



IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
IN THE COLONY OF
MONTSEERRAT
(Civil)

CASE NO: MNIHCV2014/0034

BETWEEN:

CLAUDE GERALD Applicant

AND

HERMAN SERGEANT
HON ATTORNEY GENERAL Respondents

Appearances:

Dr. David Dorsett for the Applicant
Mrs. Sheree Jemmatte-Rodney for the Respondent.

2015: April 17
2015: July 03

Judgment

- [1] **Redhead, J. (Ag):** The Applicant is an Agricultural Economist. The first named respondent is the Station Manager of Radio Montserrat (ZJB).
- [2] On 15th September 2014 the applicant filed a Fixed Date Claim Form in which he sought the following remedies:

(i) A declaration that the right of the applicant to freedom of expression pursuant to Section 13 of the Montserrat Constitution Order 2010 (The Constitution) was infringed when the applicant's participation in a discussion programme on ZJB Radio Montserrat was terminated by the 1st respondent on account of the applicant

- (1) Holding the views that marijuana has tremendous medicinal properties which have led some countries to legalise the use of marijuana
- (2) Imparting information about the medical benefits of marijuana
- (3) Damages
- (4) Cost pursuant to CPR 2000 Part 56.13(5) or otherwise agreed
- (5) Interest pursuant to Section 7 of the Judgment Act
- (6) All such remedies whatsoever as the applicant may appear to be entitled to pursuant to Section 20 of the Supreme Court Act.

(3) The applicant has sworn an affidavit in support of the Fixed Date Claim Form filed on 15th September 2014 claims.

(1) By paragraph 5 the applicant refers to the provisions of Section 13 of the Constitution Which provides: "that except with his or her consent no person shall be hindered in the enjoyment of his freedom of expression, and the freedom of expression includes the freedom to hold opinion and freedom to receive and impart ideas", the applicant continues in his affidavit

(2) "I hold the opinion that marijuana has tremendous medical properties and express this opinion whilst a guest on a discussion programme on ZJB/Radio Montserrat

(3) Whilst a guest on the said programme, I imparted information about the medical benefits of marijuana

(4) On account of me expressing my opinion about marijuana my further participation (or any meaningful participation) and substantive further participation on the ZJB Radio Montserrat programme was immediately terminated by the 1st Respondent.

(5) The action of the first respondent in terminating my participation on ZJB/Radio Montserrat Constituted an unlawful interference of my right to freedom of expression guaranteed by Section 13 of the Constitution as such interference was not reasonably justified in a Democratic Society.

(6) By virtue of section 20 (2) of the constitution, the High Court may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of my right to the freedom of expression as guaranteed by Section 13 of the Constitution.

(7) The infringement of my right to freedom of expression has visited me with stress and inconvenience"

It seems to me that the applicant rather than deposing to facts in his affidavit is arguing law

[5] In that affidavit the applicant also deposed that sometime in January 2014 he agreed to make a weekly appearance on the "Warren Cassell Show" a radio talk show on the government owned radio station.

[6] The applicant said that he championed natural health issues, he referred to an article "Cannabis and Coconut Oil in a capsule: A medical Miracle" and said "that was the foundation for the debut discussion on 29th January 2014".

[7] The applicant deposed in his affidavit that Marijuana has tremendous medical properties and on account of which have led some Countries to legalise its use. He said that he also made clear that it is an illegal substance and possession of it has serious consequences.

[8] The applicant also swore that he imparted information on the medical benefits of Marijuana and that the plant is now back into acceptance by mainstream society world wide.

[9] The applicant said that having expressed his opinion and imparted the information his further participation on the programme was curtailed by the 1st respondent and for all intents and purposes brought to an end.

- [10] He said that he was pulled off the programme in a most unceremonious manner. It has stressed him out. He feels that his freedom to express his view on a topic which was quite current has been stifled. The convenience of sharing information about the medical properties of Marijuana to a significant segment of the public had been severely constrained and curtailed on account of being pulled off the Station.

