentary capacity to do so

Result / Order: [Judgment reserved]

Case Name: Claude Schoulette v the Attorney General
[High Court Civil Appeal No. 37 of 2010]

Date: Thursday, 21st July 2011

Coram: The Hon. Mde. Ola Mae Edwards, Justice of Appeal
The Hon. Mr. Davidson Baptiste, Justice of Appeal
The Hon. Mr. Don Mitchell, QC, Justice of Appeal
[Ag.]

Appearances:

Appellant: Mr. Horace Fraser, with him, Ms. Isabella Shillingford
Respondent: Mrs. Brender Portland-Reynolds

Issues: Application for reconsideration of an application denied by a single judge of the court on 29th November 2010 – Application for leave to extend time to file notice of appeal – Constitutional motion for breach of constitutional right to property – Whether judicial sale was conducted in a manner which was in breach of the law – Whether there were procedural irregularities in relation to the judicial sale of appellant's property

Result / Order: [Oral delivery]
1. The application is treated as part-heard and adjourned to 26th July 2011 for completion.
2. The appellant is to submit to the Court of Appeal 3 copies of the record of appeal in relation to the decision in Homer Richardson v The Attorney General by Monday 25th July 2011 before 2:00 p.m.

Reason: To allow the court to more fully understand what took place in the case of Homer Richardson v The Attorney General of Anguilla on which counsel for the appellant relied in support of his case. In particular, the court was trying to determine whether there had been a trial in that case.

Case Name: Alban Albert v The Queen
[High Court Criminal Appeal No. 3 of 2008]

Date: Friday, 22nd July 2011

Coram: The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mr. Davidson Baptiste, Justice of Appeal
The Hon. Mr. Don Mitchell, QC, Justice of Appeal
[Ag.]

Appearances:

Appellant: In person (unrepresented)

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

Issues: Appeal against conviction – Assault – Robbery

Result / Order: [Oral delivery]
 1. The appeal is dismissed.
 2. The appellant's conviction and sentence are affirmed.

Reason: The court was of the view that the appellant's appeal against conviction was without merit, having regard to the evidence which the prosecution led and which the jury obviously believed. Further, no reason could be found to interfere with the sentence imposed by the learned trial judge, which was reasonable in all of the circumstances. The appellant had prior convictions for similar offences. Additionally, there was a full trial so that he did not have the benefit of a guilty plea discount.

Case Name: Elias George v The Queen
 [High Court Criminal Appeal No. 5 of 2009]

Date: Friday, 22nd July 2011

Coram: The Hon. Mr. Hugh A. Rawlins, Chief Justice
 The Hon. Mr. Davidson Baptiste, Justice of Appeal
 The Hon. Mr. Don Mitchell, QC, Justice of Appeal
 [Ag.]

Appearances:

Appellant: Mr. Leslie Mondesir

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

Prosecutions

Issues:	Criminal appeal against conviction and sentence – Murder – Whether the conviction was unsafe and unsatisfactory – Whether the trial judge erred in not leaving the defence of provocation to the jury – Whether the sentence of death by hanging should be substituted with a lesser sentence – Interpretation of sections 86, 87(3)(b) and 87(4) of the Criminal Code, Cap. 3.01, Revised Laws of Saint Lucia 2006 – Whether it was necessary for notice of the fact that the appellant was being tried for capital murder to be given
Result / Order:	[Judgment is reserved]
Case Name:	Bernard Auguste v Ian Joseph [High Court Civil Appeal No. 27 of 2009]
Date:	Friday, 22nd July 2011
Coram:	The Hon. Mr. Hugh A. Rawlins, Chief Justice The Hon. Mr. Davidson Baptiste, Justice of Appeal The Hon. Mr. Don Mitchell, QC, Justice of Appeal [Ag.]
Appearances:	
Appellant:	Mr. Horace Fraser
Respondent:	Mrs. Petra Nelson
Issues:	Civil appeal – Whether the findings of the learned trial judge can be supported having regard to the evidence before the court – Assault – Whether the respondent who believed that the appellant had stolen from him shot the appellant out of malice – Whether the respondent breached the duty of care that he owed to the appellant

Result / Order:

[Oral delivery]

- 1. The appeal is allowed and the judgment of the High Court is set aside; judgment is entered for the appellant.**
- 2. The matter is remitted to the High Court for damages to be assessed.**
- 3. The respondent will pay to the appellant costs in the High Court to be assessed on the sum awarded on the assessment of damages, and two-thirds of that costs in this appeal pursuant to rule 65.13 of CPR 2000.**

Reason:

The respondent (who was the defendant in the court below) impeached his own defence when he resiled from it by stating that he had not written nor signed his caution statement. The trial judge erred when the very premise on which he dismissed the claim – that the defendant/respondent injured the claimant/appellant when the latter was committing a crime – was wrong. There was sufficient evidence on behalf of the claimant to prove his claim.

Case Name:

**Augustin Williams v Debra Annus
[High Court Civil Appeal No. 36 of 2009]**

Date:

Friday, 22nd July 2011

Coram:

**The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mr. Davidson Baptiste, Justice of Appeal
The Hon. Mr. Don Mitchell, QC, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

Mr. Huggins Nicholas

Respondent:

Ms. Veronica Barnard

Issues:

Building contract – Whether the trial judge erred in finding that there did exist a contract between the

appellant and respondent and that the respondent breached that contract

Result / Order: [Oral delivery]
The hearing of this matter is adjourned.

