

CHAMBER HEARING

Tuesday 24th May 2011

HEARING (SAINT LUCIA)

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

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]

Appearances:

Respondent / Applicant:	Ms. Sardia Cenac (Mr. Peter Floissac of 1 st National Bank St. Lucia Limited, was also present)
Appellant / Respondent:	Mr. Eghan Modeste (the appellant, Mr. Al Hyacinth, was also present)

Issues: Notice of appeal to be struck out as a nullity – Whether leave to appeal was obtained in the court below

Result / Order: [Oral delivery]
It is directed that:

1. The appellant / respondent obtains from the court below, a transcript of the proceedings in which leave to appeal was sought and also file and serve with the court, a copy of the order, if any, granting leave to appeal.
2. The application that the notice of appeal be struck out as a nullity is adjourned to the sitting of the full Court on 20th July 2011, for the production of the transcript and the order of the court.

Reason: There is a conflict on the evidence as to whether leave to appeal was obtained from the court below.

Case Name: Prudence Robinson v Sagicor General Insurance Inc.
[High Court Civil Appeal No. 42 of 2010]

Appearances:

Appellant / Applicant:	Ms. Lydia Faisal
Respondent:	Mr. Mark Maragh

Issue: Extension of time to file submissions

Result / Order: [Oral delivery]
By consent:

1. The appeal is allowed and the judgment of the trial judge dated 18th November 2010 is set aside.
2. The matter is remitted to the court below for a hearing on the merits of the claimant / appellant's application for summary judgment filed on January 7th 2009.
3. The applications by the respondent filed in the court below for relief from sanctions and for summary judgment filed on 10th July 2009 are also remitted to the court below for hearing on their merits, provided that the claimant's application for summary judgment shall be heard first.
4. The trial judge shall give any further directions as necessary for managing the applications.
5. No order as to costs on the appeal.

Reason: It was necessary for all applications to be brought together, case managed, and heard, for determination on their merits.

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

Appearances:

Respondent / Applicant:	Mr. Mark Maragh
Appellant/ Respondent:	Ms. Renee St. Rose holding papers for Mr. Gerard Williams

Issues: Dismissal of appeal – Extension of time to file notice of appeal – Relief from sanctions

Result / Order: The matter is stood down.

Reason: To allow Ms. St. Rose to get in touch with Mr. Williams, counsel for the appellant. She had intended to hold papers for him on another matter, but was unsure of whether he wanted her to hold papers for her on this matter as well. Mr. Maragh, counsel for the respondent, had no objection to the matter being stood down.

Ultimately, Mr. Williams confirmed that he was on his way to the court. The matter was stood down until he arrived.

Case Name: Len Ishmael v Brian Erdelyi
[High Court Civil Appeal No. 9 of 2011]

Appearances:

Intended Appellant / Applicant:	Ms. Renee St. Rose
Respondent:	Mr. Oswald Wilkinson Larcher

Issue:

Leave to appeal

Result / Order:

[Oral delivery]

By consent:

- 1. The application for leave to appeal is hereby granted.**
- 2. The leave to appeal shall be treated as the appeal.**
- 3. By further consent, it is hereby ordered that the appeal be allowed and the order of the trial judge dated 7th April 2011 is hereby set aside and the following order based on the application by consent of the parties shall be entered as follows:**
 - i. The parties' list of documents for disclosure filed on or before 20th December 2010 is deemed to be properly filed.**
 - ii. The listing questionnaire filed on or before 31st March 2011 is deemed to be properly filed.**
 - iii. The parties' witness statements filed and exchanged as on or before 29th March 2011 are deemed to be duly filed and exchanged.**
 - iv. The joint pre-trial memorandum filed by the parties on or before 31st March 2011, is deemed to be properly filed.**
 - v. The paginated index trial bundle with all documents to be filed and served by the claimant, no later than Wednesday, 8th June 2011.**
 - vi. Costs in the matter shall be prescribed costs.**
- 4. There shall be no order as to costs on this appeal.**

Reason:

Application for leave is unopposed by counsel for the respondent.

