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

SAINT LUCIA

CRIMINAL CASES NOS. SLUCRD 2009/0013 & 0014

BETWEEN:

THE QUEEN

Claimant

AND

CLAUDIUS JOSEPH

Defendant

Appearances:

Mr. L. Mondesir for the Surety for Claudius Joseph
Ms. T. Mensah Crown Counsel for the Crown

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2011: March 11 and 17

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RULING

[1]. **BENJAMIN, J. :** On January 6, 2009, the defendant, Claudius Joseph, was charged with offences under the Drugs (Prevention of Misuse) Act, Cap.3:02, namely, possession of the controlled drug, cannabis, and possession of the said controlled drug with intent to supply to another contrary to section 8(2) and 8(3) respectively of the said Act. The defendant has been indicted along with two other persons for the said offences on an Indictment laid on January 6, 2010.

[2]. The defendant was admitted to bail in the sum of $20,000 in respect of the offence of possession of cannabis and in the sum of $30,000 in respect of the offence of possession of cannabis with intent to supply to another. The recognisance forms dated January 12, 2009 reflect that the surety for each charge is Ricardo Scott who purported to sign each form. The said surety bound himself by way of land documents to forfeit to the Crown the sums of $20,000 and $30,000 in the event that the defendant failed to perform the obligation to attend each hearing. Additional conditions were imposed, namely:

> "1. Defendant should report to the Richfond Police Station on Mondays, Tuesdays and Saturdays between 6:00 a.m. and 6:00 p.m.
>
> 2. Defendant should surrender his travel documents to the Court.
>
> 3. Defendant should (sic) Identification Card to the Court."

[3]. The defendant was arraigned with the two co-defendants on March 1, 2010 and pleaded not guilty to both counts on the Indictment. He appeared on three (3) subsequent adjourned dates for case management. On September 30, 2010, when the matter came up before the Court, the defendant was absent and a bench warrant was issued for his arrest. The said warrant has not been executed to date and the defendant remains at large.

[4]. Ricardo Scott, the surety for the defendant, was summoned to appear and was afforded the opportunity to seek legal advice and to retain Counsel to show cause to the Court as to why the amounts of $20,000 and $30,000 ought not to be estreated to the Crown for the breach of the obligation of the defendant to attend Court on the adjourned date as he was required to do. He subsequently attended with retained Counsel.

[5]. The surety gave sworn testimony in support of his own cause. He told the Court that he was a fisherman who is married and lives with his wife and four (4) children at Ciceron, Castries. Curiously, he at first gave his address as Barnard Hill, Castries but, in response to a question from Counsel he added that he also lived at Ciceron, Castries. Indeed, he stated that the security for the recognisances is his property comprised of house and land at Ciceron, which is valued at half of a million dollars.

[6]. Mr. Scott said that he has ten (10) children some of whom are adults responsible for their own upkeep. He presently resides with his four (4) children ranging in ages from four to seventeen (4 – 17) years. His financial outlay for their maintenance amounts to $600 to $700 per month.

[7]. As a fisherman for over twelve (12) years, he ventures out to sea twice per week but the other guys who work for him go out to sea with the boat every day. He earns approximately $2,000 per week on the average. His personal expenses include utilities and school fees. He further spoke of earning $300 or $400, playing music once a week.

[8]. By way of explanation, the surety said he has known the defendant for ten (10) years and that the defendant is a relative of his although he did not specify the relationship. He volunteered to the Court that the defendant is not in Saint Lucia. He said that he was informed by one Jonathan, an employee of the District Court at Vieux-Fort, that the defendant was not attending Court. The said Jonathan was his contact and he last spoke

to him on December 21, 2010 when making inquiries as to whether the defendant was attending Court. Thereafter he went to Dennery where the defendant's family lives.

[9]. Mr. Scott insisted that he kept constant contact with the defendant and his family to ensure that he was attending Court. He kept contact by telephone. He said that he was assured that the defendant could not leave Saint Lucia because he had been required to surrender his passport. Mr. Scott when cross-examined denied knowledge of the possibility of travelling out of Saint Lucia without a passport.

[10]. In direct response to the Court, Mr. Scott admitted that he was the surety for the co-defendants who are jointly charged on the same two (2) counts on the Indictment and were granted bail by the Magistrate on the same terms. As such, the total amount for which security has been provided for all defendants is $150,000. In addition, the defendant revealed that he had stood surety for two (2) other defendants, whose names he could not recall. The suretyship for one such defendant was stated to be $10,000.

[11]. In the evidence, Mr. Scott acknowledged his obligation is to bring the defendant to Court. He asserted that he did not own any property besides that at Ciceron. However, there is some suggestion of a proprietary interest in the boat used for fishing.

[12]. Learned Counsel urged the Court not to forfeit any of the total sum of $50,000 or if minded so to do, to forfeit only a part thereof in a reasonable sum taking into account the means of the surety. Learned Crown Counsel pointed out that the Court is empowered to forfeit the entire sum.

[13]. The entitlement of a defendant to bail is generally provided for in Section 592(1) of the Criminal Code of Saint Lucia, 2004. Section 601 of the Code makes general provisions relating to bail. The fundamental requirement is that a person who has been granted bail shall "surrender to custody". The term "surrender to custody" has been defined in Section 591(1) as meaning:

> "(a) in relation to a person released on bail, surrendering himself or herself into the custody of the Court or of the Police Officer, according to the requirements of the bail, at the time and place for the time being appointed for him or her to do so."

Section 591(2) provides that a defendant may be required by the Court to give security for his or her surrender to custody or the security may be given on his or her behalf. Subsection (3) goes on to give the Court the power to impose certain stated conditions for bail including that the defendant provide before his or her release, a surety to secure his or her surrender to custody.

