

ANTIGUA:

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 5 of 1977

BETWEEN: GEORGE WALTER AND OTHERS - Appellants

AND

VICTOR BROWNE AND OTHERS - Respondents

Before: The Hon. Sir Maurice Davis, Q.C. - Chief Justice  
The Honourable Mr. Justice St. Bernard  
The Honourable Mr. Justice Peterkin

Appearances: Dr. F. Ramsahoye for Appellants,  
G. Watt with him.

The Attorney-General and T. Hosein for Respondents,  
C. Richards with them.

1977, November 16 & 17; Jan. 6

J U D G M E N T

PETERKIN, J.A.:

This is an appeal against the judgment of Bishop J. refusing a declaration to the Appellants. The motion giving rise to this appeal was filed on 13th May, 1977, and sought the following relief:-

- "(a) A Declaration that the date 23rd May 1977 is the correct date fixed for the commencement of the hearing of preliminary inquiries relating to the charges mentioned and referred to in the schedule hereto.
- (b) that if the hearing of the preliminary inquiries relating to the charges mentioned and referred to in the schedule hereto are not commenced on 23rd May 1977, there be an order restraining the Respondents or any of them from prosecuting holding conducting or in any way proceeding with the charges mentioned and referred to in the schedule hereto,

/and.....

Delivered in Grenada in accordance with Section 80(1) of the West Indies Associated States Supreme Court Act, 1969, (No.26) of the Laws of Antigua.

and a declaration that prosecutions for the said charges be forever barred and

- (c) Such further or other relief as the circumstances of the case may require."

At the hearing, before the Judge Counsel for the Appellants abandoned the relief sought in para (b), and informed the Court that he would not urge the third ground set out in the motion.

The remaining two grounds were:-

- "(a) the date 23rd May 1977 as the date for the commencement of the hearing of the charges mentioned and referred to in the schedule hereto was made in open court after judicial consideration of all the facts pursuant to the provisions of 37, 41, 47, 54 and 67 of the Magistrate's Code of Procedure Act Cap. 48 and the Chief Magistrate has no power to adjourn the said fixture in the manner in which he attempted so to do or at all.
- (b) the suggested date of 7th July 1977 or any date after 23rd May 1977 is not a date "within a reasonable time" as envisaged by section 8 of the Constitution and was not made in accordance with the provisions of the Magistrate's Code of Procedure Act Cap. 48."

The relevant facts emerge from the affidavits and exhibits. They show that on 21st February, 1977, the Appellants were arrested and charged with a number of indictable offences, and were taken before Magistrate Singh. Their cases were adjourned to 1st March, and they were remanded on bail. Thereafter, there were a number of adjournments of these matters, and of five others laid on 21st March against the Appellant Halstead, up to 19th April. On each /occasion.....

occasion Magistrate Singh adjourned the preliminary inquiries and remanded the Appellants on bail. On 19th April the matters were called, and, after hearing both sides, Magistrate Singh again adjourned them to 23rd May. It would appear that both sides were consenting to an adjournment to that date. Again the Magistrate remanded the Appellants on bail, and they were ordered to appear on 23rd May.

On 22nd April, the Chief Magistrate (Respondent Victor Browne), while sitting in his civil jurisdiction in open court referred to the preliminary inquiries and informed Counsel for the Appellants who was then sitting in court that the inquiries would not commence on 23rd May. On 27th April he wrote to Counsel advising him that he had informed the Police that the date now fixed was the 7th July, 1977. The following day Counsel for Appellants replied. He pointed out that Magistrate Singh was fully aware of all the factors involved and had given judicial consideration to the matter when he fixed the date of hearing for 23rd May. He pointed out that the 23rd May was convenient to both sides, and requested the Chief Magistrate to make arrangements to hear the preliminary inquiries on that date.

At the hearing the learned Judge was invited by the Appellants to restrict his consideration of the notice of motion to the relief sought in para (a). After hearing argument from both sides he went on to state that in his view the 23rd May was the only proper fixture, and, that since this appeared to be the view of both sides, it was unnecessary to make any declaration. The matter goes a

/little.....

little further than that in my view as I shall later indicate.

Learned Counsel for the appellants has conceded that the prayer at para (a) of the motion when read alone has nothing to do with the Constitution, but argued that it should be related to para (b) of the grounds. He submitted that the adjournment to 7th July, 1977, was without legal force or effect; that it was the duty of the Judge to make a finding as to reasonable time; and that in the absence of such a finding by the Judge this Court could so do. He then asked the Court to grant the declaration sought at (a) of the prayer.

The Appellants have moved the Court under section 15 of the Constitution of Antigua. Section 15(1) relates entirely to alleged breaches of fundamental rights. It does not invite motions for any purpose whatsoever. Subsection (4) makes provision with respect to practice and procedure. It is to be found in the Supreme Court Constitutional Redress Rules, 1970. These rules require that the applicant state the breach alleged in the relief sought by way of motion. Subsection (2) gives the Court jurisdiction to hear and determine any application made in pursuance of subsection (1), and to make orders etc. for the purpose of enforcing the fundamental right in respect of which the breach is alleged. In my opinion the learned Judge was correct in limiting himself to one question only, but I think he ought to have gone one stage further and dismissed the application as, once the relief at (b) was abandoned, there was no longer a constitutional issue before the Court and he was **therefore** not competent to grant the relief sought in para (a).

/As.....

As learned Counsel for the Respondents has in my view rightfully submitted, the grounds are not a claim for relief. They are in support of a claim for relief.

The relief claimed before this Court at para 4 (b) and (c) at page four of the record cannot be granted because it was not claimed in the motion in the Court below.

There is one other aspect of the matter which I think calls for mention. Section 15(1) of the Constitution reads in part,

"If any person alleges that any of the provisions of sections 2 to 14 (inclusive) of this Constitution has been, or is being, contravened in relation to him ....."

The subsection does not include the words, "or is likely to be" before the word "contravened" as is the case with some other Constitutions. The question of any breach of section 8 did not arise, and could only arise in my opinion if the matters were effectively adjourned to 7th July, 1977. This may account for the fact that para (b) of the relief, which was later abandoned, was couched in hypothetical terms. I am of the view that the Appellants were premature as their alleged right to relief had not yet arisen at the time of filing of the motion.

Accordingly, for the reasons stated I would dismiss this appeal.

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(N.A. Peterkin)  
JUSTICE OF APPEAL

I agree.

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(E.L. St. Bernard)  
JUSTICE OF APPEAL

I also agree.

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(Sir Maurice Davis)  
CHIEF JUSTICE