Reason: To allow the court to obtain additional copies of the record of appeal.

Case Name: Evariste Ambrose v Antoine Baptiste
[High Court Civil Appeal No. 19 of 2010]

Date: Friday, 22nd July 2011

Coram: The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mr. Davidson Baptiste, Justice of Appeal
The Hon. Mr. Don Mitchell, QC, Justice of Appeal
[Ag.]

Appearances:

Appellant:	Mrs. Wauneen Louis-Harris
Respondent:	Mr. Shawn Innocent holding papers for Ms. Leandra Verneuil

Issues: Claim for possession (where title was not in dispute) brought by way of fixed date claim form – Whether the judge in the court below erred in entering summary judgment for the respondent

Result / Order: [Oral delivery]
1. The appeal is allowed.
2. The matter is remitted to the High Court for case management.
3. Costs in this appeal shall be costs in the cause.

Reason: The court found it impossible to determine the rule

pursuant to which the learned trial judge made his order in the court below.

Case Name: Augustin Williams v Debra Annus
[High Court Civil Appeal No. 36 of 2009]

Date: Friday, 22nd July 2011

Coram: The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mr. Davidson Baptiste, Justice of Appeal
The Hon. Mr. Don Mitchell, QC, Justice of Appeal
[Ag.]

Appearances:

Appellant:	Mr. Huggins Nicholas
Respondent:	Ms. Veronica Barnard

Issues: Building contract – Whether the trial judge erred in finding that there did exist a contract between the appellant and respondent and that the respondent breached that contract

Result / Order: [Oral delivery]
1. The appeal is dismissed and the judgment of the trial judge is affirmed.
2. Costs in this appeal to the respondent in the sum of \$29,310.80, that being two thirds of the costs awarded in the court below.

Reason: The appeal on the ground of illegality was dismissed because it was not pleaded. Since it was not an issue in the trial, the trial judge did not consider it. In any event, there was no evidence on which it could have arisen in the case. Further, the factual findings and assessment of the trial judge were not impeached in a manner that would require the court to vary his decision and embark upon its own assessment of the merits in the case.

Case Name: **Elias George v The Queen**
[High Court Criminal Appeal No. 5 of 2009]

Date: **Monday, 25th July 2011**

Coram: **The Hon. Mr. Hugh A. Rawlins, Chief Justice**
The Hon. Mr. Davidson Baptiste, Justice of Appeal
The Hon. Mr. Don Mitchell, QC, Justice of Appeal
[Ag.]

Appearances:

Appellant: **Mr. Leslie Mondesir**

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

Issues: **Criminal appeal against conviction and sentence – Murder – Whether the conviction was unsafe and unsatisfactory – Whether the trial judge erred in not leaving the defence of provocation to the jury – Whether the sentence of death by hanging should be substituted with a lesser sentence – Interpretation of sections 86, 87(3)(b) and 87(4) of the Criminal Code, Cap. 3.01, Revised Laws of Saint Lucia 2006 – Whether it was necessary for notice of the fact that the appellant was being tried for capital murder to be given**

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

- 1. The appeal against conviction is dismissed and the conviction of the appellant for the murders of Feliciano and Macrina Charles is affirmed.**
- 2. The appeal against the sentence of death by hanging is allowed to the extent that the sentence of death is set aside, and instead, two sentences of life imprisonment are imposed on the appellant for the murders of Feliciano Charles and Macrina Charles, the same to run concurrently.**

Reason:

Appeal Against Conviction

The court did not agree that the facts on which counsel for the appellant relied (which were mainly from the statement which the appellant gave to the police), were sufficient to raise the issue of provocation as a live issue requiring a provocation direction. The court held that even if they were wrong to have reached that conclusion, the evidence was so overwhelming in pointing to the guilt of the appellant, that in their view, no reasonable jury properly directed on provocation would have reached a different verdict from that which was reached in this case. The evidence left no doubt that the appellant was properly convicted of murder.

Appeal Against Sentence

In determining whether the sentence of death was excessive in the circumstances of this case, the court found it difficult to come to the conclusion that this case (judging from the facts of the offence) was the “worst of the worst”, or “rarest of the rare”. They opined that although it was undoubtedly a terribly murder, it did not seem to fall within any of the categories or examples of the worst of the worst given by the Privy Council in the case of *Daniel Dick Trimmingham v The Queen* [2009] UKPC 25 and later decisions. The court did note however, that the trial judge did no analysis in relation to the possibility of reform of the appellant – a fatal omission in light of the *Trimmingham* decision. The result of this was that the death penalty imposed on the appellant did not meet the criteria laid down in the *Trimmingham* and kindred decisions for the imposition of the ultimate penalty. This was particularly so given that there was some evidence in the probation report which pointed to the possibility of the appellant’s reform and rehabilitation.

