

COURT OF APPEAL SITTING

**SAINT LUCIA
13th – 17th February 2012**

JUDGMENTS

Case Name: Hilda Elisabeth Stoutt et al v First Bank
Puerto Rico
[High Court Civil Appeal No. 16 of 2010]
(Territory of the Virgin Islands)

Date: Monday, 13th February 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. Anthony Astaphan, SC, holding papers for the law firm of Farara Kerins

Respondent: Mr. Peter I. Foster holding papers for the law firm of Harneys

Issues: Banker and customer – Registered land charges
– Mother securing business loans of son – Mother elderly, housewifely, and mentally challenged – Mother not obtaining any benefit from loan to knowledge of bank– Duty of bank – Possibility of undue influence – No independent legal advice

Result & Reason: Held: allowing the appeal to the extent of any additional indebtedness due from Renport or Palmer to the bank which the appellant purported to guarantee; upholding the judge's finding as to the bank's entitlement to so much of the charge as relates solely to the balance of Mrs. Stoutt's original indebtedness prior to its

having been bundled into her guarantee of Renport's borrowings, that:

1. While the bank may not have had actual notice of the exercise of undue influence, or even of the existence of a relationship of trust and confidence between Mrs. Stoutt and her son Palmer, it did know for a fact (from its having over the years handled the banking transactions for her son's company, Renport) that Mrs. Stoutt played no part in the business of Renport. The bank should have been alert to the possibility that she had no incentive to enter into a transaction to secure Renport's defaulting debts and that as an elderly housewife mother she may have been susceptible to undue pressure. The bank must have known that, if she had no such incentive, and if she appeared not to appreciate the significance of what she was doing, no competent solicitor could have advised her to enter into a guarantee in the terms she did. They were under a duty to insist that Mrs. Stoutt obtain independent legal advice.

Barclays Bank plc v O'Brien [1993] 4 All E.R. 417 applied.

2. The solicitor would be bound to inquire, of the bank if necessary, of the reason why it required additional security. Having discovered that the company was not meeting its previous loan commitments; that the mother's security was intended to enable the company's loan limit and overdraft facility to be increased; that the mother had no financial interest in the company; that she was not benefitting in any way from the proposed loan (other than the bundling in of her existing unimpugned loan); and, if he carried out his duty to her properly, that she did not appear from her answers to his questions to

understand, due to some mental issue, the nature of the transaction she was proposing to enter into, he would be bound to advise Mrs. Stoutt that the proposed guarantee of the company's debt was inadvisable.

Barclays Bank plc v O'Brien [1993] 4 All E.R. 417 applied.

3. Even if Mrs. Stoutt appeared to the solicitor to understand the transaction, if she wished to facilitate Renport by guaranteeing the increased amount of the loan and overdraft, he would have advised her to limit her guarantee to that amount, and not to the full amount of the company's indebtedness. This was particularly so in view of the fact that Renport's indebtedness was increasing and the possibility of Renport's failure to meet the commitment.

Barclays Bank plc v O'Brien [1993] 4 All E.R. 417 applied.

4. Applying the principles of undue influence to the bank in this case, the bank was fixed with constructive knowledge of the existence of undue influence exercised over Mrs. Stoutt in her offering up her property as security for her sons' company's indebtedness to the bank.

Barclays Bank plc v O'Brien [1993] 4 All E.R. 417 applied.

Case Name:

Angel Wise Limited v Stark Moly Limited

**[High Court Civil Appeal No. 30 of 2010]
(Territory of the Virgin Islands)**

Date: Monday, 13th February 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 I. Foster holding papers for the law firm of O'Neal Webster

Respondent: Mr. Dexter Theodore holding papers for the law firm of Walkers

Issues: Civil Appeal – Loan agreement which was governed by the laws of Singapore - Setting aside of a statutory demand – Whether the trial judge erred in holding that there was no substantial dispute as to the loan agreement on which the statutory demand was based – Section 157 of the Insolvency Act, No. 5 of 2003, Laws of the Virgin Islands

Result & Reason: Held: dismissing the appeal and affirming the decision of the trial judge and; ordering that the appellant pay to the respondent costs to be agreed on by both parties or otherwise two thirds of the costs the court below pursuant to CPR 65.13 (b), that:

1. To determine whether the dispute about the legality and enforceability of the agreement was a substantial dispute qualifying under Section 157 (1) (a) (i) or 157 (2) (b) of the Virgin Islands Insolvency Act 2003, required an evaluation of the affidavit evidence of the experts. The trial judge had to carry out a preliminary assessment of the facts on

which the injustice was raised. The trial judge is vested with a discretion which he must exercise judicially. It is for him to determine in the first instance whether statements contained in affidavits that are relied upon as raising a conflict of evidence upon a relevant fact, have sufficient prima facie plausibility to merit further investigations as to their truth. An appellate court ought not to interfere with the judge's exercise of his discretion unless the way in which he exercised it is shown to have been manifestly wrong.

