

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CIVIL CLAIM NO. 268 of 2007



**IN THE MATTER OF THE CONSTITUTION OF SAINT VINCENT AND THE GRENADINES,
CHAPTER 2 OF THE LAWS OF SAINT VINCENT AND THE GRENADINES REVISED EDITION
1990**

AND

**IN THE MATTER OF AN APPLICATION BY DANIEL CUMMINGS FOR LEAVE TO APPLY FOR
AN ORDER FOR JUDICIAL REVIEW OF THE DECISION OF THE DIRECTOR OF PUBLIC
PROSECUTIONS TO TAKE OVER THE PROSECUTION OF MAGISTERIAL CRIMINAL ACTION
NO. 405 OF 2007 BROUGHT BY DANIEL CUMMINGS AGAINST THE POLICE OFFICER NO.
749 ALASIUS STAPLETON ON THE 25TH JUNE 2007**

BETWEEN:

DANIEL CUMMINGS

Claimant

V

**THE DIRECTOR OF PUBLIC PROSECUTIONS
THE COMMISSIONER OF POLICE
THE ATTORNEY-GENERAL OF SAINT VINCENT AND THE GRENADINES**

Defendants

Appearances:

Mr. Emery Robertson Snr. for the Claimant
Mr. Parnell Campbell Q.C. for the Director of Public Prosecutions
Mr. Jaundy Martin for the Commissioner of Police
Mr. Carlyle Dougan Q.C. for the Attorney-General

2007: September 21, 28

DECISION

- [1] **BRUCE-LYLE, J** :-- By claim form filed on the 20th day of August, 2007 the Claimant has sought judicial review of the decision of the Director of Public Prosecutions purportedly made on the 18th July 2007, to take over a private prosecution brought by the Claimant on 25th June 2007 against Police Constable No. 749 Alasius Stapleton.
- [2] On the 16th April 2007, the Saint Vincent and the Grenadines Port Authority began demanding the payment of a \$1 fee for the use of a facility erected for persons traveling to the Grenadines. This led to a demonstration staged by the Opposition against this fee on the grounds that it was unfair, unjust, discriminatory under the Constitution, unconstitutional and illegal because no regulations existed for the collection of the said fee by the Port.
- [3] During the demonstrations events led to a scuffle between the demonstrators and the security officers at the Port. In the process the Claimant and P.C. 749 Alasius Stapleton were engaged in their own altercation. Both accused the other of assault, and both sought medical attention with resultant medical forms being issued.
- [4] On the 21st June 2007, after proceedings had been filed in the High Court for Judicial Review of the imposition of the said fee, the applicant was served with a copy of a charge by Inspector Williams, that he on the 27th April 2007 at Kingstown in Saint Vincent and the Grenadines did assault Alasius Stapleton, Police Constable No. 749, acting in the due execution of his duty.
- [5] On the 25th June 2007 the applicant preferred a private complaint against Officer Stapleton to wit, that he Alasius Stapleton, on the 27th April 2007 at Kingstown did unlawfully assault Daniel Cummings causing him actual bodily harm contrary to Section 193 of the Criminal Code, Chapter 124 of the Laws of St. Vincent and the Grenadines.
- [6] On or about the 12th of July 2007, upon application by counsel for the Claimant, the Chief Magistrate ruled that the matters will not be dealt with together and that one would follow the hearing of the other.

