

SAINT LUCIA

IN THE COURT OF APPEAL

CIVIL APPEAL NO.12 OF 1997

BETWEEN:

DR. VAUHGN LEWIS

Appellant

and

[1] **THE ATTORNEY GENERAL OF ST.LUCIA**
[2] **MONICA JOSEPH**

Respondents

AND

CIVIL APPEAL NO.14 OF 1997

BETWEEN:

SIR JOHN G. M. COMPTON

Appellant

and

[1] **THE ATTORNEY GENERAL OF ST. LUCIA**
[2] **MONICA JOSEPH**

Respondents

Before: The Hon. Mr. Albert N.J. Matthew Justice of Appeal [Ag.]

Appearances:

Mr. K. Monplaisir Q.C. for Appellants

Mr. D. Theodore for Respondents in No.12 of 1997

Ms. M. Samaru, Solicitor General, for Respondents in No.14
of 1997

1998: March 5 and 19

Administrative law – Commission of Inquiry – Application for leave to appeal to the Privy Council against a judgment of the Court of Appeal on ground that the questions in the appeal are such as ought to be submitted to the Privy Council – Whether the questions involved in the appeal can be

considered of great general or public importance, or otherwise, such that it ought to be submitted to the Privy Council – Interpretation and application of section 108 of the Constitution – Whether the fact that there was no new principle of law which required the determination of the Privy Council precluded the granting of leave by the Privy Council – Legal consequences of an incomplete or inadequate affidavit in support of an application for leave – **Barbados Sugar Industry Ltd. v Barbados National Bank [No.2]** [1995] 50 W.I.R. 64 distinguished. Conditional leave granted to the applicants as prayed, on the usual conditions [stated].

JUDGMENT

MATTHEW J. A. [AG.]

[In Chambers]

This judgment is in respect of two applications which were filed by the Respondents on March 2, 1998 for leave to appeal from two decisions of the Court of Appeal to Her Majesty in Council. The cases were heard one after the other but I think I can conveniently deal with them in one judgment.

In Civil Appeal No 12 of 1997 one of the grounds of the application is stated to be that the matter which is intended to be appealed is a final decision in civil proceedings where the question involved in the appeal is one, that by reason of its great general and/or public importance, ought to be submitted to Her Majesty in Council.

By paragraphs 2 and 3 of the motion for leave to appeal the Respondents allege the reasons where the Court erred when it delivered its decision in this matter on February 9, 1998 and by paragraph 4 the Applicants aver their readiness to faithfully abide by any condition as may be imposed upon them by the Court.

There is appended to the notice of motion a rather terse affidavit by the solicitor of merely three paragraphs with the

third paragraph expressing an intention to rely on the grounds of the application as set out in the notice of motion.

In Civil Appeal No. 14 of 1997 the Applicants state that the appeal involves the following questions among others:

- (a) "Whether the Appellant Sir John Compton was a person subject to an inquiry by Commissioner Monica Joseph, CBE within the meaning of the provisions of section 18 of the Commissions of Inquiry Ordinance;
- (b) Whether upon an application for certiorari the Court is entitled to give a declaratory judgment of the nature given on the appeal herein;
- (c) Whether proceedings by way of certiorari were appropriate to prevent the work of the Commission being carried out in accordance with its terms of reference;
- (d) Whether bias on the part of the Commissioner was established on the evidence adduced to warrant intervention by the Court in the proceedings of the Commission;
- (e) Whether the statutory provisions in the Commission of Inquiry Ordinance vesting power in the Commission to regulate its own procedure operated to prevent interference in its proceedings by way of judicial review before it embarked upon its inquiry and made a report to the Governor General;
- (f) Whether the order made by the Court of Appeal was proper upon the application made by the Appellant for judicial review;
- (g) Whether and in what circumstances a Commission of Inquiry is subject to judicial review under the Rules of the Supreme Court in respect of its rulings concerning who is the subject of its inquiry or who are persons concerned in the inquiry in respect of its rulings in respect of persons who have a right to be or are granted leave to be

represented prior to the Commission embarking upon its inquiry and making its report.”

There is also a solicitor’s affidavit in support of that application the contents of which are slightly better than the previous one.