Eyota Pty Ltd v Hanave Pty Limited (1994) 12 ACSR 785 considered; Eng Mee Yong & Ors v Letchumanan [1980] A.C. 331 applied.

2. Although in the normal way it is not appropriate for a judge to attempt to resolve conflicts of evidence on affidavit, this does not mean that he is bound to accept uncritically every affidavit statement however equivocal and lacking in precision it may be, as raising a dispute of fact which calls for further investigation. The trial judge obviously did not consider that the assertions of the appellant through its expert witness were inherently probable, rational or plausible as to warrant further investigation by the courts in Singapore or elsewhere. This exercise of the learned trial judge's discretion was consistent with established principles.

Eng Mee Yong & Ors v Letchumanan [1980] A.C. 331 applied.

Case Name: Francis Monrose v Bank of Saint Lucia Limited
[High Court Civil Appeal No. 11 of 2011]

Date: Monday, 13th February 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	Mrs. Wauneen Louis-Harris, with her, Ms. Raquel Willie-Trotman
Respondent:	Ms. Thea J. Alexander, holding papers for Mr. Thaddeus M. Antoine

Issues: Civil Appeal- Part 55 Civil Procedure Rules 2000 (CPR) - Judgment creditor enforcing money judgment- Whether judgment creditor may opt to proceed under Part 55 CPR as distinct from proceeding under the Code of Civil Procedure- Section 2, Money Lending Act- Whether section 2 can be invoked on an application under Part 55 CPR

Result & Reason: Held: allowing the appeal, setting aside the order of the trial judge and ordering costs of this appeal to be borne by the respondent to be assessed unless agreed within 21 days:

1. The trial judge rightly rejected the judgment debtor's argument in respect of the Money Lending Act as it was not open to the judgment debtor to raise it at the enforcement stage but rather ought properly to have formed part of his defence.

2. CPR Part 55 contemplates sale of a

judgment debtor's land by way of enforcement. CPR having made the preconditions in Part 55.1(1) conjunctive rather than disjunctive intended to circumscribe the power of the court rather than enlarge it so as to encompass any circumstance where the court was so minded irrespective of whether the proceedings related to land. The procedure set out in CPR Part 55 can be engaged only where an enactment so authorizes the court to order a sale and it is necessary and expedient.

3. Once the enactment empowers the court to order a sale, directs that such an application be made to court and does not delimit the manner by which such a sale may be carried out, CPR Part 55 governs the procedure and the court, on making the order, may also direct the manner of the sale to be either by public or private treaty as the circumstances may require.
4. CPR Part 55 does not give the court a power of sale which is 'at large' but relies upon an enabling statute to ground the court's power to order a sale. It is therefore not a free standing power. The empowering enactment in respect of CPR Part 55 in Saint Lucia is the Civil Code. Article 1493 of the Civil Code empowers the sale of a judgment debtor's land. The Civil Code directs execution by way of a Writ in accordance with the formalities set out in the Code of Civil Procedure.
5. The Civil Procedure Rules 2000 being rules of procedure notwithstanding Article 37 of the Code of Civil Procedure does not and cannot override or amend the Civil Code which is an enactment.

6. In Saint Lucia, CPR Part 55 is subject to the Civil Code and any procedure directed to be followed therein save where the Civil Code or the Code of Civil Procedure permits a referral to the court. Although the CPR Part 55 procedure may well be invoked in dealing with other matters, the procedure is simply not open to a judgment creditor seeking to enforce payment of a judgment debt. The judgment creditor must abide by the provisions of the Civil Code and the procedure set out in the Code of Civil Procedure. The learned trial judge accordingly erred in holding that the Bank could invoke the CPR Part 55 by seeking an order for sale directing a sale by private treaty in execution of the judgment debt.

Laborie Cooperative Credit Union v Peter Emmanuel, Saint Lucia High Court Civil Appeal No. 4 of 2007 distinguished.

STATUS HEARING

Case Name:	Heirs of Oliver Chedy et al v Petronille Cangal et al [High Court Civil Appeal No. 34 of 2011] [High Court Civil Appeal No. 41 of 2011]
Date:	Monday, 13th February 2012
Before:	The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Appearances:

Appellant: Ms. Diana Thomas

Respondent: Ms. Mary Juliana Charles

Issue:

Status of the appeal

Result / Order:

[Oral delivery]

It is hereby ordered by consent that:

- 1. The appellants and respondents are the owners of Parcel 1225B 106 as follows:**
 - i. The appellants, the Heirs of Oliver Chedy together are entitled to one half share in Parcel 1225B 106;**
 - ii. The respondents, Petronille Kangal also known as Petronille Cangal and the trustees Anthony Paul, Colita Jankie, Pierre Joseph and Marylene are together entitled to a one half share in Parcel 1225B 106.**
- 2. An independent surveyor, to be agreed by the parties, and if the parties fail to agree on the appointment, one is to be appointed by the court to view and value the property to subdivide and partition Parcel 1225B 106 in two equal shares only.**
- 3. Should the independent surveyor determine that the house belonging to Ms. Petronille Kangal falls on the half share of Parcel 1225B 106 to which the appellants are entitled, Ms. Petronille Kangal shall be permitted to remain in occupation of her house for life.**
- 4. Upon Ms. Petronille Cangal's death, the house and all fixtures and fittings shall be removed within 30 days of her death.⁵⁵**
- 5. The appellants and respondents shall each bear half of the costs of the survey and partition.**
- 6. There shall be no order as to costs wither in these appeals or in the lower court.**
- 7. This consent order is intended to settle all outstanding issues between the appellants and respondents relating to the ownership**

and possession of Parcel 1225B 106.

