

Court of Appeal Sitting

BVI

2nd – 4th June 2008

2nd June

Coram:

Hon. Chief Justice (Ag.) Mr. Hugh Rawlins
Hon. Justice of Appeal Mr. Denys Barrow SC
Hon. Justice of Appeal (Ag.) Ms. Ola Mae Edwards
Hon. Justice of Appeal (Ag.) Mr. Dane Hamilton QC
Hon. Justice of Appeal (Ag.) Mr. John Carrington

JUDGMENT

**ATTORNEY GENERAL OF GRENADA v PETER
CHARLES DAVID ET AL
[Civil Appeal No. 34 of 2006]**

Appearances:

**Appellants: Mr. Terrence Williams holding papers for the Appellant, the
Attorney General of Grenada**

Respondent: Dr. Joseph Archibald QC holding papers for the First Respondent,

Issues:

Application for extension of time

Result:

**The Application was dismissed with costs to the First Respondent
to be taxed, if not agreed.**

Reason:

**Applying *Jn Marie and Sons v Jamie St. Louis Saint Lucia Civil
Appeal No. 14 of 2006*, the decision of Benjamin J was “other than
a final decision”. By virtue of section 37(7) of the Grenada
Constitution, the Court of Appeal has no jurisdiction to hear an
appeal from the decision of the Judge.**

Coram:

Hon. Chief Justice (Ag.) Mr. Hugh Rawlins
Hon. Justice of Appeal Mr. Denys Barrow SC
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Hon. Justice of Appeal (Ag.) Mr. Dane Hamilton QC
Hon. Justice of Appeal (Ag.) Mr. John Carrington

JUDGMENT

ATTORNEY GENERAL OF SAINT CHRISTOPHER & NEVIS ET AL V KALEEL JONES [Civil Appeal No. 1 of 2004]

Appearances:

Appellants: Mr. Terrence Williams holding papers for the Appellant, the Attorney General of Saint Christopher & Nevis

Respondent: Dr. Joseph Archibald QC holding papers for the Respondent

Issues:

Constitutional Law – Discrimination on the grounds of sex – whether rule regulating appearance was discriminatory – section 15 of the Constitution of Saint Christopher and Nevis

Result:

The appeal by the State was allowed. The declaration and award of costs made in the court below were set aside and no order as to costs was made in the appeal.

Reason:

- 1. Sexual Discrimination means treating one of the sexes less favourably as distinct from treating the sexes differently. Any consideration of the issue whether a rule in a code of appearance is sexually discriminatory must begin with a consideration of the rule in the context of the whole of the provision in which the rule is contained. Smith v Safeway PLC [1996] ICR 868 and Schmidt v Austicks Bookshops Ltd. [1977] IRLR 360 applied.**
- 2. The “hair length rule” read in the context of Article 3 as a whole was not discriminatory and was not therefore in breach of Section 15 of the Constitution. The rule was concerned with regulating appearance in accordance with accepted conventions, which is permissible.**

Coram:

**Hon. Chief Justice (Ag.) Mr. Hugh Rawlins
Hon. Justice of Appeal Mr. Denys Barrow SC
Hon. Justice of Appeal (Ag.) Ms. Ola Mae Edwards
Hon. Justice of Appeal (Ag.) Mr. Dane Hamilton QC
Hon. Justice of Appeal (Ag.) Mr. John Carrington**

JUDGMENT

CYRIL MATHURIN ET AL v ANTHONY AUGUSTIN qua Administrator of the estate of YASMIN NATASHA AUGUSTIN [Civil Appeal No. 41 of 2007]

Appearances:

Appellants: Mr. Gerard Farara QC holding papers for the Appellant

Respondent: Dr. J. Archibald QC holding papers for the Respondent

Issues:

Civil Appeal – Death – Negligence – Assessment of Damages – the lost years – Article 609 Civil Code of Saint Lucia – s.1 (2) (c) Law Reform (Miscellaneous Provisions) Act 1934 – Right to recover damages for the lost years abolished – Administration of Justice Act 1982 – Conflict of the English and Saint Lucian laws – Whether damages for lost years are recoverable

Result:

The appeal was dismissed with costs to the Respondent.

