

COURT OF APPEAL SITTING

**SAINT LUCIA
25th – 29th June 2012**

JUDGMENTS

Case Name:

**Sir James Fitz Allen Mitchell
v
Ephraim Georges
(Sole Commissioner of the Ottley Hall
Commission of Inquiry)**

**[High Court Civil Appeal No. 14 of 2011]
(Saint Vincent and the Grenadines)**

Date:

Monday, 25th January 2012

Coram:

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

Appearances:

Appellant:

**Mr. Peter Foster, holding papers for solicitors for the
appellant**

Respondent:

**Ms. Veronica Barnard holding papers for solicitors for
the respondent**

Issues:

**Judicial review – Commission of Inquiry – Whether
the learned trial judge erred in dismissing claim for
relief – Commissioner sending Interim Report to
Governor-General and DPP – Appellant and his
witnesses had not yet testified – Interim Report
describing appellant's behaviour on the evidence so
far as inexcusable – Appellant alleged to have shut
his mind to the obvious – Alleged he failed to act in
accordance with the law and his duties as a Minister
of Government – Whether the Interim Report
contained concluded views – Whether the Interim
Report should have been limited to facts,
circumstances and evidence and not given opinions**

and argument – Whether showed a predisposition towards a particular view of the evidence – The fair minded and informed observer – Apparent bias – Procedural unfairness

Result and Reason:

Held: dismissing the appeal and confirming the decision of the trial judge to dismiss the claim, and making no order as to costs, that:

1. It is generally accepted that a Commission of Inquiry must not exceed its common law powers and where it does, the Supreme Court in its supervisory jurisdiction will intervene. The question is whether a body exercising statutory powers of investigation and report has erred in law, exceeded its statutory jurisdiction, or failed to observe natural justice, if applicable, or committed some other abuse of power. Where such an error is established, the courts will usually be prepared to use their judicial review jurisdiction and they are unlikely to be deterred by arguments that a report is not a determination.
2. The principles that are laid down in the cases that dealt with the question of bias in courts or tribunals of a judicial or disciplinary nature have to be applied with great caution to the case of a Commission of Inquiry.

In re Medicaments and Related Classes of Goods (No. 2) [2001] 1 WLR 700; Basdeo Panday v Wellington Virgil (Senior Superintendent of Police) Republic of Trinidad & Tobago Mag. App. No. 75 of 2006 (unreported) distinguished; Basdeo Panday v Senior Superintendent Wellington Virgil [2008] UKPC 24 distinguished; George Meerabux v The Attorney General of Belize [2005] UKPC 12 distinguished; Medical Board of Trinidad and Tobago v des Vignes (2000) 60 WIR 375 distinguished; Davidson (AP) v Scottish Ministers [2005] UKHL 74 distinguished; R v Kent Police Authority and Others Ex parte Godden [1971] 2 QB 662 distinguished; London

Borough of Southwark v Jiminez [2003] EWCA Civ 502 distinguished.

- 3. The court, in determining issues related to bias must have regard to the context in which such issues have arisen. It would not be appropriate to apply across-the-board general principles of bias without regard for the statutory framework, the terms of reference, and the nature of the inquiry in question. The court must take into account the special nature of a Commission of Inquiry. This is an investigative body and not an adjudicatory one. The Commissioner's report was a confidential, interim report which was not published to the public. The Commissioner acted in compliance with his mandate which was to submit his Interim Report to the Governor-General and the DPP. Sir James had earlier been given every opportunity to participate in the hearings, but he had chosen not to come forward or to take advantage of the opportunity given to him. If his name was now mentioned in an interim report before he has had an opportunity to respond to a Salmon Letter, he cannot be heard to complain that he had been deprived of a right to be heard.**
- 4. In view of the relevant authorities, Sir James was required to prove much more than the formulation or expression of a provisional or interim view or opinion to establish that the Commissioner had a closed or prejudiced mind. Sir James must prove that, in view of the nature of the inquiry, the terms of reference, and the opportunities given throughout the proceedings to him, the Commissioner has closed his mind. He must establish on the part of the Commissioner irreversible prejudgment and prejudice in the expression of his views in his Interim Report to the DPP, and that the Commissioner will not alter these views irrespective of the evidence and arguments which may be presented to him by Sir James and his counsel. He must demonstrate that in the conduct of the proceedings as a whole it**

has been shown that the Commissioner was biased or unfair. He has failed to do any of these.

Mario Hoffmann v Commissioner for the Turks & Caicos Islands Commission of Inquiry and the Turks & Caicos Islands Commission of Inquiry v Dr Cem Kinay et al Nos. CL-AP 11/09 and CL-AP 8/09 (unreported) applied; Beno v Canada (Commissioner and Chairperson, Commission of Inquiry into the Deployment of Canadian Forces to Somalia) [1997] 2 FC 527 applied.

5. On the question of procedural fairness, the Commissioner's terms of reference required him, "to report immediately ... any facts, circumstances, or evidence which in the opinion of the Commission may give rise to, show or establish ..." any of the matters set out in clause 13. The Commissioner was therefore required to submit his Interim Report once he formed an opinion on any fact or circumstance which may have given rise to any of the matters in question. There was no obligation imposed on him to first hear Sir James before reporting. The fact that the Interim Report was entitled "Report on Possible Criminal Acts ..." would indicate at the outset to a fair-minded and reasonable observer that the Commissioner had not yet found or concluded that Sir James had in fact committed and was guilty of the criminal acts alleged. Furthermore, after being served with a Salmon Letter and a Witness Summons, Sir James would have had the opportunity to answer the evidence and allegations made against him.
6. Clause 13 of the Terms of Reference did not require the Commissioner merely to list the facts, circumstances and evidence, without making any comment on them. The Commissioner was entitled to draw inferences and to make comments (which may have been of a conclusionary nature) on the evidence that he had heard to that date. It would seem clear

to a fair-minded and reasonable observer giving it a fair reading that the Interim Report was not intended as a final report consisting of concluded findings of criminal liability on the part of any person, including Sir James. Nothing in the Interim Report suggested that the Commissioner had come to a concluded view, showed a closed mind, or had a particular view of the evidence amounting to a prejudgment, nor was there anything to suggest that there was other than co-incidence in the timing of the Interim Report. Sir James had long retired from active politics. There was no reason to believe that the Commissioner had any animus to Sir James' political party, or wished to do it any harm.