Reason: The parties consented to the order.

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

Date: Monday, 13th February 2012

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

Appearances:

Appellant:	Ms. Diana Thomas holding papers for Ms. Renee St. Rose
Respondent:	Mrs. Brender Portland-Reynolds holding papers for Mr. Raulston Glasgow

Issue: Status of the appeal

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

1. Counsel for the appellant is to serve a
 - i. A copy of the judge's notes together with
 - ii. A copy of counsel for the appellant's notes of the hearing on counsel for the respondent on or before 27th February 2012.
2. Counsel for the respondent is to serve a copy of counsel's notes on the appellant on or before 27th February, 2012.
3. Both counsel are to meet to agree the notes of evidence on or before 12th March 2012, failing which counsel for the appellant will prepare the record containing:
 - i. The judge's notes of evidence;

- ii. The notes from both counsel
- 4. Time to start to run in relation to the filing of the Record and submissions from 26th March 2012.

Reason: It appears that there is no official transcript of the hearing and that the Judge's notes do not assist.

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

Date: Monday, 13th February 2012

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

Appearances:

Appellant: No appearance

Respondent: No appearance

Issue: Status of the appeal

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

Reason: No appearance by the parties. It appears from a return by the Bailiff that the appellant is unable to be located despite several attempts.

Case Name: George Belmar v The Cabinet of St. Lucia
et al
[High Court Civil Appeal No. 30 of 2008]

Date: Monday, 13th February 2012

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

Appearances:

Appellant: Ms. Diana Thomas

Respondents: Mrs. Brender Portland-Reynolds holding papers
for Mr. Raulston Glasgow
Mr. Dexter Theodore, Chairman of the Board of
Assessment

Issue: Status of the appeal

Result / Order: [Oral delivery]
Upon receipt of the transcript from the Board of
Assessment, the applicable rules of Court are to
follow.

Reason: The Chairman undertook to file and serve a
copy of the transcript on or before 27th February
2012.

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

Date: Monday, 13th February 2011

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

Appearances:

Appellant: No appearance

Respondent: No appearance

Issue:

Status of the appeal

Result / Order:

[Oral delivery]

The appeal is dismissed for want of prosecution.

Reason:

No appearance on behalf of the parties despite their having been served to appear in the Court of Appeal today.

Case Name:

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

Date:

Monday, 13th February 2012

Before:

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

Appearances:

Appellant:

Mr. Alberton Richelieu

Respondent:

Mrs. Victoria Charles-Clarke, Director of Public Prosecutions

Issue:

Status of the appeal

Result / Order:

[Oral delivery]

It is hereby ordered:

- 1. The fee of \$500.00 for preparation of the transcript is waived and the record of appeal is to be prepared and delivered to counsel for the appellant and to the office of the Director of Public Prosecutions.**
- 2. The appellant is to file and serve skeleton arguments on or before 19th March 2012.**
- 3. The respondent is to file and serve skeleton arguments on or before 19th April, 2012.**

4. The appeal is set down for hearing at the next sitting of the court of appeal in Saint Lucia during the week commencing 25th June 2012.

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

Date: Monday, 13th February 2012

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

Appearances:

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

Issue: Status of the appeal

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

1. The appellant is to pay the required \$500.00 deposit to enter the recognizance to prosecute the appeal.
2. Upon such payment, the appellant is to be released from custody at the Bordelais Correctional Facility on bail pending determination of the appeal.
3. The appeal is set down for hearing at the next sitting of the Court in Saint Lucia scheduled for the 25th to 29th June, 2012.

Reason: The appellant was entitled to bail pending determination of his appeal. An application of appeal results in a stay of the magisterial sentence.

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

Date: Monday, 13th February 2012

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

Appearances:

Appellant: No appearance of the appellant.

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

Issue: Status of the appeal

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

Reason: The appellant was served but was not present at the hearing to prosecute his appeal.

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

Date: Monday, 13th February 2012

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

Appearances:

Appellant: Mr. Dexter Theodore

Respondent: No appearance

Issue: Status of the appeal

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

Reason: There was no appearance of the appellants and no appearance by or on behalf of the respondents.

