

SAINT VINCENT AND THE GRENADINES
THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

CLAIM NO 26 OF 2008

In the Matter of an Application to a Judge in Chambers

AND

In the Matter of the Barristers and Solicitors Rules Chapter
18 Section 76, and Booklet 4 of the 1990 Edition of the
Revised Laws of Saint Vincent and the Grenadines;

AND

In the Matter of an Application of J.H. Bayliss Frederick, for a
Rule to Issue to Colin Williams, Director of Public
Prosecutions, a Barrister and Solicitor, to Show Cause Why
He Should not be Suspended or Struck of the Roll

AND

In the Matter of the Application of J.H. Bayliss Frederick, a
Barrister and Solicitor, the Person Aggrieved by the Action of
Colin Williams, the Barrister and Solicitor

BETWEEN:

J.H. BAYLISS FREDERICK

Applicant

AND

COLIN WILLIAMS

Respondent

Appearances

Mr Kalisia Isaac holding for Mr Bayliss Frederick for Applicant
Mr Richard Williams and Mr Sten Sargeant for the Respondent

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2010: October 14

2011: June 3
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RULING

Introduction

- [1] **LANNS, M:** The Applicant, J. H. Bayliss Frederick, is a Senior Barrister and Solicitor of the Eastern Caribbean Supreme Court in Saint Vincent and the Grenadines.
- [2] The Respondent is the Director of Public Prosecutions for the State of St Vincent and the Grenadines.
- [3] The Applicant has made an application to the Court for an Order for a Rule to issue to Colin Williams (the Respondent) to show cause why he, the Respondent, as a Barrister and Solicitor, should not be suspended or struck off the Court Roll.
- [4] The basis of the application is stated as “Unprofessional conduct, that is to say conduct unbecoming a qualified Barrister-at-Law and Solicitor, in that
- (i) He, Colin Williams failed to investigate, assess, evaluate and come to a just conclusion in Matter of No 857 of 2007 Complaint made in the Kingstown Magistrate’s Court for Thursday 17th January 2008, against Keith Miller, Commissioner of Police, which came to his attention as a functionary Minister of Justice and a Barrister – at –Law of the Supreme Court of Justice for the State of St Vincent and the Grenadines.
 - (ii) He, Colin Williams, purporting to exercise the authority and function of Director of Public Prosecutions under section 64/2 of the Constitution of Saint Vincent and the Grenadines recklessly and wrongfully purported:-
 - (a) By Notice dated 15th January 2008 ... to take over conduct of the Private Criminal Complaint made by the Applicant, a citizen with, and under the rights guaranteed by sections 1 and 3 of the Constitution.
 - (b) By Notice dated 15th January 2008, to discontinue the prosecuting of Magisterial Complaint No 857 of 2007 against Keith Miller, Commissioner of Police
 - (iii) He, Colin Williams knew of the details of the incident in which the Coast Guard alleged that 7 Venezuelan nationals attacked them ... with firearms: and a defensive manoeuvre left two Venezuelans dead, one seriously wounded and three others with non-fatal bullet wounds. The Applicant spoke to the Director of Public Prosecutions about the incident and had suggested a solution to the ... problem, legal, diplomatic and international in nature. ... The Applicant wrote and delivered letters to the Respondent which declare and support a departure by the Director of Public Prosecutions from professional conduct to unprofessional conduct.