- [7] On Wednesday 18th April 2007 the Claimant was informed that the D.P.P. had "taken over" the private proceedings of the Claimant. No reasons or discussions were held with the Claimant prior to the D.P.P. "taking over" the Claimant's proceedings.
- [8] As a result of this decision by the D.P.P. the Claimant claims a fear that he will not be given a fair opportunity to have his private criminal complaint dealt with by the Court in a fair manner in that the opportunity to have had both matters tried at one and the same time as a cross complaint with reference to the same matter in accordance with established practice and the dictates of justice has been lost. In addition, the claim was that this would create hardships as the Claimant would be faced with additional costs of being involved in another trial for the same set of proceedings.
- [9] The applicant also claimed a fear that his interest in the private prosecution would be unduly prejudiced as there appears to be a conflict of interest situation in that the D.P.P. under whose instruction and/or authority the applicant is being prosecuted had also taken over the Claimant's private criminal prosecution.
- [10] The Claimant also claimed a strong likelihood of bias in the action of the D.P.P. purporting to take over both prosecutions, and that the decision of the D.P.P. had taken away the Claimant's right to represent himself effectively in the Criminal Court as the Claimant has an interest in having the issue of criminal responsibility dealt with by a court seised of both complaints.
- [11] The Claimant therefore prayed to the court for numerous reliefs in paragraphs 3 to 12 of the claim form –
- (a) an order of certiorari (paragraph 3)
 - (b) various declarations (paragraphs 4, 5 and 7)
 - (c) interim injunctions (paragraphs (b) and 10)
 - (d) final injunctions (paragraphs (8) and 9)
 - (e) further directions/orders/reliefs (paragraph 11)

(f) damages and costs (paragraph 12)

The Claimant also sought to rely on affidavits sworn to and filed by himself and one Mrs. Sharon Morris-Cummings.

[12] The Claimant's counsel in his submissions to the Court clearly stated that the power of the D.P.P. to take over proceedings per se is not being challenged; but that it is the manner of the exercise of that power that is being called into question. To me that is the crux of this matter, taking and having regard to all the surrounding circumstances of this case.

[13] The Claimant has put forward a series of questions under the heading "(c) THE ISSUES" at page 65 of the record. Eight questions were put forward for the Court's determination. It is my view that having dealt with questions (2) and (3) answers will be provided consequentially to the other questions posed.

[14] I propose to deal with question (3) first in order of importance – "Whether or not Section 64 of the Constitution of Saint Vincent and the Grenadines entitles the Director of Public Prosecutions to carry out his function without being subject to judicial review by the Court?" – There is no dispute between Counsel that recent case law renders the answer to this question in the affirmative. However, as has been posited by learned Queen's Counsel for the D.P.P. the Courts should be circumspect in their exercise of this supervisory power, so that the powers of the D.P.P. as envisaged and protected by the Constitution are not reduced to nothing by a willy-nilly approach to reviewing decisions of the D.P.P. and declaring such decision as unconstitutional, illegal, unjust etc. I agree that before the courts could declare as such, there has to be a serious manifest and glaring abuse of the power vested in Section 64 of the Constitution. All the authorities cited by both Counsel to this matter are on point and I endorse all of them as being pertinent to this question.

[15] Therefore having thus answered question (3) of the issues in the affirmative, question (2) follows in order of importance - "Whether in these circumstances the D.P.P. in exercising his discretion to take over such proceedings acted judicially, and if so, what was the

criteria he applied in so doing.” - Section 64 (2) of the Constitution of Saint Vincent and the Grenadines lays out the powers of the D.P.P. thus –:

“(2) The Director of Public Prosecutions shall have power in any case in which he considers it desirable to do so –

(a) to institute and undertake criminal proceedings against any person before any Court of law (other than a court martial) in respect of any offence alleged to have been committed by that person;

(b) to take over and continue any such criminal proceedings that have been instituted or undertaken by any other person or authority; and

(c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or any other person or authority

“(6) In the exercise of the powers vested in him by subsection (2) of this section and Section 42 of this Constitution, the D.P.P. shall not be subject to the direction or control of any other person or authority.”

[16] Section 69 of the Criminal Procedure Code states:-

“Any person conducting a private prosecution may do so in person or may be represented by a legal practitioner instructed by him in that behalf.”