APPLICATIONS AND APPEALS

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

Date: Monday, 13th February 2012

Coram: The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal

Appearances:
Appellant: Mr. Alberton Richelieu

Respondent: Mr. Seryozha Cenac

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

Result / Order:

[Oral delivery]

- 1. A warrant shall issue forthwith to cause the appellant to be brought to court to show cause why her bail should not be forfeited for her non-attendance to prosecute her appeal.**
- 2. The appeal is stood down pending the appearance of the appellant in court.**

Reason:

The appellant was out on bail and had been properly served with a Notice of Hearing. Nevertheless, she failed to appear at the hearing to prosecute her appeal. The Court noted that this matter had already been adjourned from the last sitting of the Court in Saint Lucia.

Case Name:

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

Date:

Monday, 13th February 2012

Coram:

**The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal**

Appearances:

Appellant:

Mr. Mark Maragh

Respondent:

Mr. Seryozha Cenac

Issues:

**Criminal appeal against conviction –
Possession of ammunition**

Result / Order:

[Oral delivery]

- 1. In the circumstances of the case, there being no notes of evidence which the appellant gave in the court below, the conviction and sentence are quashed.**
- 2. A new trial is ordered before another Magistrate.**

Reason:

The matter was adjourned before due to that missing piece of evidence. It is obvious that the piece of evidence cannot be found.

Case Name:

**Magnus Louisy v The Police
[Magisterial Criminal Appeal No. 16 of 2011]**

Date:

Monday, 13th February 2012

Coram:

**The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal**

Appearances:

Appellant:

Mr. Al Elliott holding papers for Mr. Jeannot-Michel Walters (appellant was present in person)

Respondent:

Mr. Seryozha Cenac

Issues:

Criminal appeal against conviction – Assault – Whether the magistrate erred in not ordering the pre-sentence report

Result / Order:

[Oral delivery]

The hearing of this appeal is adjourned to Tuesday, 14th 2012.

Reason: Mr. Elliot informed the Court that counsel on record for the appellant, Mr. Walters, who had conduct of this matter from the beginning had a family emergency and so was unable to appear at the day's hearing.

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

Date: Monday, 13th February 2012

Coram: The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal

Appearances:

Appellant:	Mr. Al Elliott (appellant was present in person)
Respondent:	Mr. Seryozha Cenac holding papers for Mr. Stephen Brette

Issues: Criminal appeal against conviction – Possession of a controlled drug – Admission of recognizance of appeal

Result / Order: [Oral delivery]

1. The application for admission of the recognizance of appeal is granted and accordingly, the Court hereby deems that the recognizance that was signed by the appellant on 14th November 2006 properly entered.
2. The Magistrates' Court is hereby ordered to produce the record of appeal within 21 days of this Order.
3. A copy of this Order be served on the Senior

Magistrate and the Magistrate who heard the case.

4. The appeal is traversed to the next sitting of the Court of Appeal in June 2012.

Reason:

The Court held that that an appeal from the magistrate's court will only be ready to be heard by an appellate court after the recognizance has been properly completed.

In this case, the appellant signed the recognizance on 14th November 2006 and on 15th November 2006, the sum of fifteen thousand dollars (\$15,000.00) was entered on the recognizance. In addition, there was no signature by the magistrate and no surety signed the recognizance. It would mean that the appeal is incomplete as the recognizance was not properly completed. However, the Court decided to waive the requirement and deem the recognizance properly entered.

Case Name:

**Germaine Tobie v The Police
[Magisterial Criminal Appeal No. 4 of 2011]**

Date:

Monday, 13th February 2012

Coram:

**The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal**

Appearances:

Appellant:

No appearance

Respondent:

Mr. Stephen Brette

Issues:

Criminal appeal against conviction –

Possession of firearm without license or permit

Result / Order:

[Oral delivery]

- 1. The appeal is traversed to the next sitting of the Court in June 2012.**
- 2. The appellant shall be served again at an early opportunity to attend for the prosecution of his appeal at the June 2012 sitting.**

Reason:

The bundle was received late by the respondent from the appeal court. There was no return of service from the appellant.

Case Name:

**Keith Auguste v Gevona Marcellin
[Magisterial Civil Appeal No. 1 of 2011]**

Date:

Monday, 13th February 2012

Coram:

**The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal**

Appearances:

Appellant:

Mr. Leslie Prospere (appellant was present in court)

Respondent:

No appearance of and for the respondent

Issues:

Child custody – Maintenance

Result / Order:

[Oral Delivery]

- 1. The orders made by the learned Magistrate on 19th August 2010 granting sole custody of the minor Maalik Myron Marcellin Auguste to his mother, the respondent in this appeal,**

and ordering the appellant to pay maintenance for the said child, are hereby set aside.

2. No order as to costs.

Reason:

The appellant was not properly served with notice of the proceedings. While the learned magistrate had the jurisdiction to make the maintenance order in relation to the child, he did not have jurisdiction to deal with the custody of the child. The learned magistrate purported to exercise a jurisdiction that does not reside in him pertaining to the custody of the said child.