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

Appearances:

Intended Appellant / Applicant:	Mr. Oswald Wilkinson Larcher holding papers for Mr. Gerard Williams
Respondent:	Ms. Renee St. Rose holding papers for Mr. Dexter Theodore

Issue: **Leave to appeal**

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

- 1. The application for leave to appeal the decision of the learned Master Pearletta Lanns given on 15th April 2011, is hereby granted.**
- 2. Costs of the application shall be in the appeal.**

Reason: **The application for leave to appeal is unopposed by counsel for the respondent (Ms. St. Rose).**

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

Appearances:

Appellant / Respondent / Applicant:	Mr. Gerard Williams
Respondent / Applicant / Respondent:	Mr. Mark Maragh

Issues: **Application for the appeal to be dismissed –**

Application for an extension of time to file notice of appeal – Application for relief from sanctions

Result / Order:

[Oral delivery]

- 1. The appellant's application for an extension of time and relief from sanctions is granted.**
- 2. The respondent's application for declaration that there is no appeal before the Court is refused.**
- 3. The appellant shall bear the costs of the application for extension of time and relief from sanctions fixed in the sum of \$1,200.00.**
- 4. The appeal is set down for hearing before the full Court at its next sitting scheduled for 20th to 29th July 2011.**

Reason:

The Court was satisfied that the application for an extension of time and relief from sanctions was made promptly, that the non-compliance was not intentional and that there was a good explanation for the delay which was a mistake in belief as to the true state of the facts regarding the inclusion of the notice of appeal in the bundle prepared for filing, in compliance with the directions given by the judge. All other rules and directions have however, been complied with.

Case Name:

**First Caribbean International Bank
(Barbados) Limited v Ferdinand James
[High Court Civil Appeal No. 12 of 2011]**

Appearances:

**Intended Appellant /
Applicant: Mr. Mark Maragh holding papers for Mr. Bota
McNamara**

Respondent: Ms. Petra Nelson

Issue:

Leave to appeal

**Result / Order
& Reason:**

[Oral delivery]

1. Due to short service of the notice of application for leave to appeal on the respondent, the application is adjourned to the next chamber hearing, scheduled for 28th June 2011.
2. The parties are to comply with Practice Direction Nos. 2 and 3 of 2008.

Case Name:

**Gerald Joseph v PC 561 Stanley Mitchell
[Magisterial Criminal Appeal No. 2 of 2011]**

Appearances:

**Appellant /
Applicant:**

Mr. Horace Fraser, with him, Mr. Hamish Lesmond

Respondent:

Ms. Tina Mensah

Issue:

Application for bail pending appeal

Result / Order:

[Oral delivery]

It is hereby ordered and directed that:

The appellant, upon entry of the requisite recognizance of the prosecution in his appeal, be released from custody by order of the magistrate pursuant to section 733 of the Criminal Code.

Reason:

Upon this application coming on for hearing, the Court noted that the appeal filed by the applicant is an appeal from the decision of a magistrate in the exercise of the summary jurisdiction of the District Court. The Court pointed out to counsel on both sides that pursuant to s. 723 of the Criminal Code, Cap. 3.01 of the Revised Laws of Saint Lucia 2006, an appeal, when filed, shall have the effect of suspending the execution of the decision appealed against until the appeal has been determined by the Court of Appeal. Having regard to this provision, the applicant, on entering into the requisite recognizance for the prosecution of his appeal,

must be considered as a person in respect of which the decision and sentence imposed have been suspended.

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

Appearances:

Intended Appellant / Applicant:	In person (unrepresented)
Respondent:	Ms. Veronica Barnard

Issue: Extension of time to file application for leave to appeal

Result / Order: [Oral delivery]
It is hereby ordered by consent that:

1. The application for an extension of time is adjourned to the sitting of the full Court in Saint Lucia beginning 20th July 2011.
2. Costs of today shall be considered on the application.