7. While the Commissioner's Interim Report was replete with strong and colourful language and while it was true that the Commissioner used the decisive language of a concluded finding, it would have been difficult for him to have fulfilled his mandate of reporting on the facts and evidence to the Governor-General without making an evaluation of the material before him. Even if his language was not as cautious and reserved as it should have been for an interim report prepared before all the evidence was in, the overall context would correct it. There was nothing that would give a fair minded and informed observer a reasonable apprehension that the Commissioner would at the end of the Inquiry reach a conclusion based other than on the evidence. There was simply no evidence that could displace the presumption that the Commissioner would act impartially.
8. Given the nature of the inquiry, the legislative framework, the terms of reference given to the Commissioner, the conduct of the Commissioner both before and after the delivery of his Interim Report, the duty of the Commissioner to make provisional findings and to form provisional views on the evidence and to give persons adversely affected an

opportunity to be heard before making final findings and completing the Inquiry, the duty of the Commissioner to submit interim reports, the fact that the Commissioner had made it clear that his views or findings were provisional, the Commissioner's clear indication in his Interim Report that Sir James had not yet given evidence, the Commissioner's demonstration that his mind was not closed by his issuing a Salmon Letter and giving Sir James an opportunity to show cause why an adverse report should not be made against him, and the setting out in the Salmon Letter of the allegations made against Sir James as well as the substance of the evidence adduced in support of them, the Commissioner cannot be said to have prejudged the issues so that he was prevented by the law on bias from continuing with the Inquiry.

Case Name:

**[1] Craig Smith
[2] Clayton Francis
[3] Noel Melvin
[4] Marlon Phoenix
v
The Queen**

**[High Court Criminal Appeals Nos. 10, 11,12
and 14 of 2008]
(Antigua and Barbuda)**

Date:

Monday, 25th June 2012

Coram:

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

Appearances:

Appellant:

**Ms. Veronica Barnard holding papers for Mr. Cosbert
Cumberbatch**

Respondent: Ms. Victoria Charles-Clarke, Director of Public Prosecutions, holding papers for Mr. Anthony Armstrong, Director of Public Prosecutions (Antigua and Barbuda)

Issues: Criminal appeal against conviction – Attempted murder – Joint enterprise – ID parade – Withdrawal from joint enterprise – Primary party departing from common design by unforeseen action – Conviction of offence of shooting with intent to cause grievous bodily harm where secondary party is unaware of the intent of primary party – Whether secondary party’s realization of primary party’s intent sufficient to found conviction – Non-disclosure

Result and Reason: Held: allowing the appeal of Craig Smith, Clayton Francis, and Noel Melvin against their conviction for shooting with intent and quashing the conviction; dismissing Marlon Phoenix’s appeal against his conviction for shooting with intent and upholding his conviction; dismissing the appeal of Craig Smith, Clayton Francis, Noel Melvin and Marlon Phoenix against their conviction for attempted murder and upholding their conviction, that:

1. In a joint enterprise, if a secondary party realizes (without agreeing to such conduct being used) that the primary party may kill or intentionally inflict serious injury, but nevertheless continues to participate with the primary party in the venture, that will amount to a sufficient mental element for the secondary party to be guilty of murder if the primary party, with the requisite intent, kills in the course of the venture unless (i) the primary party suddenly produces and uses a weapon of which the secondary party knows nothing and which is more lethal than any weapon which the secondary party contemplates that the primary party or any other participant may be carrying and (ii) for that reason the primary’s party act is to be regarded as fundamentally different from anything foreseen by the

secondary party. Applying this principle to the present case, there was no evidence presented at trial which showed that Smith, Melvin and Francis had knowledge of the gun in Phoenix's possession before he shot at Paredes. Moreover, no evidence was produced which showed that Smith, Melvin or Francis came to the realization that Phoenix may shoot at Paredes with intent to do him grievous bodily harm but they nonetheless continued to participate with him in the venture. Phoenix's action went outside the scope of the joint enterprise. In the circumstances, the conviction of Smith, Melvin and Francis for the offence of shooting with intent is unsafe and cannot be upheld.

R v Powell and Daniels and R v English [1999] 1 AC 1 applied; R v Hyde [1991] 1 QB 134 applied; R v Rahman and others [2008] UKHL 45 applied.

2. Smith, Melvin and Francis, armed with the knowledge of Phoenix's intent to recover the car by violence and knowing that Phoenix had shot at Paredes at Tyrells, nonetheless journeyed to Ramon Hill with him. There was a conversation in the car on the way to Ramon Hill about the gun. As such, they had the sufficient mental element to be liable and guilty for the actions of Phoenix. Smith, Melvin and Francis lent themselves to the enterprise and by doing so gave assistance and encouragement to Phoenix in carrying out the enterprise which then involved the intent to kill. Additionally, the learned trial judge gave proper and adequate directions to the jury concerning the intent for attempted murder. Accordingly, their conviction of attempted murder of Charles must be upheld.

R v Powell and Daniels and R v English [1999] 1 AC 1 applied; R v Hyde [1991] 1 QB 134 applied; R v Rahman and others [2008] UKHL 45 applied.

3. An accused who effectively withdraws before an injury is inflicted would not be guilty because he was not a party to and did not participate in any unlawful violence which caused the injury. This distinction was specifically put to the jury by the learned trial judge in reference to Francis' defence. In scrutinizing the evidence, Francis, at all material times, continued with the joint venture with the other appellants. After the shooting at Tyrells, he was aware that Phoenix possessed a gun and was prepared to use violence to recover the car from Hope. He was the one who identified the car in which Hope and Charles were in and who drove away the car in which two of the other appellants fled the scene with him after the Ramon Hill shooting. He never, at any point, abandoned the appellants and therefore it cannot be said that he effectively disengaged or withdrew from the enterprise.

R v O'Flaherty et al [2004] EWCA Crim 526 applied.

4. The test for non-disclosure is whether, taking all the circumstances of the trial into account, there is a real possibility that the jury would have arrived at a different verdict. The statement allegedly made by Francis to the police about Phoenix's non-involvement in the incidents was never recorded. Consequently, there was no such evidence to be disclosed to the defence for the evidence to be placed before the jury. Even if such a statement was placed before the jury, the jury had the evidence of Smith and Hope identifying Phoenix as the shooter. In the circumstances, there was not a real possibility that the jury would have arrived at a different verdict.

Mc Innes v Her Majesty's Advocate (Rev 1) (Scotland) [2010] UKSC 7 applied; Maureen Peters v The Queen Territory of the Virgin Islands HCRAP 2009/005 (delivered 1st October 2010) applied.

5. An identification parade ought to be fair to the appellant. In this case the parade was not patently or materially defective and was conducted fairly. Furthermore, there was other cogent evidence pointing to Phoenix as the shooter.

Mark Peters v The Queen Saint Vincent and the Grenadines Criminal Appeal No. 8 of 2000 (delivered 17th September 2001) applied.

6. The trial judge clearly and properly directed the jury on the applicable legal principles pertaining to Smith's evidence in regard to Phoenix. In the circumstances there is no merit in the complaint regarding the directions of the learned judge.