Case Name:

Fairfield Sentry Limited (In Liquidation) v

**Alfred Migani et al
[High Court Civil Appeal Nos. 14-21 of 2011]**

Date: Monday, 25th July 2011

Coram: The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mde. Ola Mae Edwards, Justice of Appeal
The Hon. Mde. Janice Pereira, Justice of Appeal

Appearances:

Applicant: Mr. Michael Brindle, QC (who had been given leave to appear as a barrister of the Eastern Caribbean Supreme Court and to be heard for the purpose of the applications in this matter), with him, Mr. Andrew Westwood

Respondent: Lord Falconer, QC, with him, Ms. Nadine Whyte (O'Neal Webster Respondents)
Mr. Mark Hapgood, QC, with him, Mr. Kissock Laing (Harneys Respondents)
Mr. Dominic Chambers, QC, leading Ms. Arabella di Iorio (Maples and Calder Respondents)
Mr. Robert Foote (Ogier Respondents)

Issues: Application to vary order of single judge of the Court of Appeal – Leave to appeal – Application for a stay of execution

Result / Order: [Oral delivery]
The matter is adjourned to 2:00 p.m. today.

Reason: To allow the court to break for lunch.

Case Name: Fairfield Sentry Limited (In Liquidation) v
Alfred Migani et al
[High Court Civil Appeal Nos. 14-21 of 2011]

Date: Monday, 25th July 2011

Coram: The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mde. Ola Mae Edwards, Justice of Appeal
The Hon. Mde. Janice Pereira, Justice of Appeal

Appearances:

Applicant: Mr. Michael Brindle, QC, with him, Mr. Andrew Westwood

Respondents: Lord Falconer, QC, with him, Ms. Nadine Whyte (O’Neal Webster Respondents)
Mr. Mark Hapgood, QC, with him, Mr. Kissock Laing (Harneys Respondents)
Mr. Dominic Chambers, QC, leading Ms. Arabella di Iorio (Maples and Calder Respondents)
Mr. Robert Foote (Ogier Respondents)

Issues: Application to vary order of single judge of the Court of Appeal – Leave to appeal – Application for a stay of execution

Result / Order: [Oral delivery]
1. The application for leave to appeal is dismissed.
2. The application to vary or discharge the order of Baptiste JA is refused.
3. The application to stay the order of Bannister J is dismissed.
4. The applicant will bear the costs of the respondents being one global sum to be assessed if not agreed within 21 days.

Reason: The Court was of the view that the application for leave to appeal did not have a reasonable prospect of success.

Case Name: Sylvia Francois Richard v The Commissioner of Crown Lands
[High Court Civil Appeal No. 17 of 2010]

Date: Monday, 25th July 2011

Coram: The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mde. Ola Mae Edwards, Justice of Appeal
The Hon. Mde. Janice Pereira, Justice of Appeal

Appearances:

Appellant: Mr. Horace Fraser

Respondent: Ms. Jan Drysdale

Issues: Property dispute – Whether appellant entitled to prescriptive title against parcel of land registered in name of the Crown

Result / Order: [Oral delivery]
1. The appeal is dismissed and the decision of the trial judge dated 4th June 2010 is affirmed.
2. The appellant shall pay \$1,000.00 to the respondent in this appeal.

Case Name: White Construction Company Limited v DCG Properties Limited
[High Court Civil Appeal No. 22 of 2010]

Date: Monday, 25th July 2011

Coram: The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mde. Ola Mae Edwards, Justice of Appeal
The Hon. Mr. Davidson Baptiste, Justice of Appeal

Appearances:

Appellant: Mr. Dexter Theodore

Respondent: Ms. Renee St. Rose

Issues: Interpretation of specific provisions of the contract between the appellant and respondent – Whether arbitration proceedings and court proceedings should have been allowed to run concurrently

Result / Order: [Oral delivery]
The matter is adjourned to 4:00 p.m. on 26th July 2011.

Reason: There was not sufficient time to complete the proceedings that evening.

Case Name: Imbert Simon v Charles Anthony
[High Court Civil Appeal No. 30 of 2010]

Date: Tuesday, 26th July 2011

Coram: The Hon. Mde. Ola Mae Edwards, Justice of Appeal
The Hon. Mde. Janice Pereira, Justice of Appeal
The Hon. Mr. Davidson Baptiste, Justice of Appeal

Appearances:

Appellant:	Ms. Diana Thomas
Respondent:	Mr. Gerard Williams

Issues: Whether the learned judge should have relied on CPR 16.4 instead of CPR 16.3 – Whether counsel for the appellant would have been at a disadvantage if she was not allowed to put in any evidence relating to the assessment of damages

Result / Order: [Oral delivery]

1. The appeal is allowed.
2. The order made on 14th April 2010 excluding the affidavit evidence of the defendant filed on 31st March 2010 is set aside.
3. The matter is remitted to the court below for assessment of damages.
4. Costs awarded to the appellant in the sum of \$1,000.00.