Case Name:

**Rosita Harrow v Giepha Sexius
[High Court Civil Appeal No. 32 of 2011]**

Date:

Monday, 13th February 2012

Coram:

**The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal**

Appearances:

Appellant:

Ms. Andra Gokool-Foster

Respondent:

Mr. Vern Gill

Issues:

Application for an extension of time to file record – Relief from sanctions

**Result / Order
& Reason:**

[Oral delivery]

- 1. The application herein for extension of time to file the record is granted by consent.**
- 2. The record of appeal filed on 1st February**

- 2012 is deemed to have been properly filed.
3. All further proceedings shall be in accordance with the Civil Procedure Rules.

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

Date: **Monday, 13th February 2012**

Coram: **The Hon. Mr. Hugh A. Rawlins, Chief Justice**
The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal

Appearances:

Appellant: **Mr. Garth Patterson, QC, with him, Ms. Alana Gore, Mrs. Candace Cadasse-Polius and Ms. Eugenia Dickson for CAGE St. Lucia Ltd.**

Respondent: **Mr. Anthony Astaphan, SC, with him Mr. Peter I. Foster, instructed by Ms. Renee T. St. Rose for Treasure Bay St. Lucia Ltd.**
Mrs. Esther Greene-Ernest (holding a watching brief for The Gaming Authority)
Mr. Vern Gill (holding a watching brief for The National Lotteries Authority)
Mrs. Petra Jeffery-Nelson (holding a watching brief on behalf of The Attorney General)

Issue: **Application for stay of execution and proceedings**

Result / Order: **[Oral delivery]**
1. The application for stay of proceedings and in particular of the case management order

of Wilkinson J, which was made on 19th January 2012 is hereby granted in part.

2. Paragraphs 14–17 of the said case management order are stayed pending the determination of the appeal.
3. The appeal herein will be heard as a matter of urgency and accordingly, solicitors for Treasure Bay (St. Lucia) Ltd. shall file and serve written submissions on or before 24th February 2012.
4. Solicitors for CAGE St. Lucia Ltd. shall file and serve written submissions in reply, if necessary, on or before 2nd March 2012.
5. The hearing of the appeal shall be on Wednesday, 7th March 2012 in Saint Lucia.
6. Costs shall be costs in the appeal.

Reason:

It is just and equitable for the court to grant a stay of proceedings in this case. The court is concerned that it appears that reliefs have been claimed which will affect the applicant's business.

Case Name:

**The Attorney General et al v Winston Valcin
[High Court Civil Appeal No. 47 of 2011]**

Date:

Monday, 13th February 2012

Coram:

**The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal**

Appearances:

**Intended Appellant / Mr. Dwight Lay
Applicant:**

Respondent: Mrs. Cynthia Hinkson-Ouhla

Issues: Application for leave to appeal – Whether the trial judge erred in admitting the amended statement of case when it was filed without leave

Result / Order: [Oral Delivery]

1. The application herein for leave to appeal is granted and in the circumstances of this case the said application for leave is treated as the appeal.
2. The appeal is allowed and accordingly the decision of the learned Judge to dismiss the application to strike out the amended statement of claim is set aside.
3. As a consequence of paragraph 2 of this order, the directions contain in the order of 28th November 2011 are also set aside.
4. This matter is remitted to the High Court for status hearing and for any directions that may be necessary for the trial on 2nd October 2012.
5. There is no order as to costs.

Reason: There was no foundation on which the judge could have properly exercised his discretion in relation to allowing the amended grounds of appeal. The rules indicate that in order to amend a statement of case permission must be sought. There was no due process in relation to amended statement of case.

Case Name: Alwyn St. Omer et al v K. Base Co. Ltd.
[High Court Civil Appeal No. 2 of 2012]

Date: Monday, 13th February 2012

Coram: The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mde. Janice M. Pereira, Justice of

Appeal

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

Appearances:

Appellant:

Mrs. Wauneen Louis-Harris

Respondent:

Ms. Zinaida McNamara

Issues:

Application for leave to appeal – Application for extension of time to file notice of appeal – Application for stay of execution

Result / Order:

[Oral delivery]

- 1. The application herein for leave to appeal is withdrawn and accordingly dismissed.**
- 2. In the circumstances of this case, the appeal is heard.**
- 3. The appeal is allowed in as much as it is clear that the decision of the judge made on 12th December 2011 was made in error, no evidence having been adduced.**
- 4. The application for stay is dismissed as it is redundant.**
- 5. The case shall be remitted to the High Court for case management directions.**
- 6. The respondent shall pay \$1000.00 agreed costs to the applicants/appellants.**

Reason:

Appellant conceded with respondent on issue of leave and decided to abandon that application. Summary judgment cannot be entered on a fixed date claim form without the matter first being tried and evidence being put forth. The statement of claim cannot be and is not evidence.

Case Name:

**Zebee Mathurin v Francis Jn. Baptiste
[High Court Civil Appeal No. 4 of 2012]**

Date: Monday, 13th February 2012

Coram: The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal

Appearances:
Intended Appellant / Applicant: Mr. Horace Fraser
Respondent: Ms. Petra Nelson

Issues: Application for an extension of time to file application for leave – Application for leave to appeal – Application for stay of execution – Inordinate delay in filing the application for leave – Whether judgment entered on fixed date claim followed the required procedure set out in CPR 27.2.