APPLICATIONS AND APPEALS

Case Name:

**Mitchel Joseph
v
The Queen**

[High Court Criminal Appeal No. 1 of 2011]

Date:

Monday 25th June, 2012

Coram:

**The Hon. Sir Hugh A. Rawlins, Chief Justice
The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]**

Appearances:

**Appellant /
Applicant:**

Mr. Al Elliot

Respondent:

**Ms. Victoria Charles-Clarke, Director of Public
Prosecutions**

Issues: Criminal appeal against conviction – Murder – Application for an adjournment – Variation of terms of directions

Result / Order: [Oral delivery]
1. Paragraph one (1) of the directions is varied to extend time to file and serve skeleton arguments by the appellant on or before 9th July 2012.
2. Paragraph two (2) of the said directions is varied to extend time to file and serve a response to the appellant's skeleton arguments on or before 21st August 2012.
3. Paragraph three (3) of the said directions is varied to extend time to file and serve any reply, if necessary on or before 10th September 2012.
4. The matter is traversed to the next sitting of the court in Saint Lucia during the week commencing 10th December 2012.

Reason: The respondent had not yet received written submissions from the appellant. The appellant asked to have the matter adjourned so that he could have some time to prepare the submissions. The respondent was not opposed to the adjournment being granted.

Case Name: Sheldon Fletcher
v
The Queen

[High Court Criminal Appeal No. 2 of 2009]

Date:

Coram: The Hon. Sir Hugh A. Rawlins, Chief Justice
The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Leslie Mondesir

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

Issues: Criminal appeal against conviction – Murder – Tape on which summation recorded unable to be found

Result / Order: [Oral delivery]

1. The Court Reporting (CAT Unit) shall make a further careful search of the tapes which they hold to locate the recording of the summation that was given at the trial.
2. The head of the CAT Unit shall submit a report to the Chief Registrar on the result of the search on or before 19th November 2012.
3. The matter shall be listed for report at the next sitting of this court in Saint Lucia during the week commencing 10th December 2012.

Reason: The Court Reporting Unit had been unable to locate the recording of the summation given at trial. As a result, the record of appeal remained incomplete.

Case Name: Alvin Edward
v
Eddie Monlouis

[High Court Civil Appeal No. 44 of 2011]

Date: Monday, 25th June 2012

Coram: The Hon. Sir Hugh A. Rawlins, Chief Justice
The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Applicant: Ms. Cynthia Hinkson-Ouhla

Respondent: Ms. Jan Drysdale

Issues: Application for leave to appeal – Whether learned trial judge misdirected herself in refusing to allow claimant to rely on witness statement which was improperly headed (form was not strictly adhered to)

Result / Order: [Oral delivery]
1. The application for leave to appeal is granted.
2. In the circumstances of this case, the said application is treated as the appeal.
3. The appeal is allowed.
4. The witness statement filed by the claimant on 21st June 2011 is deemed to have been properly filed on that day.
5. The case is remitted to the High Court for directions with a view to trial, if necessary.
6. The respondent shall pay the applicant \$750.00 costs on the application.

Reason: The Court held that it is not a document's heading that is most significant but rather, its substance. A witness statement is headed merely to give an indication of what the document contains. If a party's witness statement is rejected, the consequences are very serious – that party will be precluded from relying on their statement and giving evidence in court.

The Court went on to state that court clerks are obliged to file the papers that they receive from attorneys; they cannot take it upon themselves to reject documents on the basis they have not been presented in the proper form.

It was held that the judge, in the exercise of her discretion, should have allowed the witness statement to be filed so that the matter could have proceeded, based on its substance.

Case Name: [1] Alexis Alcide as Heir to the Estate of
Gerald Alcide aka Gerald Alcide Jn Marie aka
George Alcide
[2] Alexis Alcide as Administrator of the
Estate of Emilienne Alcide (nee Gilbert)
v
[1] Josephine Lansiquot as Executrix of the
Estate of Joseph Alcide c/o Monica Alcide of
Bagatelle, Castries
[2] John Cherubin as Administrator of the
Estate of Veronica Alcide of Monchy
[3] Monica Alcide of Bagatelle, Castries

[High Court Civil Appeal No. 7 of 2012]

Date: Monday, 25th June 2012

Coram: The Hon. Sir Hugh A. Rawlins, Chief Justice
The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Applicant: Mr. Alexis Alcide in person

Respondent: Mr. Mark Maragh holding papers for Mr. Vern Gill

Issues: Application for leave to appeal

Result / Order: [Oral delivery]
1. The application for leave to appeal the order of
Wilkinson J. dated 2nd February 2012 is granted.
2. The applicant is to file his notice of appeal within
35 days of today's date.
3. All subsequent proceedings shall be conducted in
accordance with the Civil Procedure Rules 2000.
4. Costs shall be costs in the appeal.

Reason: The application showed that the appeal had realistic
prospects of success. The respondent was not
opposed to the application for leave being granted.

Case Name:

**Conrad Charles
v
The Attorney General**

[High Court Civil Appeal No. 9 of 2012]

Date:

Monday, 25th June 2012

Coram:

**The Hon. Sir Hugh A. Rawlins, Chief Justice
The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]**

Appearances:

**Appellant /
Applicant:**

Ms. Cynthia Hinkson-Ouhla

Respondent:

Ms. Brender Portland-Reynolds

Issues:

Application to strike out discontinued – Application to extend time to file notice of appeal (on grounds of illness of counsel)

Result / Order:

[Oral delivery]

- 1. The application for extension of time to file the notice of appeal is granted.**
- 2. The notice of appeal which was filed on 13th March 2012 is deemed to have been duly filed as of today's date for the purposes of rule 62.9, CPR 2000.**
- 3. Costs shall be in the appeal.**

Reason:

The respondent did not oppose the appellant's application to extend time to file the notice of appeal, this extension having been sought because counsel for the appellant was ill.

Case Name: Cecilia Deterville
v
Foster & Ince Cruise Services (St. Lucia) Ltd.
[High Court Civil Appeal No. 15 of 2011]

Date: Monday, 25th June 2012

Coram: The Hon. Sir Hugh A. Rawlins, Chief Justice
The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Appellant:	No appearance (Mr. Horace Fraser was counsel on record for the appellant)
Respondent:	Mr. Mark Maragh

Issues: Unlawful dismissal – Whether the learned trial judge erred in law in making material findings of fact firstly not based on any evidence, and secondly, not having weighed the evidence at all

Result / Order: The matter is stood down. (The Court requested further information on the matter).

Reason: The matter was not ready to be heard because the record of appeal was incomplete.

