

SAINT LUCIA

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 37 OF 2003

BETWEEN:

MARTINUS FRANCOIS

Applicant

and

THE ATTORNEY GENERAL

Respondent

Before:

The Hon. Mr. Adrian D. Saunders
The Hon. Mr. Brian Alleyne, SC
The Hon. Mr. Michael Gordon, QC

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

Appearances:

Mr. Parry Husbands QC with Mr. Martinus Francois and Dr. Nicholas Frederick
for the Applicant
Mr. Anthony Astaphan QC with Ms. Jan Drysdale and Mr. Dwight Lay
for the Respondent

2004: April 26, 27
June 7.

JUDGMENT

[1] **SAUNDERS, J.A.:** Mr. Martinus Francois alleged that both the Minister of Finance (incidentally the Prime Minister) and the Parliament of Saint Lucia had acted unlawfully in connection with the withdrawal of monies from the Consolidated Fund to meet a Government guarantee to the developers of the former Hyatt Hotel. The suit¹ was heard by High Court Judge Madame Justice

¹ St. Lucia High Court Civil Suits 499 of 2003 & 537 of 2003

Hariprashad-Charles, J. The learned Judge decided in favour of Mr. Francois. The Judge ordered that guarantees given by the Prime Minister were not approved by the St. Lucia Parliament; that the Prime Minister had no power under section 39 of the Finance (Administration) Act 1997 to borrow sums of money in order to refinance Government's obligations in respect of the hotel; and that the St. Lucia Parliament was not entitled to pass a resolution authorising such borrowing. The Judge also declared void the Statutory Instrument that embodied the resolution passed by Parliament.

- [2] The Attorney General appealed these decisions. This Court, on March 29th 2004, upheld the appeal². Mr. Francois is now applying for permission to appeal, to Her Majesty in Council, the judgment rendered by this Court.
- [3] The stated Grounds of the Application, and I am paraphrasing here, are as follows:
- (i) That the matter in dispute is a final decision which is of the prescribed value of \$1,500.00 or upwards;
 - (ii) That the matter in dispute involves a claim to a question respecting property or a right of the value of \$1,500.00 or upwards;
 - (iii) That the decision of the Court of Appeal involves a question as to the interpretation of the Constitution and in particular sections 77 and 78; and
 - (iv) That the question involved in this appeal is one that by reason of its general and public importance or otherwise ought to be submitted to Her Majesty.
- [4] The Constitution of Saint Lucia provides for appeals to be made to Her Majesty. A litigant is not automatically entitled to appeal. The litigant must first apply to this Court. If, in civil proceedings (such as these are), the litigant's application can be brought within i), ii) or iii) above, then the Constitution grants the litigant a right of appeal. This court will, in those circumstances, allow the appeal to Her Majesty to proceed once the litigant fulfills certain basic conditions. If the application is made pursuant to iv) above, then this Court has a discretion whether or not to permit the appeal to go forward. The grounds relied upon by Mr. Francois are therefore

² See St. Lucia Civil Appeal No. 37 of 2003

independent of each other. For him to succeed on his Application, he need only satisfy this Court on any one of these four grounds.

Grounds (i) and (ii)

- [5] These two grounds can be taken together. The question is whether *the matter in dispute* here is of a value in excess of \$1,500.00 or whether the appeal involves a claim to or question concerning property valued in excess of \$1,500.00. At the hearing of this Application, there was little discussion on either of these two grounds. This was not surprising. The essential dispute Mr. Francois has with the Attorney General is not about any money or property *per se*. The dispute concerns the validity, the legality of the acts of the Prime Minister and of Parliament. Long before the trial at first instance, by an Order dated 17th July, 2003, Shanks, J. had distilled the issues to be resolved in the case. In her judgment, Madame Justice Harisprashad-Charles referred to this Order. The issues listed by Justice Shanks were: whether the guarantees given were lawful and binding; whether the Prime Minister had the requisite power to borrow certain sums of money; whether the withdrawal of funds from the Consolidated Fund was in breach of section 78 of the Constitution; and whether Mr. Francois had the necessary *locus standi* to bring the action. Those were the issues that went to trial and were resolved by the Court. None of these issues relates to a dispute over money or a claim to or question respecting property or a right of the value of \$1,500.00 or upwards. The dispute was really over a matter of principle which principle just happened to surround the borrowing of substantial sums of money. In my judgment neither ground i) nor ground ii) affords any proper basis upon which leave to appeal can be granted.

