

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CLAIM NO. SLUHCV2005/0372

IN THE MATTER of the Constitution
Order of St. Lucia No. 1901 of 1978

AND

IN THE MATTER of an Application by
MICHEL MAGLOIRE also known as
MICHAEL MAGLOIRE of Black Bay,
Vieux Fort alleging that Sections 1 and
91 (2) and (3) have been contravened in
relation to him and seeks redress in
accordance with Section 105 of the said
Constitution

BETWEEN:

MICHEL MAGLOIRE
also known as MICHAEL MAGLOIRE

Claimant

and

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

Defendants

Appearances:

Mr. H. Fraser for Claimant

Mr. S. Bennett Q.C. along with Ms. P. Augustin for Defendant

2006: November 14;
2007: January 25,

JUDGMENT

INTRODUCTION

- [1] **EDWARDS, J.:** The Claimant Mr. Michel Magloire is an Attorney-at-Law. From the 4th January 2000 to May 2004, he was employed by the Government of St. Lucia as a Magistrate.
- [2] The 1st Defendant The Judicial and Legal Services Commission (J.L.S.C.), is the autonomous body charged with the Constitutional duty, to appoint/confirm appointment of Magistrates to office, and remove them therefrom.
- [3] The Attorney General is the legal representative of the Crown pursuant to sections 4 and 13 (2) of The Crown Proceedings Ordinance Chapter 13 of the Revised Laws of St. Lucia 1957.
- [4] By an Amended Fixed Date Claim Form filed on the 12th October 2005, Mr. Magloire's Originating Motion has sought the following relief:
1. A Declaration that the directive of J.L.S.C. to Attorney General contained in a letter addressed to the Senior Magistrate and communicated to the Claimant dated 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 J.L.S.C. was done in breach of the rules of natural justice and without just cause.

3. A Declaration that J.L.S.C.'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 J.S.L.C. would have recommended to the Attorney General that his contract should be renewed, on the same terms he previously enjoyed, and that the Attorney General would have accordingly acted on the said recommendation.
5. A Declaration that the Attorney General's letter dated 7th January 2004, addressed to the Secretary of the J.L.S.C., recommending that the Claimant be re-appointed as Magistrate II on a month-to-month basis for a period of 3 months on the ground of ill health, was an inducement by the Attorney General to the J.L.S.C., to exercise its constitutional mandate in a manner to cause the Claimant's removal from office.
6. A Declaration that the action of the Attorney General in accepting, adopting and implementing the recommendation it induced the J.L.S.C. to make and therein contained in the letter dated 6th May 2004, is contrary to law, and caused the Attorney General to breach his contract with the Claimant.
7. A Declaration that the J.S.L.C. had a duty at law to state the reason(s) for its removal of the Claimant from office, or alternatively altering the existing contract between the Claimant and the Attorney General, or for re-appointing the Claimant to the office of Magistrate on a limited basis.

8. A Declaration that the actions of the J.L.S.C. in the re-appointment of the Claimant and altering his contract with the Attorney General 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 J.L.S.C. could remove the Claimant from Office.
10. An Order that the Defendants do pay compensation/damages to the Claimant for loss of earnings and for the inconvenience and distress suffered.
11. An Order that the J.L.S.C. do pay exemplary damages to the Claimant for its oppressive and arbitrary action.
12. Further and other Relief.
13. Costs.

BACKGROUND FACTS

- [5] Magistrates in St. Lucia are fixed term contract officers. Their continued employment as Magistrates depends on the renewal of their contracts by the Government at the expiration of each contractual period in a particular set of circumstances.
- [6] The Government's existing practice, usually permits the preparation and execution of a Magistrate's current contract, to take place, during that current contractual period.

