IN THE COURT OF APPEAL

IN THE EASTERN CARIBBEAN SUPREME COURT

SAINT CHRISTOPHER CIRCUIT

Civil Appeals Nos. 4, 5 & 6 of 1998

BETWEEN:

Rt. Hon. Dr. Kennedy Alphonse Simmonds — **Plaintiff/Appellant**

and

Randolph Williams — **1st Defendant/Respondent**
The Attorney-General — **2nd Defendant/Respondent**

BETWEEN:

Richard Llewellyn Caines — **Plaintiff/Appellant**

and

Randolph Williams — **1st Defendant/Respondent**
The Attorney-General — **2nd Defendant/Respondent**
Hon. Dr. Denzil Douglas — **3rd Defendant/Respondent**

BETWEEN:

Hugh Carlisle Heyliger — **Plaintiff/Appellant**

and

Randolph Williams — **1st Defendant/Respondent**
The Attorney-General — **2nd Defendant/Respondent**
Hon. Dr. Denzil Douglas — **3rd Defendant/Respondent**

Appearances: Miss Constance Mitcham, Mr. Vernon Veira, Mrs. Lillian Benjamin-Matthew and Miss Marissa Hobson with her for the applicants.
Mr. Damien Kelsick for Randolph Williams.
Mr. Delano Bart, Attorney-General in person and for Dr. Denzil Douglas, Miss Karen Hughes is with him.

[March 10:12: 1999]

JUDGMENT

SATROHAN SINGH JA [CHAMBERS]

This is an application by the appellants for an Order to stay the proceedings of a Commission of Inquiry established by Letters Patent under the Public Seal dated July 28, 1997, until the final determination of their appeals. The application is

supported by an affidavit from Dr. Kennedy Simmonds. The respondents have filed no affidavits in response.

THE ORIGIN:

By Originating Summonses filed during the latter half of the year, 1997, the appellants moved the High Court for orders to quash the appointment of the Commission on the grounds inter alia (1) of material irregularities occurring in the purported appointment of the said Commission, (2) that the appointment and powers of the sole Commissioner, the first named respondent, were null and void and of no effect, (3) that the gazetted terms of reference were vague and were therefore null and void and of no effect, contrary to the Commissions of Inquiry Act Cap. 288 of the Laws of the Federation, and (4) of bias and partiality.

The matter was heard by **Neville Smith J** and on November 10, 1998, the Learned Judge dismissed the summonses and refused the orders prayed for therein. The appellants have appealed from that judgment to this Court.

THE APPLICATION:

In support of their application for the stay of the Inquiry, the affidavit of Dr. Simmonds, states that the Commission of Inquiry was being challenged on the grounds of its Aconstitutionality, illegality, in addition to its breach of the rules of natural justice and more specially bias of the Counsel and staff of the Commission.@ This deponent also averred in his affidavit that AIf the Commission is allowed to continue airing its proceedings on radio and television to the Nation and throughout the region and the Court of Appeal finds in favour of the Plaintiff/Appellants, it

would mean that our constitutional rights would have been violated on a daily basis for over a period of two years and our reputation destroyed without recourse.@ This applicant also swears that AIn his judgment, His Lordship Mr. Justice Neville Smith found as a fact that both Counsels to the Commission Lee L. Moore, Q.C., and Dr. Henry L. Browne, the latter being lead Counsel to the Commission Amight be predisposed to disfavour the 1st named Plaintiff/appellant, The Rt. Hon. Dr. Kennedy Simmonds@ and that having so found he ought to have found in favour of the said 1st named Plaintiff/Appellant and by extension the other two Plaintiffs/Appellants as they were Ministers in the Government headed by the 1st named Plaintiff/Appellant.@ Finally, he says, that the appellants were of the view that if the proceedings of the Commission of Inquiry were to continue and this Court were to find in their favour on the appeal, irrevocable damage would have been done to their reputation and character.