Reason:

- 1. Notwithstanding the change in English law damages can be recovered for the lost years in a case of death based on the provisions of Article 609 of the Civil Code, which states that on the death of any person after the commencement of this Chapter, all causes of action subsisting or vested in him shall survive against, or as the case may be, for the benefit of, his succession.**
- 2. That the amendment to the English law of damages for the lost years did not extend to Saint Lucia because it conflicts with the express provision of the Code.**
- 3. The Appellant must pay to the Respondent prescribed costs to be quantified based on the quantum of damages for the lost years that are awarded or agreed. Such costs were to be assessed, if not agreed. Veronique Ismael v Justin Albert St. Lucia Claim No. SLUHCV 0717 of 2002 (judgment delivered 8 December 2006) overruled. Gammell v Wilson [1981] 1 All ER 578 distinguished.**

Coram:

**Hon. Chief Justice (Ag.) Mr. Hugh Rawlins
Hon. Justice of Appeal Mr. Denys Barrow SC
Hon. Justice of Appeal (Ag.) Ms. Ola Mae Edwards**

Hon. Justice of Appeal (Ag.) Mr. Dane Hamilton QC
Hon. Justice of Appeal (Ag.) Mr. John Carrington

JUDGMENT

VOLKER STEVIN CONSTRUCTION EUROPE BV v VOS LTD.

[Civil Appeal No. 13 of 2007] (Grenada)

Appearances:

Appellants: Mr. Kevon Swan holding papers for the Appellant

Respondent: Dr. J. Archibald holding papers for the Respondent

Issues: Contract Law – Formation of contract – whether contract existed

Result: The appeal was allowed with costs to the Appellant.

Reason: The agreement between the parties was the acceptance by the appellant of a standing offer made by the respondent to provide such numbers of workers as were required from time to time. This did not create an exclusive or absolute obligation on the parties, or in other words, this was not an absolute contract. Each time a certain number of workers were required of the respondent, a separate contract would be created. There was a contract only to the extent of that requisition; otherwise there was no contract. *Burton v The Great Northern Railway Company (1854) 9 Ex. 507* applied.

Coram:

Hon. Chief Justice (Ag.) Mr. Hugh Rawlins
Hon. Justice of Appeal (Ag.) Mr. Dane Hamilton QC
Hon. Justice of Appeal (Ag.) Mr. John Carrington

APPLICATION

THOMAS TOWNSEND, THERESE TOWNSEND v PERSISTENCE HOLDINGS LTD.

[Civil Appeal No. 8 of 2008]

Appearances:

Appellants: Mr. Sydney Bennett QC

Respondent: Mr. Gerard Farara QC

Issues: Privy Council referral for mention

Result: The appeal was adjourned. The matter is to be listed on the appeals list for September 2008 in the Territory.

Reason: Parties to consider by 31st July 2008 whether an amended Notice of Application should be filed.

Coram: Hon. Chief Justice (Ag.) Mr. Hugh Rawlins
Hon. Justice of Appeal (Ag.) Mr. Dane Hamilton QC
Hon. Justice of Appeal (Ag.) Mr. John Carrington

APPLICATION

THE TELECOMMUNICATIONS REGULATORY COMMISSION v DIGICEL [Civil Appeal No. 16 of 2007]

Appearances:

Appellant: Ms. Benedicta Samuels holding papers for Mr. Anthony Astaphan SC

Respondents: Mr. Paul Webster QC for Digicel
Mr. Gerard Farara QC with him Mrs. Tana'ania Small-Davies for CCT
Mr. Kevon Swan for BVI Cable Co. Ltd.
Mr. Phillip Kite holding a watching brief for Cable & Wireless Ltd.

Issues: Application for Judicial Review - whether the learned judge was wrong to issue a mandamus order.

Result: The claim, and consequently the appeal in this matter, was discontinued and accordingly dismissed with no order as to costs.

Reason: The parties agreed that the matter should be withdrawn with no order as to costs. A Notice of Discontinuance was filed in the

matter.

Coram: Hon. Chief Justice (Ag.) Mr. Hugh Rawlins
Hon. Justice of Appeal (Ag.) Mr. Dane Hamilton QC
Hon. Justice of Appeal (Ag.) Mr. John Carrington

APPLICATION

WILLIAM PENN v THE QUEEN [Criminal Appeal No. 1 of 2006]

Appearances:
Appellant: Dr. Joseph Archibald QC with Ms. Anthea Smith
Respondent: Mr. Terrence Williams, Director of Public Prosecutions

Issues: Privy Council Referral – on charge of Burglary

Result: The Appellant shall remain on bail in the same terms until the judgment on the remaining issues in the appeal are determined and judgment is delivered.

Reason: Judgment to be delivered on the remaining issues.