Case Name: In the Matter of The Attorney General's
Reference (Constitutional Questions) Act Cap.
17.18 of the Revised Laws of Saint Lucia
v
In the Matter of the Attorney General
Referring to the Court for Hearing and

**Consideration of Important Questions
Relating to Sections 41(2), 41(7), 107 and 108
of Saint Lucia Constitution Order**

[High Court Civil Appeal No. 18 of 2012]

Date: Monday, 25th June 2012

Coram: The Hon. Sir Hugh A. Rawlins, Chief Justice
The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Raulston Glasgow, with him, Mr. Deale Lee (Mr. Anthony Astaphan, SC, lead counsel, was not present)

Interested Party: Ms. Renee St. Rose (on behalf of the Saint Lucia Bar Association)

Issues: Referral to court for hearing and consideration of important questions relating to sections 41(2), 41(7), 107 and 108 of the Saint Lucia Constitution Order – Manner in which Attorney General should proceed

Result / Order:

[Oral delivery]

1. Solicitors for the Attorney General shall publish a copy of the notice of reference which was filed on 1st June 2012 in two (2) consecutive issues of two (2) newspapers which are circulated widely in Saint Lucia and in two (2) consecutive issues of the Official Gazette.
2. The notice shall in addition invite interested parties to signify their interest by filing a notice of appearance in the Court of Appeal.
3. Notice of appearance shall be filed and served on the Attorney General on or before 31st August 2012.
4. The reference shall be scheduled for case management with a view to directions for hearing on or before 1st October 2012.

Reason: The notice of reference ought to have been publicised

so that persons with an interest in the matter could file a notice of appearance in the Court of Appeal.

Case Name: Cecilia Deterville
v
Foster & Ince Cruise Services (St. Lucia) Ltd.
[High Court Civil Appeal No. 15 of 2011]

Date: Monday, 25th June 2012

Coram: The Hon. Sir Hugh A. Rawlins, Chief Justice
The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Appellant:	No appearance (counsel on record was Mr. Horace Fraser)
Respondent:	Mr. Mark Maragh

Issues: Unlawful dismissal – Whether the learned trial judge erred in law in making material findings of fact firstly not based on any evidence, and secondly, not having weighed the evidence at all

Result / Order: [Oral delivery]
The appeal is traversed to the next sitting of the Court in Saint Lucia during the week of 10th December 2012.

Reason: Counsel for the respondent informed the Court that the record of appeal was close to being completed and the Registry would soon be able to issue a notice of availability.

Case Name: [1] Cukurova Finance International Limited
[2] Cukurova Holding AS
v
Alfa Telecom Turkey Limited

[High Court Civil Appeals Nos. 18 and 24 of 2010]

Date: Monday, 25th June 2012

Coram: The Hon. Sir Hugh A. Rawlins, Chief Justice
The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Applicant: Mr. Peter Foster holding papers for solicitors for Alfa Telecom Turkey Limited

Respondents: No appearance

Issues: Application to vary order of Court of Appeal – Date of hearing to be fixed

Result / Order: [Oral delivery]
The hearing of the application to vary is scheduled for Wednesday 27th June 2012.

Reason: The applicant was seeking an expedited hearing of the application. Mr. Foster informed the Court that all affidavits had been filed by the applicant and the matter was ready to be heard.

JUDGMENTS

Case Name: Theresa Anne Marie Justin
v

The Queen

**[High Court Criminal Appeal No. 5 of 2008]
(Saint Lucia)**

Date: Tuesday, 26th June 2012

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

Appearances:

Appellant: Ms. Wauneen Louis-Harris

Respondent: Mr. Stephen Brette holding papers for Ms. Victoria Charles-Clarke, Director of Public Prosecutions

Issues: Criminal appeal against conviction and sentence – Murder – Credibility of appellant – Jury not given good character direction – Evidence of defendant's good character not adduced by defence counsel at trial – Whether failure to do so fatal to fairness of trial or safety of conviction – Inadmissible evidence – Sections 52 and 72 of the Evidence Act, Cap. 4.15 – Whether sentence excessive

Result and Reason: Held: dismissing the appeal and affirming the appellant's conviction and sentence, that:

1. The omission of a good character direction is not necessarily fatal to the fairness of a trial or the safety of a conviction. Much may turn on the nature of and the issues in the case, and on the other available evidence. In the instant case, the jury would inevitably have convicted the appellant even if a good character direction had been given. It cannot be said that the verdict of the jury was unsafe or unsatisfactory, or unsupported by the evidence.

Jagdeo Singh v State of Trinidad and Tobago
[2006] 1 WLR 146 applied.

2. The prosecution not producing in court a written record of the confrontations conducted by the police would not have precluded the reception of oral evidence of the confrontations or make the oral evidence inadmissible.

R v Francis (2009) 74 WIR 108 applied.

3. The learned judge adequately conveyed to the jury the fact that there was an absence of forensic evidence in support of the Crown's case. From the summation, the jury would have been left in no doubt that there was no forensic evidence linking the appellant to the crime.
4. The learned judge did not err in principle in sentencing the appellant having taken all matters into consideration including the absence of antecedents and the time she had already spent on remand. There is no proper basis for disturbing the sentence imposed.

APPLICATIONS AND APPEALS

Case Name:

**Frederick Augustus
v
Mayor & Citizens of Castries**

[High Court Civil Appeal No. 25 of 2009]

Date:

Tuesday, 26th June 2012

Coram:

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

Appearances:

Appellants:

No appearance (counsel on record was Ms. Cynthia Hinkson-Ouhla)

Respondent: Ms. Esther Greene-Ernest

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

Result / Order: The matter is stood down.

Reason: Ms. Hinkson-Ouhla was not present. Counsel for the respondent requested that the matter be stood down so that she could be located.

Case Name: [1] Eugene Nelson
[2] Ferlyn Nelson
[3] Orilda Nelson
v
First Caribbean International Bank Limited
[High Court Civil Appeal No. 22 of 2011]

Date: Tuesday, 26th June 2012

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

Appearances:

Appellants: Ms. Lydia Faisal

Respondent: Ms. Renee St. Rose

Issues: Whether the learned trial judge was wrong to uphold the respondent’s personal action despite Article 1942

of the Civil Code of Saint Lucia, Cap. 4.01 – Whether interest was properly calculated

Result / Order:

[Oral delivery]

- 1. The appeal is dismissed in part as the Court is of the view that Article 1942 of the Civil Code of Saint Lucia does not preclude the Bank from bringing a personal action to recover the debt in respect of a loan made by it. The action in this case was a personal action.**
- 2. The appeal with respect to arrears of interest is allowed as interest is claimable up to five (5) years and any arrears of interest in excess of five (5) years would have been prescribed and extinguished pursuant to Article 2129 of the Civil Code.**
- 3. The respondent shall have costs on this appeal fixed at 2/3 of the costs awarded below pursuant to CPR 65.13, there being no cogent reasons advanced for departing from the general rule as to entitlement of costs.**

Reason:

The Court held that once money has been paid out by a creditor, it creates an obligation in the debtor to repay that sum. The creditor is not limited to bringing a hypothecary action against the debtor.

