SAINT LUCIA

IN THE COURT OF APPEAL

CIVIL APPEALS NO. 23 OF 2006

BETWEEN:

(1) C. J. TOURING SERVICE
(2) WEST COAST JEEP & TAXI SERVICES LTD
(3) NICO'S TOURING SERVICES LTD
(4) NEW FRONTIER TAXI ASSOCIATIONS
(5) T. E. TOURING SERVICES
(6) PETER LORD
(7) EMERY NAITRAM
(8) EVERGREEN PASSENGER TRANSPORT LTD

Appellants

and

ST. LUCIA AIR AND SEA PORTS AUTHORITY

CONSOLIDATED WITH CIVIL APPEAL NO. 24 OF 2006

CLASSIC TRANSPORTATION INCORPORATED

Appellant

and

ST. LUCIA AIR AND SEAPORTS AUTHORITY

Respondent

Before:

The Hon. Mr. Michael Gordon Q.C. — Justice of Appeal
The Hon. Mr. Denys Barrow S.C. — Justice of Appeal
The Hon. Mr. Hugh Rawlins — Justice of Appeal

Appearances:

Mr. Horace Fraser for the Appellants
Mr. Hilford Deterville Q.C. with Ms. Samantha Charles for the Respondent

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2006: October 19;
2007: January 15

JUDGMENT

[1] GORDON J.A. By order of this court appeals 23 and 24 of 2006 were consolidated and heard together. The essential facts in both cases are the same and the issues raised are the same.

[2] By two petitions dated 23rd August and 30th August 2006 filed under the authority of Articles 841 and 850 of the Code of Civil Procedure the appellants sought an injunction against the respondent restraining the respondent, whether by itself, its servants or agents from interfering with or obstructing or in any manner preventing the appellants from picking up and setting down passengers at any of the airports controlled by the respondent.

[3] On August 31, 2006 a judge in chambers, without hearing counsel for the respective parties made an order in the following terms:

> "1. It is obligatory on the Petitioners to give notice of this legal proceedings to the Respondent pursuant to Section 90 of the Saint Lucia Air and Sea Ports Act No. 10 of 1983 prior to commencing this legal proceedings.
> 2. There being no documentary evidence before me that the requisite written notice has been served on the General Manager by the Petitioners or their agent, this Petition and Application for leave to file a claim for Judicial Review is barred; and the Petition and Application is dismissed without hearing counsel for the Petitioners."

[4] The appellants are dissatisfied with that ruling of the trial judge and have appealed to this court. At the hearing of the appeal, there were two preliminary applications to be dealt with. The first was made by two of the appellants and was an application that the party described as "C.J. Touring Service " should be re-designated as Kervin Mitchell trading as C.J. Touring Service and that the party described as "New Frontier Taxi Associations " should be re-designated as Winston Edward trading as New Frontier Taxi Association.

[5] Notwithstanding the objection by learned counsel for the respondent, I am guided by the words of Sir Dennis Byron C.J. in Saint Lucia Furnishings Limited v Saint Lucia Cooperative Bank Limited et al[1] at paragraph 11 of the judgment where he said:

[1] St. Lucia Civil Appeal No. 15 of 2003 decision delivered November 24, 2003

> "The main concept in the overriding objective of the new rules set out in CPR Part 1.1 is the mandate to deal with cases justly. Shutting a litigant out through a technical breach of the rules will not always be consistent with this, because the Civil Courts are established primarily for deciding cases on their merits, not in rejecting them through procedural default."

The granting of the application by the two appellants requires an exercise of my discretion. I am of the view that the respondent would in no way be prejudiced if the application were to be granted and that such a grant would be dealing with the application justly.

[6] The second application was an application by the respondent to exclude a number of pages from the record. The appellants conceded that all of the documents sought to be excluded save pages 13 – 18 inclusive should be expunged. Pages 13 to 18 were the application and affidavits in support thereof dealt with in paragraphs 4 and 5 above and in my view are properly before this court.