[17] There is not doubt therefore that the powers of the D.P.P. are far reaching and profound. The exercise of that power carries with it serious implications. It follows that such powers must be exercised with caution, and judicially and in accordance with the principles of law. Both learned Counsel are not in dispute with this view and so is the court. The dictum of Chief Justice Byron in Civil Appeal No. 8 of 1999 – **Attorney-General of Grenada vs the Grenada Bar Association** brings this view held above to the fore. In that case Byron C.J. opined -

“I am satisfied that the context of the Constitution does demonstrate that the office of Director of Public Prosecutions is required to be endowed with the same qualities of independence as the judiciary to ensure that the criminal justice system is independent of political and other improper influences and operates on the lofty principles of equality before the law. Thus, the general picture of the Constitution of Grenada depicts the Judiciary as being independent and impartial, in a state based on the separation of powers. Under the umbrella of the judiciary

stands the D.P.P. as one of the guardians being independently responsible for the institution and conduct of criminal proceedings, according to the same high standards of equality before the law, fairness and freedom from political or other improper influences.”

[18] Learned Queen’s Counsel has submitted that the D.P.P. is not a law unto himself/herself. I agree. The authorities have established that a D.P.P. is ultimately subject to the judiciary. However Counsel submits that the cases also establish that the threshold of interference by the courts within the ambit of the D.P.P.’s authority and powers is high, in keeping with the generally acknowledged respect for the doctrine of separation of powers. See the cases of Grant v D.P.P. (1980) 30 WIR 246; Brooks v D.P.P. (1994) 44 WIR 332; D.P.P. v Sullivan (1996) 54 WIR. I agree with this view and the authorities mentioned. I even go as far as saying that these authorities set the parameters for my guidance in resolving this molehill turned into a mountain.

[19] It is not in dispute that the Claimant is aware of the powers vested in the D.P.P. by Section 64 of the Constitution and that the D.P.P. has the power to continue as well as the power to not continue proceedings that are properly taken over by him.

[20] But Learned Queen’s Counsel goes further to say that the Claimant has not testified that the D.P.P. has made any substantive decision as to the future course of the Claimant’s private prosecution. He goes further to say that nothing in the Claimant’s affidavit amounts to credible evidence that the D.P.P. has actually done anything to substantiate the Claimant’s apparent paranoia; and that the Claimant’s claim is grounded in speculation and not hard evidence. He contends that notwithstanding the Claimant’s claims for reliefs against the D.P.P. at this stage are premature, misconceived , and amount to an abuse of process.

[21] I respectfully disagree with Learned Queen’t Counsel’s position and submissions on this score. The taking over by the D.P.P. of a private prosecution is followed by the act of continuing with such prosecution or discontinuing it entirely. I cannot agree or envisage that a D.P.P. will take over a private prosecution and then sit down at his leisure to decide whether to continue the prosecution or to discontinue it. I would have thought that

because of the nature of the circumstances of the case leading to the institution of private prosecution by the Claimant, the D.P.P. would have first given serious thought about his intention to continue or discontinue before he took over the private prosecution. If anything the D.P.P. in my view is the one guilty of being premature, misconceived, and tending to abuse the whole process. For learned Queen's Counsel to contend that the taking over by the D.P.P. of a private prosecution is not a final act, but is the first procedural step in a process which logically and in principle requires at least on other step, that of deciding what to do about a private prosecution which has been taken over, and describing that step as the substantive decision, is to stretch the whole process too far. I am firmly of the view that the D.P.P. ought to have given serious thought as to continuing or discontinuing the private prosecution, before taking it over. In my view the D.P.P. exercised bad judgment when he took over the private prosecution without having thought then about what step he would take next.

[22] This is what triggered the fears, apprehensions or misgivings on the part of the Claimant. A situation which I find reasonable in the circumstances and to me do not amount to an abuse of process. The Claimant was perfectly entitled to have acted with dispatch in view of the decision taken by the D.P.P. and to approach the Court for redress. Having taken all the circumstances of this case into consideration, and especially in view of the fact that the prosecution against the claimant had commenced, the Claimant did not abuse the Court's process by approaching the court for redress in a timely fashion.