Case Name:	RBTT Bank Caribbean Limited v Michael Joseph et al [High Court Civil Appeal No. 35 of 2010]
Date:	Tuesday, 26th July 2011
Coram:	The Hon. Mde. Ola Mae Edwards, Justice of Appeal The Hon. Mde. Janice Pereira, Justice of Appeal The Hon. Mr. Davidson Baptiste, Justice of Appeal
Appearances:	
Appellant / Respondent:	Mr. Mark Maragh
Respondent / Applicants:	Mr. Horace Fraser (1st Respondent) Mrs. Kim St. Rose, with her, Ms. Isabella Shillingford (2nd Respondent)
Issues:	Whether the appellant received a fair trial in the court below – Whether the trial judge erred in striking out the appellant’s claim in the court below – Whether the sanction of striking out imposed by the learned judge’s order was wholly disproportionate
Result / Order:	[Oral delivery] 1. The appeal is allowed. 2. The order made on 6th December 2010 is set aside. 3. The matter is remitted to the court below for the trial to proceed. 4. Costs to the appellant in the sum of \$1,500.00 each to be paid by the 1st respondent and the 2nd respondent.
Reason:	In the court below, judgment was entered without any trial; the appellant was not given an opportunity to make submissions. The trial judge’s haste to strike out the appellant’s case was evident from the manner in which the order itself was put together –

certain paragraphs of the order were not consistent with each other. The court took the view that the case in the court below had reached a stage where it could have been determined on its merits, but this was not done.

Case Name: Gregory Fevrier v Luciana Fevrier
[High Court Civil Appeal No. 31 of 2010]

Date: Tuesday, 26th July 2011

Coram: The Hon. Mde. Ola Mae Edwards, Justice of Appeal
The Hon. Mde. Janice Pereira, Justice of Appeal
The Hon. Mr. Davidson Baptiste, Justice of Appeal

Appearances:

Appellant: Mr. Horace Fraser

Respondent: Mr. Mark Maragh

Issues: Divorce proceedings – Whether the learned trial judge erred in finding that the matrimonial home was community property – Whether the learned trial judge erred in ordering that the appellant make a lump sum payment in the amount of \$150,000.00 by way of maintenance to the respondent

Result / Order: [Oral delivery]
The matter is stood down.

Reason: To allow counsel to have discussions with each other.

Case Name: Carlos Anthony Augustin v Uni-v (St. Lucia)
Ltd. Trading as Unique Vacations of Choc

Bay Castries
[High Court Civil Appeal No. 44 of 2010]

Date: Tuesday, 26th July 2011

Coram: The Hon. Mde. Ola Mae Edwards, Justice of Appeal
The Hon. Mde. Janice Pereira, Justice of Appeal
The Hon. Mr. Davidson Baptiste, Justice of Appeal

Appearances:

Appellant: Mr. Gerard Williams

Respondent: Mr. Mark Maragh

Issues: Procedural Appeal – Whether judgment in default entered for the respondent was premature – The effect a letter which authorized the appellant’s attorney to accept service within the jurisdiction would have had on the time limit for filing an acknowledgment of service, having obtained an order for substituted service from the learned trial judge – Whether the learned judge’s order was one for service out of the jurisdiction

Result / Order: [Oral delivery]
Decision reserved until 27th July 2011.

Case Name: Claude Schoulette v The Attorney General
[High Court Civil Appeal No. 37 of 2010]

Date: Tuesday, 26th July 2011

Coram: The Hon. Mde. Ola Mae Edwards, Justice of Appeal
The Hon. Mr. Davidson Baptiste, Justice of Appeal
The Hon. Mr. Don Mitchell, QC, Justice of Appeal
[Ag.]

Appearances:

Appellant: Mr. Horace Fraser, with him, Ms. Isabella Shillingford

Respondent: Mrs. Brender Portland-Reynolds

Issues: Application for reconsideration of an application denied by a single judge of the court on 29th November 2010 – Application for leave to extend time to file notice of appeal – Constitutional motion for breach of constitutional right to property – Whether judicial sale was conducted in a manner which was in breach of the law – Whether there were procedural irregularities in relation to the judicial sale of appellant's property

Result / Order: [Oral delivery]
1. The application is dismissed with no order as to costs.
2. The order of Pereria JA is affirmed.

Reason: Reasons for the late filing of the application for an extension of time to file the notice of appeal were not clearly set out in the appellant's affidavit evidence. The court held that affidavits supporting applications for extensions of time should properly set out the reasons for the delay. Full and frank reasons should be given to explain why there was a failure to comply with the rules.

Case Name: Gregory Fevrier v Luciana Fevrier
[High Court Civil Appeal No. 31 of 2010]

Date: Tuesday, 26th July 2011

Coram: The Hon. Mde. Ola Mae Edwards, Justice of Appeal
The Hon. Mde. Janice Pereira, Justice of Appeal
The Hon. Mde. Davidson Baptiste, Justice of Appeal

Appearances:

Appellant: Mr. Horace Fraser

Respondent: Mr. Mark Maragh

Issues: Divorce proceedings – Whether the learned trial judge erred in finding that the matrimonial home was community property – Whether the learned trial judge erred in ordering that the appellant make a lump sum payment in the amount of \$150,000.00 by way of maintenance to the respondent

Result / Order: [Oral delivery]
The matter is treated as part-heard and adjourned to Thursday, 28th July 2011 at 11:00 a.m. for completion.

Reason: To allow counsel on both sides to properly confer with their clients before coming to a decision on how to proceed with the matter.