[7] The starting point in this appeal must be section 90 of the Saint Lucia Air and Sea Ports Authority Act, No. 10 of 1983, ("the Act") which reads, so far as relevant, as follows:

> **"**90. LIMITATION
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> "Where, after the commencement of this Act, any legal proceeding is commenced against the Authority for any act done in pursuance, or execution or intended execution of this Act, or regulations or of any public duty or authority imposed or conferred by this Act or any regulations, or in respect of any alleged neglect or default in the execution of this Act, such regulations or of any such duty or authority, the following provisions shall have effect despite anything contained in any enactment, that is to say—
>
> "(a) the legal proceeding shall not be commenced until at least one month after written notice containing the particulars of the claim, and of the intention to commence legal proceeding, has been served upon the General Manager by the plaintiff or his agent;"

[8] This court is not required to, and specifically avoids, comment on the behaviour of the respondent of which complaint is made by the appellant. The sole, single and narrow point is whether the learned trial judge was correct in interpreting section 90 of the Act as being sufficiently wide as to cover any proceeding against the respondent.

[9] In Bryan v Lindo[2], a case which came before the Court of Appeal of Jamaica, the court had to consider language in the Public Authorities Protection Act of Jamaica, the first part of section 2 of which latter act was in very similar language to the first paragraph of section 90 of the Act. In that case it was found as a fact that a soldier, the defendant, during a state of emergency, arrested the plaintiff and took him to a police station. He told the police there that the plaintiff had fired shots at him. In response to suggestions from the police the defendant started to manhandle the plaintiff, and when remarks were made by the police that the defendant was merely romping with the plaintiff the defendant fired his weapon at the plaintiff at point blank range seriously injuring him. The plaintiff sued the defendant for assault. The issue before the Jamaican Court of Appeal was whether the one year period of limitation applied to the act of the soldier. It had been found by the court of first instance that this was a case of deliberate and gratuitous shooting of the plaintiff by the defendant for no other reason than that the defendant was responding to the jeering of the police personnel present. It was not an act done in pursuance or in execution or even intended execution of any law.

[10] As the court of appeal in Jamaica pointed out, the phrase 'execution or intended execution', which is common both to the Act and the Jamaican Public Authorities Protection Act, imports a mental element as it covers acts done in intended execution of the Act.

[11] Maliciousness, fraud or any other improper motive on the part of the respondent cannot be presumed; it must be asserted and then proved. This has not been done by the appellants in their affidavits filed in support of their petitions for an injunction. Bryan v Lindo is therefore of little or no assistance to the appellant.

[12] Learned counsel for the appellant contended, on the authority of Smith v East Elloe Rural District Council[3], that where in a statute general words are used they must be so

[2] (1986) 44 WIR 295
[3] [1956] AC 736

interpreted as not to take away individual rights. Learned counsel quoted from the judgment of Lord Reid at page 765 in support of his point:

> "There are many cases where general words in a statute are given a limited meaning. That is done, not only when there is something in the statute itself which requires it, but also where to give general words their apparent meaning would lead to conflict with some fundamental principle. Where there is ample scope for the words to operate without any conflict it may very well be that the draftsman did not have in mind and Parliament did not realize that the words were so wide that in some few cases they could operate to subvert a fundamental principle. In general, of course, the intention of Parliament can only be inferred from the words of the statute, but it appears to me to be well established in certain cases that, without some specific indication of an intention to do so, the mere generality of words used will not be regarded as sufficient to show an intention to depart from fundamental principles. So, general words by themselves do not bind the Crown, they are limited so as not to conflict with international law, they are commonly read so as to avoid retrospective infringement of rights, and it appears to me that they can equally well be read so as not to deprive the Court of jurisdiction where bad faith is involved.

[13] The principal, as articulated by the noble Law Lord, is well known. However, with the greatest of respect to counsel for the appellants I find that the principle has no application in this circumstance. It is clear that if a litigant has a claim in tort or contract against the respondent, such a claim will inevitably involve a determination of proprietary rights in the broadest meaning of that phrase. It is also trite law that the Constitution protects citizens from the deprivation of their 'property'. That by itself does not give the court the right to override the clear words of the legislation unless the legislation seeks to override the Constitution. In my view the Act does not seek to do this. Therefore, in so far as these petitions for injunction are concerned, I am of the view that the learned trial judge was right in determining, as she did, that absent the required notice as set out in section 90 of the Act, the proceedings were a nullity.