Reason: The appellant / applicant, acting in person, had not properly served counsel for the respondent with notice of these proceedings. Counsel for the respondent merely attended the hearing out of courtesy to the court, upon receipt of a notice indicating that these proceedings were scheduled to take place today, 24th May 2011.

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]

Appearances:

Intended Appellant / Applicant: Mrs. Raquel Willie-Trotman, with her, Mrs. Wauneen Louis-Harris

Respondent: Mr. Thaddeus M. Antoine, with him, Ms. Thea J. Alexander (Mr. Martin James, representing Bank of Saint Lucia Limited, was also present)

Issue:

Leave to appeal

Result / Order:

[Oral delivery]

It is hereby ordered by consent that:

- 1. The application for leave to appeal is granted.**
- 2. The judgment / decision of the trial judge made on 19th April 2011 is stayed, pending the determination of the appeal.**
- 3. The respondent shall bear the costs of this application agreed in the sum of \$1,500.00.**
- 4. This appeal shall be heard by the full Court.**
- 5. The notice of appeal is to be filed within 14 days and thereafter the rules governing hearing of appeals are to be followed.**

Reason:

The applicant has shown that there is a good arguable case. The points raised during this hearing should be fully ventilated before the full Court. The application for leave is unopposed by counsel for the respondent.

**CASE MANAGEMENT
(ANGUILLA)**

Case Name:

Jenny Lindsay v Webster Dyrud Mitchell et al

[High Court Civil Appeal No. 3 of 2011]

Date: Tuesday 24th May 2011

On paper:

Intended Appellant / Applicant:	Jenny Lindsay
Respondent:	Webster Dyrud Mitchell

Issue: Application for leave to appeal and a stay of execution

Result / Order: It is hereby ordered that:
The application for leave to appeal and for stay of execution is adjourned for hearing by teleconference on Thursday, 30th June 2011 at 10:00 a.m.

Reason: The Court was minded to refuse leave to appeal.

CASE MANAGEMENT
(ANTIGUA & BARBUDA)

Case Name: Romanetta Francis v ABI Bank Limited
[High Court Civil Appeal No. 16 of 2011]

Date: Tuesday 24th May 2011

On paper:

Intended Appellant / Applicant:	Daniels, Phillips & Associates
Respondent:	Roberts & Co.

Issue: Application for leave to appeal

Result / Order:

It is hereby ordered that:

- 1. The applicant files a copy of the order / decision being appealed.**
- 2. The application for leave to appeal is adjourned to the next Chamber sitting scheduled for 28th June 2011.**

Reason:

To enable the order being appealed to be filed.

CASE MANAGEMENT
(COMMONWEALTH OF DOMINICA)

Case Name:

**Truxton Chalmers v Lena Julianne Chalmers
[High Court Civil Appeal No. 10 of 2010]**

Date:

Tuesday 24th May 2011

On paper:

Applicant:

Glen Ducreay Chambers

**Appellant /
Respondent:**

Truxton Chalmers

Issue:

Application to be removed on record as acting for the appellant

Result / Order:

It is hereby ordered that:

- 1. Solicitors Glen Ducreay attempt service on the appellant by whatever means which will ensure that the said application is brought to the attention and notice of the appellant.**
- 2. The application is adjourned to the next Chamber sitting scheduled for 28th June 2011.**

Reason:

In order to fulfill the requirements of rule 63.6(2) Civil Procedure Rules 2000.

Case Name: Janet Nicholas v Irving Felix Shillingford
[High Court Civil Appeal No. 6 of 2011]

Date: Tuesday 24th May 2011

On paper:

Intended Appellant / Applicant:	Dyer & Dyer Chambers
Respondent:	In person (unrepresented)

Issue: Application for leave to appeal

Result / Order: It is hereby ordered that:
1. The applicant / defendant be granted leave to appeal against the order of Stephenson-Brooks J. dated 25th February 2011.
2. Costs of this application be costs in the appeal.

