

IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)

CLAIM NO. GDAHCV2008/0292

BETWEEN:

GRENADA TECHNICAL & ALLIED WORKERS UNION

Applicant

and

KENNY A. LALSINGH INVESTMENTS COMPANY (KALICO) LIMITED

Respondent

Appearances:

Mr. Ruggles Ferguson for the Applicant
Mr. Dwight Horsford for the Respondent

2009: May 26
August 28

JUDGMENT

- [1] **MICHEL, J. (Ag.):** By Notice of Application filed on 16th May 2008 the Applicant, Grenada Technical And Allied Workers Union, applied to the Court for an order pursuant to Part 21 of the Civil Procedure Rules 2000 (CPR) permitting the Applicant to represent the workers of the Respondent, Kenny A. Lalsingh Investments (Kalico) Limited, in a civil action against the Defendant.
- [2] The grounds of the application were that there are approximately twenty persons who can be claimants in the suit and that the Applicant has a sufficient interest in the proceedings to represent all of the persons who have the same interest.
- [3] The relevant facts are that the Applicant is a registered trade union which is recognised as the bargaining agent of the clerical and shop assistants employed by the Defendant. The Applicant alleges that, contrary to the labour laws of Grenada, the Defendant has been compelling its clerical and shop assistants to work on Sundays and has not been paying

- them overtime for so doing. The Applicant therefore seeks the Court's permission to institute proceedings against the Defendant on behalf of the affected employees to right the alleged wrong.
- [4] The matter first came before the Judge in Chambers on 31st October 2008 and was adjourned to 28th November 2008.
- [5] On 26th November 2008 the Defendant filed an affidavit in opposition by its Managing Director, Kenny Lalsingh.
- [6] When the matter came back before the Judge in Chambers on 28th November 2008, the Learned Judge granted leave to both parties to file supplemental affidavits within fourteen days, while the matter was adjourned to 6th February 2009.
- [7] None of the parties availed themselves of the opportunity to file supplemental affidavits, but the Respondent filed written submissions with authorities on January 20th 2009 while the Applicant filed its submissions in response on 5th February 2009.
- [8] When the matter came up on 6th February it was further adjourned to 13th March, then 2nd April and then 26th May, when it was eventually heard.
- [9] The application raises an issue which would be of interest to the trade union movement and to employers as well in those Caribbean countries with trade union legislation similar to that of Grenada.
- [10] The issue would not arise in England or in those countries with legislation similar to that of England because the **Trade Union And Labour Relations (Consolidation) Act 1992** of the UK provides at section 10 that although a trade union is not a body corporate it is capable of suing and being sued in its own name, whether in proceedings relating to property or founded on contract or tort or any other cause of action. This provision would allow a trade union in the United Kingdom faced with a situation similar to the present one

to seek to bring an action on behalf of its members. But no such provision exists in the **Labour Relations Act, 1999** of Grenada, which legislates the status, rights and responsibilities of trade unions in Grenada.

[11] I do not regard the cases on privity of contract which were cited to the Court to be germane to the determination of this matter because the Applicant in this case is not seeking to institute proceedings for its benefit on someone else's contract, but rather to bring a representative action on behalf of its members forming part of a particular bargaining unit of which it is the bargaining agent of the aforesaid members. The only question which arises is whether it has the legal capacity to do so.

[12] Section 10 of the **Trade Union And Labour Relations (Consolidation) Act 1992** of the United Kingdom is contained in Chapter II of the Act titled "Status And Property Of Trade Unions." The equivalent part of the Grenada trade union legislation is Part III of the **Labour Relations Act, 1999** titled "Status of Registered Organisations" and it deals with both status and property of trade unions in Grenada. It does not however give any right to a trade union in Grenada to sue or be sued in its own name. Instead, it vests the property of a trade union in the trustees of the union who alone can sue or be sued in respect of the union's property and then goes on at section 12 of the Act to state the following:

- "(1) The trustees of a registered organisation or any other officer of such organisation who may be authorized so to do by the rules may bring or defend any action, suit, prosecution or complaint in any court concerning the right or claim to property, real or personal, of the organisation, and may sue or be sued in their proper names without other description than the title of their office.
- (2) The rights conferred by subsection (1) shall not abate by the death, resignation or removal from office of a trustee or other officer but such rights shall be vested in the successor in office as if such death, resignation or removal had not taken place.
- (3) The successor of the trustee or other officer shall in [all] respects be in the same position as if the proceedings had been commenced in his name.
- (4) A summons or other process of any court to be issued to a trustee or other officer of an organisation may be served by leaving the same at the registered office of the organisation."

[13] The question as to whether this section authorises the trustees or other officers of a trade union in Grenada to sue or be sued on behalf of the union other than on an issue concerning property remains to be determined, but its determination does not bear on the outcome of this case and so need not now be addressed. However, the provisions contained in Part III of the **Labour Relations Act, 1999** do not appear to liberate a trade union in Grenada from its common law shackles of an inability to sue or be sued in its own name. If therefore a trade union in Grenada is not entitled in law to sue or be sued in its own name then it cannot in its own name bring a representative action in the High Court on behalf of its members.

[14] The Grenada Technical And Allied Workers Union must therefore find another vehicle to drive the interest of its members en route to a resolution of the impasse with the Defendant.

[15] I will make no order as to costs in this matter.

Mario Michel
High Court Judge (Ag.)