

GRENADA

IN THE COURT OF APPEAL

MOTION NO.1 OF 2005
CIVIL APPEAL NO.10 OF 2004

BETWEEN:

BERNARD COARD, CALLISTUS BERNARD, LESTER REDHEAD,
CHRISTOPHER STROUDE, HUDSON AUSTIN, LIAM JAMES,
LEON CORNWALL, JOHN ANTHONY VENTOUR, DAVE BARTHOLOMEW,
EWART LAYNE, COLVILLE MC BARNETTE, SELWYN STRACHAN
AND CECIL PRIME

Applicants

And

THE ATTORNEY GENERAL

Respondent

Before:

The Hon. Brian Alleyne, SC
The Hon. Michael Gordon, QC
The Hon. Denys Barrow, SC

Chief Justice (Ag.)
Justice of Appeal
Justice of Appeal (Ag.)

Appearances:

Mr. Keith Scotland with Mr. Ruggles Ferguson and Mr. Cajeton Hood for the Respondents

Mr. Karl Hudson-Phillips, QC with Mr. Rohan Phillip instructed by Henry Hudson-Phillips & Co. for the Respondent

2005: June 27, 29.

JUDGMENT

- [1] **GORDON, J.A.:** This was an application by the Applicants for conditional leave to appeal to the Privy Council against a judgment of this Court delivered on February 14, 2005. The Respondent opposed the application.
- [2] The Applicants had filed proceedings in the High Court of Grenada for redress pursuant to section 16 of the Constitution of Grenada for contraventions of sections 3, 5 and 8 thereof in relation to them. They were largely successful

before the High Court. The Respondent to these proceedings successfully appealed to this Court and now the Applicants seek to appeal against that latter decision.

[3] The application by the Applicants was grounded on Section 104 (1) of the Constitution of Grenada and differences in interpretation of this section formed the basis of the dispute between the parties. Learned Queen's Counsel for the Respondent drew the Court's attention to the difference in wording between sections 103 and Section 104 (1) of the Constitution. Those sections are reproduced hereunder-

"103. (1) Subject to the provisions of section 37(7) of this Constitution, an appeal shall lie from decisions of the High Court to the Court of Appeal as of right in the following cases-

- (a) final decisions in any civil or criminal proceedings on questions as to the interpretation of this Constitution;
- (b) final decisions given in exercise of the jurisdiction conferred on the High Court by section 16 of this Constitution (which relates to the enforcement of the fundamental rights and freedoms).

"104. (1) Subject to the provisions of section 37(7)¹ of this Constitution, an appeal shall lie from decisions of the Court of Appeal to her majesty in Council as of right in the following cases-

- (a) Where the matter in dispute on appeal to her majesty in Council is of the value of fifteen hundred dollars or upwards or where the appeal involves directly or indirectly a claim to or question respecting property or a right of the value of fifteen hundred dollars or upwards, final decisions in any civil proceedings;
- (b) Final decisions in proceedings for dissolution or nullity of marriage;
- (c) Final decisions in any civil or criminal proceedings which involve a question as to the interpretation of this constitution and
- (d) Any such other cases as may be prescribed by Parliament."

[4] Learned Queens Counsel for the Respondent argued that section 103 (b) created a specific right of appeal to the Court of Appeal in relation to decisions given in the

¹ This section deals with determination of questions relating to membership of Parliament

exercise of the jurisdiction given by section 16 of the Constitution and that there was no such corresponding right under section 104 in respect of appeals to Her Majesty in Council. As I understood his argument, he posited that the exercise of jurisdiction under section 16 of the Constitution was separate and distinct from either criminal or civil proceedings. Hence, the Applicants had no right of appeal to Her Majesty in Council under section 104 (1) (c).

- [5] I am of the view that learned Queen's Counsel's argument is falsely premised. A comparison of the language in section 103, subsections (a) and (b) indicates that subsection (b) is not constraining of subsection (a) but rather, is different in intent and effect. Subsection (a) deals with "questions as to the interpretation of this Constitution" whereas subsection (b) deals with the "exercise of the jurisdiction conferred.....by section 16 of this Constitution" (The emphasis is mine). In this application, as indicated by the affidavit in support of the Motion, the Applicants wish to appeal on a question that "involves an interpretation" of sections 72, 3, and 8 of the Constitution of Grenada.
- [6] There is, further, a significant divergence in language between section 103 (a) and section 104 (1) (c). The former speaks to "questions as to the interpretation" and the latter speaks to "proceedings which involve a question as to the interpretation". It would seem to me that the latter is wider than the former and embraces the jurisdiction that the Applicants seek to have this Court exercise. I am fortified in this view by the sentiments expressed in the Privy Council case of **Sundry Workers v Antigua Hotel and Tourist Association**² which was mostly helpfully brought to our attention by learned Counsel for the Applicants. This case derived from the Industrial Tribunal of Antigua and Barbuda and involved the interpretation of the comparable section in the Antigua and Barbuda Constitution to section 104 of the Grenada Constitution. In the course of his judgment, Lord Bridge of Harwich said the following:

² [1992] WIR 145

“.....it appears to their Lordships that in both section 104 (b) and 105 (c) the phrase `any civil or criminal proceedings’ and in section 105 (3) `any civil or criminal matter’ are used in a comprehensive sense to embrace proceedings or matters of every kind which are assumed to fall into the one category or the other.”

[7] I therefore hold that the Applicants pursuant to section 104 (1) (c) may appeal as of right to Her majesty in Council.

[8] Learned Queens Counsel for the Respondent further argued that pursuant to the provisions of the **Constitutional Judicature (Restoration) Act, 1991**³ (“the Restoration Act”) this Court was prohibited from giving leave to appeal to Her Majesty in Council. He argued that the issues raised in this case were matters which were dealt with under the Former Court of Appeal established under the Establishment of the Supreme Court of Grenada Act 1979. Section 7 (4) of the Restoration Act reads as follows:

“(4) Notwithstanding anything contained in this Act or any other law, no appeal whatsoever shall at all lie to her majesty in Council from any decision whether final, interlocutory or otherwise or from any thing or matter arising out of any such decision of the Former Court of Appeal.”

Counsel prayed in aid the decision of this Court in **Mitchell et al v Attorney General of Grenada et al**⁴ wherein this Court declined to exercise jurisdiction to hear or rehear or determine or redetermine certain matters, namely Criminal Appeals Nos 4 to 20 of 1986, Civil Appeals Nos 7 and 11 of 1988 and Motion No 1 of 1991 in the said Criminal Appeals which decision was grounded in section 7 (4) of the Restoration Act.

[9] With great respect to learned Queen’s Counsel, the essential difference between this case and the Mitchell case is that the issues sought to be adjudicated in this case flow from proceedings filed in the Supreme Court of the Organization of the

³ Act No 19 of 1991

⁴ [1993] 3 LRC 199

Eastern Caribbean States of which this Court forms part, and do not, procedurally, derive from the Former Supreme Court of Grenada.

- [10] In the circumstances, and for the reasons advanced above, leave is granted to the Applicants to appeal to her Majesty in Council on condition that within 90 days of this date the Applicants do deposit with the registrar of the Supreme Court the sum of 500 pounds sterling or its EC dollar equivalent as security for the prosecution of the appeal and do within the same 90 days make arrangements for the preparation and dispatch of the Record of Appeal to the Registrar of the Privy Council.

Michael Gordon, QC
Justice of Appeal

I concur.

Brian Alleyne, SC
Chief Justice [Ag.]

I concur.

Denys Barrow, SC
Justice of Appeal [Ag.]