Case Name: White Construction Company Limited v DCG Properties Limited
[High Court Civil Appeal No. 22 of 2010]

Date: Tuesday, 26th July 2011

Coram: The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mde. Ola Mae Edwards, Justice of Appeal
The Hon. Mde. Janice Pereira, Justice of Appeal

Appearances:
Appellant: Mr. Dexter Theodore
Respondent: Ms. Renee St. Rose

Issues: Interpretation of specific provisions of the contract between the appellant and respondent – Whether arbitration proceedings and court proceedings should have been allowed to run concurrently

Result / Order: Decision reserved.

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

Date: Tuesday, 26th July 2011

Coram: The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mde. Ola Mae Edwards, Justice of Appeal
The Hon. Mde. Janice Pereira, Justice of Appeal

Appearances:

Appellant:	Mr. Horace Fraser
Respondent:	No appearance

Issues: Vehicular accident – Whether the learned trial judge erred in law by purporting to take judicial notice of a private contract as the basis for denying the award of \$14,600.00 to the appellant – Whether the learned trial judge erred in law by ruling that the appellant was not entitled to general damages for distress and inconvenience

Result / Order: [Oral delivery]

1. The hearing of the appeal is adjourned to the next sitting of the court in Saint Lucia scheduled for 12th-16th December 2011.
2. Solicitors for the appellant are to serve the respondent with the notice of the hearing and to file a proof of service.

Reason: Neither the respondent, nor counsel for the respondent appeared at the hearing. The respondent however, had only been served with a certificate of result that indicated that he was to appear during the week commencing 18th July 2011 (the previous week). The court held that this was not sufficient notice for him to appear at the day's hearing, on 26th July 2011.

Case Name: **Shane Paul v New India Assurance Co. (T&T) Ltd.**
[High Court Civil Appeal No. 10 of 2011]

Date: **Tuesday, 26th July 2011**

Coram: **The Hon. Mr. Hugh A. Rawlins, Chief Justice**
The Hon. Mde. Ola Mae Edwards, Justice of Appeal
The Hon. Mde. Janice Pereira, Justice of Appeal

Appearances:

Appellant: **Mr. Gerard Williams**

Respondent: **Mr. Dexter Theodore**

Issues: **Procedural Appeal – Insurance claim – Whether letter from counsel for the appellant was sufficient to be regarded as notice of that party’s intention to pursue a claim in the courts – Whether the wording of the appellant’s letter was conditional or unconditional – The effect of s. 9(2)(a) of the Motor Vehicles Insurance (Third Party Risks) Act 24 of 1988**

Result / Order: **[Oral delivery – Majority decision]**

- 1. The appeal is allowed and the order of the Master is set aside.**
- 2. The respondent is to pay costs to the appellant in the sum of \$1,500.00.**
- 3. The letter was unconditional and accordingly constituted sufficient notice of intention to proceed under s. 9(2)(a) of the Motor Vehicles Insurance (Third Party Risks) Act 1988.**

Reason: **The majority of the court was of the view that the master erred in interpreting the wording in the last paragraph of the appellant’s letter – it was not conditional, but unconditional. It was held that the last paragraph of the letter was an invitation to the**

respondent insurance company to indicate what their position was in relation to the claim, to which they did not respond. The letter was in fact sufficient notice of the appellant's intention to commence legal proceedings.

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

Date: Wednesday, 27th July 2011

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

Appearances:

Appellant: No appellant (Counsel on record is Mr. Marcus Foster)

Respondent: Mr. Seryozha Cenac

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

Result / Order: [Oral delivery]
1. The matter is adjourned to the next sitting of the court, the Court not being able to ascertain whether the appellant was served.
2. Notice of hearing of the appeal is to be served on the appellant by the court office.
3. The respondent has leave to re-file and serve skeleton arguments by 9th September 2011.

Reason: There was no evidence that any or any proper notice of the hearing of the matter was given to the appellant. The court was therefore of the view that it would only be prudent to have the matter traversed to the next sitting of the Court of Appeal as well as to

direct that a notice of hearing be served on the appellant.

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

Date: **Wednesday, 27th July 2011**

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

Appearances:

Appellant:	No appearance
Respondent:	Mr. Stephen Brette

Issues: **Appeal against conviction – Indecent assault**

Result / Order: **[Oral delivery]**
The matter is stood down.

Reason: **To allow counsel for the respondent to get in touch with counsel for the appellant.**

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

Date: **Wednesday, 27th July 2011**

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

Appearances:

Appellant:	No appearance
Respondent:	Mr. Seryozha Cenac

Issues: **Appeal against conviction – Possession of controlled drug with intent to supply**

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

- 1. The appeal is adjourned to the next sitting of the court in Saint Lucia during the week commencing 12th December 2011**
- 2. The appellant is to be served with a copy of the notice of hearing by the court office**
- 3. Counsel for the respondent is granted leave to re-file his skeleton submissions no later than 9th September 2011 and to serve the same on the appellant.**
- 4. In the event that the appellant is represented by counsel then his skeleton arguments should be filed and served on or before 9th September 2011.**

Reason: **It could not be confirmed whether notice of the day's hearing had been given to the appellant. The court thought it best to err on the side of caution and proceed as if none had been given.**

Case Name: **Alberto Emmanuel v The Police
[Magisterial Criminal Appeal No. 7 of 2011]**

Date: **Wednesday, 27th July 2011**

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

Appearances:

Appellant: Mr. Andie George (the appellant, Mr. Alberto Emmanuel was also present)

Respondent: Mr. Stephen Brette

Issues: Appeal against conviction – Driving without due care and attention

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

Reason: Counsel for the respondent indicated that it was not the respondent's intention to contest the appeal, since it was clear that the evidence adduced did not meet the required standard for a finding that the appellant had been driving without due care and attention.