The parties were further ordered to report to the court on Thursday, 28th June 2012 with the adjusted amounts in respect of the interest on the principal sums.

Case Name:

**[1] Moses Joseph
[2] St. Lawrence Matty
[3] Matthew Matty
[4] Patrick Lubrin
[5] Earl Bernard
[6] Antoine Fanis**

v

**Alicia Francois
(Administratrix of the Estate of the late Jacob
Fanus of Desruisseaux, Micoud)**

[High Court Civil Appeal No. 25 of 2011]

Date: Tuesday, 26th June 2012

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

Appearances:

Appellants: Mr. Horace Fraser

Respondent: Mr. Vern Gill

Issues: Property – Possession – Acquisition of title by fraud
and/or mistake

**Result / Order
& Reason:** [Oral delivery]
By consent, this appeal is stayed pending the
determination of Suit Claim No. SLUHCV2009/758.

Case Name: Frederick Augustus
v
Mayor & Citizens of Castries

[High Court Civil Appeal No. 25 of 2009]

Date: Tuesday, 26th June 2012

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

Appearances:

Appellant: Ms. Cynthia Hinkson-Ouhla

Respondent: Ms. Esther Greene-Ernest

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

Result / Order: [Oral delivery]
The appeal is adjourned for hearing tomorrow

Reason: Ms. Greene-Ernest informed the Court that Ms. Hinkson-Ouhla had a family emergency and so was not able to attend court for the day.

Case Name: Sonia Hippolyte
v
Cletus Hippolyte

[High Court Civil Appeal No. 31 of 2011]

Date: Tuesday, 26th June 2012

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

Appearances:

Appellant: Mr. Horace Fraser

Respondent: Mr. Dexter Theodore

Issues: Divorce proceedings

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

2. Costs to the respondent agreed in the sum of \$1,750.00.

Reason:

On examining the pleadings in the court below, the Court observed that no cogent evidence had been presented by either party to support the allegations which they had made at trial. The learned judge, who ordered that both the appellant and respondent be non-suited, could not, in the circumstances, have come to any other decision, given the unsatisfactory state of the evidence which was before him. A trial judge must have a proper evidential basis upon which to exercise his discretion.

Case Name:

**Rosita Harrow
v
Geipha Sexius**

[High Court Civil Appeal No. 32 of 2011]

Date:

Tuesday, 26th June 2012

Coram:

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

Appearances:

Appellant: Ms. Andra Gokool-Foster

Respondent: Mr. Vern Gill

Issues:

**Nuisance – Whether the trial judge erred in granting the respondent permanent injunctive relief –
Procedural irregularities**

Result / Order:

[Oral delivery]

- 1. The appeal is allowed.**
- 2. The order of the trial judge made on 6th July 2011 is set aside and the matter is remitted to the High**

Court for case management.

- 3. Costs in the appeal are agreed in the sum of \$5,000 in accordance with CPR 65.13.**

Reason:

The Court was satisfied that this claim did not proceed in accordance with the Civil Procedure Rules 2000. Neither the appellant nor her counsel was present at the trial and the matter seemed to have gone from an interim stage straight to the substantive stage. The Court pointed out that counsel for the respondent ought to have assisted the trial judge by indicating to him that he should not have proceeded with the trial and should only have dealt with the application for an injunction which was before him at the time (this application had been made at an earlier stage in the proceedings).

The Court held that it was necessary for the matter to be sent back to the court below so that it could be case managed and then properly tried on its merits.

Case Name:

**Cleophas Phillips
v
[1] Jean Baptiste Emilien
[2] Jerome Actie
[3] Caroline Louison
[4] Johnson Phillips
As Trustees for Sale**

[High Court Civil Appeal No. 35 of 2011]

Date:

Tuesday, 26th June 2012

Coram:

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

Appearances:

Appellant:

Mr. Gerard Williams

Respondents: Ms. Lydia Faisal

Issues: Right of way of necessity – Whether learned trial judge erred in making findings of fact when no evidence had been presented to him

Result / Order: [Oral delivery]
1. The appeal is allowed and the judgment delivered on 26th September 2011 is set aside.
2. The matter is remitted to the High Court for case management directions and for a trial on its merits.
3. There shall be no order as to costs.

Reason: There was no basis on which the learned trial judge could have made any factual findings at trial as no evidence had been presented to him in order to do so. The matter proceeded contrary to the procedure set out in the Civil Procedure Rules 2000.

Case Name: Jeff McVane
v
The Police

[Magisterial Criminal Appeal No. 2 of 2010]

Date: Tuesday, 26th June 2012

Coram: The Hon. Sir Hugh Rawlins, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]
The Hon. Mr. Francis Cumberbatch, Justice of Appeal [Ag.]

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

Issues: Appeal against conviction – Possession of firearm without licence

Result / Order: [Oral delivery]
A bench warrant is hereby issued for the arrest of the appellant for him to immediately be brought before the court to prosecute his appeal.

Reason: No appearance of the appellant.

Case Name: Tatia Chulan
v
The Police

[Magisterial Criminal Appeal No. 4 of 2010]

Date: Tuesday, 26th June 2012

Coram: The Hon. Sir Hugh Rawlins, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]
The Hon. Mr. Francis Cumberbatch, Justice of Appeal [Ag.]

Appearances:
Appellant: Mr. Alberton Richelieu

Respondent: Mr. Seryozha Cenac

Issues: Appeal against conviction – Possession of controlled drug with intent to supply – Possession of ammunition – Whether the decision of the magistrate was against the weight of the evidence – Whether there was a break in the chain of custody with regard to the evidence collected at the scene of the crime

Result / Order: [Oral delivery]
1. The appeal against conviction is dismissed.
2. The conviction and sentence made by the

magistrate is confirmed.

Reason: The Court was of the view that the inescapable inference was that the appellant was guilty and saw no break in the chain of custody as regards the evidence collected at the scene of the crime and that produced in court.

Case Name: Germain Tobie
v
The Police

[Magisterial Criminal Appeal No. 4 of 2011]

Date: Tuesday, 26th June 2012

Coram: The Hon. Sir Hugh Rawlins, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]
The Hon. Mr. Francis Cumberbatch, Justice of Appeal [Ag.]

Appearances:
Appellant: No appearance
Respondent: Mr. Stephen Brette

Issues: Appeal against conviction – Possession of firearm without licence or permit

Result / Order: [Oral delivery]
The respondent is to take all necessary steps to serve the appellant for him to appear on Thursday, 28th June 2012 to prosecute his appeal.