(I make the observation that, how does the applicant know that a significant segment of the public was interested in hearing what he had to say about marijuana?)

- [11] The applicant deposed that on 5th February 2014 after Mr. Warren Cassell was given clearance by the programme director, Mr. James White, and to him separately, he again appeared on the show.

- [12] Mr. White had indicated to him that Marijuana was the source of contention and it would be prudent to stay clear of such topic.

- [13] The applicant said that he returned on Wednesday 5th February 2014 and after a quick introduction by Mr. Cassell, he began a discussion on the Aloe Vera plant, moments into the thought (and before concluding it) Mr. White entered the Station and in his presence informed Mr. Cassell that the Station Manager (1st Respondant) had telephoned him and insisted that he was not to be allowed on the radio and that no permission was given for him to be on the radio.

- [14] The Applicant deposed that he subsequently wrote a letter to the Attorney General seeking her intervention into the matter. The Applicant said that the only response from the Attorney General was an e-mail saying that she had assigned the matter to a Crown Counsel in her office.

- [15] Finally the Applicant alleged that the action of the 1st Respondent in pulling him off the programme is not something that is reasonably justified in a Democratic Society.

- [16] In an affidavit deposed to by the first named Respondent, Herman Sergeant, he said that he is the Station Manager of Radio Montserrat/ZJB and has held that position from since 2003.
- [17] As Station Manager he is responsible, for among other things, approving programmes and programme content to be aired on the Radio Station, coordinating the programme schedule and work flow of the departments, and supervising and managing the people who work within the Radio Station.
- Prior to approving any programmes to ensure that the contents of the programmes are kept within the Station guidelines, to ensure the integrity of the programme content, and to ensure there is nothing which will be contrary to law, or which will offend ethical and industry standards.
- [18] The first respondent said that he is expected to continue to monitor programmes to ensure that standards are maintained. He further deposed that the Warren Cassell Show is a radio programme which is broadcasted on Radio Montserrat/ZJB for four hours per week from 11:00 to 12:00pm (sic) noon (Wednesday and Thursday) 11:00am to 1:00pm on Fridays. The programme is produced and hosted by Mr. Warren Cassell, an independent producer who pays the Radio Station a monthly fee for his radio programme.
- [19] On Wednesday 29th January 2014, the Station Manager said that he was listening to the broadcast of the Warren Cassell Show on Radio Montserrat/ZJB when he heard the Claimant, Mr. Claude Gerald, being introduced as a feature presenter on a new weekly segment on the Warren Cassell Show where health issues would be discussed. Prior to hearing this announcement, he had not been informed that a new segment was being introduced on the Warren Cassell Show and that Mr. Gerald was going to present this segment.

- [20] The first named respondent deposed that as he listened to the programme he became increasingly concerned about the discussion which was taking place because the discussion appeared to him, to be promoting the use of Marijuana in all its forms.
- [21] The Station Manager deposed that Radio Montserrat/ZJB being a Government owned Radio Station should not, in his view, be seen to be promoting the use of Marijuana which is illegal in Montserrat, and he was concerned that the discussion which was taking place may be perceived as supporting or promoting the use of Marijuana. He has attached a transcript, recording the discussion on Marijuana. The Station Manager swore that in the best interest of everyone that he should stop the discussion on the topic and he sent a note to the host, Mr. Warren Cassell, indicating that he should stop the discussion immediately. The discussion on the topic of Marijuana ended shortly thereafter and Mr. Cassell continued with his show.
- [22] On 29th January 2014, the Mr. Sergeant, asked Mr. James White, Executive Producer to remind Mr. Warren Cassell of the Station policy for introducing new programme segments, and the need to seek the approval of the Station Manager before introducing any new programme content and before dealing with potential controversial topics, and the need for programmes to be vetted and approved by the Station Manager before they are aired. The Station Manager said that he was informed by Mr. James White and verily believed that he reminded Mr. Cassell of these procedures.
- [23] On Wednesday 5th February 2014, the Station Manager said that he was listening to the broadcast of Warren Cassell Show, when he heard the Claimant on the Warren Cassell programme discussing the health benefits of Aloe Vera. He immediately called Mr. James White and instructed him to stop the discussion on the health issues, and the discussion was stopped shortly thereafter and the Warren Cassell show continued.
- [24] Mr. Sergeant deposed that the discussion was stopped because the proper station procedures had not been followed. Mr. Warren Cassell had by e-mail communicated with

