

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV 2006/0038

BETWEEN:

LENNOX LINTON

Claimant

And

MAUREEN HYMAN "Chief Magistrate Ag., "A", St John's
THE ATTORNEY GENERAL (Antigua and Barbuda)

Defendants

.....
2006: January 26th
February 10th
.....

Appearance:

Mr Dane Hamilton Snr for the Claimant

REASONS FOR DECISION

- [1] **Blenman, J: (Chambers)** This is a without notice application for leave to apply for Judicial Review.
- [2] Mr Lennox Linton (Mr Linton) is the Station Manager of Observer Radio Station located in High Street. He applied to the court for leave to file Judicial Review proceedings in order to quash the decision of Her Worship the Chief Magistrate (ag) Maureen Hyman in which he alleged that the Chief Magistrate ruled that the "Submissions made were denied and the matter should proceed to trial."
- [3] Mr Linton said that during the course of his show, on the 16th day of September, 2005 he reviewed the lead story appearing in the Antigua Sun dated Friday 11th September 2005 that dealt with an article under the headline **DPP v. Observer Radio** with a sub headline of Mr Pestaina says "RADIO MANAGER RUDE"

[4] He said that it was reported that Mr Pestaina has said that he (Mr Linton) had on previous occasions verbally ridiculed his office on the air, entertaining calls from the public who at times made a mockery of his office. He further stated that the article indicated that Mr Pestaina said that "he (Mr Linton) was trying to put the DPP in a bad light in public and that he has got to put a stop to this nonsense. Repeated attempts to contact via phone for a comment proved futile."

[5] Mr Linton said that he responded to the futility of the attempt to obtain his comment by saying "All we did yesterday was to remember this judgment and to ask whether or not the DPP had done anything about it. Now if Mr Pestaina considers this to be rude, if he considers this to be inciting public mischief, Mr Pestaina is clearly entitled to his opinion, he is certainly not going to provoke me into commenting whether his piece in the Sun Newspaper suggests anything about his suitability for the post of DPP. He is not going to do that at all."

[6] Mr Linton alleged that on the 20th Day of September, 2005 he was summoned to appear before the Magistrate of District "A" St John's to answer to complaints issued and made by GENE PESTAINA the then Acting Director of Public Prosecution for the State of Antigua and Barbuda. The complaints were as follows:

(a)" that you on the 16th day of September, 2005 did recklessly publish a defamatory statement concerning the Director of Public Prosecution, Gene Pestaina to wit that you, Lennox Linton, on the morning radio programme "Wake Up Call" stated that you would not be provoked into making any comments as to the suitability of Gene Pestaina for the office of Director of Public Prosecutions, such statement having a tendency to injure the said Gene Pestaina in his office, contrary to S.11(1) (a) of the Libel and Slander Act Cap 248 of the Laws of Antigua and Barbuda 1992 Revised Edition.

(b) "... that on the 16th day of September, 2005 did publish defamatory statement concerning the Director of Public Prosecutions, Gene Pestaina, to wit that you Lennox Linton, on your morning radio programme "Wake Up Call" stated that you would not be provoked into making any comment as to the suitability of Gene Pestaina for the Office of Director of Public Prosecutions, such statement having a tendency to injure the said Gene Pestaina in his office, contrary to S.11(1)(b) of the Libel and Slander Act Cap. 248..."

(c) "...that you on the 16th day of September, 2005 did maliciously publish a defamatory statement concerning the Director of Public Prosecutions, Gene Pestaina, to with that you, Lennox Linton, on your morning radio programme "Wake Up Call" stated that you, would not be provoked into making any comment as to the suitability of Gene Pestaina for the office of Public Prosecutions, such statement thereby exposing the said Gene Pestaina to ridicule, contrary to S.11(1)(a) of the Libel and Slander Act Cap 248."

[7] He said that on Wednesday 28th September 2005, he appeared before Her Worship Maureen Hyman Acting Chief Magistrate sitting in District "A" Magistrates Court, St John's whereupon his Counsel on his behalf submitted together with authorities the following:

- (i) that no offence was disclosed on the face of the Summonses/Complaints;
- (ii) that the alleged statements as made by the Defendant were not on the face of the same defamatory;
- (iii) that to ground the offence thereby giving the Magistrate jurisdiction to hear the complaints the statement must of itself be defamatory within Subsection (2) of Section 11 and that the statement alleged was not per se such a statement;
- (iv) that no innuendo or special or secondary meaning was particularized in the said summonses/complaints;
- (v) that the summonses/complaints were duplicitous.

[8] He stated that on Wednesday 26th October, 2005 Mr Hugh Marshall Counsel on behalf of Mr Gene Pestaina submitted to the Court that the Claimant's application was premature. That the words referred to in the complaint have to be viewed in the context of the circumstances and the manner in which they were delivered, a determination of which the Magistrate cannot come to at this stage. Further, the Defence is prohibited by Section 230 of the Magistrate Code of Procedure Act from so submitting. After a reply by his (Mr Linton's) counsel, Her Worship the Magistrate Maureen Hyman adjourned the further hearing of the Summonses/Complaints to December 8th, 2005 for decision.

