

ANTIGUA AND BARBUDA

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 16 OF 2002

BETWEEN:

H.M.B HOLDINGS LIMITED

Applicant/Respondent

and

THE CABINET OF ANTIGUA and BARBUDA
THE ATTORNEY GENERAL FOR ANTIGUA and BARBUDA

Respondents/Appellants

Before:

The Hon Albert Redhead

Justice of Appeal

The Hon Adrian Saunders

Justice of Appeal

The Hon Ephraim Georges

Justice of Appeal (Ag.)

Appearances:

Mr G. Simonette and Mrs T. Benjamin with him for the Applicant

Mr John Fuller for the Respondents

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2003: May 26, 30
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RULING

[1] **REDHEAD J.A.** The Applicant brought this application by way of notice of motion for Conditional Leave to appeal to Her Majesty in Council pursuant to Section 122(1)(a) of the Constitution of Antigua and Barbuda which provides as follows:

- (1) An appeal shall lie from decisions of the Court of Appeal to Her Majesty in Council as of right in the following cases:-
 - (1) 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.”

[2] Learned Counsel for the Applicant argued before us that his application for appeal to the Privy Council is one as of right. He sought to show that the value of the property in dispute is well over the prescribed value. Mr Simonette referred to a passage in the case of **Fisher v Minister of Public Safety and Immigration and Others 1997 4LRC 344 at 359(F)**

[3] I entertain no doubt in my mind that once it is established that the appeal is one as of right, we have no option but to grant leave. But is this appeal, one as of right? Has this Applicant established that this is an appeal as of right?

[4] In the supporting Affidavit sworn by Natalia Querard , the Managing Director of the Applicant except in paragraph seven where passing reference is made to deprivation of property, the allegation in the affidavit does not support the contention that this is an appeal which involves a claim to or a question representing property or a right to property.

[5] Paragraph 7 of the affidavit reads as follows:

“The Respondent/Applicant has sought the protection of the Courts regarding likely deprivation of its property. In the circumstances adjudication by Her Majesty in Council on the Court is crucial.”

[6] In the High Court of Antigua the Applicant brought an ex parte application

for leave to apply for judicial review. In its reliefs the Applicant sought a number of orders, declarations and injunctions. It sought for example an “Order of Certiorari” to remove into the High Court of Justice and quash the decision by the Cabinet of Antigua and Barbuda to acquire in a manner provided by Section 3 of the Land Acquisition Act Cap 233 the Applicant ‘s land as described in the schedule to a resolution passed by Parliament namely the House of Representatives on 12th day of February 2002 and in the Senate on 21 February 2002.

- [7] A declaration that the stated decisions of the Cabinet and the approval of those decisions by Parliament are discriminatory, arbitrary, irrational Wednesbury unreasonable, capricious and affected by bias and null and void, unlawful and of no effect.
- [8] An interim injunction restraining the Cabinet, or the Secretary to the Cabinet or both from commencing the process of acquisition, acquiring, entering, taking possession of and/or in any way the Appellant’s lands in purported pursuit of the provisions of the Act.
- [9] An order of Mandamus directing the Cabinet or Parliament or the Secretary to the Cabinet and all of them not to cause the acquisition of the appellant’s lands.

[10] These are but some of the orders and declarations that the Applicant prayed for in its motion before the High Court. Some of which were granted by Learned Trial Judge.

[11] On appeal by the Applicant/Respondent to the Court of Appeal, the appeal was allowed and the decision of the Learned Trial Judge was set aside. It is from this decision of the Court of Appeal that the applicant wishes to appeal to Her Majesty in Council.

[12] The action brought by the Applicant before the High Court was an administrative action. It challenged the procedural and legislative authority of Parliament.

[13] Indeed in paragraph 6 of Natlia Querard's affidavit she deposed:

“On the advice of Counsel the said questions without limitation touch and concern important matters of procedure in relation to interlocutory appeals from the exercise of a trial judge's discretion and the appropriate fees for interference by an appellate court with such exercise of discretion. As well, the said questions concern substantiative legal concepts such as the correct test to be applied when exercising a discretion to strike out . As well, the said questions concern substantive legal concepts such as the correct test to be applied when exercising discretion to strike out an action which allegedly discloses no reasonable cause of action on grounds in both administrative and constitutional law and the powers of the court to review administrative actions for the Executive and the Legislature in Commonwealth jurisdictions.”

[14] When the action brought by the applicant in the High Court together with its application for leave to appeal to Her Majesty in Council and the supporting affidavit is examined closely one is hard pressed to say that this is an appeal which involves directly a claim to or question respecting property. However, we are of the view that it may, just may be regarded as an appeal which involves indirectly a claim to or question respecting property.

[15] In the circumstance we have no option but to grant conditional leave to the applicant to appeal to Her Majesty in Council.

[16] Mr Fuller, Learned Counsel for the Respondents argued that if we grant conditional leave we should also attach as a condition that the Applicant pay half of the agreed cost which is \$50,000.00 as a condition.

[17] We are of the view that once the Applicant is entitled to leave as of right it would be wrong to attach any condition to it. It would have been otherwise if we had to exercise our discretion in granting the leave.

Albert Redhead
Justice of Appeal

I concur

**Adrian
Saunders**
Justice of

Appeal

I concur

**Ephraim
Georges**
Justice of Appeal

(Ag.)