- [7] The Magistrate usually remains in office and continues to perform his/her Magisterial duties after the expiration of a contractual period, until re-appointment and the renewal of the contract.
- [8] Where there is no renewal of the contract, the Magistrate quits office or his/her services are terminated at the end of the contractual period or thereafter.
- [9] Mr. Magloire was employed as a Magistrate for 4 successive contractual periods of 1 year from the 4th January 2000 to 3rd January 2004. On the expiration of his contractual period from the 4th January 2003 to the 3rd January 2004, he remained in office.
- [10] He continued to function as a Magistrate with the expectation that his contract would be renewed for another year, because on the 18th July 2003, he had given written notice to the Government that he wished to remain in its employment.
- [11] His fourth contract, like the other previous contracts, contained a provision Clause 11 which provided as follows –
- “Six months prior to completion of a tour of employment service, the person engaged shall give notice in writing to the Government whether he desires to remain in its employment, and the Government shall thereupon decide whether it will offer him further employment. If the Government offers him further employment the re-engagement will be on such terms and such period as may be mutually agreed.”**
- [12] The facts that gave rise to this Originating Motion, are contained in Mr. Magloire's Supporting Affidavit with documentary exhibits, filed on the 20th May 2005.

[13] By letter dated 7th January 2004 the Permanent Secretary in the Ministry of Justice wrote the following letter to the Secretary of the J.L.S.C, concerning Mr. Magloire's re-appointment, on the expiration of his 1 year contract on the 3rd January 2004 –

" ...

Dear Madam

The Ministry of Justice recommends the re-appointment of Mr. Michael Magloire to the post of Magistrate II with effect from January 04, 2004 on a month-to-month basis for a period of three [3] months. Mr. Magloire's one-year contract ended on January 03, 2004.

As far as the performance of his duties is concerned, Mr. Magloire, unfortunately suffers from a medical condition which causes him to be away from office quite often. This does not augur well for the jurisdiction where he serves. Mr. Magloire had previously undergone surgery and the Ministry is aware that he is required to undergo eye surgery overseas in March 2004. This month-to-month appointment will facilitate him until this time.

Relevant documents are attached for the Commission's perusal.

I should be grateful for the Commission's consideration and approval of this recommendation.

Yours sincerely,

[Sgd.] M. Louis
Permanent Secretary"

[14] By letter dated the 6th April 2004, the Secretary of the J.L.S.C. Ms. Angus Smith, wrote to the Permanent Secretary Ms. Marie-Ange Louis at the Ministry of Justice. This letter stated –

“ . . .

Dear Madam

I have been directed by the Chairman, Judicial and Legal Services Commission to inform you that the Judicial and Legal Services Commission has approved of the appointment of Mr. Michael Magloire to the post of Magistrate II on a month-to-month basis for a period of four [4] months with effect from 4th January, 2004.

The Commission would be grateful if you could kindly forward medical documentation to support the request for month-to-month employment.

With thanks

Yours faithfully

[Sgd.] Angus Smith
Secretary”

[15] On the 7th May 2004 Mr. Magloire received the following letter from the Permanent Secretary:

"May 6, 2004

Floreta Nicholas
Senior Magistrate
First & Second District Court
Peynier Street
Castries
Dear Ms. Nicholas,

Re: Magistrate Michael Magloire

By letter dated April 8, 2004 you were informed of the decision of the Judicial and Legal Services Commission (JLSC) approving the appointment of Magistrate Magloire to the post of Magistrate II on a month-to-month basis for a period of four months with effect from January 4, 2004.

The effect of this is that Mr. Magloire's final working day as Magistrate was Friday April 30, 2004.

The Ministry of Justice has been advised that Mr. Magloire is continuing to work past the termination date under the month-to-month arrangement. If this is so, be advised as follows:

1. No one, save the Judicial & Legal Services Commission, has authority to further extend Mr. Magloire's working arrangement;
2. Any purported extension of this arrangement by a body other than the Judicial and Legal Services Commission (JLSC) is void and of no effect;
3. In the circumstances Government of St. Lucia will accept no responsibility for paying any monies to Mr. Magloire for any unauthorized period during which he worked.

4. By copy of this letter we are informing the Chairman of the Judicial and Legal Services Commission, the Accountant General and Mr. Magloire.

Yours sincerely

Permanent Secretary

cc: Hon. Petrus Compton
Minister of Justice

Chairman, Judicial & Legal Services Commission
Accountant General

Mr. Michael Magloire.”

- [16] Concerning this letter, Mr. Magloire deposed that he was taken by surprise, since he did not receive the letter bearing date 8th April 2004, informing him that he was re-appointed as Magistrate on a four month contract.
- [17] Mr. Magloire retained the services of Solicitors who on the 21st May 2004, wrote the following letter to the Permanent Secretary of the Ministry of Justice –

“ . . .

