SAINT LUCIA

IN THE COURT OF APPEAL

HIGH COURT CIVIL APPEAL NO.12 OF 2004

BETWEEN:

BERTHA COMPTON qua Administratrix of the
Succession of the late MACRINA BLAIZE

Claimant/Appellant

and

[1] DR. CHRISTIANA NATHANIEL
[2] DR. GERARD SALTIBUS
[3] THE HONOURABLE ATTORNEY GENERAL OF ST LUCIA
[4] THE HOSPITAL ADMINISTRATOR OF VISTORIA HOSPITAL

Defendants/Respondent

Before:

The Hon. Mr. Hugh A. Rawlins — Justice of Appeal [Ag.]

Appearances:

Mr. Hilford Deterville, QC, with him Ms. D. Thomas for the Claimant/Appellant
Mr. Raulston Glasgow, Crown Counsel, for the Defendants/Respondents

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2005: January 10;
February 15.

JUDGMENT

[1] RAWLINS, J.A. [AG.]: This is an appeal from a decision that the Master gave on 8th June 2004. In this case, the Claimant/Appellant, Mrs. Compton, instituted the action against the defendants, who are the Respondents on this appeal, on 23rd February 2000. The action was instituted by way of Writ and Statement of Claim under the 1970 Rules of the Supreme Court ("the old Rules"). The Attorney General, who is the 3rd named defendant, entered an unconditional appearance on behalf of all of the defendants on 10th March 2000. The new Rules, the Eastern Caribbean Supreme Court Civil Procedure Rules, 2000, came into effect on 31st December 2000.

[2] Among other things, the defendants stated in their defence that the service of the pre-suit Notice of Intended Prosecution on the Attorney General was defective. They said that service of the Notice did not comply with Article 28 of the Code of Civil Procedure, Cap. 243 of the Laws of St. Lucia, because Mrs. Compton did not serve the Attorney General at his principal residence. The Master decided to hear this as a preliminary issue when the case came before him for case management conference. In his decision, the Master struck out the action against all of the defendants on the ground that service on the Attorney General failed to meet the requirements of Article 28.

[3] At the hearing, Counsel for Mrs. Compton had insisted that a similar question arose on a previous hearing before a High Court Judge. He said that the Court dealt with the issue then and it was therefore *res judicata*. The Master held that the doctrine of *res judicata* did not apply. He made no order as to costs. I shall first consider the appeal on the issue of *res judicata*. If the doctrine is not applicable, I shall then consider whether the service of the Notice of Intended Prosecution on the Attorney General was regular or irregular and the consequences that flow from the answer.

Res judicata

[4] In my view, the Master did not dispassionately consider the issue whether res judicata arose when he heard the matter. He stated that the doctrine was applicable to preclude him from hearing whether the Attorney General was properly served with the Notice because, in any event, Mrs. Compton had to demonstrate that she complied with Article 28 before any liability could be attached to the Crown.

[5] The basic principles of this doctrine are well settled. A simple statement may be better appreciated with reference to the full Latin statement – *res judicata pro*

veritate accipitur. A literal English translation is that a thing adjudicated is accepted as the truth. Therefore, when a Court of competent jurisdiction has decided an issue between parties, the same issue cannot be re-litigated between them in the same Court. The decision stands until it is reversed on appeal.

[6] In this case, Solicitors for the defendants issued a Summons on 22nd March 2000. They sought an order to strike out the Writ against the 1st and 2nd named defendants on the ground that Mrs. Compton failed to comply with the requirements for service under Article 28. On 17th May 2000, d'Auvergne J dismissed the Summons with costs. *Res judicata* could not have arisen on that decision for 2 reasons. The first is that the Summons did not seek to strike out the action against the Attorney General. The second is that the Summons related to the Writ and not to the Notice of Intended Prosecution.