Mr. James White on Thursday 30th January 2014 and copied to him and asked if the Claimant, Mr. Claude Gerald could appear on the Warren Cassell programme and speak on health topics, but no decision had been taken in relation to the matter. He, the Station Manager, had not been provided with the programme content for the new segment to be aired as part of the Warren Cassell Show.

[25] The first Respondent also deposed that on 5th February 2014, after the health discussion on Aloe Vera was stopped Mr. James White informed him that he had indicated to Mr. Cassell that the Claimant Mr. Gerald could appear on the Warren Cassell programme to discuss health related issues.

[26] Mr. Sergeant said that prior to this he was not aware that Mr. White had given approval. Mr. White was not authorized to give that approval.

[27] On 12th February 2014, Mr. Gerald asked the first Respondent if he could have a programme on natural health as part of the Warren Cassell Show. He informed Mr. Gerald that he had no objections to him doing the programme segment but he indicated that like the majority of the other programmes aired on Radio Montserrat/ZJB, his segment would have to be pre-recorded so that it could be vetted. Mr. Gerald objected to this and they had no further discussion on the matter.

[28] The first Respondent in his affidavit denied that the Claimant's discussion on Radio Montserrat/ZJB on 20th January 2014, was terminated because the Claimant holds the view that Marijuana has tremendous medical properties and have led some countries to legalise the use of Marijuana. He said that he does not know whether or not the Claimant does in fact hold the view that Marijuana has tremendous medical properties.

[29] The First Respondent denied that the Claimant's discussions on Radio Montserrat/ZJB on 20th January 2014, and on 5th February 2014, were terminated because the Claimant was imparting information about the medical use of Marijuana.

- [30] The First Respondent says that the discussion on Marijuana on 29th January 2014, was stopped because he was concerned that it would have appeared that Radio Montserrat/ZJB a Government owned Radio Station was supporting or promoting the use of Marijuana, a substance which is illegal in Montserrat.
- [31] The discussion on Marijuana and Aloe Vera on 5th February 2014 was stopped because the Station procedures for approval of programmes and programme content had not been followed.
- [32] Dr. Dorsett in his Skeleton submission argued that the Applicant's right to freedom of expression guaranteed by Section 13 of the Montserrat Constitution Order 2010 was contravened when his participation on a radio programme was interrupted. Section 13(1) of the Montserrat Constitution, referred to above.
- [33] Dr. Dorsett Contended that the principal issue for determination is whether there was constitutional justification for the first respondent's curtailing of the Applicant's participation on the radio programme on the ground that what was done was reasonably justifiable in a Democratic Society or in the interest of public order or otherwise.
- [34] Dr. Dorsett contended that interference with a person's constitutional right is only lawful and justified to the extent that it is permitted by the Constitution. Learned Counsel argued that this is clearly referenced in terms of Section 2 of the Constitution.

Section 2 of the Constitution mandates: "Whereas the realisation of the right to self determination must be promoted and respected in conformity with the provision of the charter of the United Nations.

Whereas every person in Montserrat is entitled to the fundamental rights and freedoms of the individual, that is to say, the right without distinction of any kind, such as sex, sexual orientation, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status but subject to respect for the rights and freedom of others and for the public interest to each and all of the following namely:

- (a) _____
- (b) _____
- (c) _____

[35] The subsequent provision of this part shall have the effect for the purpose of affording protection to the aforesaid rights and freedoms, and related rights and freedoms Subject to said limitations of the protection as are contained in these provisions.

