

GRENADA

IN THE COURT OF APPEAL

CIVIL APPEAL NO.34 OF 2006

BETWEEN:

IN THE MATTER OF SECTION 31 (1) (A) OF THE
GRENADA CONSTITUTION ORDER 1973

AND

IN THE MATTER OF SECTION 37(1)(b) OF THE
GRENADA CONSTITUTION ORDER 1973

BETWEEN:

THE ATTORNEY GENERAL OF GRENADA

Appellant

and

PETER CHARLES DAVID

First Respondent

and

SUPERVISOR OF ELECTIONS

Second Respondent

and

BRENDA HOOD

Third Respondent

Before:

The Hon. Michael Gordon, QC

Justice of Appeal

The Hon. Denys Barrow, SC

Justice of Appeal

The Hon. Hugh A. Rawlins

Justice of Appeal

Appearances:

Mr. R.N.A. Henriques, QC and Mr. Hugh Wildman for the Appellant

Dr. Francis Alexis, Mr. Ruggles Ferguson, and Mr. Anselm Clouden for the
Respondent

2007: March 26;
June 4.

ORDER

- [1] **GORDON, J.A.:** Before this court is an application by the Attorney General for an extension of time within which to appeal against the decision of Benjamin J, given on 12th September 2006,¹ striking out the Fixed Date Claim Form that commenced the proceedings from which the application arises. The judge decided the court had no jurisdiction to entertain a challenge to the validity of the election of the first respondent (the respondent) as a member of the House of Representatives, brought by Fixed Date Claim Form procedure.
- [2] At an earlier stage the Attorney General filed a Notice of Application in this court for leave to appeal against the decision of Benjamin J. A Notice of Appeal accompanied the Notice of Application for leave to appeal. That Notice of Application was heard by teleconference by a single judge on 31st October 2006 and was dismissed on the ground that no leave could be given because if the decision from which it was sought to appeal was other than a final decision there was no jurisdiction in this court to hear the matter and if the decision was a final decision then no leave was required.²
- [3] Thereafter the usual steps in the progress of an appeal were taken, including the preparation of a Record of Appeal and the filing and exchange of skeleton arguments.
- [4] On 5th December 2006 when the appeal came on for hearing counsel for the respondent objected that there was no appeal before the court because the Attorney General had filed no notice of appeal. Crown counsel in the Attorney General's chambers subsequently explained that he had proceeded on the thinking that because a Notice of Appeal had been filed with the notice of

¹ Grenada Claim No. GDAHCV2006/0018, *The Attorney General of Grenada v Peter Charles David and others*.

² Section 37 of the Constitution of Grenada (see paragraph 8 below)

application for leave to appeal, there was no necessity to file another notice of appeal. This court upheld the objection and dismissed the proceedings.

[5] In consequence the Attorney General applied by notice filed on 20th December 2006 for an extension of time within which to appeal and it was that application that came before us.

[6] Before deciding that application it seems to me there is a precedent issue that must be decided, which is whether an appeal lies from the decision of Benjamin J and that notwithstanding the decision of the single judge referred to at paragraph 2 above³. That issue arises upon a consideration of the terms of section 37 of the **Constitution of Grenada**, pursuant to which the Attorney General sought a declaration that Mr. David was not validly elected because he was disqualified on account of his Canadian citizenship. Section 31 of the Constitution provides that no person shall be qualified to be elected as a member of the House of Representatives if he is, by virtue of his own act, under any acknowledgement of allegiance, obedience or adherence to a foreign power or state.

[7] Section 37 of the Constitution provides:

“37 (1) The High Court shall have jurisdiction to hear and determine any question whether –

(a) ...

(b) any person has been validly elected as a member of the House of Representatives;

(c) ...

...

(5) Parliament may make provision with respect to –

(a) the circumstances and manner in which and the imposition of conditions upon which any application may

³ The single judge was myself

be made to the High Court for the determination of any question under this section; and

(b) the powers, practice and procedure of the High Court in relation to any such application.

(6) An appeal shall lie as of right to the Court of Appeal from any final decision of the High Court determining such a question as is referred to in subsection (1) of this section.

(7) No appeal shall lie from any decision of the Court of Appeal in exercise of the jurisdiction conferred by subsection (6) of this section and no appeal shall lie from any decision of the High Court in proceedings under this section other than a final decision determining such a question as is referred to in subsection (1) of this section." (Emphasis added).

[8] It was expressly stated in the heading as well as the body of the Fixed Date Claim Form that the Attorney General brought the claim against the respondent, seeking a declaration that his election was a nullity, pursuant to section 37 of the Constitution. There is no dispute, therefore, that the provisions of section 37 confer and demarcate the jurisdiction of the court.

[9] The decision of Benjamin J, as indicated, was on a strike out application and not on the hearing of the substantive claim that the Attorney General brought. The substantive claim never came on for hearing. As indicated, the judge decided that the claim form procedure was the wrong procedure, that "the court is not clothed with jurisdiction to entertain the claim in its existing form"⁴ and that the Fixed Date Claim Form stood dismissed for want of jurisdiction.⁵

[10] It was not raised in argument before us or in the written submissions whether or not the decision of Benjamin J was a final order. Whether an order is a final or a

⁴ Judgment paragraph [36]

⁵ judgment paragraph [43]

procedural (or interlocutory) order, as Rawlins J.A. recently restated in *JnMarie & Sons v Jamie St. Louis*,⁶ is determined by employing the application test. On that test an order is final if it is made on the hearing of an application that, whichever way the application is decided, will finally determine a substantive issue between the parties.

[11] If the decision of Benjamin J is a final order the court must proceed to decide whether to extend time for appealing. If the decision of Benjamin J is not a final order section 37 (7) of the Constitution explicitly prohibits an appeal from the decision he gave. In my view the court must now decide on the nature of the order of Benjamin J, before proceeding with the application as this is fundamental to the jurisdiction of this court. At the risk of repetition, the decision of the single judge could not confer jurisdiction on this court in the face of the clear language of the Constitution. While it is a straightforward decision, because counsel were not given the opportunity to submit on the issue, I think it appropriate that they should now be given the opportunity to make written submissions, which will be considered without a further hearing. I would, therefore, adjourn this matter for the Registrar to issue the appropriate case management order.

Michael Gordon, QC
Justice of Appeal

I concur.

Denys Barrow, SC
Justice of Appeal

I concur.

Hugh A. Rawlins
Justice of Appeal

⁶ St. Lucia Civil Appeal No. 14 of 2006. The full court subsequently endorsed the single judge decision.