[7] The defendants filed an Originating Motion on 19th April 2000. It referred questions to be determined as preliminary issues. The Motion prayed that the Writ should be struck out for failure to comply with Article 2124 of the Civil Code. The defendants have contended that premised on this, this Court has no jurisdiction to grant the reliefs that Mrs. Compton seeks. The Motion did not get off the ground, in a manner of speaking, when Hariprashad-Charles heard it in July 2000. Counsel for Mrs. Compton stated in their written submissions that the defendants withdrew the Motion. Counsel for the defendants stated that the order referred, not to the withdrawal of the Motion, but to the withdrawal of the Summons that was issued on 22nd March 2000. These contra-positions are of little moment, however, because the Motion did not raise the same issue upon which the Master made his decision. The Court did not determine on that Motion whether the Attorney General was properly served with the Notice. Counsel for Mrs. Compton admitted this in Paragraph 4:18 of their written submissions.

[8] In conclusion, therefore, *res judicata* is not applicable to the issue whether the Writ should be struck out against the Attorney General on the ground that it was

irregularly served. I must therefore consider whether the Master erred when he held that service on the Attorney General was irregular.

Was service on the Attorney General irregular?

[9] At the outset, I think that the Master erred when, on deciding that the Attorney General was not properly served, he struck out the Writ, not only against the Attorney General, but also against all of the defendants. He might have thought that this resulted because the Attorney General entered appearance on behalf of all of them. Notwithstanding this, the other parties remain parties to the proceedings unless and until they are struck out on some permissible specified ground, which all of the parties in the case are given the opportunity to canvass.

[10] It is usually perceived that there is some difficulty that relates to the service of process on the Attorney General. This is because although the Crown Proceedings legislation in most Commonwealth Caribbean jurisdictions provide for service on the Attorney General, they do not specify the mode of service. Possible exceptions may be found in the Crown Proceedings legislation of Trinidad and Tobago and Belize. Section 17 of the Crown Proceedings Act, Cap. 129 of the Revised Laws of Belize, 1990, provides that where proceedings are brought by or against the Attorney General, documents are to be served on the Attorney General, personally, or by leaving them with some adult person employed in the office, after the server explains the contents of the document.

[11] Now, in St. Lucia, section 14 of the Crown Proceedings Act, Cap. 13 of the Revised Laws of St. Lucia, 1957, requires the Attorney General to be served with documents in proceedings against the Crown. However, the provision for the mode of service was provided by Order 54 rule 3(2) of the old Rules.

[12] Order 54 rule 3(2) provided:

> "Personal service of any document required to be served on the Crown for the purpose or in connection with any civil proceedings is not requisite; but

> where the proceedings are by or against the Crown service on the Crown must be effected – (a) by leaving the document at the office of the person who, in accordance with section 14 of the Crown Proceedings Ordinance of … St. Lucia … is the person to be served, or of any agent whom that person has nominated for the purpose, but in either case with a member of the staff of that person or agent."

[13] This provision is verbose but clear. It speaks to the mode of service in 2 circumstances. It states, first, that where there is a requirement that documents are to be served on the Crown " … for the purpose of or in connection with any civil proceedings …", personal service is not necessary. It provides, in the second place, for the mode of service in proceedings that are brought by or against the Crown. In the latter case, service must be done by leaving the document at the office of the person who is to be served in accordance with section 14 of the Crown Proceedings Act, the Attorney General. Alternatively, the document should be served at the office of the person whom the Attorney General nominates as his or her agent for the purpose of service. The provision then goes further to provide that, in either case, service might be effected by leaving the document with a member of staff at the office of the Attorney General or the agent.

[14] Thus Order 54 rule 3 achieved the same purpose as section 17 of the Belize Crown Proceedings Act does. It makes sound practical reason. A person is not an Attorney General in a private capacity, but in an official capacity. Service in that capacity should not be at his residence but at the office where he works in the official capacity. An Attorney General may be a single person who has to travel on government business. Little good purpose could be achieved by requiring service at his residence when he might not be available there? A process server who goes to serve a document on the Attorney General should not be required to go to his residence to serve it if the Attorney General is not available at his office.

[15] It would be an untenable proposition to suggest that Order 5 rule 3(2) of the old Rules is not applicable because the new Rules repealed the old Rules. The issue of service must be determined in accordance with the old Rules since they were in

force at the time when the Notice was served and provided for the mode by which that service was to be effected.

