

SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)

CIVIL SUIT NO. 718 OF 1997

BETWEEN:

HEIRS OF AVRIL AFRICAIN aka JEAN BAPTISTE JOSEPH and Heirs of JN BAPTISTE JOSEPH aka BENOIT, represented by L.P.R. BENEDICT JOSEPH and Heirs of JN BAPTISTE JOSEPH aka ANTOINE, represented by L.P.R. (1) John Joseph and (2) Stanislaus Joseph

Claimants

and

- (1) Estate of the late ADRIENNE FELICIEN represented by Antonius Ralph Felicien, Executor
- (2) Estate of MEDAS FELICIEN aka JOSEPH FELICIEN, represented by Marie Felicien (nee Louise), Administratrix
- (3) Estate of the late EMMANUEL FELICIEN, represented by Thomas Walcott, Executor
- (4) The Heirs and Estate of the late EDWARD FELICIEN aka Sylvester Felicien
- (5) The Estate of the late MARY FELICIEN, represented by (1) Andrew Felicien, (2) John Baptiste Felicien, Administrators
- (6) ARNOLD FELICIEN, represented by Joseph Felicien and Jennifer Brutus, Administrators
- (7) The Estate of the late LAWRENCE FELICIEN, represented by S. Headley Felicien, Administrator
- (8) SAMUEL FELICIEN in Gros Islet
- (9) Estate of MARIE AMBROSE (nee Felicien), represented by Simon Ambrose, Administrator
- (10) Heirs ANNE MARIE MODESTE (nee Felicien)
- (11) BERNADETTE SYLVESTER, represented by Augustin Sylvester and Marie Pascal, Administrators

Defendants

Appearances:

Lucius Joseph in person

Mrs. Kim Camille St. Rose for the Applicant, Stanislaus Joseph

Mr. Dexter V.O. Theodore for the Nos. 1,4,5,6,10 and 11 Defendants.

Mr. Winston Hinkson for Nos. 7 and 8 Defendants.

Mr. Alvin St. Clair for Nos. 2, 3 and 9 Defendants

2004: May 25
May 28

COSTS...WHO SHOULD PAY THE COSTS IN THESE PROCEEDINGS? APPLICATION FOR CLAIMANT NOT TO PAY COSTS---CLAIMANT DID NOT TAKE PART IN PROCEEDINGS...CLAIMANT DID NOT FINANCE PROCEEDINGS---CLAIMANT WAS IN ENGLAND...SHOULD NON-PARTY BE LIABLE ...IF HE INSTIGATED PROCEEDINGS, FINANCED IT AND ACTIVELY TOOK PART IN IT?...CASES OF SYMPHONY GROUP PLC v HODGSON AND GLOBE EQUITIES REFERRED TO

JUDGMENT

1. **HARIPRASHAD-CHARLES J:** The applicant, Stanislaus Joseph seeks an order of the court for his second cousin Lucius Joseph to pay all the costs associated with the unsuccessful prosecution of this claim.
2. A convenient starting point will be to narrate some brief facts of the proceedings which resulted in the visitation of costs on the claimants including Mr. Stanislaus Joseph.

Some Brief Facts

3. On 25th August 1997, the claimants filed a specially indorsed writ of summons with statement of claim alleging that they are the heirs of the late Avril Africain also commonly known as Jean Baptiste Joseph of Tivoli Estate, Gros Islet which estate was wrongfully registered and recorded at the instance of the defendants either by mistake or fraud. They sought a rectification of the land registers and plans to cancel the name "Felicien" and to substitute the name "Avril Africain" in its place.
4. Though the issue that had to be decided at the trial was relatively simple, the trial in itself took five days. This is because the family tree of the defendants as well as the claimants had to be clearly established since the claimants were alleging that there were two Avril Africains and it is their Avril Africain who owned the land in dispute. The defendants