(These words were emphasized by Dr. Dorsett).

[36] In my considered opinion Section 2, referred to above, speaks generally to fundamental rights that all Montserratians without limitation, such as sex, race, religion etc are entitled to. The Section does not specifically refer to freedom of expression which is to be found in Section 13 of the Constitution.

[37] In support of his argument Learned Counsel Dr. Dorsett referred to two authorities.

(1) R V (Mahmood) V Secretary of State for the Home Department¹

Mahmood's case concerns an application by a citizen of Pakistan who entered the United Kingdom illegally and claimed asylum. He married a British Citizen from Pakistan who had settled in the UK. One week later his asylum claim was refused and was he served with notice of removal as an illegal entrant. He then applied for leave to remain on the basis of his marriage. The Secretary of State refused his application on the grounds that his marriage did not predate enforcement actions by at least two years as provided by paragraph 5 of his marriage policy DP3/96 and that there were no exceptional circumstances justifying the grant of leave to remain. The Secretary of State anticipating the incorporation into domestic Laws of the right guaranteed by the convention for the Protection of Human Rights and Fundamental Freedom (1953) the Secretary of State also considered that any disruption to family life which might result from the applicant's removal was fully justified in the wider public interest of maintaining firm Immigration Control and would not involve a right of family life in Article 8 of the Convention. The applicant applied

¹ (2001) 1 WLR 840

for judicial review of the Secretary of State's decision on 2nd November 1999, by which time the applicant had two children by his marriage, the judge dismissed his application.

On appeal the Court of Appeal dismissing his appeal holding inter alia, that a Court required to review an administrative decision made before incorporation of the convention was not obliged to consider convention rights as having been incorporated into domestic laws by the 1998 Act on the ground that the decision would or might be implemented after incorporation, but that as a matter of Common Law in a public law case involving fundamental rights, such as the right to family life, Under Section 8, the Court would insist that the fact be respected by the decision maker who was accordingly required to demonstrate either that his proposed action did not in truth interfere with the right or if it did, that considerations existed which might reasonably be accepted as amounting to be substantial objective justification for interference. Since the Secretary of State had stated that he had regard to Article 8 when giving his decision

- [38] Apart from the fact that is fundamental right's issue was involved i.e. whether the decision of the Secretary of State was an interference with family life, I am of the considered opinion that this authority is of dubious application to the case under consideration.

(2) **Regina v Richmond upon Thames London Borough Council Ex parte Watson**²

- [39] This concerns four local authorities and involving four different applicants who were former mental patients and were compulsorily detained under the provision of the Mental Health Act 1983. The Applicants were then discharged from hospitals, received after Care Services including accommodations provided by the Respondent local authorities pursuant to Section 117 of the Act. On their application for judicial review of the decision by each authority to charge for such accommodation, the authorities contended that Section 117 did not impose a free standing duty to provide after care but was a "gateway duty" to ensure that after care services were provided under such other provision as were appropriate in the Applicants' case. Section 21 of the National Assistance Act 1948 the

¹ (2000) 1 B 370

judge rejected the authorities contentions and quashed their decision to charge the Applicants for accommodation.

- [40] On appeal by the local authorities, dismissing the appeal that Section 117 of the Act was unambiguous in its imposition of freestanding obligations and could not be constructed as a gateway to the provision of care services under Section 2 of the 1948 Act, and that accordingly local authorities who charge for accommodation in pursuance of their duty under Section 117 were not entitled to charge for it.

- [41] I have great difficulty in appreciating the relevance to or assistance that can be rendered to the case at bar.