Result / Order: The decision is reserved and will be delivered on Tuesday, 13th February 2012.

Case Name: Zebee Mathurin v Francis Jn. Baptiste
[High Court Civil Appeal No. 4 of 2012]

Date: Tuesday, 13th February 2012

Coram: The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal

Appearances:
Intended Appellant / Applicant: Mr. Horace Fraser

Respondent: Ms. Petra Nelson

Issues: Application for an extension of time to file application for leave – Application for leave to appeal – Application for stay of execution – Inordinate delay in filing the application for leave – Whether judgment entered on fixed date claim followed the required procedure set out in CPR 27.2.

Result / Order: [Oral delivery]
1. The application for leave to appeal is dismissed as being unnecessary.
2. The application is treated as an application for extension of time to appeal and is dismissed.
3. The applicant shall bear the respondent's costs in the sum of \$1,000.00.

Reason: The trial judge had not conducted a trial of the claim in a summary manner as contemplated by CPR 27.2 but rather entered judgment for the claimant based on the pleadings, the fixed date claim form and the statement of case even though the defendant was not present.

The case can be distinguished from *Alwyn St. Omer et al v K. Base Co. Ltd.* (Civil Appeal No. 2 of 2012) where the Court set aside the judgment of the court below where the judge sought to give judgment, there only being a fixed date claim form. In *Alwyn St. Omer et al*, the notice of appeal was filed timely unlike in this case where there is an application for extension of time for leave to appeal after 22 months and no validly constituted notice of appeal.

The court is called upon to exercise discretion to determine whether or not the circumstance warrants a grant of an extension of time. The matters which the court will consider will include the length of delay, the reasons, and the

chances of success on appeal. The applicant here accepts that the delay was inordinate, some 22 months, and even though it may be said that the decision that was arrived at in giving judgment in a summary form would be considered irregular, when one considers the inordinate delay, where the explanation proffered is simply inexcusable, then the court could not, having regard to the justice of the situation, merely allow the grant of the application. That is not to say that the judge did not err. However, the prejudice to the respondent outweighs the prejudice to the appellant.

Case Name:	Magnus Louisy v The Police [Magisterial Criminal Appeal No. 16 of 2011]
Date:	Tuesday, 14th February 2012
Coram:	The Hon. Mr. Hugh A. Rawlins, Chief Justice The Hon. Mde. Janice M. Pereira, Justice of Appeal The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
Appearances:	
Appellant:	Mr. Al Elliot holding papers for Mr. Jeannot-Michel Walters
Respondent:	Mr. Seryozha Cenac
Issues:	Criminal appeal against conviction – Assault – Whether the magistrate erred in not ordering the preparation of a pre-sentence report
Result / Order:	The matter is stood down.

Reason: To allow Mr. Elliot to get in touch with Mr. Walters, counsel for the appellant.

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

Date: Tuesday, 14th February 2012

Coram: The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal

Appearances:

Appellant: Mr. Al Elliot, holding papers for Mr. Alberton Richelieu (appellant was present in person)

Respondents: Mr. Seryozha Cenac

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

Result / Order: [Oral delivery]
1. The bench warrant issued on 13th February 2012 is discharged.
2. The appellant shall remain on bail on the same terms and conditions.
3. The matter is traversed to the next Court of Appeal sitting during the week of 25th June 2012.

Reason: The Court understood that counsel for the appellant gave the appellant the wrong date.

Case Name: Hector Mathurin et al v Church of God
Seventh Day Incorporated
[High Court Civil Appeal No. 5 of 2012]

Date: Tuesday, 14th February 2012

Coram: The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal

Appearances:

Appellant: Mr. Horace Fraser with him Mrs. Wauneen Louis-Harris

Respondents: Ms. Andra Gokool-Foster

Issue: Application for stay of execution of order of mandatory injunction given on 18th January 2012

Result / Order: [Oral delivery]

1. The application for stay of execution is dismissed.
2. Paragraph 5 of the Order of Belle J contained in the judgment delivered 18th January 2012 is deleted and the following paragraph substituted there for:
“The fifth appellant/applicant is restrained from entering or operating from the premises of the respondent churches in Fond Bernier, Soufriere and in Ti Rocher, in the quarter of Micoud.”
3. Paragraph 6 of the Order is struck out.
4. Paragraph 7 of the Order is deleted and replaced by a new paragraph 6 as follows:
“The respondent to pay the costs of and occasioned by these proceedings in the agreed sum of \$1,500.00.”
5. There is no order as to costs in relation to the application for stay of execution.

Reason: Paragraph 5 of the order was too broad and cannot stand. It will be unjust and not in line with the Constitution and the freedom to worship.