- (iv) The Director of Public Prosecutions, without instructions, consultations, request or retainer whatever, purports to represent the Complainant ... in direct contravention of the right given by sections 69 and 70 and the entire enabling authority of Chapter V of the Criminal Code Cap 125 of the 1990 Edition of the Laws of Saint Vincent and the Grenadines.
- (v) The Director of Public Prosecutions has no authority to issue directions to Magistrates or dictate the procedures obtaining in the Courts of Saint Vincent and the Grenadines, but can ... appear on behalf of the Commissioner of Police. AND he wrongly delivered to the Magistrate seised of Complaint No 857 of 2007 a paper-writing captioned "Notice of Discontinuance" intending the same to put an end to the Complaint of the Applicant.
- (vi) By letter dated 15th January 2008, the Director of Public Prosecutions took over conduct of the Private Criminal Complaint No 857 of 2007 – Bayliss Frederick v Keith Miller, as authorised by S 66/1 of the Criminal Procedure Code Chapter 125 of the 1990 Edition of the Laws of Saint Vincent and the Grenadines, on behalf of Keith Miller, Commissioner of Police and could not therefore issue a Discontinuance, Keith Miller being the Defendant.
- (vii) The Director of Public Prosecutions is by necessary implication responsible to the Judicial and Legal Services Commission and/ or the Parliament of Saint Vincent and the Grenadines, and / or the Attorney General and cannot be responsible to no person or authority for his actions, and has acted irresponsibly and unprofessionally by describing Mr Frederick as "rude and out of place" for requesting reasons for intervention in a private criminal complaint."

[5] For the reasons that follow I propose to dismiss the application.

Factual Background

[6] The facts, so far as they are relevant are that on 27th November 2007, the Applicant attended at the Milton Cato Memorial Hospital to secure the discharge of a client Andres Dominguez (Andres) to enable him to take a flight to Venezuela for medical attention. There were several police officers at Andres' bedside. When the Applicant attempted to walk away with Andres, an altercation occurred between the Applicant and the police. As a result of the altercation, the Applicant sustained a hairline fracture of the 4th toe. The Applicant did not know the name of the police officer who actually stepped on his toe; nor did know the names of the other police officers who allegedly assaulted him. So, by letter dated 28th November 2007, he sought the assistance of the Commissioner of Police (COP), since the police officers had indicated to him that they were under the command of

the COP and were carrying out his orders. The letter notified the COP that if he failed to give the Applicant promptly in writing the names of the police officers within two days after the date of the letter, then the Applicant will make a complaint against the COP for aiding and abetting thirteen police officers, by giving them orders to assault him causing him severe injury to his foot and body. Apparently, the letter was copied to the DPP and the Minister of Justice.

[7] The COP did not answer the letter; so, on 4th December 2007, Mr Frederick, laid Complaint against him for the offence of Assault Causing Actual Bodily Harm contrary to Section 193 of the Criminal Code, Chapter 124 of the Laws of Saint Vincent and the Grenadines Revised Edition 1990.

[8] On the same date as he laid the Complaint, Mr Frederick wrote to the Respondent informing him of the Complaint laid against the COP. For convenience, I reproduce the letter:

"December 4 2007

The Director of Public Prosecutions
Saint Vincent and the Grenadines
DPP's Chambers
Methodist Building

Dear Sir

I have today laid complaint against Mr Keith Miller, the Commissioner of Police, for aiding and abetting 13 Policemen to assault and beat me causing me actual bodily harm, to wit: hairline fracture of the 3rd toe on the left foot. – the names and addresses of said policemen are still unknown despite my written request to Mr Keith Miller.

It has been observed and noted that recently in two matters involving the Police in Private Criminal Prosecutions you have intervened and "Took Over" the Private Criminal Prosecutions. This letter is a request that in this matter against Mr Miller you do not intervene, you being by these presents requested not to do so UNLESS You SERVE ME WITH NOTICE OF REASONS FOR the Director of Public Prosecutions' intervention.

J.H. Bayliss Frederick

Enc/l Hon Minister of Legal Affairs, St Vincent and the Grenadines

Cc: Hon Attorney General

[9] The Respondent responded to the Applicant's letter the following day in these terms:

"5th December 2007

Mr Bayliss Frederick
P.O. Box 485
Kingstown
St Vincent

Dear Sir

Please refer to your letter of 4th December 2007.

I find your letter rude and out of place, to say the very least.

I shall continue to exercise the powers conferred on me in a judicial and rational way regardless to your insinuation; without giving reasons to you nor anyone else, since that is not a requirement or a consideration...