Tan Te Lam and Other S. Superintendent of TAI A CHAU Detention Center and another¹

This case concerns Applicants of Chinese ethnic origin, were part of a large number of migrants from Vietnam who had arrived without permission in Hong Kong by boat from Vietnam. They were known as the "boat people." They were refused refugee status and had been detained under Section 13D of the Immigration Ordinance for several years "pending" removal from Hong Kong.

- [42] The Applicants issued writs of Habeas Corpus against the Superintendents of the detention centers where they were being held, seeking their release, on the ground, inter alia, that there was no prospect of their being compulsively repatriated, since the Vietnamese Government had a policy of refusing to accept back those they regarded as non Vietnamese Nationals and accordingly their removal was not "pending."

- [43] The judge ordered the release of three of the applicants on that ground, although he found that the period during which they had been detained was in all the circumstances reasonable. He held that there was evidence that the fourth applicant would be repatriated "in the near future" and that he was thus held still pending removal. On appeal the Court of Appeal of Hong Kong held that the questions whether the length of detention was

¹(1997) A.C. 97

reasonable or repatriation possible were incidental to the discretionary powers conferred on the Director of Immigration by Section 13D and as such were for the director and not for the courts to decide, and that since the director had shown that attempts were still being made to repatriate the applicants, they continued to be held pending removal. Accordingly the judge's order to release the first three applicants was reversed and his decision regarding the fourth applicant upheld.

- [44] On appeal to the Judicial Committee of the Privy Council allowing the appeals, that where a statute had given the executive power to detain persons pending their removal from the country it was to be implied, unless the statute provided otherwise, that the power could only be exercised during such period as was reasonably necessary to effect removal and that if it became apparent that removal was not going to be possible within a reasonable time further detention was not authorized; that the questions as to what constituted a reasonable period and whether there was sufficient prospect of persons being removed within it, were matters for the court to determine. At paragraph 114 Lord Browne-Wilkinson opined:

"First such a provision (as S13 D of the Immigration Ordinance) would be very surprising given the basic constitutional importance of Habeas Corpus. If a jailor could justify the detention of his prisoner by saying 'in my view the facts necessary justify the detention exists'. The fundamental protection afforded by a Habeas Corpus would be severely limited. The Court should be astute to ensure that the protection afforded to human liberty by Habeas Corpus should not be eroded save by the clearest word. Secondly, there is nothing in the language of the ordinance to suggest that this was intended. Thirdly, there is some indication to the contrary. Before 1991 the Courts of Hong Kong had on a number of occasions reached the conclusion that the detention was not authorized by Section 13D because repatriation was not pending and in so doing reached their own conclusion of fact on the evidence adduced. In 1991 the legislator substantially amended Section 13D in particular by introduction of Section (1A) yet the legislation introduced no provision limiting the court's power to determine jurisdictional issue of fact..."

- [45] This case like the former cases involves the interpretation statutes i.e. to determine whether the actors were acting legitimately in accordance with the authority under which they purported to act.
- [46] The case at bar calls for a determination or declaration whether the rights of the applicant to freedom of expression pursuant to Section 13 of the Montserrat Constitution Order 2010 were infringed, when the Applicant's participation on a discussion programme on ZJB Radio/ Montserrat was terminated by the first Respondent.
- [47] Mrs. Jemmotte-Rodney, Learned Counsel on behalf of Respondents argued that notwithstanding the existence of a general right to broadcast, circumstances may arise and steps may be taken which may amount to an infringement of the right to freedom of expression. In support of that argument Learned Counsel referred to the case of- **John Benjamin and Others v Minister of Information and Broadcasting and Another**¹. The facts in that case were as follows; Radio Anguilla was the only Secular Radio Station operating in the country. Following a commitment by political parties to free broadcasting in 1994, a programme was instituted called "Talk Your Mind" which enabled members of the public to telephone their comments as part of the programme.
- [48] Mr. Benjamin, a lawyer who had experience in producing of a radio programme was appointed to host the programme on condition that he was responsible for its format and for obtaining sponsorships. This arrangement was made by the Director of Broadcasting with approval of four ministers of The Coalition Government.
- [49] The programme was first aired on 19th October 1994 and was, it seems to be a great success. Issues of wide importance to the public were ventilated and Government Ministers took part in the discussion but by 1996 there was much criticism of the Government during the programme and in July 1996 the Minister of Information and

¹ (1991) WIR 111

Broadcasting suggested that the programme should be changed to one with discussion panels but no phone calls in participation by the public.

