

SAINT VINCENT AND THE GRENADINES

IN THE COURT OF APPEAL

CIVIL APPEAL NO.23 OF 2001

BETWEEN:

HANSRAJ MATADIAL

Appellant

and

JOHN BAYLISS FREDERICK

Respondent

Before:

His Lordship, The Hon. Sir Dennis Byron

Chief Justice

His Lordship, The Hon. Mr. Albert Redhead

Justice of Appeal

His Lordship, The Hon. Mr. Ephraim Georges

Justice of Appeal [Ag.]

Appearances:

Mr. P. R. Campbell, QC; Mr. McCaulay Peters for the Appellant

Mr. Gilbert Peterson for the Respondent

2003: March 4;
June 30.

JUDGMENT

[1] **BYRON, C.J.:** This appeal was brought to set aside an Order suspending Mr. Matadial from practicing as a Barrister and Solicitor for one month in accordance with The Eastern Caribbean Supreme Court (Saint Vincent and the Grenadines) Act CAP.18, Section 76.

The Preliminary Point

[2] Counsel for the respondent submitted that Mr. Frederick should be removed from the record and the appeal dismissed. He contended that Mr. Frederick was the 'aggrieved party' and not a litigant. He should not have been joined as a party to

the appeal. The proceedings were in essence a disciplinary process, which were neither a civil suit nor criminal prosecution. The Judges who made the Order should have been joined as the responding party.

The Law

- [3] Historically the Judges in England had the right at common law to determine who should be admitted to practice as barristers and solicitors; and, as incidental thereto, the Judges had the right to suspend or prohibit from practice. In England this practice has been delegated so far as barristers are concerned, to the Inns of Court and so far as Solicitors are concerned to the Law Society. In the British Colonies, there were no Inns of Courts and as an essential requirement of the Administration of Justice the Judges retained the same powers in their own hands¹.
- [4] In St. Vincent and the Grenadines these powers have been embodied in the Supreme Court Act. In relation to the power to suspend or prohibit from practice it specifically provides that any two Judges of the High Court may, for reasonable cause, suspend any barrister or solicitor from practising in Saint Vincent and the Grenadines during any specified period, or may order his name to be struck off the Court Roll.²
- [5] The regulations under the Act provide that proceedings to suspend or strike a barrister or solicitor off the roll shall be commenced by an application to a Judge in Chambers for a rule to issue to the Barrister or Solicitor named to show cause why he should not be suspended or struck off the roll, and that such application may be

¹ Re Antigua Justices (1830), 1 Knapp 267, per lord Wynford at 268.

² The Eastern Caribbean Supreme Court (Saint Vincent and the Grenadines) Act CAP. 18; section 76.

made by the Attorney General or by the person aggrieved by the action of the barrister or solicitor complained against³.

- [6] In 1961 similar regulations in the Gambia, were considered by the Privy Council in the case of the **Attorney General of the Gambia v N'Jie**⁴. Lord Denning delivered the judgment of the Court:

“when the Judges exercise this power to suspend or expel, they do not decide a suit between parties. There is no prosecutor as in a criminal case, nor any plaintiff as in a civil suit. The Judges usually act on their own initiative, *ex mero motu*, on information which has come to their notice, or to the notice of one or other of them in the course of their duties; as in **R v Southerton** (1805), 6 East 126, at p.143 and **Har Prasad Singh v Judges of Allahabad High Court** (1931), L.R. 58 Ind. App. 152 at p. 154. But sometimes they have acted on the complaint of the Attorney General of the colony, as in **Re Antigua Justices** (1830), 1 Knapp, 267. and **Macauley v Sierra Leone Supreme Court Judges** (1928) A.C. 344 (see the printed book); or even on the complaint of a third person, as in **Anandalwan v Judges of the High Court at Madras** (1930), L.R. 58 Ind. App. 156 n. (see the printed Record of the Proceedings, pp. 1 and 284). Whoever makes the complaint, the Judges are of course, under a duty to act judicially; see **Har Prasad Singh v Judges of Allahabad High Court** (1931), L.R. 58 Ind. App. 152.

When a legal practitioner is suspended or struck off by the Judges of a colony, he has always been at liberty to petition Her Majesty in Council to restore him. But he should give notice of his application to the Judges so as to enable them to justify their order; see **Smith v Sierra Leone Justices** (1848), 7 Moo P.C.C. 174 at p.175 by Lord Brougham; and in all the cases since 1848 the Judges themselves have been made respondents to the appeal; see, for instance, **Har Prashad Singh v Judges of Allahabad High Court** (1931), L.R. 58 Ind. App. 152: though in one of the cases the Attorney General was also made a respondent: Macauley's case. This fact that the Judges are themselves always made respondents to the petition to Her Majesty is an implicit recognition that, when exercising this jurisdiction, they do not sit as a Court of law but as a disciplinary authority. And it has been expressly decided in West Africa that the Judges in this regard do not sit as a Court. In Macauley's case, the Chief Justice of Sierra Leone struck Mr. Macauley off the roll of Court. Mr. Macauley sought to appeal to the Full Court under a provision which gave an appeal from a decision of the “Supreme Court” to the Full Court.

³The Eastern Caribbean Supreme Court (Saint Vincent and the Grenadines) Act CAP. 18; Barristers and Solicitors Rules ...Booklet 4 rule 4(i) and (ii).

⁴ (1961) 2 All E.R. 504 at 509.

It was held by Petrides and Sawrey-Cookson, JJ, with Atkin, J., dissenting that no appeal lay to the Full Court because the order of the Chief Justice striking him off was not a decision of the "Supreme Court", and that Mr. Macauley's only remedy was to go to the Privy Council for special leave. (The judgment is contained in the printed Record in Macauley's case, pp. 30 to 33 and 44 to 49)."

- [7] In 2000 the Privy Council had to consider similar provisions from an appeal from Mauritius in the case of **Goinsamy Chinien v The Attorney General and the Mauritius Bar Association**⁵. Lord Hutton in delivering the judgment of the Court referred to the quotation from Lord Denning in *N'Jie*, that is set out in the preceding paragraph with approbation and applied it in concluding that an application for the reinstatement of a barrister who was struck off the roll by Judges, was not "civil proceedings" and that the Court of Appeal had no jurisdiction to grant the petitioner leave to appeal.

Conclusion

- [8] In this case the status of Mr. Frederick is that of "a person aggrieved by the conduct of the barrister complained against". Rule 4 of the Barristers and Solicitors Rules permitted him to initiate the complaint in that capacity. But these are not legal proceedings they are disciplinary proceedings. They are neither a civil suit nor a criminal complaint. Mr. Frederick is not a plaintiff, nor a prosecutor. He is not a litigant. Lodging an appeal with him as the only respondent was misconceived. He has been made liable for legal costs and expenses improperly. I agree that the proceedings against him must be dismissed with costs.

⁵ (2000) UKPC8 at 12

Order

[9] I would therefore order that the appeal is dismissed with costs.

Sir Dennis Byron
Chief Justice

I concur.

Albert Redhead
Justice of Appeal

I concur.

Ephraim Georges
Justice of Appeal [Ag.]