Reason: The Court was of the view that the appeal had a real prospect of success.

Case Name: Joseph Raphael Le Blanc v The Public Service Commission
[High Court Civil Appeal No. 13 of 2011]

Date: Tuesday 24th May 2011

On paper:

Appellant:	In person (unrepresented)
Respondent:	Solicitors for the Public Service Commission

Issue: Application for an extension of time to retain an attorney in order to file an appeal against the decision of the Public Service Board of Appeal

Result / Order: It is hereby ordered that:
The application for more time to retain an attorney in order to file an appeal is dismissed.

Reason: There having been no affidavit in support filed but an affidavit of service sworn to on 18th May 2011, the Court was of the view that the application was not one which it could entertain, given that there was no matter pending before it.

Case Name: Ambrose George v Hector Spags John et al
[High Court Civil Appeal No. 14 of 2011]

Date: Tuesday 24th May 2011

On paper:

Appellant: Mr. Anthony Astaphan, Senior Counsel, with him,
Mr. Alick Lawrence

Respondent: Mr. Gildon Richards (for the 1st respondent)
The Attorney General's Chambers (for the 2nd and 3rd respondents)

Issue: Application for leave to appeal

Result / Order: It is hereby ordered that:
The application for leave to appeal is granted.

Reason: The Court was of the view that the appeal had a real prospect of success.

Case Name: Ambrose George v Hector Spags John et al
[High Court Civil Appeal No. 15 of 2011]

Date: Thursday 26th May 2011

Appearances:
(VIA TELE-
CONFERENCE)

Appellant: Mr. Alick Lawrence

Respondent: Mr. Gildon Richards (for the 1st respondent)
Mr. Levi Peters (for the 2nd respondent)

Issue: Case management of appeal

Result / Order:

It is hereby ordered and directed that:

1. The appeal Nos. 14 and 15 of 2011 are to be consolidated and are deemed to be urgent.
2. That the time for the prosecution and hearing of the appeals be abridged.
3. The records of appeal are to be filed and served no later than Thursday, 2nd June 2011, and transmitted to the Headquarters of the Court of Appeal in Saint Lucia.
4. The appellant is to file and serve his written submissions and authorities within 21 days of the date of this order.
5. The respondents are to file submissions and authorities, if any, within 21 days of the service of the appellant's submissions and authorities.
6. The appellant shall file, if necessary, submissions in reply within 7 days of receipt of the respondent's submissions.
7. The appeals be set down for hearing by the Court of Appeal at the first available opportunity, the said hearing to be by video conference, unless otherwise directed by the Chief Registrar.
8. The appellant, by his counsel undertaking to abide by any order as to damages which the third respondent may suffer by reason of the grant of this order, which the appellant, has to pay the third respondent is hereby restrained

from holding any meetings with Mr. David Bruney or from divulging any confidential information whether written or oral to Mr. David Bruney in respect of any matter involving or concerning the appellant and any other member of the Cabinet of the Commonwealth of Dominica pending the hearing of the appeals.

Reason:

On the grant of interim injunctive relief pending the hearing of the appeals, the Court was mindful of the fact that the learned trial judge considered that an arguable case for Judicial Review had been made out in respect of whether Mr. Bruney would be disqualified from membership of the Integrity Commission (the third respondent), under section 5(d) of the Integrity in Public Office Act, which, were the Court to find at trial that Mr. Bruney was so disqualified, would mean that he would have had access to confidential information in the meantime, which he was not authorised to have. There is no doubt that this would be prejudicial to those persons who are required to furnish such information. On the other hand, were it to be determined that he is not so disqualified, whether on this ground, or any other, then the information, could always be readily available, and no prejudice would have been suffered by the Commission which is able to continue with its functions. The balance of convenience clearly lies in the restraint, of access to such information, pending determination of the appeal.