Coram: Hon. Chief Justice (Ag.) Mr. Hugh Rawlins
Hon. Justice of Appeal (Ag.) Mr. Dane Hamilton QC
Hon. Justice of Appeal (Ag.) Mr. John Carrington

APPLICATION

EQUATOR EXPLORATION LTD. v BW PEACE LTD. AKA BW ENDEAVOUR LIMITED [Civil Appeal No. 8 of 2008]

Appearances:

Applicant: Mr. Stephen Moverley Smith QC

Respondent: Mr. Paul Webster QC

Issues: Application to set aside a statutory demand.

Result: The matter was adjourned to Thursday June 5th, 2008.

Reason: The Appellant requested time to prepare submissions. The matter was not listed but due to a request from the Respondent for the matter to be heard at this sitting of the Court Appeal, it will be dealt with at that time.

Coram: Hon. Chief Justice (Ag.) Mr. Hugh Rawlins
Hon. Justice of Appeal (Ag.) Mr. Dane Hamilton QC
Hon. Justice of Appeal (Ag.) John Carrington

MAGISTERIAL CRIMINAL APPEALS AGAINST SENTENCE

STEPHEN HENRY v THE QUEEN [Magisterial Criminal Appeal No. 6 of 2007]

Appearances:

Appellant: Mr. Herbert McKenzie

Respondent: Ms. Tiffany Scatliffe for Director of Public Prosecutions

Issues: Theft- Appeal against sentence

Result: The sentence of 12 months was substituted instead of 18 month aggregate. Taking remissions of sentence into consideration, the sentence shall be considered to be time served.

Reason: Section 92 of the Magisterial Code of Procedure provides that the aggregate term of imprisonment shall not exceed 12 months.

Coram: Hon. Chief Justice (Ag.) Mr. Hugh Rawlins
Hon. Justice of Appeal (Ag.) Mr. Dane Hamilton QC
Hon. Justice of Appeal (Ag.) Mr. John Carrington

ISHMAEL HODGE v THE QUEEN
[Magisterial Criminal Appeal No. 1 of 2008]

Appearances:

Appellant - Mr. Kevon Swan

Respondent - Mr. Terrence Williams, Director of Public Prosecutions

Issues: Unlicensed foreign fishing vessel - Appeal against Conviction

Result: The appeal was withdrawn and accordingly dismissed

Reason: The Appellant was no longer interested in pursuing the appeal.

Coram:

Hon. Chief Justice of Appeal (Ag.) Mr. Hugh Rawlins
Hon. Justice of Appeal (Ag.) Mr. Dane Hamilton QC
Hon. Justice of Appeal (Ag.) John Carrington

**PACIFIC ELECTRIC WIRE AND CABLE COMPANY
LIMITED v TEXAN MANAGEMENT LIMITED**
[Civil Appeal No. 19 of 2006]

Appearances:

**Applicant: Mr. Paul Webster QC and with him Mr. Kerry Anderson for 3rd & 4th
Applicants, Mr. Jack Husbands for 1st & 2nd Applicants**

Respondent: Mr. Gerard Farara QC and with him Mrs. Tana'ania Small-Davies

**Issues: Applications for Leave to Appeal to Her Majesty in Council –
Forum non conveniens, Part 9.7 and 10.3 of the CPR**

Result: Decision reserved.

Coram:

Hon. Justice of Appeal Mr. Denys Barrow SC (President)
Hon. Justice of Appeal (Ag.) Ms. Ola Mae Edwards
Hon. Justice of Appeal (Ag.) Mr. Dane Hamilton QC

APPLICATION

CUKUROVA FINANCE INTERNATIONAL HOLDINGS & CUKUROVA HOLDING AS v ALFA TELECOM TURKEY LIMITED [Civil Appeal No. 27 of 2007]

Appearances:

Appellant - Ms. Arabella di Iorio

Respondent Mr. Robert Levy with Mr. Jack Husbands

Issue:

- 1. Application for leave to Appeal to Her Majesty in Council**
- 2. Application for quantification of costs pursuant to the Order of the Court of Appeal dated April 22nd, 2008**
- 3. Application for Judge to be recused**

Result:

- 1. The Application for Leave to Appeal to Her Majesty in Council was granted on usual terms – security in the sum of £500 to be paid within 7 days; preparation of the record to be done within 45 days.**
- 2. The Appellant's costs of the trial of the preliminary issues before the High Court and of the appeal to the Court of Appeal shall be determined pursuant to the provisions of the Civil Procedure Rules by the Master at a hearing which shall take place on the first available date after 7th September 2008 (on any island within the jurisdiction) on a time estimate of 1 day.**
- 3. The Appellants shall file and serve on the Respondent their submissions and any evidence by 4pm on Monday 23rd June 2008.**
- 4. The Respondent shall file and serve on the Appellants their answer by 4pm on Monday 14th July 2008.**
- 5. The Appellants shall file and serve on the Respondents any further submissions and any evidence in reply by 4pm on 28th July 2008**
- 6. The parties shall attempt to argue the contents of the bundles to be used at the hearing before the Master and any documents about which the parties are unable to agree shall be included in a separate file.**
- 7. By 4 p.m. on the date that is 2 weeks before the hearing before the Master the Appellant will file at the Court and serve upon the Respondent the bundle for use at the hearing.**
- 8. The submissions referred to above shall stand as the**

