

IN THE COURT OF APPEAL

GRENADA

Civil Appeal No. 5 of 1969

Between:

ARTHUR ALFRED BERESFORD BOWEN

RICHARD BOWEN

(an Infant under the age of 21 years  
by his next friend Arthur Alfred  
Beresford Bowen)

MARCIA BOWEN

Appellants

and

STEPHEN BASCOMBE

Respondent

Before: The Honourable the Acting Chief Justice  
The Honourable Mr. Justice P. Cecil Lewis  
The Honourable Mr. Justice St. Bernard (Ag.)

M.J. St. B. Sylvester with D.C. Williams for Appellants  
K.H.C. Alleyne (Attorney General), with L.G. St. Louis  
for Respondent

1970, May 11

JUDGMENT

GORDON, C.J. (Ag.)

In a pending action between the plaintiffs/appellants and the defendant/respondent filed on the 2nd of December, 1969, as No. 351 of 1969 in the High Court the learned trial judge, Glasgow J., on the application of the plaintiffs/appellants made an interlocutory injunction on the 2nd of December, 1969, restraining the defendant/respondent from removing the first named appellant from the State pending the determination of the case in the High Court.

A motion dated the 4th of December, 1969, in which counsel for the respondent sought to have the interlocutory injunction discharged was duly heard by the Court on the 10th December when Glasgow, J. discharged the injunction. The first named appellant now appeals to this Court from the order discharging the interim injunction.

On the 10th of December, 1969, subsequent to the discharge of the injunction by the Court an order dated the 1st of December, 1969, signed by the Governor of the State was executed on the first named appellant and he was duly removed from the State on the ground that he was an undesirable inhabitant. He is at present out of the State.

/The Court

The Court on its own motion raised the question of the effectiveness of any order which might be made on the grounds of the relief sought in the appellant's grounds of appeal, having regard to the fact that the appellant is now no longer resident in, and cannot return to the State. The relief sought was as follows:

- (i) An order setting aside the order of the learned judge made on the 10th day of December, 1969.
- (ii) An order restraining the defendant, Stephen Bascombe and all other police constables from interfering with the freedom of movement of the plaintiff Arthur Alfred Beresford Bowen including his right to enter Grenada and his right to immunity from expulsion from Grenada pending the determination of his status as a person belonging to Grenada by virtue of the provisions of section 18 (2) (d) of the Grenada Constitution.
- (iii) An order giving such directions as the Court may consider appropriate for the purpose of enforcing or securing the enforcement of the provisions of section 12 (1) of the Grenada Constitution in relation to the plaintiff Arthur Alfred Beresford Bowen.
- (iv) Such further or other order as the case may require.

Regarding the first ground of relief sought, two considerations arise, firstly, if even this Court ordered the setting aside of the order discharging the interim injunction this would not in itself revive the original interim injunction. Secondly, if even it revived the interim injunction the order would be ineffective for the reason that the Removal Order made by the Governor under section 4 (1) (g) of the Immigration Restriction Act (~~Ordinance~~ No. 26 of 1969) is not appealable and is not before us.

Regarding ground 2 of the relief sought, in answer to a question by the Court counsel for the appellant conceded that this Court cannot make an order authorising the appellant's return. Later in his argument he advanced a contrary view. He cited no authority to support his latter contention.

In my opinion, since the Removal Order is still in effect and the appellant cannot now return to the State this Court cannot make an order which could in any way effectively authorise the return of the appellant to the State. The same argument applies to the third ground of the relief

/which the

which the appellant seeks.

In the circumstances I am of the opinion that the relief sought is entirely academic, and I would accordingly dismiss the appeal with costs.

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(K. L. Gordon)  
Acting Chief Justice

P. CECIL LEWIS, J.A. I agree.

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(P. Cecil Lewis)  
Justice of Appeal

ST. BERNARD, J.A. (Ag.) I agree that the appeal should be dismissed.

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(E. L. St. Bernard)  
Justice of Appeal