Case Name:

**Joseph Roberts v Magdalene Francois et al
[High Court Civil Appeal No. 18 of 2011]**

Date:

Tuesday 24th May 2011

On paper:

**Intended Appellant /
Applicant: Dawn Yearwood Chambers**

Respondent: Singoalla Blomqvist-Williams Chambers (for the 2nd and 3rd respondents)

Issues: Application for leave to appeal – Application for a stay of execution

Result / Order: It is hereby ordered that:
1. The application for leave to appeal and stay of execution of the order of Stephenson-Brooks J. dated 15th April 2011 is hereby granted.
2. Costs of the application shall be costs in the appeal.

Reason: The Court was of the opinion that the appeal had a real prospect of success and that the refusal of a stay would cause injustice to the applicant / intended appellant.

CASE MANAGEMENT
(GRENADA)

Case Name: Florence Williams v Grenada Cooperative Bank Ltd.
[High Court Civil Appeal No. 8 of 2011]

Date: Tuesday 24th May 2011

On paper:
Appellant / Applicant: The Law office of G.E.D. Clyne

Respondent: Ciboney Chambers

Issues: Application for leave to amend the counter notice of appeal – Application to strike out counter notice of appeal

Result / Order:

It is hereby ordered that:

- 1. Leave is granted to the respondent / applicant to amend the counter notice of appeal filed 11th March 2011, the amended counter notice of appeal to be filed and served within seven (7) days.**
- 2. The application to strike out the counter notice of appeal filed by the appellant / respondent is refused.**
- 3. Costs to the appellant / respondent in the sum of \$1,000.00.**

Reason:

No prejudice would be occasioned to the appellant in allowing the amendment.

Case Name:

**Paul Mc Leod v His Worship Jerry Seales
[High Court Civil Appeal No. 11 of 2011]**

Date:

Tuesday 24th May 2011

On paper:

**Intended Appellant /
Applicant:**

Ciboney Chambers

Respondent:

The Attorney General's Chambers

Issue:

Application for leave to appeal

Result / Order:

It is hereby ordered that:

The application for leave to appeal against the order of Cumberbatch J. dated 25th March is granted.

Reason:

The Court was of the view that the appeal had a real prospect of success.

CASE MANAGEMENT
(SAINT CHRISTOPHER AND NEVIS)

Case Name: Charles De Barbier et al v Roland Leduc
[High Court Civil Appeal No. 10 of 2008]

Date: Tuesday 24th May 2011

On paper:

Appellants / Respondents:	Daniel, Brantley & Associates
Respondent / Applicant:	Butler Butler & Butler

Issue: Application for security for costs and a stay of execution

Result / Order: It is hereby ordered that:
1. The appeal is hereby discontinued.
2. Costs to the respondent / applicant to be assessed if not agreed within (30) thirty days.

Reason: The appellants / respondents have filed a notice of discontinuance.

Case Name: Vernon S. Veira et al v Guy Mitchell et al
[High Court Civil Appeal No. 21 of 2010]

Date: Tuesday 24th May 2011

On paper:

Appellant:	Vernon S. Veira & Associates
Respondent:	Webster Dyrud Mitchell

Issues:	Misappropriation of funds – Case management
Result / Order:	(No further order was made for this matter.)
Reason:	The parties were unable to comply with the directions which had previously been given since the transcript (which was necessary in order to carry out the directions) was still unavailable.
Case Name:	Naomi Darren v Haim Samet, Steinmetz, Haring & Co. [High Court Civil Appeal No. 5 of 2011]
Date:	Tuesday 24th May 2011
On paper:	
	Intended Appellant / Applicant: Cozier & Associates
	Respondents: Myrna R. Walwyn & Associates
Issues:	Application for leave to appeal – Application for a stay of proceedings
Result / Order & Reason:	It is hereby ordered that: 1. The application for leave to appeal against the decision of the Master dated 18th March 2011, is refused there being no reasonable prospect on appeal. 2. Leave to appeal having been refused, the application for a grant of a stay of the said decisions is also refused. 3. The applicant shall bear the costs of the application fixed in the sum of \$1,500.00.