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

Date: Tuesday, 14th February 2012

Coram: The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal

Appearances:

Appellant:	Mr. Jeannot-Michel Walters (appellant was present in person)
Respondent:	Mr. Seryozha Cenac

Issues: Appeal against conviction – Assault – Whether the magistrate erred in not ordering the preparation of a pre-sentence report

Result / Order: [Oral delivery]
1. The Probation Services Department shall prepare a pre-sentence report pursuant to section 1098 of the Criminal Code of Saint Lucia and transmit it to the Court of Appeal within two (2) months of today's date.
2. This appeal shall be listed in the magisterial appeals against sentence list for June 2012 sitting of this Court in Saint Lucia.

Reason: If a court is minded to impose a custodial sentence they must request a pre-sentencing report. The Court of Appeal is given the power to vary an order if they are so minded.

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

Date: Tuesday, 14th February 2012

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

Appearances:

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

Issues: Summary dismissal of employee – Whether the employee's summary dismissal was unlawful

Result / Order: [Oral delivery]

1. The appeal is dismissed and accordingly the order of the trial judge is affirmed, except for item 2 of paragraph 29 of the judgment which basically sets out the Order.
2. The total sum awarded to the respondent is EC \$83,313.74.
3. The appellant shall pay six percent (6%) interest on net payment from 28th November 2006 to date of the judgment and continuing until payment in full.
4. The appellant shall pay prescribed costs in the sum of \$20,662.75 in the court below and \$13,775.16 in this appeal.

Reason: The Court did not find any reason to upset the learned trial judge's findings.

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

Date: Tuesday, 14th February 2012

Coram: The Hon. Mr. Hugh A. Rawlins, Chief Justice
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. Mark Maragh

Issues: Summary dismissal of employee – Whether the dismissal was lawful – Breach of the rules of natural justice

Result / Order: [Oral delivery]
1. The appeal is allowed and the decision and order of the learned trial judge set aside.
2. The total sum awarded to the appellant is \$19,322.77 less tax and statutory deductions.
3. The respondent shall pay to the appellant six percent (6%) interest on the net payment under paragraph 2 of this Order from 25th July 2006 and continuing until payment in full.
4. The respondent shall pay to the appellant \$5,798.83 prescribed costs in the court below and \$3,864.55 in the appeal.

Reason: The appellant was not given an opportunity to be heard. This goes against the very core of the principles of natural justice and cannot stand. The rules of natural justice were not observed in coming to the conclusion to terminate the appellant.

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

Date: Tuesday, 14th February 2012

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

Appearances:

Appellant:	Mrs. Esther Greene Ernest
Respondent:	Mr. Evans Calderon (for 1 st and 2 nd respondents) Mr. Kenneth Monplaisir, QC (for 3 rd , 4 th , and 5 th respondents)

Issues: Locus standi – Title to property by possession of over thirty (30) years

Result / Order: [Oral delivery]

1. The appeal is dismissed on the locus stand decision.
2. However, the appeal is allowed in relation to the decision and order which the learned trial judge made on the claims in the case and that decision and order is set aside.
3. The case is remitted to the High Court for the trial of the substantive claim as a matter of urgency by another judge

4. The parties shall bear their own costs in the High Court and in the Court of Appeal.

Reason:

There was sufficient locus standi for the trial to go forward. The judge had no jurisdiction to determine substantive issues on the preliminary points that were before him.

Case Name:

**Sonia Hippolyte v Celtus Hippolyte
[High Court Civil Appeal No. 31 of 2011]**

Date:

Wednesday, 15th February 2012

Coram:

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

Appearances:

Appellant:

No appearance of counsel or the appellant.

Respondent:

Mr. Dexter Theodore

Issue:

The substantive appeal was not dealt with.

Result / Order:

**[Oral Delivery]
The appeal is struck out with liberty to the appellant to apply to restore.**

Reason:

There was no appearance of counsel or the appellant.

Case Name: Barbara Mc Quilkin et al v Sylvester Devaux
[High Court Civil Appeal No. 43 of 2012]

Date: Wednesday, 15th February 2012

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

Appearances:

Appellant: Mr. Horace Fraser

Respondent: Mr. Peter I. Foster, with him, Ms. Renee St. Rose

Issues: Running down action – Negligence

Result / Order: The decision is reserved until after lunch.

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

Date: Wednesday, 15th February 2012

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

Appearances:

Appellant: Mr. Shawn Innocent (appellant was present in person)

Respondent: Mrs. Brender Portland-Reynolds holding papers for Mr. Raultson Glasgow

Issue: Extradition

**Result / Order /
Reason:**

[Oral Delivery]

1. Referring to the unless order made on 12th December 2011 whereby it was ordered that unless the appellant complies with the order the appeal shall stand dismissed and there being no compliance with the terms of the order, the appeal stands dismissed.
2. No order as to costs.

Case Name: Kimran Gaston v West Indies General Insurance Company Ltd.
[High Court Civil Appeal No. 3 of 2012]

Date: Wednesday, 15th February 2012

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

Appearances:

**Intended
Appellant/Applicant:** Mrs. Lydia Faisal

Respondent: Mr. Eghan Modeste

Issues: Application for leave to appeal – Application for a stay of execution – Master did not give reasons for her decision

Result: [Oral Delivery]
1. The application for leave to appeal is treated as the appeal.
2. Paragraph 1 of the draft order in the court

below is set aside.