- tendered 99 exhibits to substantiate the contention that there was only one Avril Africain and that they are his lawful heirs.
5. On 15th December 2000, I gave a written judgment in the matter. I dismissed the action brought by the claimants. I concluded that the arguments advanced by Mr. Kenneth Foster QC on behalf of the claimants that there were two Avril Africains were specious. I also concluded that the main thrust of the claimants' arguments was not even pleaded and that this action was nothing more than a 'big fishing expedition.' I awarded costs to the defendants. Suffice it to say, in those days, the Registrar was empowered to tax costs upon the presentation of a Bill of Costs. That was not undertaken as the claimants appealed the judgment.
 6. On 10th June 2003, the Court of Appeal dismissed the appeal on a procedural point. The claimants have not appealed that decision. It logically follows that the judgment of the High Court stands.
 7. On 11th December 2003, the defendants filed an application in the High Court for the assessment of costs pursuant to my Order of 15th December 2000. By this time, new Rules were introduced in civil litigation in Saint Lucia. Under CPR 2000, the Judge who tries the case has the correlative duty of assessing costs. This application is still pending.

Who should pay the Costs?

8. The general rule as stated in Part 64.6 (1) is that the unsuccessful party pays the costs of the successful party. Part 64.6 (5) provides as follows: "in deciding who should be liable to pay costs the court must have regard to all the circumstances."
9. Part 64.10 gives the court the power to make an order for a person who is not a party to the proceedings to pay costs once certain conditions are met.
10. Mr. Stanislaus Joseph (who is named as a claimant) filed an application for an order that Lucius Joseph and his mother, Benedicte Joseph pay all the costs of the claimants in the

action. He alleged (i) that he was named as a claimant in the Suit without his consent and prior knowledge and he is not and never was the claimant or an heir of Avril Africain (ii) that the instigator of the Suit was Lucius Joseph and his mother, Benedicte Joseph, who were the only witnesses and not him and (iii) that he never took part in the case.

11. Both Mr. St. Clair and Mr. Theodore feel that Mr. Stanislaus Joseph should bear a percentage of the costs, however minimal since he knew that he was a claimant in these proceedings and did absolutely nothing to remove his name from the case. In fact, Lucius Joseph himself alleged that Mr. Stanislaus Joseph paid him \$120.00 to assist in the prosecution of the matter. Mr. Stanislaus Joseph vigorously denied the allegation. He stated that his wife had told him (and he believed her) that on one occasion when she visited St. Lucia she gave Lucius Joseph the sum of £50.00 for Lucius' son who is his godson on his behalf. I believe Mr. Stanislaus Joseph and I find that he never financed the costs of these proceedings.
12. It cannot be denied that Mr. Stanislaus Joseph never took part in the trial. It is alleged that he may have attended one or two Chamber hearings before another Judge but that has not been proven. Indeed, he was in England when this trial was being conducted. However, I am of the firm view that he knew that a claim was filed in his name since he was served on at least two occasions in respect of this claim; the first being at Castro's Bar on Friday, 11th December 1998 by Elicius Ernest and on the other occasion, the 16th April 1999, at his residence at Dauphin Street in Gros Islet by Thaddeus Simon. On hindsight, one could conclude that he was a bit laissez-faire in these proceedings. But this is not only uncommon to him but a large percentage of our citizens who do not treat documents originating from the court seriously.
13. There is also evidence that after Mr. Stanislaus Joseph learnt of the outcome of the case, he spoke to Mr. Kenneth Foster, QC. He told Mr. Foster that he did not authorize him to bring a claim against the defendants. Mr. Foster told him to go and speak to Lucius Joseph. Lucius simply refused to discuss the matter with him in the presence of Mr. Foster.

14. In addition, on 10th June 2003, Mr. Stanislaus Joseph received information of an application in this matter coming on for hearing in the Court of Appeal. He attended Court on that day to protect his interests. He indicated to the Justice of Appeal that he did not institute the proceedings. The matter was dismissed as the claimants/applicants did not comply with certain preliminary requirements in order to prosecute their appeal.
15. From the above, it is clear to me that Mr. Stanislaus Joseph was not interested in these proceedings. He claimed that Lucius Joseph was the instigator of this claim and that Lucius and his mother should bear the full costs associated with the case.

Should Lucius Joseph bear all the costs associated with these proceedings?