[23] I therefore do not agree with Learned Queen's Counsel in the set of circumstances leading to this suit before me, that it is only after the D.P.P. would have taken a substantive decision in the matter that a complaint or claim could be brought against the D.P.P. challenging the D.P.P.'s substantive decision. I reiterate that the D.P.P. exercised bad judgment in taking over the private prosecution before deciding whether to continue with it or discontinue it. If anything the most prudent thing for him to have done in the highly charged circumstances of this case, would have been to decide whether to continue or discontinue the private prosecution before taking it over. If he had done so this matter

might very well not be before this court wasting judicial time. It is for this reason I have described this case as making a mountain out of a molehill.

[24] In as much as I agree that the D.P.P. was not bound to give any reasons for his decision to take over the Claimant's private prosecution or to hear representations from the Claimant, an exercise in good judgment over the matter would have allayed the Claimant's fears and apprehensions and rather restored his confidence in the process; that he would be afforded fair play and justice.

[25] Having said this, I would agree with the submission by learned Queen's Counsel that it is not being suggested that a D.P.P. is a law unto himself/herself. I agree that the authorities cited by both sides in this case, establish that a D.P.P. is ultimately subject to the judiciary. However, the cases also establish that the threshold of interference by the Courts within the ambit of the D.P.P.'s authority and powers is high, in keeping with the generally acknowledged respect for the doctrine of separation of powers – see Tappin v Lucas (1973) 20 WIR 229.

[26] Having thus said, I will not go so far as to hold or declare that the decision of the D.P.P. in taking over the private prosecution instituted by the Claimant was unconstitutional, made without due process of the law, illegal, improper or a perverse exercise of such powers. I would go as far as saying that in the exercise of his bad judgment referred to earlier the decision was an unreasonable, irrational exercise of such powers or discretion. In the circumstances I am inclined to accept the fears, apprehensions and misgivings of the Claimant to make a fair minded, independent observer to conclude that the decision would create a real likelihood of bias on the part of the whole proceedings before the Magistrate's Court. I need not expound or rehash the known and trite case law on the law relating to bias. But taking all the circumstances of this case as stated in the affidavit of the Claimant, into consideration, it is my view that this matter should have been handled differently to avoid an unnecessary multiplicity of suits before the Courts, all shrouded in a highly charged unnecessary political atmosphere.

[27] If good judgment had prevailed, this matter ought not to have reached this court wasting precious judicial time.

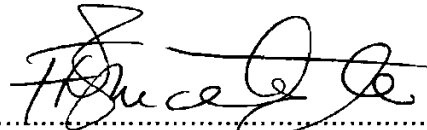
[28] Having said thus I order as follows:-

(1) The reliefs sought by the Claimant, that is paragraphs (1), (2), (3), (4), (5), (6), (7) and (8) are hereby refused. In applying paragraph (11) of the relief sought by the Claimant I order that the private prosecution taken over by the D.P.P. be remitted back to the Magistrates Court and heard together with the prosecution instituted against the Claimant, as a cross-complaint. This in my view will conduce to the just and fair disposal of the Magisterial matters mentioned above in accordance with the Constitution of Saint Vincent and the Grenadines and principles of justice, equity, equality before the law and fair play.

(2) The interim injunctions granted as per paragraphs (8), (9) and (10) in the application for leave to claim for judicial review are hereby lifted in accordance with paragraph one of my order in this case. In that regard the claim for review succeeds.

[29] With regards to the claim against the Commissioner of Police and the Attorney-General of Saint Vincent and the Grenadines, these were dismissed at the very outset of this hearing as having no merit.

[30] There will be no order as to costs.



Frederick V. Bruce-Lyle
HIGH COURT JUDGE