

ANTIGUA AND BARBUDA

IN THE COURT OF APPEAL

CIVIL APPEAL NO.25 OF 2005

BETWEEN:

GLENTIS W. GOODWIN

Appellant

and

[1] HON.WINSTON B. SPENCER

[2] HON. JUSTIN L. SIMON

Respondents

Before:

The Hon. Mr. Brian Alleyne, SC

The Hon. Mr. Michael Gordon, QC

The Hon Mr. Hugh A. Rawlins

Chief Justice [Ag.]

Justice of Appeal

Justice of Appeal

Appearances:

Mr. Ralph Francis for the Appellant

The Hon. Mr. Justin Simon, QC, Attorney General, for the Respondents

2007: March 14.

JUDGMENT

[1] **GORDON, J.A.:** On 28th June, 2004, the gubernatorial assent was given to an Act, the long title of which is "An Act to provide for the acquisition of citizenship of Antigua and Barbuda in commemoration of the new millennium, by persons, who were on and since the first day of January, 2000 lawfully resident in Antigua and Barbuda." The short title of the Act is the Millennium Naturalisation Act (hereinafter referred to as "the Act").

[2] The purpose of the legislation, as expressed in the long title of the Act, was principally achieved by Section 3(1) of the Act which reads as follows:

“3. (1) Notwithstanding any law to the contrary, and subject to subsection (3), any person of full capacity who was lawfully resident in Antigua and Barbuda on the first day of January, 2000 and, on the date of his application for citizenship under this Act, has been continuously lawfully ordinarily resident in Antigua and Barbuda from that day, may apply to become a citizen of Antigua and Barbuda in accordance with regulations made under this Act.”

[3] The appellant; who described himself as the chairman of the Organization for National Development, a political party in Antigua and Barbuda, filed an Originating Motion pursuant to the provisions of Section 119 of the Constitution of Antigua and Barbuda (hereafter “the Constitution.”) seeking a declaration that Section 3(1) of the Act contravenes Sections 114 (1) (c) (ii) and Section 116 (1) of the Constitution and thus was “null and void and of no effect.”

[4] Named as defendants in the Originating Motion were Honourable Winston B. Spencer and Honourable Justin C. Simon in their respective capacities of Prime Minister and Attorney General of Antigua and Barbuda. In a suit of this nature the proper party is “The Honourable Attorney General” and no one else. Section 13 (2) of the Crown Proceedings Act, Cap. 121 of the Laws of Antigua is in clear, unequivocal and mandatory terms. It reads:

“Civil proceedings against the Crown shall be instituted against the Attorney General”

In his submissions in the court below the Honourable Attorney General made no application for costs and none were ordered. Counsel and litigants should, however, be aware that should a wrong person be made a party to litigation and seek costs on that basis, it is quite likely that a court would so exercise its discretion as may result in pain to the claimant. In the event we made no order as to costs.

- [5] The Learned Trial Judge in a judgment dated 21st November, 2005 dismissed the claim of the Claimant who, being dissatisfied with the decision has appealed to the Court of Appeal. We heard the appeal and dismissed the same and promised to reduce our reasons to writing, which we now do.
- [6] The basic premise of learned counsel for the appellant is that Section 114 (1)(c)(ii) of the Constitution is part of Chapter VIII of that latter document and, by virtue of Section 47 (5) of the Constitution, can only be amended by the prescribed method set out in that Section. That is, Section 114 of the Constitution is what is referred to as a deeply entrenched clause. Learned Counsel argues that Section 3(1) of the Act seeks to vary or amend Section 114 of the Constitution.
- [7] There is no dispute between the parties that the procedure for altering a deeply entrenched clause of the Constitution has not been followed. Rather, the argument of Learned Queen's Counsel, the Attorney General, is that Section 3 (1) of the Act neither effects, nor purports to effect, any change to Section 114 (1)(c)(ii).

Section 114 (1)(c)(ii) reads as follows:

"114.(i) Subject to the provisions of paragraph (e) of Section 112 and of Section 117¹ of this Constitution, the following persons shall be entitled, upon making application to be registered on or after 1st November, 1981-----

...
(c)...

(ii) any person who being a Commonwealth citizen is domiciled in Antigua and Barbuda and has for a period of not less than seven years immediately preceding his application been lawfully ordinarily resident in Antigua and Barbuda (whether or not that period commenced before 1st November, 1981.)"

- [8] Of crucial importance is that Section 114 of the Constitution is cast in terms of the entitlement of certain categories of persons, upon making application, to be registered as citizens of Antigua and Barbuda. The entitlement to registration

¹ Neither Section 112 nor 117 are relevant in this context.

(after application) arises upon the fulfillment of certain conditions. The conditions in the case of section 114 (1)(c)(ii) are that the applicant must be a Commonwealth citizen; must be domiciled in Antigua and Barbuda (presumably at the time of application); and, must, for a period of not less than seven years immediately preceding his application, have been lawfully ordinarily resident in Antigua and Barbuda.

[9] By contrast, Section 3 of the Act grants unto the Minister (defined as the Minister responsible for Immigration and Citizenship) certain discretionary powers in relation to the granting of any application made pursuant to Section 3(1) of the Act. Section 3 (3) is apposite in this context. It reads:

“(3) The Minister may approve an application made under this section if he is satisfied that the applicant –

- (a) possesses the qualifications set out in subsection (1);
- (b) is of good character; and
- (c) intends, in the event of being granted a certificate of registration or naturalization as the case may be, to be ordinarily resident in Antigua and Barbuda.”

[10] There is one further provision of the Constitution which is relevant to the conclusions of this judgment and it is Section 116 which, in part, reads:

“116 (1) Without prejudice to and subject to the provisions of Sections 111, 112, 113, 114 and 115 of this Constitution, Parliament may, pursuant to the provisions of this section, make provision for the acquisition of citizenship by registration.

(2) An application for registration under this section may be refused by the Minister responsible for the matter in any case in which he is satisfied that there are reasonable grounds for refusing the application in the interests of defence, public safety, public morality or public order.

(3) There shall be such provision as may be made by Parliament

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- (a) for the acquisition of citizenship of Antigua and Barbuda by persons who are not eligible or who are no longer eligible to become citizens under the provisions of this chapter;
- (b) ...”

[11] Learned counsel for the appellant urged that the words “Without prejudice to and subject to the provisions of...” at the commencement of section 116 have some special significance. In my view they do not. Quite simply, “without prejudice to” means ‘without affecting’ and “subject to” means ‘read in the context of’. There is no magic in the two phrases, nor are they terms of art. What section 116 of the Constitution of Antigua and Barbuda does is to recognise that the power to confer citizenship on persons not otherwise provided for under sections 112,113 and 114 is part of the sovereign powers of an independent state. This is precisely what the Act did.

[12] I find it unnecessary in this case to rely on the presumption of constitutionality. It simply does not arise. The plain and ordinary meaning of the words of section 3 of the Act in no way interferes with, nor constrains any of the rights and privileges granted under section 114 (1) (c) (ii).

[13] For these reasons, we dismissed the appeal. No order as to costs was made.

Michael Gordon, QC
Justice of Appeal

I concur.

Brian Alleyne, SC
Chief Justice [Ag.]

I concur.

Hugh A. Rawlins
Justice of Appeal