Case Name: Errol Eugene v The Police
[Magisterial Criminal Appeal No. 9B of 2011]

Date: Wednesday, 27th July 2011

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

Appearances:

Appellant: Mr. Shonari Clarke

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

Issues: Appeal against conviction – Driving without due care and attention – Application to withdraw the appeal

Result / Order & Reason:	[Oral delivery] The appellant is granted leave to withdraw appeals 9A and 9B of 2011, and the appeals are accordingly dismissed.
Case Name:	Magnus Louisy v The Police [Magisterial Criminal Appeal No. 16 of 2011]
Date:	Wednesday, 27th July 2011
Coram:	The Hon. Mde. Janice Pereira, Justice of Appeal The Hon. Mr. Davidson Baptiste, Justice of Appeal The Hon. Mr. Don Mitchell, QC, Justice of Appeal [Ag.]
Appearances:	
Appellant:	No appearance
Respondent:	Mr. Stephen Brette holding papers for Mr. Seryozha Cenac
Issues:	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 commencing the 12th day of December 2011. 2. The notice of hearing shall be served on the appellant by the court office.
Reason:	The appellant was not present, and neither was his attorney. The court took the view that it was likely that the appellant had not been given proper notice of the hearing of the appeal.

Case Name: Aloysius Breedy v The Police
[Magisterial Criminal Appeal No. 18 of 2011]

Date: Wednesday, 27th July 2011

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

Appearances:

Appellant: Mr. Al Elliot holding papers for Mr. Kenneth Foster

Respondent: Mr. Stephen Brette

Issues: Criminal appeal against sentence – Wounding –
Whether the custodial sentence given to the
appellant should be substituted with a fine

Result / Order: [Oral delivery]
1. The appeal against conviction is dismissed.
2. The appeal against sentence is allowed to the
extent that the sentence of 6 months
imprisonment is hereby substituted with a fine of
\$750.00 to be paid by the appellant within 14 days
of today's date, in default of payment, 6 months
imprisonment.

Reason: The court was minded to substitute the appellant's
custodial sentence with a fine.

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

Date: Wednesday, 27th July 2011

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

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

Appearances:

Appellant: Mr. Al Elliot

Respondent: Mr. Stephen Brette

Issues:

Appeal against conviction – Indecent assault

Result / Order:

[Oral delivery]

- 1. The appeal is adjourned to the next sitting of the court in Saint Lucia during the week commencing 12th December 2011.**
- 2. It is directed that the appellant be served with the notice of hearing.**

Reason:

Mr. Al Elliot apologized on behalf of counsel on record for the appellant, Mr. Huggins Nicholas, for not being able to appear at the day's hearing. The Court expressed its dissatisfaction with the manner in which Mr. Nicholas chose to deal with his absence from court.

Case Name:

**Patrick Morille v Lucien Octave
[Magisterial Civil Appeal No. 1 of 2010]**

Date:

Wednesday, 27th July 2011

Coram:

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

Appearances:

Appellant: No appearance

Respondent: No appearance

Result / Order: [Oral delivery]
Leave is granted to discontinue the matter, and it is accordingly dismissed.

Reason: A notice of discontinuance was filed on 13th April 2011 in respect of this matter.

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

Date: Wednesday 27th July 2011

Coram: The Hon. Mde. Ola Mae Edwards, Justice of Appeal
The Hon. Mde. Janice Pereira, Justice of Appeal
The Hon. Mr. Davidson Baptiste, Justice of Appeal

Appearances:

Appellant:	Mr. Colin Foster holding papers for Mr. Gerard Williams
Respondent:	Mr. Mark Maragh

Issues: Procedural Appeal – Whether judgment in default entered for the respondent was premature – The effect a letter which authorized the appellant’s attorney to accept service within the jurisdiction would have had on the time limit for filing an acknowledgment of service, having had an order for substituted service from the learned trial judge

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

Reason:

The court noted that the order of the learned judge for substituted service was not one directing service out of the jurisdiction. It was simply an order permitting service by a method other than by personal service, which is the general requirement for service of originating process. Accordingly, the court did not consider that Practice Direction 4 of 2008 relating to service out of the jurisdiction was applicable.

The appellant's legal practitioner held a mistaken view that the service and time for acknowledgment of service was still governed by the order for substituted service and not by the rules in CPR 2000 related to service. There was a failure to appreciate that once he had engaged CPR 5.6, CPR 5.19 also kicked in; the claim would be deemed as having been served on the date it was served on and accepted by the legal practitioner so authorised.