We have advised our client, amongst other things that the letter of May 6, 2004 to the Senior Magistrate of which a copy was sent to him constitutes a breach of his contractual rights and we ask that you compensate our client as follows:-

1.	Loss of earnings May 2004 to January 2005 \$7087.19 x 8	\$56,697.52
2.	25% gratuity	\$14,380.17
3.	National Insurance Contributors \$250 x 8	\$2000.00
4.	Working days leave	\$10,800.00

We respectfully say that we require a response to this letter within the next 14 days. Failure to receive a satisfactory reply to our letter within the next 14 days, we give you notice that legal proceedings will be issued in respect of client's breach of contract.

Further, we have advised our client that a copy of this letter be sent to his Parliamentary Representative for Vieux-Fort South as our client is a resident of the Vieux-Fort South Constituency.

Yours,
CALDERON MAGLOIRE & CO.
PER:-

[Sgd.] Evans Calderon
Solicitor."

[18] Mr. Magloire further deposed that he has never been informed by the J.L.S.C. of the reasons for its actions. Neither was he cited for indiscipline, nor was he "suffering by reason of incapacity" thus hindering his ability to function as a Magistrate.

- [19] On the 20th May 2005 Mr. Magloire commenced these legal proceedings against the J.L.S.C. and the Attorney General. On the 16th September 2005 the Attorney General filed a Notice of Application to Strike Out the Statement of Claim. This Application was heard on the 25th January 2006. On the 10th April 2006 in a Written Decision, the Court struck out the Claim against the Attorney General on the ground that it does not disclose an action for constitutional redress.
- [20] I note that Mr. Magloire has a claim pending against the Attorney General in this Court – SLUHCV 0831/2004 – for breach of contract and wrongful dismissal.
- [21] Mr. Magloire contends among other things, that the action of the J.L.S.C. allegedly contained in the letter dated 8th April 2004, evidenced by the letter dated the 6th May 2004, was a feeble attempt at legal engineering, designed to conceal the J.L.S.C.'s removal of him from office, at its whim and fancy. He contends that the said action is unlawful, void and without legal effect for the following reasons:
- (a) to (b) . . .

 - (c) It effectively removed him from office without affording him a hearing of the rules of natural justice.

 - (d) It denied him the right to have his application for the renewal of his contract fairly decided.

 - (e) It failed to state the reasons why the J.L.S.C. was recommending that his contract be terminated after four months.

 - (f) It went against his legitimate expectation that his contract would be renewed along the same terms and condition as the one last expired.

(g) to (i) . . .

(j) The said recommendation was coercive, oppressive, dismissive, high handed and determinate

(k) . . .

[22] The other reasons put forward by Mr. Magloire which I have omitted, directly relate to allegations that there was a breach of contract. Since there was never any contract between Mr. Magloire and the J.L.S.C, in my view it is otiose to consider such reasons in this judgment on the Constitutional Motion.

[23] The then Secretary of the J.L.S.C. Ms. Angus Smith, responded to these allegations in her Affidavit filed on the 17th June 2005.

[24] At paragraphs 4 to 9 of her Affidavit she deposed –

"4. It can be seen that the Claim against Commission is premised on the assumption that the Commission has issued a directive to the . . . [Attorney General] which resulted in the capricious, arbitrary and oppressive removal of the Claimant from office.

5. In fact on 7th January 2004 the Commission through its Secretary received a letter from the Ministry of Justice whereby it recommended the re-appointment of the Claimant to the post of Magistrate II with effect from January 4 on a month to month basis for a period of 3 months . . .

6. Accordingly, the Commission approved of the appointment of the Claimant to office on month-to-month for the period of 4 months with effect from 4th January 2004 with a request for medical documentation . . .
7. The Judicial and Legal Services Commission has no power to lay down terms of service for Magistrates. It is the Government which decides upon the duration of service of an individual Magistrate, and which decides whether or not his contract is to be renewed. The Claimant was appointed to office on a month to month basis as required by the Government and his term in office duly expired on 4th May 2005.
8. I specifically deny the assertion of the Claimant that the Commission had made unlawful recommendation to the Government with regard to the Claimant's contract, either in the letter dated 8th April, 2004 or otherwise. The letter of the Permanent Secretary of the Ministry of Justice to the Chief Magistrate dated 6th May, 2004 which letter was copied to the Claimant was not sent on behalf of the Commission.
9. In the premises I assert that the Claimant has no real prospect of succeeding on this claim for damages and any declaration against the Commission and accordingly I ask that the Claimant's claim as against the Commission be dismissed with costs."

