

CHAMBER HEARING

Tuesday, 25th September 2012

HEARING (SAINT LUCIA)

Before: The Hon. Mr. Mario Michel, Justice of Appeal
(except where otherwise stated)

Case Name: Henry Nathaniel
v
Niles Nathaniel

[High Court Civil Appeal No. 23 of 2012]

Appearances:

Intended Appellant / Applicant:	Ms. Petra Jeffrey-Nelson
Respondent:	Ms. Diana Thomas

Issue: Application for leave to appeal and stay of execution

Result / Order: [Oral delivery]

1. The application for leave to appeal and stay of execution is granted.
2. The appellant shall file the notice of appeal within fourteen (14) days of the date of this order.
3. The matter shall proceed in accordance with Part 62 of Civil Procedure Rules 2000.

Reason:

The Court was satisfied that the applicant's case had a realistic prospect of success on appeal. It was further noted that the respondents were neither consenting to nor challenging either of the two applications.

MATTERS DEALT WITH ON PAPER

Case Name:

Wayne Philogene

v

The Queen

**[Magisterial Criminal Appeal No. 2 of 2012]
(Saint Lucia)**

Date:

Tuesday, 25th September 2012

On paper:

Applicant:

Mr. Alfred Alcide

Respondent:

The Director of Public Prosecutions

Issues:

Application for extension of time – Appeal against conviction and sentence

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. Extension of time is granted.**
- 2. Notice of appeal is to be filed and served within fourteen (14) days of the date of this Order.**

Reason:

The applicant demonstrated that his appeal had a reasonable prospect of success. Also, no objection was taken by the respondent to the application.

Case Name:

Paul Cadette

v

Jane Kangal

[High Court Civil Appeal No. 24 of 2012]

(Saint Lucia)

Date: Tuesday, 25th September 2012

On paper:

Appellant: Mr. Dexter Theodore (Theodore & Associates)

Respondent: Mr. Eghan Modeste (Michel & Company)

Issues: Application for extension of time and relief from sanctions

Result / Order:

IT IS HEREBY ORDERED THAT:

1. Proof of service of the application to extend time and for relief from sanctions is to be transmitted to the Court on or before the 28th September 2012.
2. The application is adjourned to the next Chamber hearing scheduled for 23rd October 2012.

Reason: There was no evidence that the application had been served on the respondent.

Case Name:

Mago Estates Hotel Limited

v

Donald Mc. Kinnon

**[High Court Civil Appeal No. 20 of 2012]
(Saint Lucia)**

Date: Tuesday, 25th September 2012

Before: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal

On paper:

Applicant: Mr. Gerard R. Williams

Respondent: Ms. Samantha Charles (Charles & Daniel Chambers)

Issues:	Application for leave to appeal				
Result / Order:	IT IS HEREBY ORDERED THAT: Leave is granted to file a notice of appeal against the decision of the Honourable Master Georgis Taylor-Alexander dated 22 nd June 2012.				
Reason:	The Court was satisfied that the applicant's case met the threshold for the grant of leave to appeal; there was a realistic prospect that the applicant would succeed on appeal.				
Case Name:	Christian Brown representing the estate of Wayne Brown v [1] Paul Limrick [2] Theresa Limrick (nee Balkaran) [High Court Civil Appeal No. 26 of 2012] (Saint Lucia)				
Date:	Tuesday, 25th September 2012				
Before:	The Hon. Mr. Davidson K. Baptiste, Justice of Appeal				
On paper:	<table border="0" style="width: 100%;"> <tr> <td style="width: 20%;">Applicant:</td> <td>Mr. Eghan Modeste (Michel & Company)</td> </tr> <tr> <td>Respondents:</td> <td>Ms. Shan Greer (Greer & Associates)</td> </tr> </table>	Applicant:	Mr. Eghan Modeste (Michel & Company)	Respondents:	Ms. Shan Greer (Greer & Associates)
Applicant:	Mr. Eghan Modeste (Michel & Company)				
Respondents:	Ms. Shan Greer (Greer & Associates)				
Issue:	Application for leave to appeal				
Result / Order:	IT IS HEREBY ORDERED THAT: The matter is adjourned to be heard before a single judge on Wednesday 10 th October 2012 at 10:00 am in the Conference Room at the Eastern Caribbean				

Supreme Court Headquarters.

