

SAINT LUCIA:

**IN THE HIGH COURT OF JUSTICE
(Civil)**

No: 167 of 1999

Between:

**ADOLPH EDWARDS
ANDERSON CHARLES
PAULINUS STEPHEN
PAULINUS MASON**

Petitioners

.vs

COMMISSIONER of POLICE

Respondent

Appearances:

Mr. Parry Husbands Q.C. for the Petitioner
Mr. P. Thompson for the Respondent

1999:July 16th and 19th

JUDGMENT

d'AUVERGNE J. (In Chambers)

The Petitioners filed an ex parte application headed "Petition supported by affidavits of the Petitioners against the Respondent seeking the following:

That an injunction be granted restraining the Defendant from placing or causing to be placed any signs or structures on Monday and Tuesday the 19th and 20th inst. on:

- (a) That part of Peynier Street between its junction with Jeremie Street in the North and St.Louis Street between its junction with Peynier Street on the West and Chaussee Road on the East
- (b) That part of St.Louis Street between its junction with Peynier Street on the West and Chaussee Road on the East

designated as bus stands by the Licensing Authority under section 91 of the Motor Vehicles and Road Traffic Act, No.13 of 1994; the Defendant's action described above being for the purpose of facilitating Carnival Bands and Revellers.

At 4.45 p.m. Friday the 16th day of July 1999 learned Senior Counsel on behalf of the Petitioners informed the Court that he wished to be heard on an important and urgent matter and his request was granted.

Upon perusing the documents I noticed that none of the four Petitioners in their affidavits had given an undertaking as to damages. Thereupon I pointed out to Counsel that an injunction could not be granted unless the Petitioners had given an undertaking as to damages. He replied that he did not think that it was necessary in this case.

I then gave an order that the Respondent be served and that the matter was adjourned to Monday, 19th July 1999 (Carnival Monday).

On Monday 19th July 1999 at 9.30a.m. the matter was heard in Chambers. It is to be noted that an additional paragraph, paragraph 5, was added to the affidavit of each and every Petitioner in the following words: "I undertake to pay any damages caused by this injunction".

Learned Senior Counsel contended that the placing of signs and structures along Peynier Street/St.Louis Street on the 19th and 20th of July would affect the livelihood of the Petitioners and that the Respondent in so doing did not comply with section 89 of the Motor Vehicle and Road Traffic Act 1994 which states that the placing of such signs and structures must be published in the Gazette and one local newspaper.

He argued that should any of the Petitioners contravene the request as stated by the signs and structures, section 213 of the said Act lays down a fine of \$500 and that the offender can even be arrested.

Learned Counsel for the Respondent informed the Court that he was not served, that he had not even seen the application and that he did not even know the Petitioners. Learned Senior Counsel replied that he had spoken to the Solicitor General on Friday and Counsel himself on Saturday

Conclusion

This application is replete with errors. First of all, the application does not indicate under what Authority it is brought.

In St.Lucia an injunction can either be brought pursuant to Article 841-850 of the Code of Civil Procedure 1957 or under Order 29 of the Rules of the Supreme Court, 1970. This application is by way of Petition, so I have concluded that it was meant to be pursuant to Act 841-850 of the Code of Civil Procedure 1957.

"Article 841 provides:

The application for a writ of injunction is made by petition to the Supreme Court or Judge, supported by affidavit setting forth the facts of the case and containing the necessary conclusions. It may be granted unconditionally, or upon such terms as the Court or Judge may think.

Article 842:

The Court or Judge may order the issue of the writ ex-parte, or may order that the petition be served upon the adverse party before giving judgment thereon. But no injunction shall be granted unless the Plaintiff gives an undertaking or security to the satisfaction of the Court or judge for the payment of any damages which may be caused by the issuing of the writ."

This application in my judgment is not for an interlocutory injunction since the object of an interlocutory injunction is to preserve matters pending the trial of matters in dispute. As I see it, this is a perpetual injunction albeit for 2 days 19th to 20th July 1999.

Halsbury's Laws of England, 4th Edition, Vol. 24 para.926 provides "*Prima facie* the Court will not grant an injunction to restrain an actionable wrong for which damages are an adequate remedy. Where the Court interferes by way of injunction to prevent an injury in respect of which there is a legal remedy, it does so upon either of two distinct grounds. First, that the injury is irreparable, and second, that it is continuous. By "irreparable injury" is meant injury which is substantial and could never be adequately remedied or atoned for by damages."

It was contended that the Petitioners would lose their livelihood \$200.00 two hundred dollars a day for two days. This, in my opinion, is a

case where damages are an adequate remedy. The injury is capable of being estimated in money. This is a matter which should be argued between the parties and an order was given to that effect which was not obeyed.

Finally, the Court has no power to issue an injunction against the Crown. The commissioner of Police is an Officer of the Crown and the effect of an order of injunction against him would be to give relief against the Crown.

The application was dismissed.

There was no order as to costs.

Learned Senior Counsel gave Notice of Appeal in Chambers. There was no Secretary on 20th. Moreover, the Court has been without a printer for the past six months hopefully, this judgment will be printed and delivered on the 21st of July, 1999.

SUZIE d'AUVERGNE
High Court Judge


Suzie d'AUVERGNE
High Court Judge