

SAINT LUCIA:

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 5 of 1977

BETWEEN:

BOSWELL WILLIAMS

Plaintiff/Appellant

and

1. THE ATTORNEY GENERAL  
OF SAINT LUCIA

2. COLIN BEADON also known  
as COLIN DEATON

3. MARCEL ALBERT

4. JOHN G.M. COMPTON

5. LORENZO WILLIAMS

Defendants/Respondents

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

Appearances: Appellant in person.

L. Williams, Attorney General for  
Respondents Nos. 1, 2, 4 and 5

T. Cozier holding watching brief  
for No. 3 Respondent.

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1978, February 20 and 27

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J U D G M E N T

PETERKIN, J.A.:

This is an appeal against the decision of Renwick J. made in Chambers on 29th July, 1977, refusing an application by the Appellant to strike out the defences of the first and second-named Respondents, pursuant to Order 24, Rule 16 of the Rules of the Supreme Court, for failure to comply with an Order of the Court for inspection of documents.

The following are the facts and circumstances:-

On 18th November, 1976, the Appellant applied to the Court

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for orders (i) that the first and second-named Respondents serve him with a list of documents within 7 days, and (ii) that there be inspection of documents within 7 days of the service of the list. The Appellant went to the Court for production of the list of documents to be used by the other side, and for an order to inspect them. On 15th December, 1976, an order was made in terms of the Summons. On 7th January, 1977, after the Respondents had failed to comply with the order of the Court, the Appellant applied for an order that the defences of the Respondents named be struck out. On 17th January the Respondents served the Appellant with a list of documents, and a notice to inspect, and on 19th January, at the hearing of the Appellant's application to strike out the defences, the Judge made the following order:

"That inspection ordered on Monday, 31st January, 1977, at the Attorney-General's Chambers. No order need be drawn up."

According to the Appellant, he went to the Attorney-General's Chambers at about 11.30 a.m. on 31st January, and was shown a number of documents. He noticed that some of the documents produced were not on the list, while there were others on the list which were not produced. He also noticed that the documents were not numbered or marked in any way to enable them to be identified by reference to the numbers set out on the list. He asked for documents 2, 5 and 12 on the list and was told that they were in files in the Government Office upstairs. He further stated that he wished to make a copy of document No. 13 and was told that he could only see the document and not copy it. The Appellant complained that the Respondents had in effect, failed to comply with the order of the Court made on 19th January for inspection. He therefore by Summons dated 9th March, 1977, applied to the Court for an order striking out the defences of the first and second-named Respondents. On 29th July, 1977, the Judge made the

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following order:-

"THIS MATTER coming up for hearing on the twenty-seventh day of April, the fourth day of May, and the twenty-ninth day of July one thousand nine hundred and seventy-seven; and

UPON READING the Summons and the affidavits filed by the Plaintiff;

AND UPON HEARING the Plaintiff in person and Counsel for the Defendants THE ATTORNEY GENERAL OF SAINT LUCIA AND COLIN BEADON also known as COLIN DEATON,

IT IS HEREBY ORDERED:

1. That copies of such documents as the Defendants THE ATTORNEY GENERAL OF SAINT LUCIA and COLIN BEADON also known as COLIN DEATON intend to rely on at the hearing, be served on the Plaintiff on or before 31st August 1977; and
2. That this matter be listed for next Call Over Day when a date for the hearing will be allotted;....."

In his written decision at pages 5 and 6 of the record the Judge found that some of the documents were available for inspection, but that these documents were not listed in accordance with the practice governing such an inspection, and concluded that a genuine attempt had been made to comply with the Order.

The grounds of appeal are:

- "(1) That the decision is perverse;
- (2) That the Learned Judge adjudicated beyond the conclusion of the matter before him;
- (3) That the order of the Learned Judge would result in injustice to the Appellant; and would materially prejudice or embarrass him;
- (4) That the decision is against the weight of the evidence;

/(5).....