Reason: The Court was satisfied that the applicant's case met the threshold for the grant of leave to appeal; there was a realistic prospect that the applicant would succeed on appeal.

Case Name: [1] Quincy Gumbs
[2] Fairplay Management Services Ltd
v
Eustace Hobson (dba Eustace Hobson & Associates)
[High Court Civil Appeal No. 6 of 2012]
(Anguilla)

Date: Tuesday, 25th September 2012

On paper:

Applicants:	Ms. Joyce A. Kentish (Joyce Kentish & Associates)
Respondent:	Law firm of Daniel, Brantley & Associates

Issues: Application for stay of execution – Application for extension of time to file notice of appeal and relief from sanctions

Result / Order: IT IS HEREBY ORDERED THAT:
The application for extension of time to appeal and/or to seek leave to appeal is accordingly dismissed.

Reason: The application was not made in a timely manner and the reasons given for the late filing of the application were unsatisfactory.

Case Name:

**Lynwood Bell
v
[1] Malcolm Hope Ross
[2] Donald Curtis**

**[High Court Civil Appeal No. 5 of 2012]
(Anguilla)**

Date:

Wednesday, 23rd January 2012

On paper:

Applicant:

Chancery Lane Chambers

Respondents:

Law firm of Webster Dyrud Mitchell

Issues:

Application for leave to appeal and stay of execution

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The applicant is hereby granted leave to appeal the judgment and order of Roberts J [Ag.] dated 29th June 2012.**
- 2. The judgment and order are hereby stayed until the determination of the appeal.**
- 3. Costs of this application to be costs in the appeal.**

Reason:

The Court was satisfied that the applicant had reasonable prospects of success on appeal. Furthermore, the Court thought that it was in the interests of justice that the judgment of the court below be stayed pending the hearing and determination of the appeal.

Case Name:

**Richard Charles Sayer
v
Caribbean Developments (Antigua) Limited**

**[High Court Civil Appeal No. 9 of 2011]
(Antigua and Barbuda)**

Date: Tuesday, 25th September 2012

On paper:

**Appellant /
Applicant:** Ms. E. Ann Henry (Henry & Burnette)

Respondent: Law firm of John E. Fuller & Co.

Issues: Application for extension of time to file skeleton arguments

Result / Order: **IT IS HEREBY ORDERED THAT:**
The application for extension of time to file skeleton arguments is adjourned for determination by the Full Court in Antigua and Barbuda during the week commencing 29th October 2012.

Reason: There was already an application for leave to adduce additional evidence before the Court, scheduled to be heard on the same day as the substantive appeal (during the next sitting of the Court in the territory). It was noted however, that the outcome of this application to adduce fresh evidence may well have impacted on the skeleton arguments for the substantive appeal, which arguments the appellant was seeking an extension of time to file at this hearing.

The Court had some difficulty choosing a deadline for the filing of both parties' skeleton arguments, which would allow the substantive appeal to be heard later on during the week of the sitting; this would have necessitated abridging the time which the respondent was entitled to (under the Civil Procedure Rules 2000) for replying to the appellant's skeleton arguments. The Court was therefore of the view that the best course of action would be to have the application for an extension of time dealt with by the full Court, along with the application to adduce

additional evidence and the substantive appeal itself.