Yours respectfully

Colin Williams
Director of Public Prosecutions"

- [10] On January 15th 2008, the Respondent undertook Complaint 857 of 2007 – Bayliss Frederick v Keith Miller. Then on 22nd April 2008, the Respondent filed a Notice of Discontinuance dated January 15th 2008 which effectively brought the proceedings to a close.
- [11] That was the background to the present application for a Rule to issue for the DPP to show cause why he should not be suspended or struck off the Roll of Barristers.
- [12] The Applicant is aggrieved by the Respondent's response to his letter requesting non-intervention by the Respondent unless the Respondent furnishes him with reasons for his intervention.
- [13] The Applicant is also aggrieved by the Respondent's decision to take over and discontinue the matter "without instructions, consultation, assessment, evaluation, request or retainer"
- [14] The Applicant describes the Respondent's response to his letter, and his subsequent take over and discontinuance of the Complaint against the COP as "unprofessional conduct, unbecoming a qualified Barrister-at-Law and Solicitor."

The Application

[15] The Application was filed on 25th January 2008, and served on 28th January 2008. It was supported by three Affidavits of the Applicant filed on 25th January 2008; 22nd April 2008; and 9th June 2008. The first Affidavit is not precisely in the Form set out in CPR 30.2; in particular it is not numbered at all; does not state the name, address and occupation of the deponent; and the number of the affidavit in relation to the deponent. However, no issue was taken with these procedural irregularities and I do not regard them as fatal to the Application.

[16] Coming to the content of the affidavits. I can find nothing in the affidavits which suggests that the Respondent is guilty of unprofessional conduct. On the contrary, I find that the Affidavits are replete with irrelevances, invectives, opinions, arguments and accusations.

First Affidavit

[17] The first affidavit contains 17 paragraphs consisting of 6 pages.

[18] Paragraph one tells of the Applicant's attendance before the Kingstown Magistrate's Court on 16th October 2007 to represent four Venezuelans. It also tells of his visit to the Eveready Funeral Home where he spoke to one, Cedric Mills who showed him the remains of Martin Dominguez and Alexis Munoz. Next, it tells of the Applicant's visit to the Milton Cato Memorial Hospital where he saw and spoke with his client Andres Dominguez.

[19] Paragraph 2 refers to a conversation the Applicant had with the Respondent on 19th October 2007, and paragraph 3 refers to a conversation the Applicant had with one Sara Marina Dominguez.

[20] Paragraph 4 tells of a letter to the COP from the Applicant informing that the Applicant has been retained to represent all Venezuelans involved in an incident with the Coast Guard.

[21] Paragraph 5 tells of the Applicant's visit to the Venezuelan Embassy where he was shown various reports (including a Medical Report) in regard to one of his clients, namely Andres Dominguez.

[22] Paragraphs 6, 7, 8 and 9 speak to the Applicant's procurement of an airline ticket and travel documents in favour of Andres; his visit to the hospital and his efforts and difficulty in securing Andres' discharge from the Hospital to get him to the airport.

[23] Paragraphs 10 to 14 tell of the altercation with the police, and the resultant injury sustained by the Applicant. As well, they tell of offensive and or demeaning comments made by the Applicant to the police and certain hospital staff.

[24] Paragraph 15 tells of a letter written to the COP informing of the altercation between the Applicant and the police at the hospital, and requesting the names of the 13 police officers who were said to have maltreated the Applicant.

[25] Paragraphs 16 and 17 inform of the failure of the COP to reply to the letter and it offered an opinion as to why the police assaulted the Applicant.

Second Affidavit

[26] The Second Affidavit is short. It contains 9 paragraphs consisting of three pages.

[27] Paragraph one refers to the first affidavit sworn by the Applicant.

[28] Paragraph 2 introduces Exhibits "BF1" and "BF2" being two Notices of Discontinuance dated 15th January 2008 in relation to Complaint 857 of 2007- **Bayliss Frederick v Keith Miller**.