The court was of the view that the appellant, by his letter dated 13th April 2010 which notified the respondent's legal practitioner of his authorisation to accept service, and having been so served, effectively, at his volition, changed the method of service from being by substituted service to a method equating to personal service. This then took the matter outside of the operation of the substituted service order and brought it under the operative parts of CPR 2000 relating to personal service within the jurisdiction and more specifically, to service on the legal practitioner for the party, where the normal time limit of 14 days would come into operation (see CPR 9.3). Having taken that course which engaged CPR 5.6 and CPR 5.19, the order for substituted service (though a valid order) simply ceased to be operative.

STATUS HEARING

Case Name:

Christopher Alsace et al v Choc Estates

Limited
[High Court Civil Appeal No. 25 of 2001]

Date: Wednesday, 27th July 2011

Before: The Hon. Mr. Hugh A. Rawlins, Chief Justice

Appearances:

Appellants:	Mr. Colin Foster
Respondent:	Mr. Mark Maragh holding papers for Mr. Anthony Bristol

Issue: Status of matter

Result / Order & Reason: [Oral delivery]

1. This matter shall be listed for case management in November 2011 until a view to directions for hearing of appeal possible.
2. Solicitors for the parties shall take such steps as are necessary to provide such notes as are necessary and available for the hearing of the appeal, on or before 8th November 2011.

Case Name: Parry Husbands v Herbert Jn. Baptiste et al
[High Court Civil Appeal No. 40 of 2003]

Date: Wednesday, 27th July 2011

Before: The Hon. Mr. Hugh A. Rawlins, Chief Justice

Appearances:

Appellant:	No appearance (the appellant is deceased)
Respondent:	No appearance

Issue: Status of matter

Result / Order:	[Oral delivery] The order of 21 st February 2011 is noted and accordingly the appeal is dismissed with no order as to costs
Reason:	There was no appearance of the respondent nor any of the attorneys representing the parties.
Case Name:	Headley Felicien v Rosalie Sylvester [High Court Civil Appeal No. 16 of 2006]
Date:	Wednesday, 27 th July 2011
Before:	The Hon. Mr. Hugh A. Rawlins, Chief Justice
Appearances:	
Appellant:	No appearance
Respondent:	No appearance
Issue:	Status of matter
Result:	[Oral delivery] The order of 21 st February 2011 is noted and accordingly the appeal is dismissed with no order as to costs
Reason:	There was no appearance of any of the parties nor of counsel acting on their behalf.
Case Name:	Jascinta Bevan v The Queen [High Court Criminal Appeal No. 2 of 2007]
Date:	Wednesday, 27 th July 2011

Before: The Hon. Mr. Hugh A. Rawlins, Chief Justice

Appearances:

Appellant: No appearance

Respondent: Mr. Seryozha Cenac

Issue: Status of matter

**Result / Order
& Reason:**

[Oral delivery]

1. The order of this court dated 21st February is noted.
2. The Court being informed that the transcript was paid for on the due date, the appeal remains live and further proceedings shall be in accordance with the relevant rules.

Case Name: Francis Mathurin et al v The Queen
[High Court Criminal Appeal No. 4 of 2008]

Date: Wednesday, 27th July 2011

Before: The Hon. Mr. Hugh A. Rawlins, Chief Justice

Appearances:

Appellants: Mrs. Wauneen Louis-Harris (the appellants themselves not present)

Respondent: Mr. Seryozha Cenac

Issue: Status of matter

Result / Order:

[Oral delivery]

1. The appellants shall pay the sum required for the transcript on or before 24th October 2011.
2. Further proceedings shall be in accordance with the relevant rules.

Reason: The transcript is ready.

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

Date: Wednesday, 27th July 2011

Before: The Hon. Mr. Hugh A. Rawlins, Chief Justice

Appearances:

Appellant:	In person (appellant indicated that he was being represented by Mr. Lorne Theophilus)
Respondent:	Mr. Seryozha Cenac

Issue: Status of matter

Result / Order: [Oral delivery]

1. The appellant shall arrange for copies of any receipts concerning payment for the transcript to be taken to the office of the Registrar of the High Court.
2. This case shall be listed for further status hearing during the week of 12th-16th December 2011.

Reason: To confirm that the transcript has been paid for.

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

Date: Wednesday, 27th July 2011

Before: The Hon. Mr. Hugh A. Rawlins, Chief Justice

Appearances:
Appellant: No appearance
Respondent: Mr. Seryozha Cenac

Issue: Status of matter

Result / Order: [Oral delivery]
1. This appeal is to be scheduled for further status hearing during the week of 12th-16th December 2011.
2. The Registrar shall ensure that the appellant is served to attend during that week and proof of service shall be filed.

Reason: No documents relating to this appeal could be found by the 1st District Court. Thus, there was no proof that the appellant had been served with a notice of hearing. For this reason, the Court refused to dismiss the appeal.

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

Date: Wednesday, 27th July 2011

Before: The Hon. Mr. Hugh A. Rawlins, Chief Justice

Appearances:
Appellant: No appearance
Respondent: Mr. Seryozha Cenac

Issue: Status of matter

Result / Order [Oral delivery]

& Reason:

1. The case is traversed to the next status hearing in order to ensure that the appellant is served to attend.
2. The court office shall take such steps as are necessary to effect service and may for this purpose seek the assistance of PC # 430 Isaia Anthony.