- [9] He further stated that on December 8th 2005 the said Acting Chief Magistrate at the resumed hearing ruled "Submissions denied, matter to proceed to trial", giving no reasons therefore and proceeded to set a date for the hearing of the complaints on **January 28th 2006**.
- [10] Mr Linton indicated that he wishes to file Judicial Review proceedings to quash the decision of Magistrate Maureen Hyman, Chief Magistrate Ag. District "A", St John's Antigua that submissions made on behalf of the Claimant on Wednesday the 28th day of September, 2005 and on Wednesday 26th October, 2005 "Submissions denied and the matter proceed to Trial." He also seeks a declaration that no offences are disclosed on Summonses dated 20th September, 2005 issued by the said Chief Magistrate (ag).
- [11] In addition, he indicated his desire to apply for an Order of Prohibition preventing the said Chief Magistrate (ag) from hearing and/or adjudicating on the said Summons and/or Complaints.
- [12] Mr Linton also sought to stay further proceedings in the Magistrate Court District "A" until the determination of these proceedings under Part 56 of C.P.R 2000.

Grounds

- [13] The Grounds of his Application for leave to apply for Judicial Review are:
- (a) That Criminal Summonses and/or information are required by law to disclose on the face thereof the alleged commission of an offence or infraction of the law with which a defendant is charged.
 - (b) That it is this alleged commission of an offence and/or infraction of the law which gives the Magistrate jurisdiction to hear the evidence and to make a determination as to the commission of an offence or otherwise.
 - (c) That all matters pertinent to the determination of a Complaint and/or Summons in the Magistrate Court are in issue and a Magistrate sitting in such Court is required to properly direct his or herself in the relevant law and act reasonably in reaching any decision of a point taken in limine that such magistrate has no

jurisdiction to enter into and hear such complaint and/or summonses which do not in the face of such complaint and/or summons disclosed the commission of an offence or a criminal infraction of the law, giving reasons therefor.

- (d) The Director of Public Prosecutions, the constitutional authority for the institution of criminal process is obligated by law to act impartially and fairly with no regard to personal motives and feelings when initiating criminal proceedings against anyone. This duty to so act must also be unfettered by bias or prejudice towards the individual charged.

Law

[14] Section 11 of the Libel and Slander Act, Cap 248 of the Laws of Antigua and Barbuda provides as follows:

“(1) Any person who:

“(a) maliciously or recklessly publishes any defamatory statement other than a defamatory libel in relation to any other person shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding five thousand dollars or to a term of imprisonment not exceeding one year.”

“(b) published any defamatory statement in relation to the personal character or conduct of any other person shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding two thousand dollars or to a term of imprisonment not exceeding nine months.”

“(2) For the purposes of this section a defamatory statement is a statement concerning any person which exposes him to hatred, ridicule, or contempt, or which causes him to be shunned, or avoided, or which has tendency to injure in his office, profession or trade.

“(3) On the trial of a case under this section the truth of the matters charged may be enquired into, but shall not amount to a defence unless in the opinion of the court, it was for the public benefit that the said matters charged should be published.”

Analysis

[15] It is the law that the court will review not only errors of law appearing on the face of the record, but also errors which are material to the decision.

- [16] The matter came before me, on the afternoon of January 25th, 2006, while I was sitting in Assizes. Acting pursuant to C.P.R 2000 Rule 56.4, which enjoins the court to hear the matter forthwith, I heard the matter immediately.
- [17] There being no good reason for not hearing the matter based on the paper application acting in accordance with C.P.R 2000 Rule 56:4(2), I heard the matter.
- [18] After giving careful consideration to the matter I was satisfied that Mr Linton had demonstrated that there is an arguable case that a ground for seeking judicial review exists. It is my respectful view also, that the points raised by Mr Linton merits investigation on a full inter partes basis, with all the relevant evidence and arguments on the law. See **R v. Secretary of State for Home Department, exp Rukshanda Begum and Angur Begum [1990] COD 109.**
- [19] In view of the fact that Mr Linton stated in his affidavit that the matter was scheduled to continue before the Chief Magistrate (ag) Her Worship Maureen Hyman at 9.00am on the 28th January 2006, I directed that the leave granted to file the Judicial Review proceedings operates as a stay of the proceedings in accordance with Rule 56:4(8).

Conclusion

- [20] In an effort to expedite full hearing of the matter I make the following orders.
- (a) Leave is granted pursuant to C.P.R 2000 R 56.4(3) to the Claimant to apply for Judicial Review of the decision of the Her Worship Magistrate Maureen Hyman Chief Magistrate (ag.).
 - (b) I grant leave to the Claimant on condition that he files the Judicial Review proceedings within 14 days of this order.
 - (c) The Claimant shall serves forthwith, a copy of this order together with a copy of the Without Notice Application for leave to file Judicial Review, on the Honourable Attorney General and Her Worship, the Chief Magistrate (ag.)
 - (d) In accordance with Rule 56.4(8) I order that the leave granted herein shall operate as a stay of the matter in view of the date

scheduled for the continuation of the matter in the Magistrates Court.

- (e) I granted the Respondents 14 days leave from the receipt of the Judicial Review proceedings within which to file their affidavits in Answer.
- (f) The matter is adjourned for trial to 28th February 2006.

Louise Esther Blenman
High Court Judge.