[29] Paragraph 3 refers to a letter from the Applicant to the Respondent dated 4th December 2007 wherein reference was made to matters in which the Respondent intervened and took over those matters. This paragraph introduces the following exhibit:

(i) "BF 3", being three letters to a Magistrate informing of the Respondent's intention to take over the following private criminal complaints against Jesse Morgan for Indecent and Abusive Language; and a Notice of Discontinuance pertaining to the same complaints:

- No. 181/07 - ROBERTS V JESSE MORGAN;
- No. 182/07 – LEMUEL WILLIAMS V JESSE MORGAN;
- No. 183/07 – LEESONI SAM V JESSE MORGAN; and
- Notice of Discontinuance in the Matter against JESSEE MORGAN for indecent and Abusive Language

[30] Paragraphs 4, 5 and 6 speak to three Complaints (No 61 of 2008; No 62 of 2008 and No 76 of 2008) filed in the Magistrate's Court against Ralph Gonsalves for Indecent Assault and Rape; It introduces Exhibits "BF4"; "BF5" and "BF6" as evidence. These exhibits consist of three Notices of Discontinuance of Suits numbered 61 of 2008; 62 of 2008 and 76 of 2008.

[31] Paragraph 7 states that the second Affidavit is evidence in support of allegations contained and made in paragraphs 2, 4 and 5 of the Applicant's Application.

Third Affidavit

- [32] The third Affidavit consists of nine paragraphs of 3 pages.
- [33] Paragraph one speaks to the applicant's identity.
- [34] Paragraph two speaks to two previous Complaints numbered 386 of 2008 and 387 of 2008 laid by the Applicant against one BERTIE POMPEY Deputy Commissioner of Police (DCOP) and a Barrister at Law for (1) aiding and abetting armed policemen to assault him; and preventing him from entering the P. H. Veira premises; and (2) assaulting the Applicant by forcefully grabbing him and ejecting him from Police Headquarters where he had been attending on a client who was detained there.
- [35] Paragraph 3 tells of the postponement of the hearing date in the Matter against the DCOP from 26th May 2008 to 5th June 2008
- [36] Paragraph 4 speaks to a letter dated 23rd May 2008 from the Respondent requesting that the Applicant provide statements and information touching and concerning Complaint 387 of 2008 against the DCOP.
- [37] Paragraphs 5 to 7 speak to the letter in reply from the Applicant to the Respondent together with the information requested and follow –up letters, also in relation to the Matter against the DCOP. The letters and the statements referred to in paragraph 33 to 36 are exhibited marked "Bundle BF BP 1"; "BF BP 2 – 2i/2ii"; "BF BP 3"; "BF/BP 4".
- [38] Paragraph 8 speaks to the failure of the Respondent to deliver any correspondence touching and concerning Complaint No 386 of 2008.
- [39] Paragraph 9 is worth reproducing. It states:
- "I have filed this affidavit in support of the allegations made by me in the herein application AND to bring to the knowledge of the High Court that:
- (a) Section 64 of the Constitution has to be judicially examined and declared in light of the frequency of the use of "Taking over Private Criminal matters by the DPP"
 - (b) "Take Over" needs to be judicially defined. The word "and" in Sec 64/2/b of the Constitution is a conjunct and not a disconnect.
 - (c) In so far as there is a philosophy of law the courts of the State [are] obliged to interpret for public guidance, legal conundrums; in particular whether an individual authority can be given powers the exercise of which goes outside the control of the courts and / or beyond accountability; other than by express agreement between and binding the parties to it.

- (d) Section 64 of the Constitution creates and or is permissive of a Political Dictatorship, contrary to the affirmation of principles of democracy expressed and declared in the Schedule to the said Constitution.”

Respondent's Affidavit

[40] The Respondent swore to and filed an affidavit in reply to the application. In paragraphs 3, 4 and 5 of that affidavit the Respondent averred:

- “3. On the 15th day of January 2008 pursuant to and in exercise of my Constitutional powers, I undertook criminal proceedings Number 857 of 2007 J.H. **Bayliss Frederick v Keith Miller**. I subsequently filed a Notice of Discontinuance dated the 15th day of January 2008 which effectively brought an end to those proceedings. All actions taken by me were done pursuant to the exercise of my Constitutional powers.”
- “4. By letter dated 4th December 2007, the Applicant Mr Bayliss Frederick requested me to account for the exercise of my Constitutional powers. I considered the request to be an attempt to undermine the protection embodied in the Constitution of St Vincent and the Grenadines against any interference in the exercise of my powers as Director of Public Prosecutions.”
- “5. In the premises, I ask this Honourable Court to dismiss the Application and not order that a Rule do issue herein.”