Reason: The respondent was unable to serve his skeleton arguments on the appellant.

Case Name:

Magnus Louisy

v

The Police

[Magisterial Criminal Appeal No. 16 of 2011]

Date:

Tuesday, 26th June 2012

Coram:

The Hon. Sir Hugh Rawlins, Chief Justice

The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

The Hon. Mr. Francis Cumberbatch, Justice of Appeal [Ag.]

Appearances:

Appellant:

Mr. Jeannot-Michel Walters

Respondent:

Mr. Seryozha Cenac

Issues:

Appeal against conviction – Assault

Result / Order:

[Oral delivery]

- 1. The Registrar shall ensure that a copy of the order made in this appeal on 14th February 2012 for a presentencing report is served on the probation office within 7 days of today's date.**
- 2. The probation report shall be submitted to the Registrar within 6 weeks of today's date.**
- 3. The hearing of this appeal is adjourned to the next sitting of the Court of Appeal in St. Lucia during the week commencing December 10, 2012.**
- 4. A copy of this Order shall also be served on the probation department within seven (7) days of today's date.**

Reason:

The probation report which was to be prepared by the probation department (as had been directed by the Court of Appeal) was not prepared as yet.

Case Name:

Elvis King

v

The Police

[Magisterial Criminal Appeal No. 14 of 2011]

Date:

Tuesday, 26th June 2012

Coram:

The Hon. Sir Hugh Rawlins, Chief Justice

The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

The Hon. Mr. Francis Cumberbatch, Justice of Appeal [Ag.]

Appearances:

Appellant:

Mr. Al Elliot

Respondent:

Mr. Stephen Brette

Issues:

Appeal against conviction – Possession of a controlled drug

Result / Order:

[Oral delivery]

- 1. The Magistrate the Hon. Mr. Innocent and the Court Administrator at the Magistrates' Court shall take all necessary steps to produce the record of appeal in order to facilitate the appellant to prosecute his appeal.**
- 2. The record of appeal shall be produced within 21 days of today's date, this being the final order.**
- 3. Further proceedings shall be in accordance with the relevant law and procedure for prosecuting the appeal.**
- 4. The hearing of this appeal is adjourned to the next sitting of the Court in St. Lucia during the week commencing 10th December 2012.**
- 5. A copy of this Order shall be served on the Magistrate and the Court Administrator forthwith.**

Reason:

The Court had ordered the Magistrates' Court to produce a record of appeal consisting of written reasons for the decision, but up to the date of the

hearing, this had not been done.

Case Name: **Amis Victor**
v
The Police

[Magisterial Criminal Appeal No. 1 of 2012]

Date: **Tuesday, 26th June 2012**

Coram: **The Hon. Sir Hugh Rawlins, Chief Justice**
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]
The Hon. Mr. Francis Cumberbatch, Justice of Appeal [Ag.]

Appearances:
Appellant: **Mr. Alberton Richelieu**
Respondent: **Mr. Stephen Brette**

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

Result / Order: **[Oral delivery]**
1. The Court Administrator shall produce a supplemental record of appeal containing the two (2) statements under caution and the two (2) interviews under caution which were tendered into evidence at the trial.
2. The supplemental record shall be filed and served within 21 days of today's date.
3. The appeal is traversed to the next Court of Appeal sitting in St. Lucia during the week commencing December 10, 2012.

Reason: **Counsel for the appellant had been unable to reach his client for the purposes of the appeal. Further, the interviews given by the appellant were not part of the record of appeal.**

Case Name:

**Kelia Bynoe
v
Dr. Leonard Lasley**

[Magisterial Civil Appeal No. 3 of 2011]

Date:

Tuesday, 26th June 2012

Coram:

**The Hon. Sir Hugh Rawlins, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]
The Hon. Mr. Francis Cumberbatch, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Mr. Dexter Theodore

Respondent:

No appearance of or on behalf of the respondent

Issues:

Affiliation – Custody of minor

Result / Order:

[Oral delivery]

- 1. The appeal is allowed and accordingly the order herein of the Hon. Magistrate dated 7th April 2011 is quashed.**
- 2. The respondent shall pay the sum of \$1,500.00 to the appellant within one (1) month of today's date.**
- 3. The consent order herein dated 28th July 2010 remains in full force and effect.**

Reason:

The Court accepted that the magistrate did not have jurisdiction to make the order that was made.

Case Name:

Melchoir Louis

V
Euphasia Sheedy Aristide

[Magisterial Civil Appeal No. 1 of 2012]

Date: Tuesday, 26th June 2012

Coram: The Hon. Sir Hugh Rawlins, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]
The Hon. Mr. Francis Cumberbatch, Justice of Appeal [Ag.]

Appearances:

Appellant: In person

Respondent: No appearance of or on behalf of the respondent

Issues: Paternity

Result / Order: [Oral delivery]
1. The appeal is allowed and accordingly the order herein of the Hon. Magistrate is quashed.
2. The case is remitted to the Magistrates' Court for a new trial by another Magistrate who must ensure that all evidence is adduced before a decision is made.

Reason: The Court held that the magistrate erred in coming to a decision without having heard all of the evidence.

Case Name: Bryan Stephen
V
Justice Rosalyn Wilkinson

[High Court Civil Appeal No. 41 of 2010]

Date: Wednesday, 27th June 2012

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Leon Gokool

Respondent: Mr. Raulston Glasgow, with him, Mr. Deale Lee

Issues: Section 39(3) of the Legal Profession Act, Chap. 2.04
Revised Laws of Saint Lucia 2008 – Disciplinary proceedings

Result / Order: Decision is reserved until after the lunch break.

Case Name:

[1] Marguerite Desir
[2] Marguerite Desir (qua Executrix of the will
of the late Albertha Bella Butcher)
v
Sabina James Alcide

[High Court Appeal No. 30 of 2011]

Date: Wednesday, 27th June 2012

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Appellants: Mr. Peter Foster, with him, Ms. Diana Thomas

Respondent: Mr. Dexter Theodore, with him, Mr. Eghan Modeste

Issues: Probate – Trust – Undue influence – Fraud

Result / Order: The matter is stood down.

Reason: Court was adjourned for the lunch break.

Case Name: Bryan Stephen
V
Justice Rosalyn Wilkinson

[High Court Civil Appeal No. 41 of 2010]

Date: Wednesday, 27th June 2012

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Leon Gokool

Respondent: Mr. Raulston Glasgow, with him, Mr. Deale Lee

Issues: Section 39(3) of the Legal Profession Act, Chap. 2:04
Revised Laws of Saint Lucia 2008 – Disciplinary
proceedings

Result / Order: [Oral delivery]
1. The title of these proceedings is renamed “Re
Bryan Stephen, an Attorney-at-Law”.
2. The appeal is dismissed.
3. Decision of the trial judge made in the court below
is affirmed.
4. No order as to costs.