ISSUES

[25] The issues arising from the Affidavits of Mr. Magloire and Ms. Angus Smith, the Amended Claim Form, the Constitution, Public Law and submissions of Counsel are:-

- A. What was the nature of any legitimate expectations that Mr. Magloire may have had, based on this practice of the Government and his employment as Magistrate from the 4th January 2000 to the 3rd January 2004?
- B. Did the J.L.S.C. act unconstitutionally in relation to Mr. Magloire?
- C. What declarations and relief, if any, are Mr. Magloire entitled to?

[26] I shall now consider the first 2 issues together in light of the structure of the submissions of Learned Counsel Mr. Fraser. He has referred to a large number of authorities. Though I have examined each of them, the fact that I have not mentioned all of them in this judgment is no reflection on his industry. I have omitted most of these authorities either because the principles are duplicated in them or because of my conclusions. Almost all of these authorities relate to challenges of the decisions of public or statutory authorities by way of Judicial Review. The judicial statements he relied on in these authorities in support of his submissions concerning natural justice and legitimate expectation were made within the context of either Judicial Review or Constitutional Motions for infringement of fundamental rights provisions. Some of these Authorities were:

Barnwell v Attorney General and Another [1993] 49 W.I.R. 88; **Mc Inness v Onslow Fane** [1978] 3 All E.R. 211; **Robert Naidke and Others v Attorney General of T&T** Privy Council No. 10 of 2003; **The Attorney General of Antigua**

& Barbuda and Others v Lake P.C. [1998] E. C.L.R. 305; Felix Durity v Attorney General T&T (Unreported) No. 569 of 1997 H.C.;

LEGITIMATE EXPECTATION AND THE CONSTITUTION

- [27] The Privy Council in Attorney General of Hong Kong v Ngyuen Shiu crystallized the concept of legitimate expectation: [1983] 2 All E.R. 346. The Board conceded that legitimate expectations may include expectations which go beyond legal rights, provided they have a legal basis.
- [28] A legitimate expectation may arise either from an express promise given on behalf of a public authority, or from the existence of a regular practice which the Claimant can reasonably expect to continue: (Per Lord Fraser of Tullybetton in Council of Civil Service Unions v Minister of Civil Service [1985] A.C. 374, at 401). “In view of the importance which the claim of legitimate expectation has assumed . . . within recent times . . . it may be useful to emphasise that a legitimate expectation accords its claimant locus standi to seek judicial review of administrative action within the framework of public law” [rather than filing a Constitutional Motion]: (PER Bishop C.J. in Barnwell v Attorney General of Guyana (1993) 49 W.I.R. 88).
- [29] I accept the undisputed evidence of Mr. Magloire, and that of 2 other former Magistrates, who deposed to the established practice, for the re-appointment of Magistrates in St. Lucia. I accept that they are re-appointed long after their period of engagement has expired by effluxion of time, and long after they have continued in office upon the expiration of their fixed contractual term. In my view this practice can support the conclusion, that Mr. Magloire was entitled to have a legitimate expectation, that his contract would be renewed for one year, commencing 4th January 2004 to 3rd January 2005.

[30] Learned Counsel Mr. Fraser has referred to this expectation as a legitimate expectation in the first degree.

[31] The nature of the legitimate expectation is what is in issue. Mr. Fraser has argued that the expectation was that the J.L.S.C. would re-appoint him as Magistrate for 1 year in the exercise of its mandate under Section 91 (2) and (3) of The Constitution of St. Lucia.