[50] Mr. Benjamin considered this as interference with the public's right to freedom of expression and was unwilling to change the format which he personally arranged and paid for. The programme was then closed down which lead to the widespread criticism, indeed anger, on the part of the public. Subsequently, on October 23 1996 the programme was reinstated with the Minister of Information and Broadcasting as the guest speaker.

[51] On 18th July 1997 during the programme, a question was raised by a caller as to the legality and propriety of the National Lottery which had recently been set up in Anguilla. Mr. Benjamin expressed the view that the Lottery was not appropriate for Anguilla and that in his view it was illegal.

[52] Mr. Todd Washington Vice President of Anguilla Lottery and gaming Co. Ltd. by letter gave notice of his intention to sue Radio Anguilla and Mr. Benjamin for defamation, malicious intent to injure the economic interests of the company in Anguilla and for other serious tortious actions.

[53] The Government then without discussing the matter with Mr. Benjamin, suspended "Talk Your Mind". The Applicants applied to the High Court and sought a declaration that the suspension of the programme was a contravention, active suppression and abridgement of the [first appellant's] Right to freedom of thought, freedom of expression and freedom from discrimination as guaranteed by Sections 1, 10, 11 and 13 and enshrined by sections 10, 11, 13, 16 of the Constitution of Anguilla in that

(a) It constitutes a refusal by the Respondent to allow further debates of the issue of the lottery through the medium which has the widest and most effective broadcast dimension in Anguilla.

(b) it constitutes in relation to the [appellants] a refusal by the Respondent to allow the [appellants] access to the medium which has the widest and most effective broadcast dimension for the debate on matters of community concern.

(c) it is discriminatory in effect of the Applicants in the exercise of their right to freedom of thought and expression.

[54] The Learned Judge, in the High Court Saunders J (as he then was) held that the Minister's decision to suspend the programme on 19th July 1997 was a contravention of the Applicants' right to freedom of expression guaranteed and enshrined in the constitution and protected by Section 11. The Learned Judge also ordered that Mr. Benjamin should have damages assessed by a judge in chambers and that those damages be paid by the Minister.

[55] The Minister and Attorney General appealed on the basis (1) that no constitutional issue was at the heart of the case and that was purely a challenge to the exercise of administrative discretion, and (2) Mr. Benjamin had no fundamental right or legitimate expectation to host the programme.

[58] The Court of Appeal allowed the appeal and set aside the judge's orders. The Applicants appealed to Privy Council. At paragraph 31 Lord Slynn of Hadley delivering the advice of the board opined:

"Their Lordships are of the opinion that circumstances may exist where freedom of speech, as the Judge stressed, the basis of democracy may be hindered within the meaning of Section 11(1) where there is no contractual and no absolute generalised right to speak in the way in which individual wishes to express his views. In **X and Association of Z v United Kingdom**⁵. The European Convention for the Protection of Human Rights and Fundamental Freedoms 1953 could not be taken to include a general and unfettered right for any private citizen to

⁵ (1971) 18 CDR 86 at 88

organization to have access to broadcasting time on radio and television in order to forward its opinion."

Continuing at paragraph 32 Lord Slynn said:

"There are obvious limits to the exercise of the freedom even without a law falling within Section 11(2) of the Constitution. Thus no one has a right in circumstances to insist on holding a meeting in an individual's house, or in the middle of a highway which impedes traffic, or to use language intended to stir up violence or breach of the peace but the circumstances of each case have to be looked at."

