

IN THE COURT OF APPEAL

SAINT VINCENT

MOTION No. 3 of 1976

BETWEEN:

METROCINT GENERAL INSURANCE
COMPANY LIMITED

AND

EGERTON RICHARDS

RESPONDENTS/APPELLANTS

AND

HOUSTON LEWIS

AND

OLIVER DA SILVA

PETITIONERS/RESPONDENTS

Before:

The Honourable the Chief Justice
The Honourable Mr. Justice St. Bernard
The Honourable Mr. Justice Peterkin.

E. W. Robertson for Respondents/Appellants
G. Isaacs for Petitioners/Respondents.

1976. September 20.

DAVIS C.J.:

This is an application by the Applicants/Respondents for leave to appeal to Her Majesty in Council from a decision of this Court delivered on the 10th May, 1976. The application is made under Sec. 102 (1) (a) and 102 (2) (a) of the St. Vincent Constitution Order, 1969, which reads as follows:-

"102-(1) Subject to the provisions of section 35 (7) of this Constitution, an appeal shall lie from decisions of the Court of Appeal to Her Majesty in Council as of right in the following cases-

- (a) Where the matter in dispute on the appeal to Her Majesty in Council is of the value of fifteen hundred dollars or upwards or where the appeal involves directly or indirectly a claim to or question respecting property or a right of the value of fifteen hundred dollars or upwards, final decision in any civil proceedings;

(2) Subject to the provisions of section 35 (7) of this Constitution, an appeal shall lie from decisions of the Court of Appeal to Her Majesty in Council with the leave of the Court of Appeal in the following cases-

- (a) where in the opinion of the Court of Appeal the question involved in the appeal is one that, by reason of its great general or public importance or otherwise, ought to be submitted to Her Majesty in Council, decision in any civil proceedings,"

The application is made by way of motion in accordance with Rule 4 of the West Indies Associated States (Appeals to Privy Council) Order, 1967, and by virtue of Rule 29 (2) of the Court of Appeal Rules, such a motion must be supported by affidavit.

It should be observed that whether the motion is brought under 102 (1) (a) or 102 (2) (a) the applicants

would be seeking a relief, and the question arises whether they should state in their notice of motion the nature of the relief sought.

Order 8, Rule 3 of the Rules of the Supreme Court reads as follows:-

"The notice of an Originating Motion must be in Form 10, Appendix A, and the notice of any other motion in Form 34 in that Appendix."

A look at these two forms will show that in either case an applicant must show on the face of the motion the relief he seeks. This requirement appears to be most appropriate in an application by motion whether before the High Court or the Court of Appeal.

The motion before the Court does not disclose under what provisions of the law the application is made, neither does it conform with the requirements specified in Order 8, Rule 3.

If, however, this was the only defect in the application I would not be prepared to hold that this was fatal.

I have already stated that every motion must be supported by affidavit, and I now look at the affidavit filed in support of the motion. The affidavit sworn to by the Applicant Houston Lewis sets out 18 grounds of appeal upon which the Applicants will rely if leave were granted to appeal to Her Majesty in Council. Nowhere in this affidavit is there any material showing some ground or any ground upon which the discretion of the Court should be exercised in the direction of giving leave to appeal. Indeed, during the course of the arguments Counsel for the Applicants was compelled to admit that

he could not bring the application within Sec. 102, (1), (a), not only because there was no affidavit showing that the question for determination did not involve any property or right of the value of \$1500.00 or upwards, but that in fact the evidence in the matter in dispute showed that the amount involved in the case of one Applicant was \$5, and in the case of the other the sum of \$250.00.

Similarly, it is quite clear from the wording of Sec. 102, (2) (a) that it is the duty of the Applicant to satisfy the Court that the question involved in the appeal is one of great general or public importance before he can obtain leave to appeal. This he must do by material in his affidavit sworn in support of the motion.

The nature of the affidavit sworn to in this case is such that it can be fairly said that there is no affidavit.

In addition, I am of the opinion that no cogent arguments were advanced to convince me that the question involved in this matter was of any great general or public importance. I would emphasize that the fact that the matter is of great importance to the applicants is not enough to justify leave being granted to the Privy Council in respect thereof.

I would dismiss the application and make no order as to Costs.

I agree

/s/Maurice Davis
CHIEF JUSTICE

/s/E. L. St. Bernard
JUSTICE OF APPEAL

/s/N. A. PETERKIN
Justice of Appeal.