[16] Learned Counsel for the defendants submitted that Order 54 rule 3(2) is not applicable because the Notice of Intended Prosecution is not " … a document required to be served on the Crown for the purpose of or in connection with any civil proceedings … ". He premised this on his view that a Notice is a pre-litigation process and not a document in the proceedings. He contended that the Notice was served before civil proceedings commenced and cannot therefore be a document that was served for the purpose or in connection with litigation that did not subsist at the time of service.

[17] Learned Counsel for the defendants adverted to the rationale for requiring service of a Notice of Intended Prosecution. He said that it grants time to the Crown, which has to manage many Departments and persons, to investigate the circumstances that surround a claim with a view to settlement, rather than to embark upon unnecessary and expensive litigation. However, I do not agree with his submission that the Notice in this case was not intended for the purpose of or connected with civil proceedings because it was prior to the Writ and the institution of the action.

[18] The words "in connection with" mean associated with or related to. The Notice in this case was associated with or related to civil proceedings, notwithstanding that it has to be done before proceedings are instituted. It was required a necessary part of proceedings. In the premises, therefore, the Notice of Intended Prosecution was regularly served pursuant to Order 54 rule 3(2) of the 1970 Rules.

[19] This finding would be sufficient to dispose of this appeal. However, learned Counsel for the defendants submitted that it is Article 28 of the Civil Procedure Code, rather than Order 54 rule 3, which applies to the service of the Notice.

Article 28

[20] Article 28 requires a Notice to be served on any public officer or other person who is fulfilling any public duty or function. The Article provides that such a person cannot be sued for damages for anything that he or she does in the exercise of his or her functions unless the person is served with a Notice at least 1 month before the Writ is issued. The Article requires the Writ to be served on the officer personally or at his or her domicile. Under Article 48 of the Civil Code, Cap. 242, for the purpose of civil proceedings, the domicile of a person is the place where the person has his or her principal place of residence.

[21] Learned Counsel for Mrs. Compton submitted that the legal personality of the Attorney General for civil proceedings gives him the personality of a corporation sole. He used this as the premise to state that the domicile of the Attorney General is not the principal place of residence of the incumbent but the Attorney General's place of business. However, I agree with Counsel for the defendants that there is no legal basis on which it may be correctly held that the Attorney General has the personality of a corporation sole in relation to any proceedings.

[22] It is noteworthy that Article 28 relates to public officers, generally, while Order 54 rule 3 spoke specifically to the method by which service was to be effected on the Attorney General in proceedings against the Crown. Article 28 does not speak to service upon the Attorney General. It speaks to service upon persons in the position of the 1st and 2nd named defendants. Under the Article, if they are sued for anything done in the exercise of their functions, they must be given notice at least 1 month prior to the commencement of the action. The Notice must be served on them personally, or at their domicile. Order 54 rule 3(2) provides for service on the Attorney General. Mrs. Compton therefore prevails on this appeal because the Attorney General was regularly served under Order 54 rule 3(2).

Costs and Order

[23] The general rule is that costs follows the event unless there are very good grounds to direct otherwise. In this case there are no good grounds. I am inclined to the view, which Counsel for Mrs. Compton stated that the defendants should have raised the issue of irregular service of the Notice on the Attorney General in their Summons or Originating Motion. In my view, it was unnecessary for them to raise the issue as they did in their Defence, particularly since the Attorney General had accepted the Writ on his own behalf and entered an unconditional appearance to it on behalf of all of the defendants. A similar issue was raised in relation to the 1st and 2nd defendant. It failed. The case was at the case management stage. Time has passed. The defendants shall meet Mrs. Compton's costs occasioned by this appeal and for the hearing before the Master.

[24] It was in the foregoing premises, the appeal is allowed and the decision that the Master gave herein on 8th June 2004 is wholly set aside. The Defendants/Respondents shall pay the Claimant/Appellant $2,000 costs for the proceedings before the Master and on this appeal. The Registrar shall schedule this case for case management conference to be conducted within 21 days of today's date.

Hugh A. Rawlins
Justice of Appeal [Ag.]