

SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

Claim No. SLUHCV2005/0372

BETWEEN:

MICHEL MAGLOIRE also known as
MICHEAL MAGLOIRE

Claimant

AND

- (1) THE JUDICIAL AND LEGAL SERVICES
COMMISSION
- (2) THE ATTORNEY GENERAL

Defendants

Appearances:

Horace Fraser for Claimant

Mrs. Georgis Taylor – Alexander for Defendants

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2006: January 25
April 10
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DECISION

MASON J

[1] This court is being asked by the second Defendant to strike out the Statement of Claim of the Claimant in this action on the grounds that it discloses no reasonable cause of action against the second Defendant.

[2] The substantive action is a constitutional motion brought by the Claimant under Section 105 of the Constitution as a result of alleged breaches of sections 1 and 91 (2) and (3) of the Constitution.

[3] The Claimant is seeking redress in the form of the following declarations:

- (1) A declaration that directive of the First Named Defendant to the Second named Defendant therein contained in a letter addressed to the Senior Magistrate and communicated to the Claimant dated the 7th May, 2004 wherein he was duly informed that his contract will not be renewed was a capricious, arbitrary and oppressive removal of the Claimant from office.
- (2) A declaration that the Claimant's removal from office as Magistrate by the First Named Defendant was done in breach of the rules of natural justice and without just cause.
- (3) A declaration that the first Defendant's removal of the Claimant from office was contrary to law and was done at its pleasure or whim and fancy.
- (4) A declaration that the Claimant has a legitimate expectation that the First Named Defendant would have recommended to the Second Named Defendant that his contract should be renewed on the same terms he

previously enjoyed and that the Second Named Defendant would have accordingly acted on the said recommendation.

- (5) A declaration that the Second Named Defendant's letter dated the 7th January, 2004 addressed to the Secretary of the First Named Defendant recommending that the Claimant be reappointed as Magistrate II on a month-to-month basis for a period of three (3) months on the ground of ill health was an inducement by the said Second Named Defendant to the First Names Defendant to exercise its constitutional mandate in a manner to cause the Claimant's removal from office.
- (6) A declaration that the action of the Second Named Defendant in accepting, adopting and implementing the recommendation it induced the First Named Defendant to make and therein contained in the letter dated the 6th May, 2004 is contrary to law and caused the Second Named Defendant to breach his contract with the Claimant.
- (7) A declaration that the First Named Defendant has a duty at law to state the reason(s) for its removal of the Claimants from office or alternatively altering the existing contract between the Claimant and Second Named Defendant or for re-appointing the Claimant to the office of magistrate on a limited basis.
- (8) A declaration that the actions of the First Named Defendant in relation to the re-appointment of the Claimant and altering his contract with the Second Named Defendant were an abuse of power.

(9) A declaration that by virtue of section 91(3) of the St. Lucia Constitution Order 1978 indiscipline and incapacity are the only grounds on which the First Named Defendant could remove the Claimant from office.

and orders that

(1) the Defendants do pay compensation/damages to the Claimant for loss of earnings and for the inconvenience and distress suffered.

(2) the First named Defendant do pay exemplary damages to the Claimants for its oppressive and arbitrary action.

[4] Section 105 of the Constitution provides for the original jurisdiction of the High Court in constitutional matters and states:

(1) any person who alleges that any provision of this Constitution (other than a provision of Chapter I thereof) has been or is being contravened may, if he or she has a relevant interest, apply to the High Court for a declaration and for relief under this section.

(2) The High Court shall have jurisdiction on an application made under this section to determine whether any provision of this Constitution (other than a provision of Chapter I thereof) has been or is being contravened and to make a declaration accordingly.

- (3) Where the High Court makes a declaration under this section that a provision of this Constitution has been or is being contravened and the person on whose application the declaration is made has also applied for relief, the High Court may grant to that person such remedy as it considers appropriate, being a remedy available generally under any law in proceedings in the High Court.
- (4) The Chief Justice may make rules with respect to the practice and procedure of the High Court in relation to the jurisdiction and powers conferred on the Court by or under this section. Including provision with respect to the time within which any application under this section may be made.
- (5) A person shall be regarded as having a relevant for the purpose of an application under this section only if the contravention of this Constitution alleged by him or her is such as to affect his or her interests.
- (6) The right conferred on a person by this section to apply for a declaration and relief of an alleged contravention of this Constitution shall be in addition to any other action in respect of the same matter that may be available to that person under any other law.
- (7) Nothing in this section shall confer jurisdiction on the High Court to hear or determine any such question as is referred to in section 39.

