

PRESS SUMMARY

EASTERN CARIBBEAN SUPREME COURT IN THE COURT OF APPEAL



SAINT LUCIA

SLUHCVAP2015/0013

Honourable Guy Joseph (in his personal capacity and in his capacity as Parliamentary Representative for Castries South East) v [1] The Constituency Boundaries Commission [2] The Honourable Prime Minister [3] The Attorney General (acting in her capacity as the legal representative of Her Excellency, the Governor General)

JUSTICES: Her Ladyship, Dame Janice M. Pereira, DBE, Chief Justice; His Lordship, the Hon. Davidson Kelvin Baptiste, Justice of Appeal and Her Ladyship, the Hon. Gertel Thom, Justice of Appeal.

INTRODUCTION

This judgment was delivered by the Court of Appeal in open court at its sitting in the Virgin Islands (BVI) on Wednesday, 6th April 2016. The Court endeavours to deliver its judgments as they become ready for delivery and may do so in any Member State or Territory where it is sitting.

BACKGROUND FACTS

The appellant, Hon. Guy Joseph, is a member of the House of Assembly and also the representative of the Castries South East Constituency in Saint Lucia. The first respondent, the Constituency Boundaries Commission (“the Commission”), is established under section 57 of the Constitution of Saint Lucia (“the Constitution”) and comprises five members: the Speaker of the House of Assembly (as Chairman), two

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members appointed by the Governor General acting in accordance with the advice of the Prime Minister and two members appointed by the Governor General acting in accordance with the advice of the Leader of the Opposition.

Section 58 of the Constitution makes provision for the Commission to submit, to the Governor General, reports in relation to the electoral boundaries of Saint Lucia, which may include recommendations for alterations to be made to the boundaries. The Commission prepared a report which recommended an increase in the number of constituencies from 17 to 21 and which also made changes to the boundaries of some constituencies (“the Report”). The Castries South East Constituency was one of those affected by the Report. The draft order of the Governor General to give effect to the recommendations of the Report was laid in the House of Assembly by the Prime Minister and was approved by the members of the House of Assembly.

On 17th February 2015, Hon. Guy Joseph applied for and obtained an order restraining the Governor General from issuing a proclamation to give effect to the recommendations contained in the Report without notice to the other parties. The order of 17th February 2015 also scheduled the hearing of the application between all the parties to 27th February 2015. On 20th February 2015, counsel Mr. Anthony Astaphan, SC sent an email to the Registrar of the High Court copied to counsel for Hon. Guy Joseph, stating that he had been asked by the Attorney General to assist the Prime Minister and the Governor General (the second and third respondents in these proceedings, respectively) in relation to the application made by Hon. Guy Joseph.

On 24th February 2015, the Chairman of the Commission, by email, advised the members of the Commission that, in view of the urgency of the matter, he had requested that Mr. Astaphan, SC represent the Commission at the hearing of 27th February 2015.

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On 26th February 2015, Hon. Guy Joseph instituted legal proceedings in the court below against the Commission, the Prime Minister and the Attorney General, in which he challenged the legality of the Report. Hon. Guy Joseph complained that the Commission, in preparing its report in accordance with section 58 of the Constitution, did not act independently and was improperly influenced by the ruling Saint Lucia Labour Party (“SLP”), of which the Prime Minister is the leader; and also, that the Commission had failed to consult or properly consult while exercising its functions under section 58 of the Constitution.

The parties consented to an order dated 27th February 2015 for the expedited hearing of the underlying claim. This consent order stated that Mr. Astaphan, SC had appeared for all of the respondents ‘for the purposes of [that day] only’. Subsequently, one of the Commission members appointed on the advice of the Leader of the Opposition, wrote to the Chairman objecting to Mr. Astaphan, SC representing the Commission on the basis that he was on record as representing the Prime Minister and Governor General and also that he had a close relationship with the Prime Minister and the Chairman of the Commission.

On 6th March 2015, Hon. Guy Joseph applied for an order restraining the Commission from continuing to retain Mr. Astaphan, SC to represent it in the underlying claim, and an order that the Commission be independently represented by counsel who is not connected with any of the political parties or with any of the parties in the underlying claim. The basis of the application was two-fold: (i) that there was a conflict because Mr. Astaphan, SC was already on record as representing the Prime Minister and Governor General; and (ii) that Mr. Astaphan, SC had a close and notorious relationship with the Prime Minister and the Chairman of the Commission, and this personal allegiance to the Prime Minister and his professional relationship with the Chairman would conflict with the duty that he owes to the Commission to advise it independently, impartially and objectively.