16. It is evident that Lucius Joseph was not a party to the claim. But, at the trial, his mother and himself were the only witnesses to testify on behalf of the claimants. He was the principal witness for the claimants [Paragraph 20 of judgment]. Indeed, he held himself out to be the claimant in the case, representing the heirs of Avril Africain: see his affidavit filed on 21st July 1998. Further, in an affidavit dated 20th May 2004, he says "We are the plaintiff in suit 702/97", a claim that bears exactly the same name as this one. He then proceeds to exhibit the closing remarks in the case (702/97) as a document exhibited thereto and marked "Q", which document bears the heading "Law Suite 718 of 1997", an indication that what he refers to as Suit 702/1997 and 718 of 1997 are really the same case. It is specious for him to now say that there were two claims and he was not involved in this one.
17. There is no doubt in my mind that Lucius Joseph was the driving force behind this claim. In his affidavit filed on 21st May 2004, Mr. Foster stated that Lucius Joseph instructed him to represent him, his mother and his family in a claim to settle the ownership of the Estate of Avril Africain. At paragraph 2 of the said affidavit, Mr. Foster stated that Lucius Joseph said "this [sic] [case] was important to him." He paid Mr. Foster a substantial fee of \$30,000.00 and therefore, single-handedly, financed the legal costs of the claim. There is no doubt that Mr. Lucius Joseph was in regular attendance throughout the trial, on a daily basis and played an active part in the proceedings, both in and out of the witness box. In pursuit of the claimants' objective, Mr. Lucius Joseph has not hesitated to deceive the court. His

evidence is described in the judgment as a 'big fishing expedition' and 'an ingenious plan devised by him.'

18. In addition, Mr. Lucius Joseph has admitted in this court that he is the mastermind of the claim and that he will continue to be the mastermind. He also stated that he is dissatisfied with the way in which his lawyer represented him especially in the Court of Appeal and as such, he will seek to re-open this case.
19. In my judgment, it is crystal clear that Mr. Lucius Joseph is the instigator of these proceedings.
20. In *Symphony Group plc v Hodgson*¹, it was stated at page 152 that where a person has maintained or financed the action, that was undoubtedly considered to be a proper case for the exercise of the discretion [to make a non-party responsible for the costs of the action].
21. In the case of *Globe Equities Limited v Globe Legal Services Limited*², the judge's findings are admissible [against a non-party] where connection with the non-party was so close that he will not suffer any injustice by allowing this exception to the general rule. The test is the closeness of the connection of the non-party to the original proceedings. Are the circumstances relied on such as to make it just to order a non-party to pay the costs?
22. Mrs. St. Rose submitted that Lucius Joseph's role in this case is that of an intermeddler, out of gain for himself by filing a fictitious claim, being the principal witness but leaving his name out of it as he was well aware that there was no basis in fact for the claim. He purportedly represented his mother as her 'administrator' although she is alive. He has financed by his own admission, the substantial legal cost of this action in the sum of \$30,000.00 which no doubt, indicated a high level of commitment to this cause.

¹ [1993] 4 All ER 143

² [1999] EWCA Civ. 905

23. Taking all factors into consideration, I do not think that Mr. Stanislaus Joseph is merely attempting to avoid the payment of costs of these proceedings. On the contrary, I find that Lucius Joseph was the person who instructed Counsel and instituted these proceedings on his own without the authorization or consent of Stanislaus Joseph and without financial assistance from him. The conduct of Lucius Joseph himself in this court suggests that even if Stanislaus Joseph were to advise not to re-open the case, he would not heed such advice. He told me that he is prepared to lose everything for this case which he considers not at an end.
24. At paragraph 22 of his most recent affidavit filed on 20th May 2004, he deposed as follows:
"Not until these seeming paradoxes are clarified and put into perspective are we willing to accept guilt or wrong doing...."
25. In these circumstances, I find that Lucius Joseph masterminded this action. He financed it single-handedly and dragged into it his aged mother. He has also admitted in numerous affidavits that he is the plaintiff/claimant in this case representing the heirs of Avril Africain. As such, he and his mother, Benedicte Joseph must pay the full amount of the Costs to be assessed by the Court at a later date.

INDRA HARIPRASHAD-CHARLES
High Court Judge