It is noticeable here that the solicitor in her affidavit states that the Respondents are seeking leave “to appeal to Her Most Gracious Majesty in Council against the said judgment of the Court of Appeal on the ground that the questions in the appeal are such as ought to be submitted to Her Majesty in Council.”

Learned Counsel for Respondents in the first case as well as the learned Solicitor General in the presentation of their applications sought the leave of the Court by virtue of Subsection [2][a] of Section 108 of the Constitution of Saint Lucia. I shall set out the provision in full later on in the judgment.

Mr. Theodore submitted that the matter had generated great public attention in the press and this attests to its great public importance not to mention the fact that the Commission of Inquiry is a public inquiry concerned with inquiring into the conduct of certain officials in their public capacities. All of these, he said, go to show the questions involved here are of great general and public importance.

Ms Samara submitted that the questions raised in the motion go to the root of the judgment, not only to the law of bias, but also to the jurisdiction of the Court in matters involving a commission of inquiry.

Learned Senior Counsel for the Appellants opposed the application. Counsel quite rightly pointed out that the applications did not lie as of right but were dependent upon the discretion of the court and in support of that submission

Counsel cited the case of **LOPES v VALLIAPPA CHETTIAR 1968 2 AER 136 AT PAGES 138/139**. I think Counsel referred to this case because of the last few lines of page 139. The case is not relevant to these proceedings for it is dealing with the discretion of the Judicial Committee of the Privy Council to grant special leave. That situation is akin to the provision set out at Section 108 [3] of the Constitution and as I have already indicated the applications here are under Section 108 [2][a].

Learned Senior Counsel then attacked the incompleteness or inadequacies of the affidavits in support of the application and as authority in this respect he cited **BARBADOS SUGAR INDUSTRY LTD v BARBADOS NATIONAL BANK and OTHERS [NO.2] [1995] 50 W.I.R. 64**.

Counsel further submitted that there was no new principle of law which required the determination of the Privy Council; that the gravamen of the case was bias and the legal principles relating to bias were well settled. In this context Counsel cited the following cases:

ETOILLE COMMERCIALLE S.A. v OWENS BANK 1993 45 WIR 136;

LA CITE DE MONTREAL v LES ECCLESIASTIQUES DU SEMINAIRE 1889 AC 660 and 662;

THORNTON v POLICE 1962 3AER 88.91.

The last two cases do not assist in the determination of this matter.

Section 108 of the 1978 Constitution of Saint Lucia pertains to appeals to Her Majesty in Council and is as follows;

[1] 108.- An appeal shall lie from decisions of the Court of Appeal to Her Majesty in Council as of right in the following cases-

- (a) final decisions in any civil proceedings where the matter in dispute on the appeal to Her Majesty in Council is of the prescribed value or upwards or where the appeal involves directly or indirectly a claim to or question respecting property or a right of the prescribed value or upwards;
- (b) final decisions in proceedings for dissolution or nullity of marriage;
- (c) final decisions in any civil or criminal proceedings which involve a question as to the interpretation of this Constitution; and
- (d) such other cases as may be prescribed by Parliament.

[2] 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) decisions in any civil proceedings 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; and
- (b) such other cases as may be prescribed by Parliament.

[3] An appeal shall lie to Her Majesty in Council with the special leave of Her Majesty from any decision of the Court of Appeal in any civil or criminal matter.

[4] References in this section to decisions of the Court of Appeal shall be construed as references to decisions of the Court of Appeal in exercise of the jurisdiction conferred by this Constitution or any other law.

[5] In this section the prescribed value means the value of fifteen hundred dollars or such other value as may be prescribed by Parliament.

[6] This section shall be subject to the provisions of section 39[7] of this Constitution."

The Applicants have come to this Court under subsection [2] of section 108 of the Constitution.

I agree with learned Counsel for the Appellants that the affidavits in support of the motions are extremely terse and of terse themselves say nothing in support of the motions as they could or probably should. The consequences of such short-comings in other proceedings could result in dire consequences, for example, in applications for leave to serve notice of appeal out of time under Order 3 Rule 5 and Order 64 rule 6[2] of the Rules of the Supreme Court. Only last month in **RAMSGATE RESOURCES N.L. and OTHERS and P.H. NOMINEES LTD** I refused such an application.