[57] Section 11 (1) and (2) of the Anguilla Constitution is in the same terms as Section 13(1) and (2) of the Montserrat Constitution.

[58] In the Court of Appeal it was argued that "the government may not be obligated to take positive action in providing the citizen with a platform to express his opinion, but, when, as in this case, the Government does provide one it cannot arbitrarily or discriminately withdraw that means"

[59] In my considered opinion the Privy Council endorsed this submission when Lord Slynn quoted with approval the findings of the Learned Judge.

"As the Judge found there was here an arbitrary or capricious withdrawal of a platform which had been made available by the government."

[60] I am of the considered opinion that the Privy Council's decision was prompted by the motive of the Government. At paragraph 49 Lord Slynn opined; "It seems to their Lordships that the motive of the Government in closing the programme in this present case is relevant in deciding whether there was a contravention of section 11. This is not a case where the Government as owner of the radio station, felt that the programme had ceased to have sufficient audience participation or appeal. Nor is it a case where there had been intended from the beginning a limited series or period, so long as the people were not utilizing the Government"

(61) In my judgment there was no capricious or arbitrary withdrawal of a platform from the applicant. In fact none was given to him. In his affidavit, Mr. Herman-Sergeant, Station Manager at paragraph 22 swore:

(62) "The discussion on marijuana on 29th January 2014 was stopped because I was concerned that it would have appeared that Radio Montserrat/ZJB a Government owned radio station was supporting or promoting the use of marijuana, a substance which is illegal in Montserrat."

(63) Was the station manager's action legally justifiable? In the Caribbean region there is quite a lot of concern about illegal drug use, particularly among the youths in our society there is also the argument that the use of Marijuana leads to the use of hard drugs.

(64) In his affidavit Mr. Sergeant deposed at paragraph 3 that as station manager he is responsible for, among other things, approving programmes and programme content to be aired on the Radio Station.

(65) The station manager in his affidavit said that the discussion by the applicant on the health benefits of Aloe Vera was stopped because the proper station policy had not been followed. Dr. Dorsett in his skeleton arguments submitted; that the Respondents argued that there was justifiable interference with the applicant's freedom of expression as there was non-compliance with station policy. The policy appears to be, that the approval of the station manager must be obtained before introducing any new programme content and before dealing with potentially controversial topics as there is a need for such programmes to be vetted and approved by the station manager before they can be aired.

In my considered opinion this was not a policy motivated by a desire to suppress or limit criticism of the government of the day. **See Observer Publications Ltd V Mathew and others**

¹ 58 WIR at paragraph 47 per Lord Cook

[66] Dr. Dorsett, Learned Counsel for the applicant, submitted this policy reeks of censorship of the most hideous kind and must be viewed with utmost suspicion. He referred to **Hector v Attorney General of Antigua and Barbuda**⁷ for support for this proposition.

[67] In Hector, Lord Bridge of Harwich at page 318 letter B reminded us as follows -

"In a free democratic Society it is almost too obvious to need stating that those who hold office in Government and who are responsible for public administration must always be opened to criticism. Any attempt to stifle or fetter such criticism amounts to political censorship of the most insidious and objectionable kind. At the same time it is no less obvious that the very purpose of criticism leveled at those who have conduct of public affairs by their political opponents is to undermine public confidence in their stewardship and to persuade the electorate that this opponent would do a better job of it, than those presently holding office. In light of those considerations their Lordships cannot help viewing a statutory provision which criminalises statements likely to undermine public confidence in the conduct of public affairs with the utmost suspicion."

[68] The appellant, the editor of a newspaper, was charged with printing a false statement which was likely to undermine public confidence in the conduct of public affairs contrary to section 33 B of the Act of 1972.