Ground (iii)

- [6] Under this ground, it is the onus of the Applicant to persuade us that the decision in this case involves a question as to the interpretation of the Constitution. Sections 77 and 78 of the Constitution in particular have been cited by counsel for Francois. These latter sections, 77 and 78, are found in the Chapter of the

Constitution that addresses the finances of the State. Section 77 merely speaks to the existence of a Consolidated Fund into which monies raised or received are paid. Section 78 ensures Parliamentary control over withdrawals from the Consolidated Fund. Fundamentally, monies cannot be withdrawn from the Consolidated Fund unless Parliament first approves the withdrawal. Throughout the hearing of this action, both before Her Ladyship at trial and before this Court on appeal, there never was an issue about the interpretation of either of these sections of the Constitution. It really was the Finance (Administration) Act of 1997 that fell to be interpreted. At paragraph 79 of my judgment upholding the Attorney General's appeal, I had noted that:

The controversy really lies in an interpretation of the Finance (Administration) Act 1997 and in an understanding of how the guarantee executed by the Prime Minister and the resolution passed by Parliament relate to that Act. Mr. Francois submitted that the guarantee was unlawful because, in his view, section 41 of the Act stipulated that prior approval of Parliament should have been granted before the Prime Minister could have executed it. Secondly, he argued that the Prime Minister could not avail himself of section 39 of the Act because the funds, approved by Parliament to help complete the former Hyatt Hotel, did not fall within the scope of capital or recurrent expenditure of Government. In each of these respects, in my view, Mr. Francois was wrong.

Ground iii) affords no basis for granting leave to appeal since no question regarding the interpretation of the Constitution was ever in issue.

Ground (iv)

- [7] The only realistic basis upon which this Court might grant leave for the appeal to be made to Her Majesty lies in ground (iv). This Court has to ask of itself the following question: Is it our opinion that "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"? That is the test. The quoted words are taken directly from section 108(2)(a) of the Saint Lucia Constitution.

[8] In support of this ground, Mr. Francois drew attention to passages from the Court of Appeal judgments of Rawlins, J.A. (Ag.) and of myself. At paragraph 159 of the judgment, Rawlins, J.A. had stated

I do not think that this case crossed the boundaries into an abuse of the process of the court. This is mainly because it raised an issue that is of some legal and public importance, which tested legality of action and procedures that lead ultimately to expenditure by the government from the Consolidated Fund. The challenge was unmeritorious, but not spurious. I do not think that Mr. Francois acted so unreasonably in making the application or in the conduct of the case, that it took the case outside of the general rule stated in Part 56.13(6) of the Rules. I therefore make no order as to costs.

At paragraph 78, I had stated that

...this matter has generated such public comment on matters of law that I believe I should briefly add a few remarks of my own on the substantive issues raised by the suit

[9] As to the observations of Justice Rawlins, his remarks must be considered in their proper context. The learned judge was clearly weighing in his mind whether the bringing of the case was an abuse of the process of the Court. Whether the challenge was spurious. Whether Mr. Francois should be penalised by being required to pay costs. It is against that background that Justice Rawlins conceded that the case raised an issue of *some* legal and public importance. Moreover, it hardly goes without saying that there is a distinct difference between saying that a case has "*some legal and public importance*" on the one hand, and saying that the case is of "*great general or public importance*" as contemplated by the constitutional provision that addresses leave to appeal, on the other hand.

[10] As for my own reference to the level of public comment generated by this case on matters of law, let me hasten to suggest that the phrase that we are construing, namely, "general or public importance", must perforce connote importance through the eyes of the law. Strong public comment does not in and of itself indicate great legal importance. Equally, a case which gives rise to a matter of enormous general or public importance might well attract little or no comment in the Press.