Order 64 Rule 6[2] requires that every application for extension of time when made to a judge of the Court...shall be supported by an affidavit setting forth substantial reasons for the application and by grounds of appeal which prima facie show good cause therefor.

In such applications the judge is required to examine the content of the affidavit.

Learned Counsel relied on the Barbados Sugar Industry Ltd. case as authority to show that where the affidavit was insufficient leave to Her Majesty's Privy Counsel will be refused. With respect I do not consider the case to be laying down any such authority. First of all at page 66 letter d Sir Frederick Smith J. A. who delivered the judgment of the Court said

"There is no doubt in my mind that in law section 64[2] cannot apply since the payment of remuneration to Court appointed receivers cannot be a question of general or public importance or such as otherwise ought to be submitted to Her Majesty in Council for decision".

Section 64[2] of the Supreme Court of Judicature Act of Barbados has a similar provision as is contained in section 108[2][a] of the Constitution of Saint Lucia. Sir Fred Smith said quite bluntly the issue in the case before him was not a matter of great general or public importance or one which otherwise ought to be submitted to Her Majesty in Council.

The Court had to deal with the application under another jurisdictional head. It was then it considered that the applicants who wanted leave were in default, that is in contempt, of the order of the High Court for over 14 months, did not know when they were going to comply with the order and whose affidavit failed to set out necessary facts on which Sir Frederick Smith J. A. could exercise his mind concerning his discretion to grant leave to appeal.

Section 108[2][a] of the Constitution of Saint Lucia requires the Court to form its opinion on the question involved in the appeal. Learned Counsel for the Appellants has submitted that there is no principle of law that requires determination, only on application of the principle.

In the case of *Etoille* at page 141 Sir Vincent Floissac gave the reason why it was of great general or public importance or the matter otherwise ought to be submitted to Her Majesty in Council and in that case the reason seems to have been a valid one, that is clarification of the law; but there can be other reasons why a matter ought to be submitted to Her Majesty in Council for decision.

The obvious question involved here was whether a person who was a judge of the High Court for 13 years and who was denied an extension of two additional years' service by a body where the voting

rule is unanimity would necessarily be bias in dealing with an issue involving a person who was part of the body making the decision.

Learned Counsel for the Appellants said the law is clear and it is only the application that gave the problem. Now if application of a law gives a problem does it become less a matter of general or public importance than if the law is unclear? In Civil Appeal 12 of 1997 the decision of the Court was by a majority of 2 – 1.

The learned Solicitor-General has raised important jurisdictional questions that need settlement. And Mr. Theodore has advocated that the Court of Appeal misdirected itself by applying the test in *R v Sussex Justices* case while paying lip service to the “real danger” test and I presume he means the test laid down in *R v Gough* 1993 2 AER 724.

An issue in these proceedings which may have gone unnoticed but which was argued before the trial judge and the Court of Appeal is whether the Attorney General should, or should not, be a proper party to the proceedings.

It seems to me that section 108[2][a] requires the Court to consider either whether the question involved in the appeal is one that by reason of its great general or public importance ought to be submitted to Her Majesty in Council or besides being of great general or public importance it ought to be so submitted.

I am of opinion that the questions involved in the appeal are by reason of their general or public

importance or otherwise ought to be submitted to Her Majesty in Council.

I therefore grant leave to the Applicants as prayed on the usual conditions, that is -

- [1] that within 90 days the Applicants shall deposit in Court the equivalent of £500 or shall enter into good and sufficient security to the satisfaction of the Court for the due prosecution of the appeal and for the payment of the costs referred to in Section 5[a] of Statutory Instrument No. 224 of 1967. [The Appeals to Privy Council Order].
- [2] that within 120 days the Applicants shall take the necessary steps for the purposes of procuring the preparation of the record and the dispatch thereof to England.
- [3] that within 120 days the Applicants shall apply to the Court for final leave to appeal.
- [4] that the costs of this application shall be costs in the appeal.

A. N. J. MATTHEW
Justice of Appeal [Ag.]