[69] Every case must be analysed in light of its particular facts and circumstances. In my judgment the law of libel ordinarily takes care of persons who falsely criticize someone and in so doing defame the person. But to legislate that any person making any false statement which is likely to undermine public confidence in the conduct of public affairs and to criminalise such conduct, in my considered opinion, is to place Ministers of Government and Officials of Government in an "Untouchable Class of their own" because that would have the effect of putting these Ministers and Officials above public criticism.

[70] In light of that Lord Bridge, with respect, with ample justification opined -

[1986] AC 312 318 B-C

"Any attempt to stifle or fetter such criticism amounts to political censorship of the most insidious and objectionable kind. Of course bearing in mind that in a free democratic society that those who hold office in government and who are responsible for public administration must always be open to criticism."

- [71] The case at bar comes nowhere near to political censorship. The first respondent took the action to close down the programme because out of concern to uphold the law, as he deposed in his affidavit, "Radio Montserrat/ZJB being a Government owned radio station should not, in my view, be seen to be supporting or promoting the use of marijuana which is illegal in Montserrat and I was concerned that the discussion which was taking place may be perceived as supporting or promoting the use of marijuana".
- [72] A transcript of the programme was provided as an exhibit in Herman Sergeant's affidavit. Having read the contents of the broadcast – **Cannabis and Coconut Oil in a Capsule: A Medical Miracle**, I come to the conclusion that Mr. Sergeant was justified in coming to the conclusion which he had. There is no doubt that Marijuana being illegal in Montserrat, in my view it would be unlawful for anyone to promote or support the use of this illegal substance.
- [73] There can be no doubt that there is a lively debate in the Caribbean about Marijuana use, there are some who advocate that the use of marijuana should be decriminalised, others point to the harmful use of the drug which they say affects the mental wellbeing, particularly of youngsters. Those who are against the use of marijuana also point out that the use of marijuana leads to the use of hard drugs.
- [74] Those who promote the use of marijuana and urge for the decriminalisation of its use point to its benefits, particularly, the medical benefits of marijuana. I have no way of knowing or assessing any of these claims or counter claims.
- [75] In my considered opinion whatever the beneficial use of marijuana is or whether its use has harmful effects, it is for the people through their representatives in Parliament who are

tasked with making the decision whether or not marijuana or the use should be decriminalized.

[76] Before leaving this judgment I wish to say that, in my opinion the station manager of Radio Montserrat/ZJB must have a positive role in the scheme of things. He swore in paragraph 4 of his affidavit that in approving programmes and programme contents he is to ensure that the programmes are kept within the station's guidelines to ensure the integrity of the programme content and to ensure that there is nothing which will be contrary to the law or which will offend ethical and industrial standards; the Station Manager is also expected to continue to monitor programmes to ensure that standards are maintained.

[77] Dr. Dorsett in his skeleton arguments frowned on this aspect of the Station Manager's roll and argued that it is akin to censorship.

I cannot see anything which is objectionable with the Station Manager disapproving programmes that are contrary to the law or which are offensive in anyway.

What about libel; if someone wishes to publish or speak on a subject which is obviously libelous should the programme Director or Station Manager not prevent the airing of such a programme or should he allow the airing of such a programme which eventually would lead to Radio Montserrat/ZJB liable in damages for libel?

[78] Concerning the issue as it relates to the discussion on abse vera which did not actually get off the ground. The first Respondent explained that he was approached by the Claimant and asked if he could have a programme on natural health as part of the Warren Cassell Show. The Station Manager said that he told him, the first respondent, like other programmes aired on the Radio Montserrat/ZJB his segment would have to be pre-recorded so that it can be vetted. Mr. Gerald objected.

[79] In my considered opinion in relation to this issue it cannot be said that the Applicant was denied his constitutional right of freedom of expression.

I hold that the Applicant was never provided with a platform on Radio Montserrat/ZJB to express his views, so none could have been withdrawn from him. I also hold that Applicant's right of freedom of expression was never infringed.

The application for relief is hereby denied.

No order as to costs.



Albert Redhead
High Court Judge