[5] Section 1 of the Constitution provides:

Whereas every person in Saint Lucia is entitled to the fundamental rights and freedoms, that is to say, the right, whatever his or her race, place of origin, political opinions, colour or creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely-

- a. life, liberty, security of the person, equality before the law and the protection of the law;
- b. freedom of conscience, of expression and of assembly and association; and
- c. protection for his or her family life, his or her personal privacy, the privacy of his or her home and other property and from deprivation of property without compensation, the provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any person does not prejudice the rights and freedoms of others or the public interest.

[6] Section 91 of the Constitution deals with the appointment, removal and disciplining of legal public officers including Magistrates:

By sub paragraph 2 it provides:

The power to appoint persons to hold or act in offices to which this section applies (including the power to confirm appointments) shall vest in the Judicial and legal Services Commission.

And by sub paragraph 3 it states:

Subject to the provision of section 96, the power to exercise disciplinary control over persons holding or acting in offices to which this section applies and the power to remove such persons from office shall vest in the Judicial and Legal Services Commission

- [7] It is the contention of Counsel for the second Defendant that basically what paragraphs 1 to 4 of the Claimant's originating motion reveals is a request for judicial review and paragraphs 5 to 9 are dealing with breach of contract.
- [8] Counsel is therefore of the view that all of these issues are inappropriate to proceedings of this nature, that they do not fall within the ambit of a constitutional motion but rather should be brought as a separate action.
- [9] According to Counsel, judicial review is different from an action for constitutional redress and entails a different procedure. Counsel refers to Part 56 of Civil Procedure Rules and more specifically to Part 56.1, which deals with the type of applications which can be made, noting that they are separated - judicial review from constitutional review.
- [10] Therefore bearing in mind that the Claimant has pleaded this case as a constitutional motion and that revocation of his interest was wrong or unlawful, it was submitted that this could not be an action for judicial review and therefore paragraphs 1 to 4 of the motion ought to be struck out.

- [11] With reference to paragraph 5 to 9 – Counsel argues that if the first Defendant was induced to break the contract with the Claimant, then even in the face of an amendment to the claim, it remains a breach of contract issue. Breach of contract is a private law action and does not fall within the ambit of breach of the Constitution.
- [12] Counsel also refers to a suit for breach of contract which the Defendant has commenced in these courts and if the action is allowed to go ahead, it gives the Claimant an unfair advantage in that he can have a second opportunity to have the matter adjudicated at the expense of the Defendant.
- [13] Counsel for the second Defendant stated that the reason for the way Section 91 (2) and (3) is worded is to maintain the separation of the power of the entities and further by Section 124 (2) (b) the first Defendant is to be construed separate from the Government of St. Lucia which has no control or direction over it. The first Defendant is the only body responsible for disciplining or removal or hiring of legal staff including Magistrates. It is not the function of the Court.
- [14] After the first Defendant issues a directive to second Defendant to appoint someone to a certain position, then the second Defendant has no choice but to enter into an employer/employee relationship and fix the terms of the contract.
- [15] Second Defendant has merely to follow the directive and has no discretion in the matter.
- [16] Counsel submits then that there is no case for the second Defendant to answer.

- [17] Court should be guarded that the Claimant is not seeking to circumvent the situation where he has sat back on his rights and not applied for judicial review and then attempted to rescue his situation by way of application for a constitutional motion.
- [18] Counsel for the Claimant's argument is that a public functionary vested with constitutional authority in performing his functions must comply with the principles of natural justice.
- [19] Public law recognizes that a decision arrived at in breach of the rules of natural justice is subject to review on grounds of illegality and unreasonableness.
- [20] In this case the first Defendant is purporting to appoint a Magistrate and the Claimant is questioning the bona fides of how the first Defendant went about exercising its duty under Section 91 of the Constitution.
- [21] The Claimant is contending that in this instance there are a number of breaches of natural justice and as a result of what followed from these breaches, they touch on private law.
- [22] Of great importance is that the first Defendant does not set the terms and conditions. All it does is appoint at request of Government. Counsel states that Government went to the first Defendant and made a representation which was not supported and therein lies the inducement and as a result of this inducement certain things followed.

[23] As a result, the second Defendant must be made to answer. However there can be no separation of the Defendants, they all played a role in the scheme of things – first Defendant said it was a recommendation from Government who then have to answer as to the reason for making such a recommendation.

[24] Lord Diplock in Attorney General of the Gambia V Momolu Jobe (1984) AC 689 at page 700 said: " A constitution and in particular that part of it which protects and entrenches fundamental rights and freedoms to which all persons in the state are to be entitled is to be given a generous and purposive construction.