Case Name:

**Mary Harper
v
Augustine Harper**

**[High Court Civil Appeal No. 6 of 2012]
(Commonwealth of Dominica)**

Date:

Tuesday, 25th September 2012

On paper:

**Petitioner /
Applicant:**

Mr. Alix Boyd Knights

Respondent:

Dyer & Dyer Chambers

Issues:

**Divorce proceedings – Motion for leave to appeal
decree absolute**

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. Leave to appeal is granted to the petitioner/applicant to appeal the Decree Absolute of Divorce pronounced on 21st December 2008 notwithstanding that the time to do so has expired.**
- 2. Notice of appeal to be filed within fourteen (14) days of the date of this Order.**
- 3. The petitioner/applicant shall file and serve on the respondent on or before 31st October 2012 a bundle consisting of:
(a) the documents listed in support of the application filed by the petitioner/applicant on 4th July 2012;
(b) skeleton arguments;
(c) authorities.**
- 4. The respondent shall file and serve skeleton arguments within 28 days of receipt of the applicant's skeleton argument.**

5. The Chief Registrar shall fix a date for hearing of the appeal via video-conference.

Reason:

The Court was satisfied that the application was not without merit; the applicant had good grounds for appealing the decree nisi and absolute granted to her ex-husband in her absence.

No notice (that the decree nisi and absolute had been applied for and obtained by the applicant's ex-husband) was ever served on the applicant. As a result, she was deprived of the opportunity to appeal the decision on time. Essentially, time expired because she was totally unaware of the court's decision.

Case Name:

**Attorney General of the Commonwealth of
Dominica
v
Samuel Raphael**

**[High Court Civil Appeal No. 24 of 2011]
(Commonwealth of Dominica)**

Date:

Tuesday, 25th September 2012

On paper:

Applicant: Ms. Sherma Dalrymple (Attorney General's Chambers)

Respondent: Ms. Singoalla Blomqvist-Williams

Issues:

Applicant to show cause why notice of appeal should not be struck out

Result / Order:

**IT IS HEREBY ORDERED THAT:
The notice of appeal filed on 29th June 2012 is a nullity and is accordingly struck out.**

Reason: The notice of appeal was filed over 10 months late. Furthermore, the affidavits filed by the Attorney General on 8th August 2012 did not show any or any sufficient cause why the notice of appeal should not be struck out.

Case Name: [1] Gloria Burnette nee Shillingford
[2] Rashida Pierre
v
Angel Peter Andrew
[High Court Civil Appeal No. 33 of 2011]
(Commonwealth of Dominica)

Date: Tuesday, 25th September 2012

On paper:

Intended appellants / Applicants:	Mr. Lennox Lawrence (for the 1 st appellant / applicant)
Respondent:	Mr. Michael E. Bruney (Dupigny, Bruney & Associates)

Issues: Intended appellants / applicants to show cause why notice of appeal should not be struck out

Result / Order: IT IS HEREBY ORDERED THAT:
The appeal is to proceed in accordance with Part 62 of the Civil Procedure Rules 2000.

Reason: A previous order of the Court required the applicants to show cause within 21 days why their notice of appeal should not be struck out. The Court was satisfied that this order was fully complied with, albeit a little late. Directions were therefore given for the prosecution of the appeal.

Case Name: [1] Attorney General of the Commonwealth of
Dominica
[2] Alleyne Maximae
[3] Vivian Augustine
v
Anthony Martin

[High Court Civil Appeal No. 12 of 2012]
(Commonwealth of Dominica)

Date: Tuesday, 25th September 2012

On paper:

Intended Appellants / Applicants:	Ms. Sherma Dalrymple (Attorney General's Chambers)
Respondent:	No appearance

Issues: Application for leave to appeal order of master –
False imprisonment – Correctness of detention

Result / Order: IT IS HEREBY ORDERED THAT:
The application is denied on the basis that it was not
made within the time prescribed by the Civil
Procedure Rules.

Reason: The application for leave to appeal was filed outside
of the prescribed time limit, and the applicants made
no application for an extension of time.

