

SAINT LUCIA

IN THE COURT OF APPEAL

CIVIL APPEAL NO.13 OF 2000

BETWEEN:

IAN THE HARDING
Administratrix of the Estate of
ALFRED HARDING
Deceased

[Substituted by Order of this Court dated January 30, 2001]

Appellant

and

[1] **THE SUPERINTENDENT OF PRISONS**
[2] **THE ATTORNEY GENERAL OF ST. LUCIA**

Respondents

Before:

The Hon. Sir C.M. Dennis Byron
The Hon. Mr. Albert Redhead
The Hon. Mr. Joseph S. Archibald

Chief Justice
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

Mr. Martinus Francois for the Appellant
Ms. Louise Blenman, Solicitor General and Ms. Cheryl Mathurin for the Respondents

2001: May 21;
September 17.

JUDGMENT

[1] **BYRON, C.J.:** The appellant applied for leave to appeal to the Privy Council against a decision of the Court of Appeal given on February 26th 2001, either as a matter of right under the provisions of Section 108(l) (c) of the Constitution or in the alternative under section 108(2) (a) of the Constitution.

[2] Section 108 (1) (c) of the constitution reads as follows:

"An appeal shall lie from decisions of the Court of Appeal to Her Majesty in Council as of right in the following cases:-

- (a) ...
- (b) ...
- (c) final decisions in any civil or criminal proceedings which involve a question as to the interpretation of this Constitution;"

[3] Section 108(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

[4] The respondents have opposed the application. In relation to the application of section 108(1) (c) they have submitted that no question of interpretation of the Constitution was alleged, that no principle of law is in dispute and that the appeal raises questions only as to the application of the facts. In relation to section 108(2) (a) they have denied that any question of great general or public importance is involved.

[5] The respondent's task although supported by numerous authorities was an uphill one. The proceedings had been commenced by an amended notice of motion which was entitled

"In the matter of the Constitution of Saint Lucia contained in the Saint Lucia Constitution Order S.I. No. 1901 of 1978

And

In the Matter of an Application by the Applicant a person alleging that certain of the fundamental rights and freedoms enshrined, guaranteed and secured by virtue of Sections 3 and 5 of the said Constitution has been, is being or likely to be contravened in relation to him and is entitled to redress in accordance with Section 16 of the said Constitution.

And

In the Matter of Section 13 (2) of the Crown Proceedings Ordinance Chapter 13 of the Revised laws of Saint Lucia 1957 whereby the Attorney General is the person against whom proceedings against the State are to be commenced."

[6] After trial the learned trial judge delivered the judgment which was the subject of the appeal before the Court of Appeal. The judgment contained declarations that:

- "a. ...the mechanical restraint with chains secured with two padlocks tied to the ankles of the Applicant on 31st day of August 1999 for a continuous period of ten (10) months and fifteen (15) days until 15th day of June 2000 without any removal amounted to torture or inhuman or degrading punishment contrary to Section 5 of the Constitution of St. Lucia.
- b. ...the removal of the said mechanical restraint and its replacement whenever the Applicant visits the bathroom or whenever the Applicant is visited by his legal adviser amounted to torture or inhuman or degrading punishment contrary to Section 5 of the Constitution of Saint Lucia.
- c. ...the cellular confinement of the Applicant since 31st day of August 1999 and continuing to the present time without break and ordered by the Superintendent of Prisons amounted to inhuman or degrading punishment contrary to Section 5 of the Constitution of Saint Lucia."

[7] Damages were also assessed at \$25,000.00 with costs to be taxed if not agreed.

[8] The appellant appealed against the judgment on grounds which contended that the trial judge was wrong to reject certain of his other complaints of torture, inhuman and degrading punishment or treatment and contended that the trial judge erred in the assessment of compensatory damages and in her failure to award aggravated and exemplary damages.

[9] The respondent served a respondent's notice contending that the declarations or orders that the fundamental rights and freedoms of the appellant guaranteed by section 5 of the constitution were contravened should be set aside and that the order awarding damages should be set aside.

[10] The Court of Appeal dismissed the appeal, allowed the cross appeal and set aside the orders of the trial judge. In its conclusion it held that the appellant had failed to prove that what was done to him attained the required minimum level of severity to bring it within the scope of Section 5 of the Constitution and that the trial judge ought to have declined to hear the matter because there was adequate means of redress for the contravention of the

prison rules under the law concerned with prerogative writs as provided for by Section 16 of the Constitution.

- [11] The respondent submitted that the court should apply the principle that leave would not be granted unless there is a genuinely disputable question of interpretation as opposed to the application of facts. There were a number of authorities in support of this statement of the law.
- [12] In **Harrikissoon v the Attorney General of Trinidad and Tobago (1980) AC 265**, the point was clearly made by the Privy council that the notion that whenever there is a failure by an organ of government or a public authority or public officer to comply with the law this necessarily entails the contravention of some human right or fundamental freedom guaranteed is fallacious. Courts are encouraged to be vigilant against abuse of the process and summarily dispose of applications that are frivolous, in that they do not involve a genuinely disputable question of interpretation of the Constitution. The basis of that ruling was that the case in point concerned only the right of a holder of a public office not to be transferred against his will from one place to another. In their Lordships view this could not reasonably be conceived as being included among the fundamental rights and freedoms specified in Chapter 1 of the Constitution.
- [14] In **Joseph v the State of Dominica (1988) 36 WIR 216** the Privy Council held that the question whether a case has had a fair hearing is not a question of interpretation but a question of fact.
- [15] In **Alleyne-Forte v Attorney General (1997) 52 WIR 480** the Privy Council concluded that the finding that the police had towed away the appellant's vehicle which had been illegally parked did not give rise to an infringement of the appellant's rights to enjoyment of his property under section 4 of the Constitution nor his rights to protection of law under section 5.

[16] This case however, is quite different to those cited. In this case the issue concerned the shackling of a prisoner for an extended period of time, and his cellular confinement. The question of whether the conduct found constitutes the minimum level of severity to bring it within the scope of Section 5 of the Constitution does involve a question as to the interpretation of Section 5, and the question of whether the judge's discretion to hear the motion was prohibited, particularly in circumstances where the appellant contends and the respondent denies that the conduct complained of contravenes the fundamental rights provisions of the Constitution, does involve the interpretation of Section 16 of the Constitution. In my view it is neither necessary nor appropriate for any assessment of the prospects of success of the particular interpretation proposed by either party. It is only necessary to determine whether there is a genuine question in dispute as to the interpretation of Sections 5 and 16 of the Constitution. In my view therefore there is an appeal as of right under section 108 (1) (c) of the Constitution.

[17] It is therefore unnecessary to consider the alternative question under Section 108 (2) (a).

[18] I would therefore grant conditional leave as prayed.

Sir Dennis Byron
Chief Justice

I concur

Albert Redhead
Justice of Appeal

I concur

Joseph Archibald
Justice of Appeal [Ag.]