[41] Both parties filed written submissions and authorities; and both parties addressed the court briefly, highlighting or expanding their written submissions. The submissions and authorities for the most part were in relation to the susceptibility of decisions of the DPP to judicial review.

Submissions: Nature of the proceedings

[42] The Applicant contended that the Application is brought against Colin Williams, the Barrister and solicitor, who happens to be Colin Williams the DPP. In his Application and in his written and oral submissions, the Applicant sought to distinguish and separate the power given to the Respondent to nolle pros or not to nolle pros, from the Respondent's conduct as a Barrister-at-Law in relation to all the Complaints brought to his attention. The Applicant submitted that Barristers have a responsibility not imposed by a contract of employment, and they cannot free themselves from such professional responsibility by pointing to a statute.

[43] In reply to that submission, Mr Williams for the Respondent submitted that the distinction sought to be made does not change the true import of the Application; nor does it change

the position in law. Mr Williams was of the view that the effect of the Application is to review the decision of the DPP. The Application being styled as disciplinary proceedings against the DPP is of no significance, argued Mr Williams because the holder of the office of DPP must be a member of the bar in order to be eligible to be appointed DPP. To seek to make the distinction is artificial and irrelevant to the issue, contended Mr Williams. Mr Williams pointed out the method of appointment; suspension and or dismissal of the DPP, as enshrined in the Constitution, and went on to submit that the Applicant has not brought his Application within the confines of the grounds set out in the Constitution.

Finding

- [44] Undoubtedly, these proceedings are essentially disciplinary proceedings against the Respondent in his capacity as Director of Public Prosecutions. However, based on the grounds of application, the content of the affidavits in support and submissions of the Applicant, they also seem to smack of an application for judicial review. Ultimately, the Applicant is really seeking to have the Respondent suspended from office or removed from the Court Roll for the content of the response to his letter of 4th December 2007; and for the subsequent take over and discontinuance of his private criminal matter, as well as other previous matters.
- [45] The proceedings are brought under the Regulations of the Supreme Court Act (St Vincent and the Grenadines) Act, Chapter 18 which provides that proceedings to suspend or strike a barrister or solicitor off the roll shall be commenced by an application to a judge in chambers for a rule to issue to the barrister or solicitor named to show cause why he should not be suspended or struck off the roll, and that such application may be made by the Attorney General or by the person aggrieved by the action of the barrister or solicitor against whom the complaint is made.
- [46] A review of the Heading and Title shows that the matter is stated to concern the "Barristers and Solicitors Rules Chapter 18 Section 76 and Booklet 4 of the ... Laws of Saint Vincent and the Grenadines." I believe the Applicant meant to state **The Eastern Caribbean Supreme Court (St Vincent and the Grenadines) Act CAP 18; section 76; and The Eastern Caribbean Supreme Court (Saint Vincent and the Grenadines) Act CAP 18; Barristers and Solicitors Rules; Booklet 4 rule (1) and (ii)**. Contrary to what is intituled in the Heading, there is no section 76 in the Barristers Rules, Booklet 4.
- [47] The matter is also stated to concern "the Application of J.H. Bayliss Frederick, a barrister and solicitor, the person aggrieved by the action of Colin Williams, the barrister and solicitor."
- [48] However, one must not lose sight of the fact that the Applicant addressed the letter dated 4th December 2007 to Colin Williams, the DPP, not to Colin Williams as a private lawyer. Nor must one lose sight of the fact that the Respondent did not act as a private lawyer when he responded to the Applicant's letter. He acted as the DPP. Furthermore, it is evident to me that the grounds of the application are referable to the Respondent in his capacity as the DPP.

The Law

[49] The office of Director of Public Prosecutions is enshrined in the Constitution of Saint Vincent and the Grenadines.

[50] In the Constitution of St Vincent and the Grenadines, as in other Caribbean Constitutions, this officer is appointed by the Governor General acting on the advice of the Judicial and Legal Service Commission and dismissible by the same method after a tribunal appointed by the Chief Justice has satisfied itself that a prima facie case for dismissal has been made out.