Case Name: Lennox Jervier
v

**Madge Angevin, by Her Attorney Carlton
Phillip**

**[High Court Civil Appeal No. 14 of 2012]
(Commonwealth of Dominica)**

Date: Tuesday, 25th September 2012

On paper:

**Intended Appellant /
Applicant:** Ms. Zena Moore Dyer (Dyer & Dyer)

Respondent: No appearance

Issues: Application for leave to appeal

Result / Order: IT IS HEREBY ORDERED THAT:
The application for leave to appeal is granted.

Reason: The Court was satisfied that the applicant had a reasonable prospect of success on appeal. Furthermore, the applicant had fully complied with the Rules of Court in making the application for leave to appeal.

Case Name: Donald Frederick
v
[1] Choo Loi Poi
[2] Choo Liu Yue Xin

**[High Court Civil Appeal No. 5 of 2012]
(Grenada)**

Date: Tuesday, 25th September 2012

On paper:

Applicants: Grant, Joseph & Co.

Respondent: The Law Office of George E. D. Clyne

Issues: Application to set aside or discharge the order of a single judge of the Court – Application for stay of execution

Result / Order: IT IS HEREBY ORDERED THAT:

1. The application to set aside the order of Mitchell, JA dated 27th June 2012 is adjourned to the Full Court for hearing and determination.
2. The aforesaid order and the proceedings in the court below are hereby stayed pending the hearing and determination of the application by the full Court.
3. The Registrar of the High Court to cause the transcript to be prepared and made available to the parties and the Court prior to the hearing of the application by the Court.

Reason: It was proper for this application to be dealt with by the Full Court rather than just a single judge (see rule 62.16A of the Civil Procedure Rules 2000).

Case Name: Janin Caribbean Construction Limited
v
[1] Ernest Clarence Wilkinson
[2] Wilkinson, Wilkinson & Wilkinson
[High Court Civil Appeal No. 1 of 2010]
(Grenada)

Date: Tuesday, 25th September 2012

On paper: Appellant / Applicant: Mr. Dwight D. Horsford

Respondents: Ms. Celia Edwards, QC

Issues: Application for executrices to be substituted as first respondents

Result / Order: IT IS HEREBY ORDERED THAT:
The application is granted substituting Cecily Wilkinson (also known as Cecly Wilkinson) and Rosalyn Elizabeth Wilkinson, as Executors of the Estate of Ernest Clarence Wilkinson, as the First Respondent in this action in place of Ernest Clarence Wilkinson deceased.

Case Name: Steven G. Hites
v
[1] Anguilla Business Services Ltd
[2] St. Kitts Scenic Railway Limited
[3] Jeffery D. Hamilton

[High Court Civil Appeal No. 7 of 2012]
(Saint Christopher and Nevis)

Date: Tuesday, 25th September 2012

On paper:

Intended Appellant / Applicant: Mr. Terence V. Byron

Respondents: Mr. Garth L. Wilkin (for the first named respondent)

Issues: Application for leave to appeal

Result / Order: IT IS HEREBY ORDERED THAT:
The application is adjourned for hearing to the Full Court in St. Kitts & Nevis during the week commencing 26th November 2012.

Reason: The Court was minded to refuse leave because it was not convinced that the applicant had a reasonable prospect of success.

Case Name: St. Kitts Scenic Railway Limited
v
[1] Anguilla Business Services Ltd
[2] Steven G. Hites
[3] Jeffery D. Hamilton
[High Court Civil Appeal No. 8 of 2012]
(Saint Christopher and Nevis)

Date: Tuesday, 25th October 2012

On paper:
Intended Appellant / Applicant: Mr. Terence V. Byron
Respondents: Mr. Garth L. Wilkin (for the first respondent)

Issues: Application for leave to appeal

Result / Order: IT IS HEREBY ORDERED THAT:
The application for leave to appeal is granted.

Reason: There was no reason to doubt that applicant had a real prospect of success on appeal.