- parties skeleton arguments for use at the hearing.
9. The Appellant shall be at liberty to apply to this court following the determination of these proceedings to receive and recover a full indemnity for its costs of the preliminary issue trial and the appeal to the Court of Appeal as a mortgagee and/or pursuant to clause 12.2 of the Facility Agreement between the Appellant and the Respondents dated 28th September 2005 and for these purposes, following the determination of these proceedings, this court shall not be functus officio.
 10. This Order shall be without prejudice to the right of Cukurova to apply for a stay.

Coram: Hon. Justice of Appeal Mr. Denys Barrow SC (President)
Hon. Justice of Appeal (Ag.) Mr. Dane Hamilton QC
Hon. Justice of Appeal (Ag.) John Carrington

HIGH COURT CRIMINAL APPEAL AGAINST CONVICTION

**DEVIN MADURO v THE QUEEN
[Criminal Appeal No. 3 of 2005]**

Appearances:

Appellant:	Mr. Paul Webster QC with Mr. Malcolm Marshall
Respondent:	Mr. Terrence Williams, Director of Public Prosecution and Ms. Christlyn Benjamin, Crown Counsel

Issues: **Murder - Whether oral confession which was admitted in evidence renders the conviction unsafe and unsatisfactory.**

Result: **Decision reserved to be delivered during the course of this sitting.**

Coram Hon. Chief Justice (Ag.) Mr. Hugh Rawlins
Hon. Justice of Appeal (Ag.) Mr. Dane Hamilton QC
Hon. Justice of Appeal (Ag.) Mr. John Carrington

**HIGH COURT CRIMINAL APPEAL AGAINST
CONVICTION**

**JERRY MARTIN v THE QUEEN
[Criminal Appeal No. 3 of 2007]**

Appearances:

Appellant: Mr. Hayden St. Clair Douglas

Respondent: Mr. Terrence Williams, Director of Public Prosecutions

Issue:

Result: The matter was adjourned to next sitting of the court in the Territory in September, 2008.

Reason: Counsel for the Appellant indicated to the Court that arrangements had not yet been put in place with regards to this appeal.

Coram

Hon. Chief Justice (Ag.) Mr. Hugh Rawlins
Hon. Justice of Appeal (Ag.) Mr. Dane Hamilton QC
Hon. Justice of Appeal (Ag.) Mr. John Carrington

APPLICATION

**BANCO POPULAR DE PUERTO RICO v GREGORY
HODGE
[Civil Appeal No. 6 of 2008]**

Appearances:

Appellant: Dr. Joseph Archibald QC

Respondent: Ms. Karen Troy

Issue: Sale of Land – Application for Leave to Appeal

Result: The Application was withdrawn and accordingly dismissed with

no order as to costs.

Reason: The Application was not served on the Respondent and the Applicant does not wish to proceed with the Application.

3rd June, 2008

Coram: Hon. Justice of Appeal Mr. Denys Barrow SC (President)
Hon Justice of Appeal (Ag.) Ms. Ola Mae Edwards
Hon Justice of Appeal (Ag.) John Carrington

**KELVIN TURNBULL v THE QUEEN
[Criminal Appeal No. 7 of 2007]**

Appearances:

Appellant: Mr. Hayden St. Clair Douglas

Respondent: Mrs. Grace Henry McKenzie with Ms. Tiffany Scatliffe

Issues: Rape – whether the learned judge erred in law in refusing the application for the complainant to be recalled for cross-examination – inconsistent verdict

Result: The appeal was dismissed and the conviction and sentence were affirmed.

Reasons: The issue was whether the appellant had had sexual intercourse with the complainant. Credibility was the main foundation. No unfairness had resulted from the judge's exercise of discretion in this matter.

Coram: Hon. Justice of Appeal Mr. Denys Barrow SC (President)
Hon. Justice of Appeal (Ag.) Mr. Dane Hamilton QC
Hon. Justice of Appeal (Ag.) Mr. John Carrington

TIFFERN HENLEY v THE QUEEN
[Criminal Appeal No. 6 of 2007]

Appearances:

Appellant: Ms. Anthea Smith

Respondent: Ms. Tiffany Scatliffe

Issue: Rape

Result: The appeal was adjourned to the next sitting of the Court in the Territory.