Reason: Judges should not be made respondents in appeal
proceedings after making decisions in disciplinary
proceedings in the High Court. Such proceedings are
neither criminal nor civil in nature, and the
jurisdiction of the High Court judge in such matters is
conferred by section 39(3) of the Legal Profession

Act, which deals with the issue of the appropriate punishment to be imposed. It is for this reason that the Court of Appeal specifically referred that issue to High Court.

Counsel for the appellant asked the Court to revisit the issues that were not taken in to account by the High Court judge, such as the appellant's remorse, and the fact he had repaid all the monies that he had wrongly taken. The Court noted that although as a general rule it has the jurisdiction to discipline all its officers, in the absence of a proper application before the learned trial judge, and in the absence of a suggestion that the learned judge erred in principle, it had no jurisdiction to revisit the matter. The judge exercised her discretion properly within the ambit of what she was asked to do.

Case Name:

**[1] Marguerite Desir
[2] Marguerite Desir (qua Executrix of the will
of the late Albertha Bella Butcher)
v
Sabina James Alcide**

[High Court Appeal No. 30 of 2011]

Date:

Wednesday, 27th June 2012

Coram:

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

Appearances:

Appellants:

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

Respondent:

Mr. Dexter Theodore, with him, Mr. Eghan Modeste

Issues:

Probate – Trust – Undue influence – Fraud

Result / Order: Judgment is reserved.

Case Name: Frederick Augustus
v
Mayor & Citizens of Castries

[High Court Civil Appeal No. 25 of 2009]

Date: Wednesday, 27th June 2012

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

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

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

Result / Order: [Oral delivery]
1. The appeal is allowed.
2. The order of the court below is set aside.
3. The appellant is awarded damages in the sum of \$2,000.00 and costs in the sum of \$1,500.00

Reason: The legislation being challenged had been repealed so the issue was a spent one.

Case Name:

**[1] James Pelius
[2] William Ferdinand
[3] Willy Vasson**

v

Patrick Smith

[High Court Civil Appeal No. 40 of 2011]

Date:

Thursday, 28th June 2012

Coram:

**The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]
The Hon. Mr. Francis Cumberbatch, Justice of Appeal [Ag.]**

Appearances:

Appellants:

Ms. Veronica Barnard

Respondent:

Mr. Dexter Theodore

Issues:

What is the meaning of bad faith within the context of Article 372 of the Civil Code, Cap. 4.01, Revised Laws of Saint Lucia 2008 – Whether a possessor has a right to compensation for improvements to property

Result / Order:

[Oral delivery]

- 1. The appeal is dismissed.**
- 2. Costs to the appellant will be on the prescribed basis.**
- 3. For the purposes of the assessment of the prescribed costs, the claim below is treated as a claim in respect of costs under CPR 65.5(2) and (3), thereby valuing the claim at \$50,000.00 and therefore costs on the appeal is awarded at two-thirds of the costs which would be awarded below based on a value of \$50,000.00.**
- 4. The order below with regard to the counterclaim remains.**

Reason:

The Court held that the fact that the appellants were heirs of the deceased did not give them an automatic equitable right to the deceased's estate. They would

have to establish that they had a transferrable or legally recognisable right to the property, coupled with actual occupation of the land. Being a beneficiary does not give one a legal or equitable right to the deceased's estate without more. It is an equitable claim that does not go with the land, but follows the money or property in the hands of the deceased's personal representative. The present landowner (the respondent) therefore owed no obligation to the appellants. The Court noted that a claim could possibly have been made out against the personal representative (vendor) of the land, but in the circumstances, no claim could properly be made as against the respondent purchaser.

With regard to the issue of whether the appellants should be compensated for improvements to the property, it had been clearly shown that they were not possessors in good faith for the purpose of Article 372 of the Civil Code and accordingly, their claim for compensation was also rightly dismissed by the learned trial judge. The appellants' claim in the court below of being licensees was also caught by Article 372.

Case Name:

Christopher Jn. Paul

v

The Queen

[High Court Criminal Appeal No. 6 of 2008]

Date:

Thursday, 28th June 2012

Coram:

**The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]
The Hon. Mr. Francis Cumberbatch, Justice of Appeal [Ag.]**

Appearances:

Appellant:

No appearance

Respondent:

Ms. Tina Mensah

Issues:	Appeal against conviction – Murder
Result / Order:	The matter is stood down.
Reason:	Counsel for the appellant, Mr. Colin Foster, was not present when the matter was called.
Case Name:	Dasheen (1988) Limited trading as Ladera Resort v Hotel Chocolat Estates Limited [High Court Civil Appeal No. 15 of 2012]
Date:	Thursday, 28th June 2012
Coram:	The Hon. Mde. Janice M. Pereira, Justice of Appeal The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.] The Hon. Mr. Francis Cumberbatch, Justice of Appeal [Ag.]
Appearances:	
Appellant: Respondent:	Mr. Leslie Prospere Ms. Kimberley Roheman
Issues:	Effluent flowing from Ladera Resort onto premises of Hotel Chocolat – Whether effluent caused damage to respondent’s premises to extent complained of by respondent – Whether the appellant’s defence was misconstrued by both the respondent and the learned judge – Relevance of expert reports in relation to matters in dispute – Leave to adduce expert reports under CPR 32.6(1) – Application for relief from sanctions

Result / Order: The matter is stood down.

Reason: To allow the parties to work out between themselves the directions to be followed from that point onwards.

Case Name: Christopher Jn. Paul
v
The Queen

[High Court Criminal Appeal No. 6 of 2008]

Date: Thursday, 28th June 2012

Coram: The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]
The Hon. Mr. Francis Cumberbatch, Justice of Appeal [Ag.]

Appearances:

Appellant:	Mr. Colin Foster
Respondent:	Ms. Tina Mensah

Issues: Appeal against conviction – Murder

Result / Order & Reason: Court is adjourned until after the lunch break (the matter was only part heard).