3. Paragraph 2 giving leave to correct the name of the respondent is to remain but will read as follows:

The claimant has leave to correct the name of the defendant by inserting the word company on the claim form and statement of claim and any further documents.

4. Costs fixed in the sum of \$1500.00 to the appellant.

Reason:

The Court should not entertain non-compliance with orders unless good and substantial reasons are given. It is well established by the cases that there ought to be given reasons for the decision, not necessarily full but succinct reasons for the decision.

Case Name:

**Barbara Mc Quilkin et al v Sylvester Devaux
[High Court Civil Appeal No. 43 of 2010]**

Date:

Wednesday, 15th February 2012

Coram:

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

Appearances:

Appellant:

Mr. Horace Fraser

Respondent:

Mr. Peter I. Foster, with him, Ms. Renee St. Rose

Issues:

**Running down action – Negligence –
Contributory negligence**

Result / Order:

[Oral Delivery]

- 1. The appeal is dismissed.**
- 2. Costs awarded to the respondent be prescribed costs fixed at 2/3 of the amount awarded as prescribed costs in the court below.**

Reason:

Where the trial judge, having seen the witnesses and having come to a particular conclusion, the appellate court ought not to interfere with that decision unless there was a miscarriage of justice. There was evidence which the trial judge could have come to the conclusion of fact to which he came. The appellant court cannot say that the learned trial judge came to a wrong conclusion, even if they would have been minded to, the appellant have not met the threshold for which the appellant court would interfere with that decision. The trial judge was correct in making no finding to contributory negligence as no such claim was made by the appellant.

Case Name:

Victoire Simon et al v Augustin Montoute et al

Date:

Wednesday, 15th February 2012

Coram:

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

Appearances:

Appellant:

Mr. Dexter Theodore

Respondent:

Ms. Andra Gokool-Foster for the second named respondent

Issues: Curatorship application under the Civil Code - Costs

Result / Order: [Oral Delivery]
1. Leave is granted to the appellants to withdraw the appeal as against the first respondent as the first named respondent is deceased.
2. The appeal is dismissed.
3. No order as to costs.

Reason: The petition made was under the Civil Code and the learned trial judge was correct in concluding such. There was action pending before the court on which costs can be applied and in light of the fact that it was a highly contentious family matter, the judge was correct in his decision.

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

Date: Thursday, 16th February 2012

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]
The Hon. Mr. Francis Belle, Justice of Appeal [Ag.]

Appearances:
Appellant: Mr. Colin Foster
Respondent: Mr. Giovanni James

Issues:

Criminal appeal against conviction – Rape and indecent assault

Result / Order / Reason:

The court is of the view that no unfairness or prejudice was suffered by the appellant consequent upon the trial judge refusing to grant the adjournment sought by his counsel Mr. Kenneth Foster, QC. The court takes into account the long history of adjournments in this matter principally occasioned by the appellant defendant or his counsel. The court further considered that at the time of the request for the adjournment was made the principle witness, that is the virtual complainant, had already given evidence and been cross examined by the appellant. Although the corroboration direction was not necessary in this case, the trial judge gave comprehensive and clear directions on the issue of corroboration. The contents of his directions cannot be faulted. Counsel for the respondent concedes that section 136 (2) of the evidence act or the section 136 (2) warning was not given by the trial judge in respect of recent complaint. The issue is what is the effect or impact of that omission? Was it fatal to the safety of that conviction? The appellant counsel contends that it was. The respondent counsel contends that it was not. The court is of the view that although a section 136 (2) direction should have been given and was not given, upon examining all of the circumstances of the case, the facts and evidence led, the failure of the judge to give that warning was not fatal to the conviction. The evidence of the virtual complainant was compelling. The issue here was whether she consented to the intercourse. Her evidence was not unreliable in any material way. The defendant's witnesses did not support several aspects of his defence and upon all of the facts this would be an appropriate case to apply the proviso. We are of the view that the jury which was properly directed would have arrived at the same verdict. In the circumstances the appeal is dismissed, the conviction and sentence are

affirmed.

Case name:	Christopher Jn. Paul v The Queen [High Court Criminal Appeal No. 6 Of 2008]
Date:	Thursday, 16th February 2012
Coram:	The Hon. Mr. Davidson K. Baptiste, Justice of Appeal The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.] The Hon. Mr. Francis Belle, Justice of Appeal [Ag.]
Appearances:	
Appellant:	Mr. Colin Foster
Respondent:	Ms. Tina Mensah
Issue:	Murder
Result / Order:	Appeal of this matter is traversed to the next sitting of the Court in Saint Lucia in June 2012.
Reason:	Counsel for the appellant indicated to the Court that he was unable to proceed due to ill health and made an application to have the matter traversed to the next sitting of the Court in June 2012.