[25] The Claimant purports to bring his action under Section 1 of the Constitution. The second Defendant is of the opinion that this he cannot do because that section is merely declaratory, that it does not confer any rights which could be pursued by the Claimant.

[26] The Privy Council case of Harrikisson V Attorney General of Trinidad et Tobago (1980) AC 265 and the statement of Diplock J regarding the use of constitutional actions is instructive.

[27] He stated at page 268:

"The notion that whenever there is a failure by an organ of government or a public authority or public officer to comply with the law this necessarily entails the contravention of some human right or fundamental freedom guaranteed to individuals by Chapter I of the Constitution is fallacious. The right to apply to the High Court under Section 6 (Section 16 of the Constitution of St. Lucia) of the Constitution for redress when any human right or

fundamental freedom is or is likely to be contravened is an important safeguard of those rights and freedoms, but its value will be diminished if it is allowed to be misused as a general substitute for the normal procedures for invoking judicial control of administrative action. In an originating application to the High Court under Section 6 (1), the mere allegation that a human right or fundamental freedom of the applicant has been or is likely to be contravened is not of itself sufficient to entitle the applicant to invoke the jurisdiction of the court under the subsection if it is apparent that the allegation is frivolous or vexatious or an abuse of process of the court as being made solely for the purpose of avoiding the necessity of applying in the normal way for the appropriate judicial remedy for unlawful administrative action which involves no contraventions of any human right or fundamental freedom”.

[28] In that case, a teacher in the Republic Trinidad & Tobago was resisting a transfer to another school without having been given the requisite three (3) month notice (unless the emergencies of the teacher service did not so permit). He considered the transfer a punishment and that the exigencies of the Teaching Service did not justify his transfer.

[29] Instead of availing himself of the review procedure provided by regulation 135 of the Public Service Commissions Regulations, he applied to the High Court for a declaration that the human rights and fundamental freedoms guaranteed this by Section 1 of the Constitution had been violated.

[30] His application was rejected by the Privy Council.

- [31] Consider also the statement of Sir Vincent Floissac, Chief Justice in a case decided earlier: Russell (Randolph and Others V Attorney General of St. Vincent and the Grenadines 50 WIR 127 at page 135.
- [32] "The jurisdiction conferred upon the High Court by Section 96 (equivalent to our Section 105) is available and exercisable whenever an Applicant who has locus standi by way of a relevant interest alleges that a constitutional provision (other than one relating to a right or freedom.....) has been or is being contravened. The jurisdiction is in the nature of a judicial review of the justiciable decisions and actions of the public authorities where those decisions or actions contravene those rendered provisions of the Constitution.
- [33] The Claimant in our case is contending that the actions of the second Defendant breached the principles of natural justice by inducing the first Defendant thereby causing a breach of contract.
- [34] The Privy Council in the case of Rees V Crane (1994) 1 AER 833 at 847 –848 quoted a passage from Wade, Administrative Law 6th edition 1988 at page 500: "Natural justice is concerned with the exercise of power, that is to say, with acts or orders which produce results and in some way alter someone's legal position to his disadvantage. But preliminary steps, which in themselves may not involve immediate legal consequences may lead to acts or orders which may do so. In this case the protection of fair procedure may be needed throughout and the successive steps must be considered not only separately but also as a whole. The question must always be whether looking at the statutory procedure as a whole, each step is fair to the person affected".

[35] It is accepted that the principles of natural justice must at all times be adhered to and that any decision arrived at in contravention of those principles can be challenged because "basic fairness" is the guiding principle of "our public law" (Lord Steyn in *R. V. Secretary of State for the House Department* (2004) 1AC 604 at 630).

[36] I also accept the submission by Counsel for the second Defendant that section 1 of the Constitution is declaratory, conferring no rights but merely indicating and guaranteeing the fundamental rights and freedoms to which every person in St. Lucia is entitled.

[37] I am therefore unable to identify which of those rights the second Defendant would be said to have contravened.

[38] I do not agree with Counsel for the second Defendant's contention that the Claimant's action does not disclose any reasonable cause of action. It just does not disclose an action for constitutional redress.

[39] I have however been informed that there is currently suit number 831/2004 pending before this Court.

[41] In following the principle set out by Lord Diplock in the Harrikisson case (supra) that the mere allegation that a human right or fundamental freedom has been contravened is not of itself sufficient to invoke the jurisdiction of the court under Section 105 of the Constitution, I recommend that the Claimant continue to pursue his rights under that action.

[41] As a consequence, I am hereby allowing the application by the second Defendant and striking out the Claimant's claim against the Second Defendant

SANDRA MASON Q. C.

High Court Judge