[14] In addition to seeking injunctions referred to above, the two petitions sought "That leave be granted to the Petitioners to file a claim for Judicial Review". As will be seen at paragraph 3 above, the trial judge also dismissed that latter application. At paragraph 15 of the Petition in Civil Appeal No.23 of 2006 and in paragraph 12 of the Petition in Civil Appeal

No 24 of 2006[4] the appellants state "[t]hat in order to save time and costs this Honourable Court is humbly asked to exercise its discretionary powers pursuant to Parts 26 and 56 of the Civil Procedure Rules (CPR) and also treat this Petition as an application for leave to file a claim for Judicial Review against the Respondent to challenge the said regulations". Part 26 of CPR deals with the court's power to manage cases and Part 56 CPR deals (inter alia) with the procedure to apply for judicial review.

[15] The issue that thus arises here is whether section 90 of the Act applies equally to an application for judicial review.

[16] In his book "Judicial Review: Law and Procedure" the author, R. J. F. Gordon states: "Judicial Review is the means by which the High Court exercises a supervisory jurisdiction over inferior courts, tribunals or other public bodies, including individuals charged with public functions"[5]. To put it further in context, the writer adds the following:

> In reviewing a particular decision the court is concerned to evaluate fairness. The essential function of judicial review (albeit in the context of natural justice), was well put by Lord Hailsham L.C. in Chief Constable of North Wales Police v Evans[6] where he stated.
>
> > 'it is important to remember in every case that the purpose…..is to ensure that the individual is given fair treatment by the authority to which he has been subjected and that it is no part of that purpose to substitute the opinion of the judiciary or of individual judges for that of the authority constituted by law to decide the matters in question.'

[17] Judicial review derives from the inherent jurisdiction of the court and is to be distinguished from remedies granted by, for example, section 16 of the Constitution of Saint Lucia, subsections 1 and 2 of which are reproduced below:

[4] Pages 32 and 55 of the Record respectively
[5] 1985 edition, page 3
[6] [1982] 1WLR 1155

"16. ENFORCEMENT OF PROTECTIVE PROVISIONS

(1) If any person alleges that any of the provisions of sections 2 to 15 inclusive has been, is being or is likely to be contravened in relation to him or her (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the High Court for redress.

(2) The High Court shall have original jurisdiction—

(a) to hear and determine any application made by any person in pursuance of subsection (1); and

(b) to determine any question arising in the case of any person which is referred to it in pursuance of subsection (3),

and may make such declarations and orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of sections 2 to 15 (inclusive):

Provided that the High Court may decline to exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law."

[18] A section 16 remedy, at the risk of stating the obvious, is a constitutionally guaranteed remedy and no Act of Parliament could be interpreted so as to derogate from the efficacy of the remedy. In other words, if the appellants had sought their remedy under section 16 for breach, say, of section 6 of the Constitution, then in my view section 90 of the Act might well be found to be inapplicable to such a suit. I make this assertion cautiously and without the usual firmness of declaration because the matter has not been argued before us.

[19] Notwithstanding the thoughts expressed in paragraph 18 above, it is clear to me that an application for judicial review cannot fall into the same category as a constitutional remedy. I would hold that section 90 of the Act also applies to such a 'proceeding'. I would dismiss both appeals with costs to the respondent calculated in accordance with Part 65 of the Civil Procedure Rules.

[20] I concur with the decision of Gordon JA and would merely add the observation that I do not understand section 90 of the Act to confer absolute immunity from injunctive relief upon the respondent. The discussion in the case of Bryan v Lindo[7] points clearly, in my view to the circumstances in which the court, in an appropriate case, may be able to grant injunctive relief without waiting for a limitation period to expire.

Michael Gordon, QC
Justice of Appeal

I concur

Denys Barrow, SC
Justice of Appeal

I concur

Hugh Rawlins
Justice of Appeal

[7] Supra