(5) That on the material available, the Learned Judge could not validly have exercised his discretion in favour of the defaulting parties, and he ought to have granted the application."

On ground (1) the Appellant submitted that what the Respondents had done could never amount to a genuine attempt; that their purpose was to defy the Order and only produce the documents they wished him to see, and that the Judge's order condoned the Respondents' behaviour, and even rewarded them, and was thus perverse. The question of the genuineness or otherwise of the Respondents' effort was one of degree, and there was evidence from the Appellant himself from which the Judge could have concluded as he did. I can see nothing in the evidence to suggest that he had acted perversely.

On ground (2) the Appellant submitted that the order made by the Judge went outside the ambit of the application before him. I would agree. The Judge even went so far as to treat the Summons as one for directions when he ordered that the matter be listed for the next Call Over Day to fix a date for hearing. Not even the Respondents had asked for this, and he made it without the consent of the Appellant. The Order also provided for service of the documents, when what was complained of by the Appellant as having been denied him was inspection of the documents listed. It is conceded, however, that this Court can correct the Order made by discharging it, and by substituting therefor the Order which the Court thinks should have been made.

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The remaining grounds may conveniently be dealt with together.

Among the cases cited by the Appellant were:

- (i) Re O (Infants) 1971 2 A.E.R. 744, and
- (ii) Ford (an infant) (by her next friend  
Vernon Clarke v Lewis (by his guardian  
ad litem Leslie Charles Windsor), 1971  
2 A.E.R. 983.

In the former case it was held that on appeal against the exercise of a judicial discretion it is the duty of the Appellate Court to set aside the decision of the Court below not only in cases where the Court below has erred in principle but in any case where the Appellate Court is satisfied that the decision of the Court below is improper, unjust or wrong. In (ii) above, a case which dealt with the Civil Evidence Act, 1968, it was held, inter alia, that a judge who, knowing that the failure to comply with the rules was the result of a deliberate decision made for tactical reasons, nevertheless exercised his discretion in favour of the recalcitrant suitor, would not be acting judicially.

In my view the latter case cited could not be applied to the facts and circumstances of the instant case because there was no evidence that the Respondents had sought any tactical gain, or indeed had even acted deliberately.

The Appellant has conceded that O. 24, R. 16 provides for the exercise of a discretionary indulgence by the Judge but nevertheless argues that there has been an improper exercise of that discretion. The Judge has concluded that there was a genuine attempt on the part of the Respondents to comply with the Order from which it would follow that the failure on their part to

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comply within the specified time was neither deliberate nor contumelious. In the case of Husband's of Marchwood Ltd v Drummond Walker Developments Ltd, 1975, 2 A.E.R. 30, Stamp, L.J. stated:

"I think that RSC Ord 24, R 16(1), is designed to secure compliance with the rules and orders of the Court relating to discovery, and not to punish a party for not having complied with them within the time limited for the purpose. I think normally - there may be exceptional circumstances - that an order which is not aimed to achieve that result is prima facie wrong, wrong either because it is not within the terms of RSC Ord 24, R 16(1), a point on which I express no opinion, or, if within the terms, is a wrong exercise of the discretion of the court."

On consideration of all the facts and circumstances I am of the view that the Judge acted judicially in refusing the application to strike out the defences, and that in so doing his decision was neither unjust nor wrong, but a valid exercise of the Court's discretion. I would, however, allow the appeal in part, discharge the Order, and in its place substitute an order that the time allowed for a proper inspection of the Respondents' documents listed be extended to 15th March 1978. The Appellant should have his costs here and in the Court below to be taxed and to be paid in any event.

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(N.A. Peterkin)  
JUSTICE OF APPEAL

I agree.

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(R.A. Nedd)  
JUSTICE OF APPEAL (ACTING)

I also agree.

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(Sir Maurice Davis)  
CHIEF JUSTICE