Case Name: Dasheen (1988) Limited trading as Ladera
Resort
v
Hotel Chocolat Estates Limited

[High Court Civil Appeal No. 15 of 2012]

Date: Thursday, 28th June 2012

Coram: The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]
The Hon. Mr. Francis Cumberbatch, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Leslie Prospere

Respondent: Ms. Kimberley Roheman

Issues: Effluent flowing from Ladera Resort onto premises of Hotel Chocolat – Whether effluent caused damage to respondent’s premises to extent complained of by respondent – Whether the appellant’s defence was misconstrued by both the respondent and the learned judge – Relevance of expert reports in relation to matters in dispute – Leave to adduce expert reports under CPR 32.6(1) – Application for relief from sanctions

Result / Order: [Oral delivery]

1. The appeal is allowed in part.
2. The matter is remitted to the court below for case management.
3. The parties shall prepare and file a joint statement of the issues arising for determination on the claim to be filed no later than 31st July 2012.
4. The witness summonses shall stand. If the appellant wishes to have the persons who have been summoned by the claimant examined before trial, then the appellant is at liberty to apply to the master at case management.
5. Costs on the counter notice are fixed in the sum of \$1,000.00 and costs on the appeal are \$1,000.00. Total costs therefore being \$2,000.00.

Reason: The Court was of the view that there was an admission (made by the appellant in the court below) that effluent was flowing onto the respondent’s

property through the government culverts. The real issue on appeal concerned the impact of this effluent flowing onto the respondent's property.

The Court further noted that the appellant was put in expense in resisting the purported counter notice of appeal.

Case Name:	Christopher Jn. Paul v The Queen
	[High Court Criminal Appeal No. 6 of 2008]
Date:	Thursday, 28th June 2012
Coram:	The Hon. Mde. Janice M. Pereira, Justice of Appeal The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.] The Hon. Mr. Francis Cumberbatch, Justice of Appeal [Ag.]
Appearances:	
Appellant:	Mr. Colin Foster
Respondent:	Ms. Tina Mensah
Issues:	Appeal against conviction – Murder
Result / Order:	[Oral delivery] 1. The appeal is dismissed. 2. The conviction and sentence are affirmed.
Reason:	With respect to the appellant's complaint that the jury was pressured into believing that they were not free to disagree because the learned trial judge stated that a unanimous verdict was necessary since it was a capital murder case, the Court held that when one looks at the summation on a whole, it becomes clear that this statement was not made in isolation.

On the issue of hearsay, the Court did not consider that the statement complained of was in the nature of admissible hearsay evidence. Section 53 of the Evidence Act (Cap. 4.15, Revised Laws of Saint Lucia 2008) makes it clear that this statement would have fallen outside of the hearsay provisions and could have been taken into evidence as it was. Furthermore, it was a statement that could have been rightly used by the trial judge for showing intention since this was an essential ingredient for the offence of murder. It would have also been relevant with respect to the issue of self defence, as the appellant had alleged that he murdered the deceased in self defence. The statement was also relevant to the issue of provocation and was therefore probative of that element and as such, relevant to the case.

With regard to the issue which the appellant took with the expert evidence, the learned trial judge made it clear that Dr. King was a medical expert and was entitled to give his opinion. The judge also set out the role of an expert and stated that an expert may give his opinion as opposed to a normal person. The statement made by the trial judge at page 21 did not go any further than to point out to the jury that they could not go off and conduct themselves as experts.

With regard to the issue taken with the good character direction, the Court held that the learned trial judge gave a full character direction. Although at the end of the direction it may be said that he used words which might have conveyed to the jury that it was up to them to determine the appellant's good character, this was not fatal to the entire summing up when it is considered in the context of all that the judge placed before the jury.

Even if the Court was of the view that the learned trial judge made an error with regard to good character direction or indeed where he may have placed before the jury the evidence of the statement which the appellant took issue with, when one considers the totality of the evidence (this being a strong case of circumstantial evidence) the jury would have undoubtedly arrived at the same conclusion.

Case Name:

**[1] Eugene Nelson
[2] Ferlyn Nelson
[3] Orilda Nelson**

v

First Caribbean International Bank Limited

[High Court Civil Appeal No. 22 of 2011]

Date:

Thursday, 28th June 2012

Coram:

**The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]
The Hon. Mr. Francis Cumberbatch, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Mr. Alberton Richelieu holding papers for Ms. Lydia Faisal

Respondent:

Ms. Renee St. Rose

Issues:

Whether the learned trial judge was wrong to uphold the respondent's personal action despite Article 1942 of the Civil Code of Saint Lucia, Cap. 4:01 – Court to be advised of agreement of parties on quantification of interest payable under order made by Court on Tuesday, 26th June 2012

Result / Order:

[Oral delivery]

In the absence of agreement on the quantification of the amount of interest, the order made earlier to remain unaltered.

Reason:

Counsel for the respondent informed the Court that the parties had not been able to agree on figure for the interest on the principal sums.

Case Name:

Simon Marius

v

The Queen

[High Court Criminal Appeal No. 7 of 2008]

Date:

Thursday, 28th June 2012

Coram:

**The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]
The Hon. Mr. Francis Cumberbatch, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Mr. Alberton Richelieu

Respondent:

Ms. Victoria Charles-Clarke

Issues:

Appeal against conviction – Murder – Whether it was the Evidence Act 2002 (Act No. 5 of 2002, Laws of Saint Lucia) or common law principles that applied to these proceedings

Result / Order:

[Oral delivery]

The appeal is adjourned for hearing to the next sitting of the Court of Appeal in Saint Lucia, during the week of 10th December 2012.

Reason:

An application for an adjournment was made by counsel for the appellant since an additional ground of appeal was filed only a few days before the hearing, on 25th June 2012. There was no objection by the Director of Public Prosecutions.

Case Name:

Germain Tobie

v

The Police

[Magisterial Criminal Appeal No. 4 of 2011]

Date:

Thursday, 28th June 2012

Coram:

The Hon. Sir Hugh A. Rawlins, Chief Justice

The Hon. Mde. Gertel U. Thom, Justice of Appeal [Ag.]

Appearances:

Appellant:

Mr. Leslie Mondesir

Respondent:

Mr. Stephen Brette

Issues:

Appeal against conviction – Possession of firearm without licence or permit

Result / Order:

[Oral delivery]

The appeal is traversed to the next sitting of the Court in Saint Lucia scheduled for the week of 10th to 14th December 2012.

Reason:

Mr. Mondesir had only got conduct of the matter on same day as the hearing. The Court was informed that the appellant's previous attorney, Mr. Stanley Felix, was no longer able to continue representing the appellant because he had become a minister of government.

The respondent had no objection to the matter being traversed to the next sitting of the Court.

Case Name:

Jeff McVane

v

The Police

[Magisterial Criminal Appeal No. 2 of 2010]

Date: Thursday, 28th June 2012

Coram: The Hon. Sir Hugh A. Rawlins, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Appellant: No appearance

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

Issues: Appeal against conviction – Possession of firearm without licence

Result / Order: [Oral delivery]
This appeal is traversed to the next sitting of this Court in Saint Lucia scheduled for the week of 10th to 14th December 2012.

Reason: The police had not yet executed the bench warrant for the appellant's arrest (although it had already been issued). At the time of the hearing, they were unsure of the whereabouts of the appellant.