Reasons: Director of Public Prosecutions requested an adjournment and the Appellant voiced no objection on the basis that the Appellant was only recently informed that he was denied legal aid.

4th June, 2008

Coram:

Hon. Justice of Appeal Mr. Denys Barrow SC (President)
Hon. Justice of Appeal (Ag.) Ms. Ola Mae Edwards
Hon. Justice of Appeal (Ag.) Mr. Dane Hamilton QC

**HIGH COURT CRIMINAL APPEAL AGAINST
CONVICTION**

DEVIN MADURO v THE QUEEN
[Criminal Appeal No. 3 of 2005]

Appearances:

Appellant: Mr. Paul Webster QC

Respondent: Mr. Terrence Williams, Director of Public Prosecutions

Issue: Murder – Wounding with intent – Aggravated Burglary – Appeal against conviction – hearsay evidence

Result: The appeals against conviction for murder and against wounding Sunday Joseph were dismissed.

Reasons: No reason to find that the conviction is unsafe or unsatisfactory. Written reasons to follow.

APPLICATION

Coram: Hon. Justice of Appeal Mr. Denys Barrow SC (President)
Hon. Justice of Appeal (Ag.) Mr. Dane Hamilton QC
Hon. Justice of Appeal (Ag.) Mr. John Carrington

**SPANISH TOWN DEVELOPMENT COMPANY LTD. ET AL
v VICTOR INTERNATIONAL CORPORATION ET AL
[Civil Appeal No. 3 of 2008]**

Appearances:

Appellant: Dr. Joseph Archibald QC with Ms. Michelle Worrell

Respondent: Mr. Gerard Farara QC with Mrs. Tana'ania Small-Davies

Issues: Breach of contract – Claim to enforce Arbitration Clause in written agreement – Whether mediation is a condition precedent to arbitration – Whether order appointing arbitrator should be set aside and a mediator appointed

Result: The appeal was dismissed. Prescribed costs awarded on the appeal to the Respondents to be agreed within 21 days; if not agreed, costs to be quantified.

Reasons: Agreed with trial judge on interpretation of Clause 25. That clause did not provide any obligation that the Respondents are required to mediate before arbitration. Costs of arbitration are within the discretion of the arbitrator as per section 20 of Arbitration Act Cap. 6.

Coram: Hon. Justice of Appeal Mr. Denys Barrow SC (President)

Hon. Justice of Appeal (Ag.) Ms. Ola Mae Edwards
Hon. Justice of Appeal (Ag.) Mr. John Carrington

HIGH COURT CIVIL APPEAL

LYRA SEWER COLLAZO v PERCIVAL WILLIAMS [Civil Appeal No. 24 of 2007]

Appearances:

Appellant: Mrs. Lorna Shelly-Williams

Respondent: Ms. Susan Demers

Issues:

Sale of Land – Whether letters and transfer of documents together constitute a sufficient agreement for sale or not or memorandum in writing evidencing oral contract

Result:

Decision reserved.

Reasons:

Coram:

Hon. Justice of Appeal Mr. Denys Barrow SC

APPLICATION

ANSIS SORMULIS v RUDOLF MERONI [Civil Appeal No. 7 of 2008]

Appearances:

Appellant: Mr. Paul Webster QC with Ms. Willa Tavernier

Respondent: Mr. Sydney Bennett QC with Ms. Michelle Worrell

Issues:

Application for Leave to Appeal

Result:

Decision reserved until Monday 9th June, 2008.

Reasons: Counsel for the Respondent to prepare a mini skeleton argument and a copy is to be sent via email to the Court by 5th June, 2008.

Coram: Hon. Justice of Appeal (Ag.) Mr. John Carrington

APPLICATION

**EQUATOR EXPLORATION LTD. V BW PEACE LTD AKA
AND BW ENDEAVOUR LIMITED
[Civil Appeal No. 8 of 2008]**

Appearances:

Appellant:	Mr. Stephen Moverley Smith QC with him Mr. Christopher Young
Respondent:	Mr. Paul Webster QC with him Mr. Malcolm Arthur

Issues: Commercial – Application to set aside a statutory demand – Application for Stay

Result: By consent, the Application for Stay dated 20th May, 2008 was adjourned to a date to be fixed after the 5th day of July 2008. Costs were reserved.

Reasons: Parties agreed that the matter be adjourned.