[32] It is necessary to reproduce Section 91 which states –

- “(1) This section applies to offices of Magistrate, Registrar of the High Court and Assistant Registrar of the High Court, to any public office in the department of the Attorney General (other than the public office of Attorney General) or in the department of the Parliamentary Commissioner, the department of the Chief Elections Officer (other than the office of Officer) or department of the Director of Public Prosecutions (other than the office of Director) for appointment to which persons are required to hold one or other of the specified qualifications and such other offices connected with the Courts as Parliament may prescribe.**
- (2) The power to appoint persons to act in offices to which this Section applies (including the power to confirm appointments) shall vest in the Judicial and Legal Services Commission.**
- (3) Subject to the provisions 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.”**

[33] Learned Counsel Mr. Fraser submitted that Section 91 of the Constitution provides Constitutional protection to Magistrates despite the fact that Mr. Magloire was a fixed term contract public officer. That Section 91 seeks to protect a Magistrate regardless of tenure. He found support for this proposition in Attorney General of Antigua & Barbuda and Others v Lake (supra) at page 313 paras A-C. There, Lord Hutton stated in his judgment: **“In April 1994 Dr. Lake held an office in the public service. Section 100 [of the Antigua and Barbuda Constitution] provided that the power to remove him from that office was vested in the Public Service Commission, and the power to appoint another person to that office in his place was also vested in the Public Service Commission. Moreover section 99 (11) provided that in the exercise of its functions under the Constitution the Public Service Commission should not be subject to the direction or control of any other person or authority. The purpose of these provisions is to protect public servants from political pressure and from the effects of political patronage.”**

[34] Developing his arguments further, Mr. Fraser contended that since the J.L.S.C. is the sole authority to appoint Magistrates to office and remove them therefrom, when the J.L.S.C. so acts, it is exercising a judicial function and must observe the rules of natural justice and adopt procedures that promote fairness.

[35] Mr. Fraser made reference to several authorities which in essence identify for the judicial functionaries, the well established applicable principles of natural justice, which are equated with procedural fairness, and which must be followed:

They are –

- (a) Giving Notice of the complaint to the person accused;
- (b) Giving ample opportunity to the person accused to respond to the allegations in the complaint;

(c) The decision making authority has a duty to listen to both sides before making the decision: (Barnwell v A.G. of Guyana (supra) at p. 134 (c) (d), (e) and (f) 146 g-h;

[36] Mr. Fraser submitted also that Mr. Magloire had a legitimate expectation that he would have been allowed a hearing or given an opportunity to make representation before the J.L.S.C. reached a decision that sought to deprive him of his financial proprietary interest.

[37] On the other hand, Learned Queen's Counsel Mr. Bennett in my view, put the matter in its proper prospective.

[38] He argued that even if Mr. Magloire had this legitimate expectation that his employment would be renewed on the same terms as his prior engagements, it was the Government of St. Lucia and not the Commission that was empowered by Clause II of the Contract to decide whether it would renew the contract. It was the Government and not the Commission that would negotiate with Mr. Magloire the terms and conditions under which he would be re-engaged.

[39] Mr. Bennett Q.C. buttressed this argument with the judicial explanations of Lord Diplock, giving the judgment of the Privy Council, concerning a provision in the Constitution of Trinidad and Tobago comparable to Section 91 of the St. Lucia Constitution.

[40] This was in the case Thomas v Attorney General [1982] A.C. 113 at page 128. There Lord Diplock stated –

“The functions of the Police Service Commission fall into two classes: (1) to appoint officers to the police service, including their transfer and promotion and confirmation in appointments and (2) to remove and exercise disciplinary control over them. It has no power

to lay down terms of service for police officers; this is of the legislature and, in respect of any matters not dealt with by legislation, whether primary or subordinate, it is for the executive to deal with in its contract of employment with the individual police officer. Terms of service include such matters as (a) the duration of the contract of employment, e.g. for a fixed period, for a period ending on attaining retiring age, or for a probationary period as is envisaged by the reference to "confirmation of appointments" in section 99 (1); (b) remuneration and pensions; and (e) what their Lordships have called the "code of conduct" that the police officer is under a duty to observe."

[41] Queen's Counsel therefore submitted in substance, that since it was the Government which had the duty or power to decide whether it would renew the contract of Mr. Magloire, then the Government as decision maker had the corresponding duty to give Mr. Magloire a fair hearing in relation to the terms of his employment, and afford him the opportunity to make representations on matters which might have influenced the decision as to those terms.

