

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)

SAINT LUCIA

CLAIM NO. SLUHCV2004/0831

BETWEEN:

MICHEL MAGLOIRE a.k.a MICHAEL MAGLOIRE
of Black Bay Vieux Fort

Claimant

and

THE ATTORNEY GENERAL

Defendant

Appearances :

Claimant in person
Leslie Prospere for the Defendant

2008: March 3;
March 20.

JUDGMENT

[1] **COTTLE, J.:** The Claimant was employed by the Government of St. Lucia as a Magistrate. The term of engagement was to have been for one year from 4th January, 2000 to 3rd January, 2001. The written contract between the parties was not executed until 23rd February, 2000.

[2] Subsequently the Claimant and the Government entered into consecutive one year contracts in 2001, 2002 and 2003. Each contract was in the form of a written document executed after the expiry of the previous term of service and expressed to operate retroactively.

[3] At the expiration of each contract the Claimant would continue working and sometime later his employment would be regularized by the execution of a contract.

However this state of affairs would change without warning.

[4] The Claimant's 2003 contract expired on 3rd January, 2004. He continued to work. He fully expected that as he had indicated a willingness to enter into another one year contract and the Government had given no indication of any inclination to the contrary, he would in due course be presented with a written contract to sign. But it was not until 19th April, 2004 that the Claimant was notified that he was being offered, not a one year contract but a series of monthly contracts.

[5] The Claimant stopped working on 7th May, 2004. Understandably aggrieved he brought a claim for breach of contract.

[6] Clearly there had been no written contract to cover the year 4th January, 2004 to 3rd January, 2005. But I have no hesitation in saying that a contract for the services of the Claimant as Magistrate for the period 4th January, 2004 to 3rd January, 2005 existed. The course of conduct of the parties will admit of no other interpretation. It was open to the Defendant to inform the Claimant that he would be offered no employment after 3rd January, 2005 on the basis of the usual one year contract. They failed to do so. And as in all of the 4 previous years they had subsequently executed a written contract, I hold that there must have been consensus ad idem that the parties would continue to govern themselves in the way that they had hitherto done. The dismissal of the Claimant thus constitutes a breach of this contract.

[7] The terms of the contract are certain. They are the same terms as applied in the 4 previous annual contracts.

What then is the measure of damages due to the Claimant?

- [8] The Court of Appeal has held that in a case where the facts were similar Judicial and Legal Services Commission v Horace Fraser Civil Appeal 24 of 2005 from St. Lucia, that the Claimant there was entitled to one month's salary in lieu of notice. I apply the reasoning of Barrow JA in that case.

“It is settled law that where a party to an employment contract is given the right in the contract to terminate and he wrongfully terminates in breach of the contractual provision for termination, the damages that he will be liable to pay for wrongfully terminating will not be greater than he would have been liable to pay had he terminated in accordance with the termination clause in the contract.”

- [9] I award the Claimant \$5,793.39 being one month's salary with the legal officer's allowance included.
- [10] Costs to the Claimant is awarded at \$5,000.00 pursuant to the Order at the Case Management Conference.

**BRIAN S. COTTLE
HIGH COURT JUDGE**