Case Name: Leewards Media Group Limited
v
A. Michael Perkins

**[High Court Civil Appeal No. 11 of 2012]
(Saint Christopher and Nevis)**

Date: Tuesday, 25th September 2012

On paper:

Applicant: Ms. M. Angela Cozier (Cozier and Associates)

Respondent: Mr. Theodore L. Hobson (Theodore L. Hobson & Associates)

Issues: Application for stay of execution and proceedings

Result / Order: IT IS HEREBY ORDERED THAT:
The application for stay of execution is granted.

Reason: The Court was of the view that the applicant did have a reasonable prospect of success on appeal. It was also satisfied that there was a real risk that the applicant could suffer injustice if the stay was not granted; the company faced possible financial ruin if the judgment was enforced. On the other hand, the only prejudice that the respondent would suffer if the judgment below was stayed and he was later successful on appeal, was that there would have been a delay in him receiving the fruits of his judgment.

Case Name:

**Jamal Smith
v
Violet Thomas Gaul**

**[High Court Civil Appeal No. 15 of 2012]
(Territory of the Virgin Islands)**

Date: Tuesday, 25th September 2012

On paper:

Applicant: Mr. Jamal S. Smith (in person)

Respondent: Law firm of Farara Kerins

Issues: Application for extension of time to file notice of appeal – Applicant to show cause why application for extension of time and notice of appeal itself should not be struck out

Result / Order: IT IS HEREBY ORDERED THAT:
The application for an extension of time to file a notice of appeal is struck out.

Reason: No attempt had been made by the applicant to show cause why the application for an extension of time and the notice of appeal itself should not be struck out.

Case Name:

[1] Ecedro Thomas
[2] Alfred Thomas
[3] Elsair Thomas Malone
[4] Alice Thomas

v

[1] Daisy Stout
[2] Garfield Stout
[3] Iona Stout Forbes (Executrix of the Will of
Essir Stout)
[4] Grethel Stout (Administratrix of the Estate
of Richard Cardinal Stout)

[High Court Civil Appeal No. 19 of 2012]
(Territory of the Virgin Islands)

Date: Tuesday, 25th September 2012

On paper:

Intended Appellants / Applicants: Ms. Tamara Cameron (Farara Kerins)

Respondents: Law firm of O'Neal Webster (for the 1st and 2nd respondents)
Law firm of J.S. Archibald & Co. (for the 3rd respondent)

Issues: Application for leave to appeal – No evidence of service on respondent

Result / Order & Reason: IT IS HEREBY ORDERED THAT:
The application is adjourned to the next Chamber date scheduled for 23rd October 2012 to facilitate service of the hearing on the respondent.

Case Name: Oswald Esberry
v
The Commissioner of Police

[Magisterial Criminal Appeal No. 2 of 2012]
(Montserrat)

Date: Tuesday, 25th October 2012

On paper:

Applicant: Mr. Oswald Esberry (in person)

Respondent: Office of the Director of Public Prosecutions

Issues: Application to amend grounds of appeal

Result / Order: IT IS HEREBY ORDERED THAT:
The application to amend grounds of appeal is granted.

Reason: The Court was satisfied that the respondent would not have been prejudiced by the grant of the application.

Case Name: Lesly Pierre
v
The Queen

[High Court Criminal Appeal No. 3 of 2012]
(Montserrat)

Date: Tuesday, 25th September 2012

On paper:

Applicant: Mr. Lesly Pierre (in person)

Respondent: Mr. Oris Sullivan (Office of the Director of Public Prosecutions)

Issues: Application for extension of time to file appeal –
Application for leave to appeal sentence

Result / Order: IT IS HEREBY ORDERED THAT:
1. The application for extension of time is granted.
2. Leave to appeal against sentence is granted.
3. The notice of appeal is to be filed within 14 days of this Order.

Reason: The appellant, who had pleaded guilty in the court below, did not have the benefit of legal advice. As a result, he had not been informed that although he could not appeal his conviction (because he had pleaded guilty), he could nonetheless appeal his sentence. He was only made aware of this after the time for appealing had expired.

The Court further noted that the appeal did have a real prospect of success.