[42] Mr. Bennett concluded that the J.L.S.C. had no contractual relationship with Mr. Magloire and could not set terms of his engagement. Hence, any expectation that Mr. Magloire entertained as to the terms under which he was to be re-engaged by the Government was an expectation as to how the Government would exercise its contractual rights under Clause 11 of the Contract.

[43] Concerning Mr. Magloire's contention that the J.L.S.C. had acted unconstitutionally in relation to him, Queen's Counsel responded with the following submissions –

(a) There is no constitutional right to hold office as a Magistrate and employment in that office is not property in the context of the

fundamental rights provisions of the Constitution: Durity v Attorney General of Trinidad & Tobago H.C.A. No. 569 of 1997 (unreported) per Gobin J at para 19.

- (b) More fundamentally, while the Commission is constitutionally empowered to appoint and to remove public servants from office, it does not exercise any judicial, quasi-judicial or any other function in relation to the laying down of terms of service for their employment. This is the exclusive preserve of the executive. The decision as to whether Mr. Magloire's contract was to be renewed and the duration of such renewal was not for the Commission to make. Mr. Magloire's contention and the submissions of his Counsel are based on a misunderstanding of the constitutional function of the J.L.S.C.
- (c) Mr. Magloire's employment is not constitutionally protected.
- (d) Section 91 (3) of The Constitution is not concerned with termination simpliciter of the employment of Magistrates. It is only concerned with one type of such termination which is removal from office. The protection afforded to such Magistrates is an entitlement to remain in office until the age of retirement unless they are sooner removed from office by the J.L.S.C. for some reasonable cause related to their conduct or fitness to perform the duties of office. Such protection is not available to persons holding office on a probationary basis, or holding office temporarily under a contract for a specific term.
- (e) Lord Diplock in Thomas v A.G. (supra) at p. 384 c said:

" . . . to remove from office in the police force in the context of section 99 (1) in their Lordships view embraces every means by which a police officer's contract of employment (not being a

contract for a specified period) is terminated against his free will by whatever euphemism the termination may be called, as for example, being required to accept early retirement . . .”

- (f) The termination by any method of a contract of employment for a fixed or specific period is outside the scope of Section 91 (3) of the Constitution.
- (g) Where such employment is terminated the only question which arises is whether there is a breach of the relevant contract of employment: St. Kitts & Nevis Civil Appeal No. 68 of 2000: Attorney General of St. Christopher & Nevis v Angela Jasmine Inniss : St. Lucia Civil Appeal No. 24 of 2005: Judicial and Legal Services Commission v Horace Fraser and Attorney General of St. Lucia. Such an issue cannot arise between the J.L.S.C. and Mr. Magloire, since the J.L.S.C. has no contractual relationship with him.
- (h) The claim regarding the letter dated 7th May 2004, which is the subject of the declaration No. 1, is premised on a false and mistaken assumption. The letter so identified as containing or constituting a directive of the Commission to the Attorney General is the letter dated 6th May 2004 signed by the Permanent Secretary to the Senior Magistrate. It was neither sent by nor on behalf of the Commission, and it was not sent to the Attorney General. The assertion of Mr. Magloire that the J.L.S.C. issued a directive to the Government of St. Lucia to terminate his employment has no basis in fact since no such directive was issued by the J.L.S.C.
- (i) The Declarations claimed as Nos. 2, 3, 6, and 8 in the Amended Claim Form are premised on the erroneous proposition of fact and law that the alleged or some action of the J.L.S.C. constituted a removal

of Mr. Magloire from office. Mr. Magloire's tenure in office came to an end on the 4th May 2004 upon the expiration of the term of appointment. The termination by effluxion of time of a contract for a fixed period is not removal from office within the context of Section 91 of the Constitution of St. Lucia.

THE ORIGINAL JURISDICTION OF THE COURT

[44] Section 105 of the Constitution of St. Lucia states as follows –

- “(1) Subject to the provisions of sections 22 (2), 37 (6) 41 (11), 58 (7), 117 (8), 121 (3) and 124 (10), 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 of the High Court.

(4) to (5) . . .

(6) The right conferred on a person by this Section to apply for a declaration and relief in respect 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.”