(See s. 81 (1) of the Constitution of Saint Vincent and the Grenadines).

(See also s. 86 (8) and s 86 (9) of the Constitution of Saint Vincent and the Grenadines).

[51] The Director of Public Prosecutions (DPP) does not take orders from any other person or authority. The intention is that there should be the same or substantially the same degree of independence as with judicial appointments.

[52] The power of the DPP to take over proceedings is conferred by Section 64(2) of the Constitution of Saint Vincent and the Grenadines, Revised Edition 1990.

[53] Having taken over a private criminal prosecution under section 64 (2) of the Constitution, the DPP has the power to discontinue the prosecution by virtue of section 67 (1) of the Criminal Procedure Code, Chapter 125 of the Laws of Saint Vincent and the Grenadines. He may do so at any stage before judgment is delivered.

[54] Under the Constitution, the DPP is not required to give any reasons for his decision, nor is he required to hear any representations made to him by a person who has instituted a private criminal prosecution. Accordingly, there is no basis for suggesting that the Respondent's response to the Applicant's request for reasons is an improper, irresponsible and unprofessional mode of exercising the power of taking over and discontinuing a private criminal prosecution, that warrants the issuing of a Rule to show cause.

Disposition

[55] Having considered the Application by the Applicant, and having considered the Affidavits of the Applicant in support of the Application and the documents exhibited thereto; and having considered the Affidavit of the Respondent in response to the Application; and upon considering the written and oral submissions of the parties; I am of the opinion that the Applicant's Application is devoid of merit and must therefore be refused. In particular, I am not satisfied that the Applicant's Affidavits disclose a prima facie case sufficient to justify that a rule should issue. Supporting affidavits and certain exhibits for the most part are scandalous, impermissible and inadmissible and do not disclose a prima facie case

against the Respondent. In my judgment, therefore, there is no justification for saying that a Rule should issue for the Respondent to show cause why he should not be struck off the Court Roll.

[56] There is no suggestion that the Respondent made a decision that departs from the relevant sections of the Constitution or the Criminal Code of Procedure. If that were so, then I am of the view that the proper mode of proceedings would have been an application for judicial review, or an Application to the Judicial and Legal Service Commission.

[57] I have already mentioned that the office of the DPP is enshrined in the Constitution of Saint Vincent and the Grenadines. As well, I have already mentioned that the method of appointment and removal of the DPP is also enshrined in the Constitution. So, if there is a case to be brought, the applicant has to bring it as a breach of the relevant section of the Constitution. I am in agreement with Mr Williams' submission that the applicant has not brought his complaint within the confines of the grounds set out by the Constitution for initiating proceedings against the DPP.

[58] Even if the Applicant had a right to request reasons for the DPP's intervention in the Applicant's Private Criminal Matter, the letter of request was premature, it having been delivered to the DPP even before the DPP had taken over and discontinued the matter.

[59] It bothers my mind that a lawyer of the calibre of the Applicant, can determine that he could dictate to the DPP in such unpleasant, offensive and disrespectful manner, what he should do or what he should not do. The Applicant's letter to the DPP to my mind was a blatant interference with the prosecutorial discretion of the DPP.

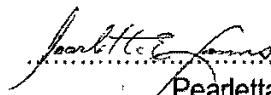
[59] That being said, it does not mean that I approve, endorse or condone the infliction of any actual bodily harm, to wit a fractured 4th toe, upon the Applicant. However, the Applicant, by his own admission, is well aware of his right or option to bring a civil action against the police in respect of the injury sustained. (See paragraph E of the Applicant's submissions) As to whether that option is still available, I make no finding.

[60] For all the above reasons, the court is unable to accede to the Application.

[61] I therefore order that:

- [1] The Application by the Applicant for a Rule to issue for the Respondent to show cause why he should not be struck off the Court Roll be and the same is hereby dismissed.
- [2] Costs awarded to the Respondent to be assessed if not agreed.

[62] I am grateful to counsel for their industry and for their patience.


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Pearletta E. Lanns
Master