- [11] In the instant case, in my respectful view, simple issues of law became enmeshed and shrouded in legitimate public concern surrounding such questions as whether a government should guarantee the expenses of a private developer. If so, up to what amount? Whether the Government, having given a guarantee to the developer, exercised a reasonable degree of prudence in monitoring the developer's cost overruns? Whether the government should have disclosed to Parliament and the populace at large the precise amount of funds taken from the Consolidated Fund to meet the guarantee? Whether the procedures adopted by Parliament in approving the withdrawal of the funds were sufficiently transparent? These may all be matters of great political importance. But they are not, none of them, issues that concern Courts of law. Not in the least. As I have indicated before, the real questions that concerned the Court in this case were very straightforward. On these questions, Mr. Francois had the benefit of the independent judgment of three judges of the Court of Appeal. The judges all thought that, so far as the legal questions were concerned, this case had no merit.
- [12] In the course of hearing this Application I said in open Court that, speaking for myself, I would be content for every decision of mine to be tested by some appellate process. But in considering whether to grant leave, judges must perforce put to one side sentimental considerations. Nor can the Court grant leave to appeal merely because a significant section of the people of St. Lucia might think the Court to be wrong and would like an opportunity to see the error corrected. The Constitution that binds everyone, including this Court, states that the Court must only grant leave to appeal in defined circumstances. We are constrained to refuse leave unless we are persuaded that the application for leave properly falls within the parameters of the Constitution. For an appellate Court to come to the unanimous view that a litigant's case was entirely lacking in merit but nonetheless still turn around and conclude that the case raised an issue of great importance would represent an unacceptable leap in logic.

[13] Leave under this ground is normally granted when there is a difficult question of law involved. In construing the phrase “great general or public importance”, the Court usually looks for matters that involve a serious issue of law; a constitutional provision that has not been settled; an area of law in dispute, or, a legal question the resolution of which poses dire consequences for the public. For example, in **Douglas v Pindling**³ leave was granted because the case raised important issues regarding the right test to be applied by a commission of inquiry in deciding whether to issue a summons under the Bankers’ Books Evidence Act and the nature of the supervisory jurisdiction of the Court over a decision to issue such a summons. In **Etoile Commerciale SA v Owens Bank (No. 2)**⁴, leave was granted in circumstances where there were conflicting judicial *dicta* from the highest Courts on the law governing the circumstances under which the enforcement of a foreign judgment might be resisted on the ground that it had been obtained by fraud.

[14] Perhaps the most critical aspect of the instant case was whether the Minister was entitled to have Parliament consider for approval, and whether parliament could validly approve, pursuant to section 39(1) of the Finance (Administration) Act 1997, a loan for the purpose of refinancing Government’s obligations to the former Hyatt Hotel. If that question were answered in the affirmative, as it was by all the members of this Court, then this was a hopeless case. The rationale for this Court’s positive answer to that question has emphatically been stated and restated in several previous decisions. See: **Williams v. Attorney General**⁵, **Spencer v. Attorney General**⁶ and **The Cabinet of Antigua & Barbuda v. H.M.B. Holdings Limited**⁷. At least, so far as this Court is concerned, this is an area of law that is so well settled that further litigation on the subject will not be regarded by this Court as being of great importance. In all the circumstances, leave to appeal to Her Majesty must be refused.

³ (1996) 3 LRC 460

⁴ (1993) 45 WIR 136

⁵ (1964) 14 W.I.R. 177

⁶ (1999) 3 L.R.C. 1

⁷ *Antigua Civil Appeal No. 16 of 2001*

[15] All is not lost for Mr. Francois however. The same Constitution that enjoins us to dismiss his Application for leave permits him directly to petition Her Majesty for special leave to appeal. And if their Lordships are so disposed, then he shall have the opportunity to launch his appeal before that tribunal.

Costs

[16] For the reasons earlier given by Rawlins, JA (Ag.) and quoted here at paragraph 7 of this judgment, no order for costs was made against Mr. Francois when this Court upheld the appeal of the Attorney General. Mr. Francois brought this further Application full well knowing that this Court considered his case to be unmeritorious. This is now the third occasion on which the State has had to expend public funds to defend itself upon an issue that this Court regards as being of little merit. A litigant has every right to so move the Court. But there are usually consequences in costs if that litigant is unsuccessful. I believe that in the circumstances here it is appropriate that an order for costs should be made against Mr. Francois on this Application. I would therefore order costs against him in the sum of \$2,500.00 .

Adrian D. Saunders
Justice of Appeal

I concur.

Brian Alleyne, SC
Justice of Appeal

I concur.

Michael Gordon, QC
Justice of Appeal [Ag.]