[14]. Provision is made in section 604 of the Criminal Code for the forfeiture of security given for bail and sub-sections (1) and (2) thereof enact as follows:

> "(1) Where a person has given security in pursuance of section 601(2), and the Court is satisfied that he or she failed to surrender to custody, then unless it appears that he or she had reasonable cause for his or her failure or there are other mitigating circumstances, the Court may order the forfeiture of the security (emphasis added).

(2) Where the Court orders the forfeiture of the security under subsection (1), the Court may declare that the forfeiture extends to such amount less than the full value of the security as it thinks fit to order."

[15]. The fundamental purpose of bail whether on the defendant's own recognizance or with a surety, is to secure the attendance of the defendant at Court in order to stand his trial. The gravity of the obligation was highlighted by the Divisional Court in R v Horseferry Road Stipendiary Magistrate, ex p. Pearson [1976] 1 WLR 511 at p. 514 c in this dictum: -

"...the surety has seriously entered into a serious obligation and ought to pay the amount which he or she has promised unless there are circumstances in the case, either relating to ... means or ... culpability, which make it fair and just to pay a smaller sum."

[16]. The consequences of the failure of the defendant to attend court are accordingly quite serious commensurate with the obligation of the surety. In R. v. Maidstone Crown Court, ex p. Lever and Connell [1996] 1 Cr.App.R.524 Butter-Sloss, L.J. in delivering the judgment of the Court of Appeal dismissing appeals against the refusal of applications for judicial review of orders for the forfeiture of bail, advocated a vigorous approach to such matters. Her Ladyship stated that the exercise of the discretion to reduce the sum forfeited ought to be exercised only exceptionally and then only in deserving cases. It is useful to repeat and I adopt the learned Lord Justice's dicta which read:

"the general principle is that the purpose of a recognisance is to bring the defendant to Court to trial. The basis of estreatment is not as a matter of punishment of the surety, but because he has failed the obligation which he

undertook. The starting point on the failure to bring a defendant to Court is the forfeiture of the full recognisance. The right to estreat is triggered by the non-attendance of a defendant at court. It is for the surety to establish to the satisfaction of the trial court that there are grounds upon which the Court may remit from forfeiture part, or wholly exceptionally, the whole recognizance. The presence or absence of culpability is a factor but the absence of culpability, as found in this case by the judge, is not in itself a reason to reduce or set aside the obligation entered into by the surety to pay in the event of a failure to bring the defendant to Court. The Court may, in the exercise of a wide discretion, decide it would be fair and just to estreat some or all of the recognisance."

Her Ladyship referred to the following remarks made by Lord Widgery CJ in R. v. Southampton Justices, ex p. Corker (1976) 120 S.J. 214: -

"The real pull of bail ... is that it may cause the offender to attend his trial rather than subject his nearest and dearest who has given surety for him to endure pain and discomfort."

[17]. The statutory provisions set out in Section 604 represent the law in Saint Lucia for the forfeiture of security for bail. The said Section 604 first requires that the Court satisfy itself as to the surety having given security and further that the defendant has in fact failed to surrender himself to Court. In the present case, the surety has lodged land documents in respect to his property situated at Ciceron, Castries and since September 30, 2010 the defendant, Claudius Joseph, has not attended Court.

[18]. In contemplating an order for forfeiture, the Court is mandated to consider whether the defendant had reasonable cause for failing to appear or other mitigating circumstances. No explanation had been proffered to the Court as to the defendant's non-attendance at Court. Indeed, the surety was unable to say exactly where the defendant was at the time of the hearing. Any other mitigating circumstances must therefore attach to the surety.

[19]. From his own testimony, it is clear that the surety had not been keeping track of the defendant's attendance at Court or the adjourned dates. The defendant did not appear in court on September 30, 2010. By his own admission, the surety did not become aware of the fact of the defendant's non-appearance until December 21, 2010. By then, the matter has been twice adjourned with the warrant of arrest being unexecuted. Further, it would appear that the surety seemed clueless as to the progress of the matter to the High Court as he continued to make inquiries of one Jonathan, a Clerk at Second District Court in Vieux-Fort. The cases involving the defendants were last before the District Court in Vieux-Fort on May 11, 2009. The foregoing leads to the inevitable conclusion that the surety was far from diligent in keeping contact with the defendant and following the progress of his cases. In this regard, the surety has failed to live up to the weighty obligation that he voluntarily assumed and failed to ensure the attendance of the defendant at Court as he was bonded to do.

[20] The only mitigating circumstances raised by the surety have been his means within the context of his earnings and financial obligations. His earnings average over $9,000 per month with expenses to a maximum of $1,400 leaving a net monthly income of $7,600. In

addition, there have been lodged with the Court land documents for a property stated to be valued at $500,000.

[21] In as much as the means of the surety has been offered as a mitigating circumstance, it must be assumed that, in entering into the recognisances the defendant was found to be worth the sums therein stated and that the surety had himself represented that he has the means to fulfill the financial obligation. It appears that the thrust of the surety's argument was not that he is unable to pay but that his domestic financial obligations may be affected by the forfeiture of the bonds.

[22] It is worthy of note that the surety has entered into recognisances for the two co-defendants in the present matter to the tune of an additional $100,000 and for at least two (2) other defendants in unrelated matters. His outlay is therefore quite onerous. It is unthinkable and there is no such evidence that the surety is unknown to the defendants. It is salutary to remind ourselves of the offence created by Section 605 for the indemnification of or payment of a fee to a surety to act in that capacity. I am prepared to take into account the domestic circumstances of the surety and remit half of the whole of the amounts of the recognisances.

[23] In the premises, it is ordered that the sums of $10,000 and $15,000 be forfeited to the Crown.

KENNETH BENJAMIN
HIGH COURT JUDGE