[45] The provisions mentioned in Sections 105 (1) are not relevant for the purposes of this Motion.

[46] The title to the Amended Claim alleges that Sections 1 and 91 (2) and (3) have been contravened in relation to Mr. Magloire. However one of the declarations that is No. 9, has been sought only in relation to Section 91 (3).

[47] Section 1 of the Constitution declares that all persons in St. Lucia are entitled to certain rights and freedoms which include the protection of the law. This section is really a preamble and an aid to the interpretation of the provisions of Chapter 1 which guarantees fundamental rights and freedoms.

[48] Consequently Mr. Magloire has not proven that Section 1 has been contravened by the J.L.S.C. in relation to him.

[49] It is obvious that the arguments of Learned Counsel Mr. Fraser, concerning the alleged contraventions of Section 91 of The Constitution by the J.L.S.C. conflict with the decisions of our Court of Appeal in (1) The Attorney General of St. Christopher and (2) Nevis v Angela Jasmine Inniss (supra) and (2) Judicial and Legal Services Commission v Horace Fraser and Attorney General of St. Lucia supra . In the first case, Redhead J.A. had to consider the degree of protection that a Registrar of the High Court enjoys under Section 83 (3) of the Constitution of St. Christopher and Nevis. This provision states: “The power to

exercise disciplinary control over persons holding or acting in offices which this Section applies and the power to remove such persons from office shall vest in the Governor General acting in accordance with the recommendation of the Judicial and Legal Services Commission. Provided that before making any recommendation as to the exercise of the powers conferred by this subsection in any case, the Judicial and Legal Services Commission shall consult the Public Service Commission.”

[50] The holders of offices specified under Section 83 of that Constitution and the provisions for appointment are comparable to Section 91 (1) and (2) of the St. Lucia Constitution. Section 83 (3) of that Constitution is comparable to Section 91 (3) of the St. Lucia Constitution.

[51] Rejecting the reasoning of the trial judge, that the holders of offices under Section 83, provide such an important service to the public, that Section 83 (3) “provides a mechanism for their removal which lay outside the control of the Executive and such an officer could not “bargain away” the protection afforded to an office holder under Section 83 by contract”, Redhead J.A. said at paras 25 and 36 to 41 of his judgment:

“25. The Learned trial judge in so doing has elevated, in my view, the Registrars, Magistrates and Crown Counsel in the office of the Attorney General and Department of the D.P.P. to the status of Director of Public Prosecutions and Judges.”

“36. In Hinds v The Queen (1976) 2 W.I.R. 366 at p. 377 Lord Diplock said:-

(i) *“Chapter VII of the Constitution, the Judicature”, was in their Lordships view intended to deal with the appointment and security of tenure of all persons*

holding any salaried office by virtue of which they are entitled to exercise civil and criminal jurisdiction in Jamaica. For this purpose they are divided into two categories: (1) a higher judiciary consisting of judges of the Supreme Court and Judges of the Court of Appeal, and (ii) a lower judiciary, consisting of those described in section 112 (2) viz “. . . Resident Magistrate, Judge of the traffic court, Registrar of the Supreme Court, Registrar of the Court of Appeal and such other officials connected with the courts of Jamaica subject to the provisions of this constitution . . . may be prescribed by Parliament . . .” The distinction between the higher judiciary and lower judiciary is that the former are given a greater degree of security of tenure than the latter. There is nothing in the constitution to protect the lower judiciary against Parliament passing ordinary laws (a) abolishing their office (b) reducing their salaries while they are in office or providing that their appointments to judicial office shall be only for a short fixed term of years . . . The only protection that is assured to them by Section 112 is that they cannot be removed or disciplined except on the recommendation of the Judicial Service Commission with a right of appeal to the Privy Council.”(My emphasis).

“37. In my view a clearer exposition of the law on this subject one would have difficulty to find.”