Case Name: Jerome Alexander v CPL # 416 Norville
[Magisterial Criminal Appeal No. 9 of 2004]

Date: Wednesday, 27th July 2011

Before: The Hon. Hugh A. Rawlins, Chief Justice

Appearances:

Appellant:	No appearance
Respondent:	Mr. Seryozha Cenac

Issue: Status of matter

Result / Order & Reason: [Oral delivery]
The Court, noting the communication from counsel for the appellant Ms. Beverley Downes that the appeal will be discontinued, accordingly dismisses the appeal.

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

Date: Wednesday, 27th July 2011

Before: The Hon. Mr. Hugh A. Rawlins, Chief Justice

Appearances:

Appellant: No appearance
Respondent: Mr. Seryozha Cenac

Issue: Status of matter

Result / Order & Reason: [Oral delivery]
The matter is adjourned to the next sitting during the week of 12th-16th December 2011 in order that the court office may serve the notice of hearing on the appellant.

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

Date: Wednesday, 27th July 2011

Before: The Hon. Mr. Hugh A. Rawlins, Chief Justice

Appearances:
Appellant: No appearance
Respondent: Mr. Seryozha Cenac

Issue: Status of matter

Result / Order: [Oral delivery]
1. The appeal is to be listed during the week of 12th-16th December 2011 for further status hearing.
2. The Court of Appeal office shall enquire whether recognizance was entered to prosecute this appeal.
3. The said court office shall serve a notice on the appellant to attend the further status hearing.

Reason: To allow the court to determine whether or not the recognizance has been entered by the appellant.

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

Date: Wednesday, 27th July 2011

Before: The Hon. Mr. Hugh A. Rawlins, Chief Justice

Appearances:

Appellant:	No appearance
Respondent:	Mr. Seryozha Cenac

Issue: Status of matter

Result / Order & Reason: [Oral delivery]
The matter is adjourned to the next sitting of this court during the week of 12th-16th December 2011 in order that the court office may serve the notice of hearing on the appellant at the Bordelais Correctional Facility.

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

Date: Wednesday, 27th July 2011

Before: The Hon. Mr. Hugh A. Rawlins, Chief Justice

Appearances:

Appellant:	Mr. Al Elliot holding papers for Mr. Marcus Foster
Respondent:	Mr. Seryozha Cenac

Issue: Status of matter

Result / Order:

[Oral delivery]

- 1. Solicitors for the appellant shall file and serve further submissions on the issue of abuse of process on or before 19th September 2011.**
- 2. The office of the Director of Public Prosecutions shall file and serve submissions in response on or before 31st October 2011.**
- 3. This matter shall be listed on the magisterial appeals list for hearing during the week of 12th-16th December 2011.**

Reason:

There was no transcript for this matter from the Magistrates' Court. The appellant was unrepresented in the court below and since the filing of the notice of appeal, there was nothing forthcoming from the Magistrates' Court. Recognizance was entered on the same day that the appeal was filed. However, the copy of the recognizance did not indicate that it had been signed by a magistrate.

Case Name:

**Felicien Dumerville v The Police
[Magisterial Criminal Appeal No. 15 of 2011]**

Date:

Wednesday, 27th July 2011

Before:

The Hon. Mr. Hugh A. Rawlins, Chief Justice

Appearances:

Appellant:

No appearance

Respondent:

Mr. Seryozha Cenac

Issue:

Status of matter

**Result / Order
& Reason:**

[Oral delivery]

The appeal, having been withdrawn, is dismissed.

Case Name: Juliana Felix et al v Marie Edward et al
[Magisterial Civil Appeal No. 1 of 2003]

Date: Wednesday, 27th July 2011

Before: The Hon. Mr. Hugh A. Rawlins, Chief Justice

Appearances:

Appellants:	Mr. Dexter Theodore
Respondents:	No appearance

Issue: Status of matter

Result / Order: [Oral delivery]
The case shall be listed for further status hearing during the week of 12th-16th December 2011.

Reason: There was no appearance of counsel for the respondents.

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

Date: Wednesday, 27th July 2011

Before: The Hon. Mr. Hugh A. Rawlins, Chief Justice

Appearances:

Appellant:	No appearance
Respondent:	No appearance

Issue: Status of matter

**Result / Order
& Reason:**

[Oral delivery]

1. The matter is adjourned to the next status hearing during the week of 12th-16th December 2011 to allow for service on the parties.
2. The court office shall take all necessary steps to ensure that the parties are served with a notice to attend for status hearing during the week of 12th-16th December 2011. Evidence of service is to be filed.

Case Name:

**Earl Cenac et al v Angela Amedee
[Magisterial Civil Appeal No. 1 of 2005]**

Date:

Wednesday, 27th July 2011

Before:

The Hon. Mr. Hugh A. Rawlins, Chief Justice

Appearances:

Appellants:

Mr. Dexter Theodore

Respondent:

No appearance

Issue:

Status of matter

**Result / Order
& Reason:**

[Oral delivery]

This appeal is adjourned for further status hearing during the week of 12th-16th December 2011 to facilitate counsel for the appellant, Earl Cenac (now deceased), to obtain instructions from the family of the deceased.