Case Name: Susan Morrice et al v Maranco LLC
[High Court Civil Appeal No. 7 of 2011]

Date: Tuesday 24th May 2011

On paper:

Intended Appellants / Applicants:	Nisbetts Chambers
Respondent:	Myrna R. Walwyn & Associates

Issue: Application for leave to appeal

Result / Order: It is hereby directed that:
The matter be set down for hearing before the full Court in St. Kitts & Nevis during the week commencing 4th July 2011.

Reason: The Court was minded to refuse the applicant leave to appeal.

Case Name: Calvin Prentice v Drepaul Balgobin
[Magisterial Civil Appeal No. 4 of 2011]

Date: Tuesday 24th May 2011

On paper:

Appellant / Respondent:	Browne & Associates
Respondent / Applicant:	Theodore L. Hobson & Associates

Issue: Application to strike out notice of appeal

Result / Order:

It is hereby ordered that:

- 1. The application to strike out the notice of appeal is refused.**
- 2. The appellant is to serve a copy of the notice of appeal on the respondent on or before 3rd June 2011.**

Reason:

The notice of appeal which was served on solicitors for the respondent / applicant on 20th April 2011, was filed within the time stipulated for filing.

CASE MANAGEMENT
(SAINT VINCENT & THE GRENADINES)

Case Name:

Terrance Dascent v The Queen
[High Court Criminal Appeal No. 24 of 2010]

Date:

Tuesday 24th May 2011

On paper:

Appellant:

In person (unrepresented)

Respondent:

The Director of Public Prosecutions

Issue:

Application to rely on amended grounds of appeal

Result / Order:

It is hereby ordered that:

- 1. The application for leave to rely on the amended grounds of appeal be served on the Director of Public Prosecutions and an affidavit evidencing service be filed by counsel for the appellant.**
- 2. The application be adjourned to the sitting of the full Court scheduled for 6th to 10th June 2011.**

Reason:

There is some merit in the amended grounds of appeal.

Case Name: Kentish Campbell v The Queen
[High Court Criminal Appeal No. 2 of 2011]

Date: Tuesday 24th May 2011

On paper:

Appellant / Applicant:	In person (unrepresented)
Respondent:	The Director of Public Prosecutions

Issue: Application for an extension of time within which to appeal

Result / Order: It is hereby ordered that:
The application for extension of time within which to appeal is refused.

Reason: The Court was of the view that the applicant had not provided a good enough reason for the grant of an extension of time in light of the length of time between the date of his conviction and sentence and the date on which he had applied for the extension of time.

Case Name: Kennis v The Queen
[Magisterial Criminal Appeal No. 19 of 2011]

Date: Tuesday 24th May 2011

On paper:

Appellant / Applicant:	In person (unrepresented)
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Respondent:	The Director of Public Prosecutions
Issue:	Application for an extension of time within which to appeal
Result / Order:	It is hereby ordered that: 1. The application for an extension of time within which to appeal is granted. 2. The appellant is to file and serve a notice of appeal within 21 days of today's order.
Reason:	Sufficient reason for the delay was given to justify granting the extension.
Case Name:	Stanley Constantine v Commissioner of Police [Magisterial Criminal Appeal No. 20 of 2011]
Date:	Tuesday 24th May 2011
On paper:	
Appellant / Applicant:	In person (unrepresented)
Respondent:	The Director of Public Prosecutions
Issue:	Application for an extension of time within which to appeal
Result / Order:	It is hereby ordered that: 1. The application for an extension of time within which to appeal is granted. 2. The appellant is to file and serve a notice of appeal within 21 days of today's order.

Reason:

Sufficient reason for the delay was given to justify granting the extension.