The High Court judge dismissed the application, for the following reasons:

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- (i) the evidence presented by Hon. Guy Joseph, along with the consent order dated 27th February 2015 did not prove conclusively that Mr. Astaphan, SC was retained to represent any of the parties in the underlying claim prior to the Commission retaining him;
- (ii) the evidence was insufficient to prove that the Attorney General or any other person directed or influenced the Commission to retain Mr. Astaphan, SC;
- (iii) the evidence of Mr. Astaphan, SC's long standing relationship with the Prime Minister, the Chairman of the Commission, and newspaper reports, was not sufficient to prove that Mr. Astaphan, SC was a political activist; and
- (iv) the test was whether a fair-minded and reasonably informed member of the public may perceive that there is a real risk that Mr. Astaphan, SC would fail in his professional duties to the court as regards his representation of the Commission. The judge was of the opinion that it could not be perceived by the fair-minded, informed member of the public that Mr. Astaphan, SC might be partial to the Prime Minister and/or the SLP and that means that he is opposed to the Commission's interest before the court which was merely to defend the Report it had prepared before Mr. Astaphan, SC was retained by the Commission. The judge also held that the fact that Mr. Astaphan, SC could be opposed to Hon. Guy Joseph was not relevant, and concluded that there could not be any perception that there is a real and appreciable risk that the administration of justice would be adversely affected if Mr. Astaphan, SC represented the Commission in the claim.

Hon. Guy Joseph appealed the High Court judge's decision, challenging, among other things:

- (a) the standard of proof (i.e. the level of certainty required to establish disputed issues in the proceedings) applied by the High Court judge in assessing the evidence;
- (b) the legal test applied by the High Court judge in coming to a decision in the matter; and
- (c) the manner in which the High Court judge had exercised his discretion.

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With regard to the standard of proof, Hon. Guy Joseph argued that the High Court judge ought to have applied a standard of proof that was lower than the usual civil standard of proof in considering the evidence before him. Hon. Guy Joseph also argued that when the correct standard of proof is applied, the evidence which he presented to the court would have been sufficient for the court to be in a position to find in his favour. Concerning the legal test applied, Hon. Guy Joseph complained that the High Court judge had misstated the applicable legal test and accordingly, the judge erred in making a determination on whether or not Mr. Astaphan, SC should be restrained from continuing to represent the Commission.

JUDGMENT

The Court of Appeal dismissed the appeal of Hon. Guy Joseph and ordered that he pay the Commission its costs in the Court of Appeal and in the High Court.

REASONS FOR THE JUDGMENT:

1. The court always has an inherent jurisdiction (i.e. the authority) to restrain solicitors from acting in a particular case and to control its processes to ensure the proper administration of justice. If there are circumstances which are likely to compromise the discharge of these duties to a court by a legal practitioner acting in a case, whether because of some prior association with one or more of the parties against whom the legal practitioner is then to act, or because of some conduct by the practitioner (whether arising from associations with the client or a close interest which gives rise to the fair and reasonable perception that the legal practitioner may not exercise the necessary independent judgment), a court may conclude that the legal practitioner should be restrained from acting, even for a client who desires that the legal practitioner continue to represent him. [para. 14 of the judgment]
2. The test to be applied is whether a fair-minded, reasonably informed member of the public would conclude that the proper administration of justice requires that a legal practitioner should be prevented from acting, in the interests of the protection of the integrity of the judicial process and the due administration of justice, including the appearance of justice. Due weight should be given

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to the public interest in a litigant not being deprived of the lawyer of his or her choice without due cause. The High Court judge did apply the correct test in making a determination on whether Mr. Astaphan, SC was suitable to represent the Commission. There was no material difference between the test as outlined by High Court judge in his judgment, and that set out in the case of **Kallinicos v Hunt** and adopted in **Viscariello v Legal Profession Conduct Commissioner**. [para. 15 of the judgment]

3. The High Court judge applied the correct standard of proof, the civil standard of proof, (on a balance of probabilities), in considering the evidence in the case. The jurisdiction of the court to restrain a legal practitioner from representing a litigant is an exceptional one and ought to be exercised with caution. Compelling evidence would be required for the court to make a determination that a legal practitioner should be restrained from continuing to represent his client. Accordingly, the application of a lower standard of proof would not have been proper. [paras. 20-22 of the judgment]
4. The High Court judge's findings of fact and his exercise of discretion cannot be faulted. He identified the correct applicable principles and in applying those principles he did not misdirect himself. He took into account all relevant matters. He attributed the relevant knowledge to the fair-minded and reasonably informed member of the public and, having adequately assessed the evidence, concluded that there was no basis for exercising the discretion to restrain the Commission from continuing to retain Mr. Astaphan, SC for the purpose of representing it in the High Court claim. The Court of Appeal therefore found no basis to interfere with the findings made and the exercise of discretion by the High Court judge. [para. 82 of the judgment]

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