- "38. For the avoidance of doubt it is to be observed that Section 112 (1) and (2) of the Jamaica Constitution is in identical terms as Section 83 (1) and (2) of the St. Christopher and Nevis Constitution [83(1) corresponds to 112 (2) and 83 (2) corresponds to 112 (1)].
- "39. There is a slight difference between 83 (3) and 112 (3) in that in the latter the Governor General acts on the advice of the Judicial Service Commission for the removal or the imposition of any penalty on the officer (same position obtains under 83 (3). But if the officer applies for the case to be referred to the Privy Council, the Governor General shall not act in accordance with the advice but shall refer the case to the Privy Council."
- "40. Provided the Governor-General may suspend the officer pending the determination of the reference to the Privy Council."
- "41. The difference between the two subsections (3) do not in my view alter the position in so far as the argument in the instant case is concerned save to say that, in my opinion, the Jamaican officer is given, it can be argued, a greater degree of security than his Kittian counter part in that the Jamaican legal officer has an opportunity to have his matter reviewed by two separate bodies."

[52] In the second case the Court of Appeal applied the judicial pronouncements of Redhead J.A. in the Inniss case. Rejecting the contention of Mr. Astaphan S.C. for the Government, that the Court of Appeal in the Inniss case failed to distinguish between the determination of a contract by effluxion of time, which was

not a removal, and termination by the intervention or act of the executive, which Counsel argued was a removal, Barrow J.A. in his leading Judgment at paragraph 21 opined –

“I consider, however, that even if I am wrong in that view it makes no difference that the Court failed to treat contractual termination as removal from office. This is because the Court in Inniss . . . (1) specifically decided that a Registrar/additional Magistrate, . . . had no constitutional security of tenure . . . which she could “bargain away” and (2) decided by necessary implication, in reversing the trial judge who had held that the clause in the contract that allowed the Government to terminate by Notice “was null and void and of no effect,” that such a clause in a Registrar’s contract did not violate the constitutional provision that vested the power to remove in the Governor General. Inniss therefore decided that contractual termination did not offend the constitutional provision relating to removal. It does not matter, then, if contractual termination was also removal; Inniss decided that such a removal was valid.”

[53] Rawlins J.A. at paragraph 48 was also of the opinion that: “Ultimately, the decision in Inniss means that neither Section 91 [of the St. Lucia Constitution] nor any other provision in the Constitution prevents a Magistrate from contracting in a manner which permits his or her employment to be terminated by the Government and not by the Commission in accordance with Section 91 (3) of the Constitution.”

[54] It is therefore easy to distinguish, the judicial pronouncements of Lord Hutton in Attorney General of Antigua & Barbuda v Lake supra reproduced at paragraph 31 of this judgment. Lord Hutton spoke of the Public Service provisions in the

Constitution concerning the appointment and removal of public officers with particular reference to Section 99 (11) of the Antigua & Barbuda Constitution which is similar to Section 85 (12) of the St. Lucia Constitution.

[55] Section 85 (12) of our Constitution provides – **“The Commission shall in the exercise of its functions under this Constitution, not be subject to the direction or control of any other person.”** This is in contrast to Section 91 (2) of The St. Lucia Constitution which does not insulate the J.L.S.C. from the direction or control of any other person. It is also significant in my view, that Section 91 (2) contains the words **“including the power to confirm appointments.”** This suggests that there will be instances when the J.L.S.C. acts on the recommendations of other persons for the appointment of officers within the category mentioned in Section 91 (1). In such cases, the J.L.S.C. will be merely confirming such appointments or it will **“approve of the appointment”** as it did in its letter dated-6th April 2004 (at paragraph 14 of this judgment). Given that Redhead J.A. in Inniss was considering a provision comparable to Section 91 in the St. Lucia Constitution, in my opinion this Court must follow the decision in Innis (supra) and the decision of the Court of Appeal in Judicial & Legal Services Commission v Horace Fraser and Attorney General (supra).

[56] I therefore accept the admirable succinct submissions of Learned Queen’s Counsel Mr. Bennet in full. I find that the Claimant has not discharged his burden of proving that Section 91 (2) and (3) of the Constitution has been contravened by the Judicial and Legal Services Commission in relation to him.

[57] Consequently the Declarations and other relief claimed are denied.

CONCLUSION

[58] The Constitutional Motion is therefore dismissed with Costs to the Judicial and Legal Services Commission to be assessed on the 31st January 2007.

Dated this 23rd day of January 2007

OLA MAE EDWARDS
HIGH COURT JUDGE