

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. 84 OF 2000

BETWEEN:

IN THE MATTER OF THE EASTERN CARIBBEAN SUPREME COURT (SAINT VINCENT AND THE GRENADINES) ACT CHAPTER 18 OF THE LAWS OF SAINT VINCENT AND THE GRENADINES, REVISED EDITION 1990 SECTION 76 AND PARAGRAPHS 3 AND 4 OF BARRISTERS AND SOLICITORS RULES, BOOKLET 4.

AND

IN THE MATTER OF UNPROFESSIONAL CONDUCT BY SAMUEL E. COMMISSIONG A BARRISTER AND SOLICITOR

AND

IN THE MATTER OF AN APPLICATION FOR A RULE TO ISSUE TO SAMUEL E. COMMISSIONG BARRISTER AND SOLICITOR TO SHOW CAUSE WHY HE SHOULD NOT BE SUSPENDED OR STRUCK OFF THE ROLL OF BARRISTERS/SOLICITORS

AND

IN THE MATTER OF THE APPLICATION OF CARL L. JOSEPH ATTORNEY GENERAL OF SAINT VINCENT AND THE GRENADINES.

Appearances:

Mrs. Paula David, Solicitor General, Mr. Jaundy Martin with her, for the applicant.
By leave of the court and without objection by Counsel for the applicant, Mr. P. R. Campbell for Mr. Commissiong, respondent.

2001:October 8, 9.
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JUDGMENT

ALLEYNE J.

[1] This application is made pursuant to the Eastern Caribbean Supreme Court (Saint Vincent and the Grenadines) Act, Barristers and Solicitors Rules (Booklet 4), Rule

4, for a rule to issue to Samuel E. Commissiong, a Barrister and Solicitor, to show cause why he should not be suspended or struck off the roll of Barristers/Solicitors. The application is supported by the affidavits of Carl Lawrence Joseph, at the time of filing Attorney-General of Saint Vincent and the Grenadines, Judith Stephanie Jones-Morgan, at the time of filing the acting Registrar of the Supreme Court, and Margaret Hughes Ferrari, a Barrister and Solicitor of the court, to which affidavits various documents are exhibited.

- [2] In essence, the affidavits allege that Samuel E. Commissiong, hereinafter the Barrister, acting as the Solicitor for Gourmet Foods (St. Vincent) Limited (Gourmet Foods) in an intended action against Friendship Bay Hotel Limited (Friendship Bay), sent to an associate in Europe a document appearing on its face to be a judgment in default of appearance, over the signature of the Registrar of the Court, and appearing to carry the seal of the court, in an action between Gourmet Foods as plaintiff and Friendship Bay as defendant, whereby it would appear that judgment in default of appearance had on a given day in July 1999 been entered for the plaintiff against the defendant for a specific sum of money. The document differed from a perfect judgment in default of appearance properly issued by the court only in the minor detail that it lacked a case number.
- [3] In early August 1999, apparently on a date earlier than August 13, the Managing Director of Friendship Bay informed Hughes that he had been advised by a colleague in Sweden that there was a judgment of the court entered against the company in a suit brought by Gourmet Foods. On that date there was apparently no such action filed in the court office/Registry.
- [4] On August 13 1999, Friendship Bay was served with a writ endorsed with a statement of claim in suit No. 401 of 1999, Gourmet Foods being the plaintiff. On the same day Hughes entered an appearance to the action on behalf of Friendship Bay.

- [5] On August 18, 1999, Hughes received from her client by FAX a copy of what purported to be a default judgment in a suit between the same parties, dated some time in July 1999, together with a copy of what appeared to be a letter from the Barrister to one Anders Hedberg, dated August 13 1999, which refers to "the case against Friendship Bay Hotel" and says "We have enclosed a copy of the default judgment for your records."
- [6] Hughes caused the matter of the purported judgment in default to be brought to the attention of the acting Registrar on August 23, 1999, and after investigations, the acting Registrar determined that the signature on the document purporting to be her signature was not in fact her signature, nor had such an order been made or filed with the court.
- [7] The acting Registrar sought an explanation from the Barrister, who stated that he "had prepared the document which he had forwarded to a Swedish colleague as a precedent of what such an order would look like when finalised."
- [8] The acting Registrar brought the matter to the attention of the Attorney-General by letter, soon after which the Barrister set up an appointment with the Attorney-General to discuss the matter. At their meeting which followed, the Barrister promised to put his explanation of the matter in writing in a letter to the Attorney-General, which he did in a copy of a letter dated September 1, 1999, addressed to the Registrar and copied to the Attorney-General. The Barrister later sought and obtained a further audience with the Attorney-General, which took place on or about October 31, 1999.
- [9] By letter dated October 29, 1999, the Saint Vincent and the Grenadines Bar Association sought the assistance of the Attorney-General in its efforts to inquire into and report on the matter. The Attorney-General filed his application for the issue of a Rule on February 18, 2000.

- [10] At the hearing of the application Mr. P. R. Campbell, appearing with the leave of the court and with no objection by Counsel for the applicant, made a number of submissions, which I consider largely irrelevant to the issue before me, which is, in my view, as correctly put by Mrs. David appearing for the Attorney-General, whether, on the affidavits, there is ground for a rule to issue requiring the Barrister to show cause why he should not be suspended or struck off the roll. It is not for me to find facts or to determine surrounding circumstances, mitigating or otherwise, nor is it for me to determine what if any penalty would be appropriate if the Barrister is unsuccessful in showing cause. That would be for the tribunal in due course in the event that a rule is issued.
- [11] On the evidence before me I hold that there are grounds sufficient to require the Barrister to show cause and I order that a rule do issue to Samuel E. Commissiong, a Barrister and Solicitor, to show cause why he should not be suspended or struck off the roll.
- [12] It is further ordered that this order and all other documents filed in this matter be served on the said Barrister Samuel E. Commissiong within seven days of this order, and that the said Samuel E. Commissiong be at liberty to file affidavits or other evidence in response within 7 days after service on him in accordance with this order.
- [13] It is ordered that the hearing of this matter take place in accordance with section 76 of the Eastern Caribbean Supreme Court (Saint Vincent and the Grenadines) Act, Chapter 18 of the Laws of Saint Vincent and the Grenadines Revised Edition 1990, in the High Court on Monday October 29, 2001 at 9.00 a.m.

Brian G.K. Alleyne
High Court Judge