THE LAW:

Jurisdiction to hear this application is given to this Court by **R 27** of the **Court of Appeal Rules, 1968**. By this power, a single judge of the Court of Appeal in any cause or matter pending before the Court, may hear, determine and make orders on any interlocutory application placed before him. The instant application is interlocutory to the appeals and calls for an order to stay the proceedings of the aforementioned Commission of Inquiry pending the determination of these appeals. It is accepted that an appeal **per se** does not operate as a stay except to the extent that the Court below or the Court of Appeal otherwise directs. An application of this nature is a matter for the exercise by the Court of its judicial discretion. This discretion is wide and unfettered and in its exercise, the Court should try to maintain

a fair and proper balance between the needs of the parties. The Court ought not to grant the stay unless there are good reasons for so doing. It is recognized that the Court does not make a practice of depriving a successful litigant of the fruits of his litigation. This applies not merely to execution but to the prosecutor of proceedings under the judgment or order appealed from e.g. inquiries into the accounts of a company **(See Shaw -v- Holland (1900) 2 Ch 305).** But, a Court is likely to grant a stay where the appeal would otherwise be rendered nugatory **(See Wilson -v- Church (No.2) (1879) 12 Ch. D 454)** or where the appellant would suffer loss which could not be compensated in damages. If the special circumstances of the case so require, the stay should be granted. If there are prima facie, no arguable grounds of appeal the stay should be refused. It is therefore always most prudent to decide that issue first.

THE SEVERAL ISSUES:

I have had the opportunity of perusing the judgment of the trial judge and the grounds of appeal filed in this matter. Arguments peripheral to the merits or demerits of the appeal were advanced by both sides for my consideration to assist in the exercise of my discretion. Cases such as **In Re Pinochet** decided on December 17, 1998 in the **House of Lord**s, and **Smyth -v- Ushewokunze and Another** from **Zimbabwe** (1998) 2 BCLR 170 [ZS] were brought to my attention. At this time, however, I am not required to say what the merits or demerits of the appeal may be. The most I am required to say is whether there are arguable grounds of appeal. I am satisfied from the arguments advanced that there are arguable grounds of appeal.

The Learned Attorney-General advanced the further argument that in order for

this application to be successful, the applicants must show that there is more than a state of affairs with which they are unhappy. They must show that they would stand to lose something tangible if their appeals were successful. I agree with this proposition. Learned Counsel further submitted that for loss of reputation or for breach of their constitutional rights, damages would be an adequate remedy.

Having found arguable grounds of appeal, and after considering the issues to be decided on the appeal and those aspects of the affidavit of the applicant Kennedy Simmonds reproduced in this judgment, I am of the considered opinion that should the application be refused, and the appellants succeed in their appeals, the appeals would have been rendered nugatory, as in all probability, the Inquiry would have been proceeded with and possibly ended in its alleged illegal status maybe before the appeals were determined. Also, because of the public daily airing of the Inquiry over the electronic media, the length of time occupied by the Inquiry, the fact as disclosed in the judgment of the Court below that the appellants are all politicians, the fact that the Inquiry is investigating certain aspects of their administration when they were the Government, and the fact of certain provisions of the Commissions of Inquiry Act Cap 288 which appear to clothe the Commissioner and witnesses at such inquiry with a certain amount of immunity, it is my opinion, that there is a possibility, prima facie, should the application be refused and the appeals allowed, that the loss the appellants may suffer could not be compensated in damages. Given these factors, I am of the view that the applicants have discharged the burden placed on them to show that there is more than a state of affairs with which they are unhappy. The respondents have produced no evidence to show any prejudice or hardships on their part should the application be granted.

CONCLUSION:

In the exercise of my judicial discretion therefore, and in an effort at maintaining a fair and proper balance between the needs of the parties, I would grant the application and stay the full proceedings of the Commission of Inquiry until the final determination of these appeals. Both the Learned Attorney-General and Learned Counsel, Mr. Kelsick had submitted that should the Court grant the stay, the order to be made should be limited to the proceedings as they related to the appellants only and not to the entire Inquiry. In the context of this matter, I cannot agree with this submission. In my judgment, the legality or otherwise of the Commission of Inquiry being one of the challenges to be resolved by the appeal, it would not be correct to limit the order as suggested by Counsel for the respondents. Had this challenge not been there, and had the alleged bias been the only challenge, I would certainly have found merit in this submission. Costs of this application will be costs in the appeal.

Because of the importance of the issues involved in these appeals, and the effect this judgment will have on the progress of the Inquiry, I would suggest that the Registrar of the Court below continue to do her utmost at making available to the appellants at the earliest possible time, the notes of the trial judge, so that the appeals could be prosecuted with due despatch, unless of course neither side would be prejudiced by the absence of those notes and the parties agree to dispense with them.

SATROHAN SINGH
Justice of Appeal