

*Privy Council Appeal No. 62 of 2002*

**(1) Alexander Benedetto**

*Appellant*

v.

**The Queen (No. 2)**

*Respondent*

*and*

*Privy Council Appeal No. 88 of 2002*

**(2) William Labrador**

*Appellant*

v.

**The Queen (No. 2)**

*Respondent*

FROM

**THE EASTERN CARIBBEAN COURT OF APPEAL  
(BRITISH VIRGIN ISLANDS)**

-----

JUDGMENT OF THE LORDS OF THE JUDICIAL  
COMMITTEE OF THE PRIVY COUNCIL,

Delivered the 20th October 2003

-----

*Present at the hearing:-*

Lord Bingham of Cornhill

Lord Steyn

Lord Hope of Craighead

Lord Hutton

Lord Rodger of Earlsferry

*[Delivered by Lord Hope of Craighead]*

-----

1. At the end of the hearing in this case counsel for the appellants asked for costs to be awarded to the appellants in the event that their appeals were successful. Their application for costs was opposed by the Crown. Counsel for the Crown also drew the Board's attention to the fact that Labrador was granted special leave to appeal as a poor person and that it appeared from the information available to the Crown that his status was unchanged. The appellants were invited to put in written submissions, to which each side would be entitled to reply. Their Lordships have now

had an opportunity of considering the written submissions and the information about Labrador's status as a poor person which has been obtained at their request by the Registrar.

2. They deal first with Labrador's status. The status of an appellant as a poor person is not a matter of concern to him alone. Rule 9 of the Judicial Committee (General Appellate Jurisdiction) Rules 1982 (SI 1982/1676) provides that a petitioner who has obtained special leave to appeal as a poor person shall not be required to lodge security for the respondent's costs or to pay any Privy Council Office fees. A poor person's appeals page in the registry fees book is marked "COFR" to indicate that the Privy Council Office fees have been remitted. His status as a poor person also affects his liability, if any, for the other side's costs. The usual practice is for a recommendation to be made by the Board for the government of the country from which the appeal comes to assist the appellant when he is given special leave to appeal as a poor person.

3. It is the duty of an appellant who, having initially been given special leave to appeal as a poor person, obtains funds for his own appeal to notify the Privy Council Office and the respondent's agents in writing as soon as possible so that the change in his status can be noted in their records. The Privy Council Office fees which were remitted on the basis that the appellant was a poor person must also be paid.

4. Their Lordships are satisfied that the steps that ought to have been taken to bring the change in Labrador's status as poor person to the attention of the Privy Council Office and the Crown were not taken in this case. On the other hand, it is plain that Labrador himself is not to blame for the way in which this matter has been handled by his solicitors and that the situation which has resulted from this is not irretrievable. The information which has been made available to the Board indicates that he was sufficiently in funds for it to be clear by December 2002 that he was no longer entitled to be treated as a poor person. Their Lordships consider that he should be treated as no longer having the status of a poor person as from 31 December 2002.

5. The appellants have asked for their costs before the Board and in the courts below, and for these costs to be taxed on the standard basis. Two questions then arise. The first is whether this is a case in which they should be awarded costs. The second is whether they should be awarded their costs in the courts below as well as before their Lordships' Board.

6. In *Teper v The Queen* [1952] AC 480, 493 it was said that the practice of the Board was against giving expenses to the successful appellant in a criminal appeal save in very special circumstances. In *Beckford v The Queen*, Times Law Reports, 30 June 1993 it was said that its practice was not to award a successful appellant costs against the Crown unless there are wholly exceptional circumstances. These statements can no longer be taken as accurate: see, for example, *Vasquez v The Queen* (1994) 45 WIR 103, 117; *Von Starck v The Queen* [2000] 1 WLR 1270, 1277. The Judicial Committee has power to award costs in the prosecution of any appeal before the Board and in the courts below: Judicial Committee Act 1833, section 15 and Judicial Committee Act 1843, section 12. Its practice is to award costs in the exercise of its discretion in any case where it considers this to be appropriate. This practice extends to criminal appeals as well as civil appeals.

7. The question whether the award should extend to costs in the courts below as well as before the Board will however be decided in the light of local statutes and of practice in the local courts. Section 50(1) of the West Indies Associated States Supreme Court (Cap 80) (Virgin Islands) provides:

“On the hearing and determination of a criminal appeal from the High Court or any proceedings preliminary or incidental thereto under this Ordinance no costs shall be allowed on either side and no appellant shall be required to give security for the costs of his appeal or for the costs of his application for leave to appeal.”

As a matter of practice in the British Virgin Islands costs are not awarded against the Crown after trial on indictment. In these circumstances the appellants’ application for costs in the courts below will be refused.

8. The facts in the light of which the application for costs before the Judicial Committee must be decided are fully set out in the judgment in which reasons were given for the advice that the appeals should be allowed: *Benedetto v The Queen* [2003] 1 WLR 1545. Their Lordships consider that it is appropriate in these circumstances that an order should be made for the payment by the Crown of the appellants’ costs before the Board. In Benedetto’s case the order will be for the payment of the costs of his appeal to the Board including his application for special leave, to be taxed on the standard scale. In Labrador’s case the order will be for the payment of the costs of his appeal to the Board in so far as incurred

after 31 December 2002 but excluding his application for special leave, to be taxed on the standard scale in his case also. Labrador will no longer be eligible for remission of Privy Council Office fees as from 31 December 2002, and all fees that would have been invoiced to him after that date will now be payable.