

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

SAINT LUCIA

SLUHCV 2005/0862

IN THE MATTER of an Application for leave
to apply for Judicial Review by GIOVANNI
JAMES acting herein and represented by his
duly appointed Attorney VERNANTIUS
JAMES

AND

IN THE MATTER of CPR 2000 Parts 56.2 &
56.3

BETWEEN:

GIOVANNI JAMES acting herein and represented
by his duly appointed Attorney: VERNANTIUS JAMES

Applicant/Claimant

AND

- 1) MINISTRY OF EDUCATION, HUMAN RESOURCE
DEVELOPMENT, YOUTH & SPORTS
- 2) ATTORNEY GENERAL OF SAINT LUCIA

Respondent/Defendants

Appearances: Mr. Vernantius James in Person
Mrs. Georgis Taylor – Alexander in association
With Ms. Jan Drysdale for Respondents

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2006: July 14
February 7, 12
March 19
.....

JUDGMENT

[1] The facts in this case are as follows:

By memorandum captioned "Special Police Scholarship" and dated 6th March 2002, the Attorney General and Minister for Justice advised the Commissioner of Police that the Honourable Prime Minister had announced in 2001 that the Government of St. Lucia had agreed to award to one police officer per year a special scholarship to pursue studies in law at a recognized university. The period of study for which the scholarship would be offered would be "no more than five years".

[2] After listing the benefits under the award, the memorandum informed that the Attorney General had been instructed by the Prime Minister to establish a three – person selection committee to make recommendations to Cabinet on a suitable candidate for the award. The Prime Minister had directed that the initiative be given full publicity within the police force.

[3] Appended to the memorandum was a circular giving details of the scholarship and inviting applications from suitably qualified police officers who wished to be considered for the scholarship. It was specifically stated that only officers who had applied to, or had been accepted by an institution for entry in the academic year 2002 – 2003 would be considered.

[4] The Claimant, a police officer, by letter dated 15th March, 2002 had already been accepted by Holborn College, London for a three year course leading to the LLB degree and for which he was required to register with the University of London.

[5] The Claimant duly registered with the University for its external programme in which it offered four (4) schemes leading to the award of the degree:

Scheme A is the traditional three (3) year programme and is divided into three (3) parts;

Scheme B is taken over four (4) years and is intended for students who wish or need to study at a slower pace;

Graduate Entry Routes A and B are for students who are already in possession of a degree and are for 2 and 3 years respectively

[6] The Claimant registered for Scheme A to complete the course of study in three (3) years. This meant that in the first year he had to take and pass the four compulsory papers in the Intermediate Examination before proceeding to Part 1.

[7] By letter dated 13th September 2002 the Ministry of Education sent the Claimant the following:

Dear Mr. James,

The Ministry of Education, Human Resource Development. Youth and Sports wishes to congratulate you on the receipt of a scholarship award to read for a Bachelor of Law Degree at Holborn College, London.

Your award is for a period of five (5) years, commencing September 2002.

You will be bonded to the Government of St. Lucia for a period of five (5) years upon completion of your studies.

Please contact the Department of Human Resource Development of the Ministry of Education to complete your bonding agreement. You are advised that your bonding agreement must be completed prior to your departure date.

Please note also that examination results should be forwarded to this department at the end of every academic year prior to the processing of fees for the next academic year, and that you should report for duty at the end of every academic year in order to ensure payment of salary during summer.

We wish you success in your studies.

Yours sincerely,

Dr. Didacus Jules

Permanent Secretary

Education and Human Resource Development

- [8] On the said 13th September 2002, the Claimant executed a bond with the Government of Saint Lucia indicating that the Government had granted him a scholarship to pursue a five year course of study in law at the Holborn College, London leading to Bachelor's Degree; that the Claimant was obligated to serve the Government for a period of five years in the public service or the private sector in St. Lucia and that there would be a penalty for withdrawal from the course without reasonable cause arising from neglect by or fault of the Claimant without the approval of the Government.
- [9] By memorandum dated 18th October 2002 and later amended on 20th August 2004, the Permanent Secretary of the Ministry of Education wrote to the Permanent Secretary of the Ministry of Justice and copied to various other Government departments advising that with effect from 23rd September 2002, the Claimant had been given study leave with pay for a period of three (3) years.
- [10] In June 2003 at the end of his first year, the Claimant took the required examination in the four compulsory subjects in the Intermediate Examination in Scheme A, passed three subjects but failed the fourth. This meant that he had failed the year and that he would have to re-sit the four subjects in order to progress. The university authorities wrote to the Claimant on 6th August 2003 in the following terms:

Dear Mr. James,

In the recent LLB Intermediate Examinations you passed three papers but had a bad fail in the fourth subject. Unfortunately, according to the

Regulations you have failed the year and must re-sit all four subjects to progress.

You have, however, the right to transfer to Year 2 of Scheme B, taking the three subjects that you have passed as equivalent in passing year 1 of Scheme B.

I would recommend that you take this option. You should remember that you cannot, however, transfer back to the Scheme A route in the future.

Good luck with your future studies.

Yours sincerely,

Dr. Wayne Morrison

Director of the External Law Programme

University of London

- [11] The Claimant accepted the University's recommendation to switch to Scheme B but did not communicate this decision to the Ministry of Education nor did he apprise that Ministry of his failure as required by the Ministry's letter of 13th September 2002.

[12] The Claimant was then registered as having satisfactorily completed Year 1 of Scheme B. He continued and successfully completed Years 2 and 3 of Scheme B in 2004 and 2005 respectively.

[13] Then by letter dated 20th May 2005, the Ministry of Education said the following to the Claimant:

Dear Sir,

Please be informed that the Government of Saint Lucia awarded you a scholarship to pursue the Bachelor of Law Degree LLB at Holborn College as a full time student.

According to information reaching the department of Human Resource Development, you are registered as a full-time LLB student of the Holborn College and should therefore complete your programme in three (3) years, which would be June 30th 2005.

However, according to a letter dated January 31st 2005 from Holborn College, you are currently registered in your 3rd year of a 4 year LLB (Hons) Law Degree Graduate entry programme. Consequently, the Government of Saint Lucia will not be responsible for the payment of the final year of your programme.

Please be guided accordingly.

Yours sincerely,

Ms. Esther Braithwaite (Ag.)

Ministry of Education & HRD

[14] As a consequence the Claimant applied for and was granted leave to apply for judicial review.

[15] By Fixed Date Claim Form with supporting Affidavit filed on 27th January, 2006 the Claimant is seeking the following:

- (1) an order of certiorari quashing the decision of the first defendant refusing to provide the Claimant with approved reasonable financial resources in respect of his studies for academic year 2005-06 under the Special Police Scholarship award.
- (2) An order of mandamus compelling the Defendants to secure that approved reasonable financial requirements are made available to the Claimant in respect of his Law studies for academic years 2005-06 and 2006-07.
- (3) An order of mandamus compelling the Defendants to make an immediate interim payment of 6390 pounds sterling being equivalent to one half of approved reasonable financial requirements of the Claimant in respect of his studies for academic year 2005-06.

- (4) An order of mandamus the Defendants to secure that adequate refunds are made to the Claimant for educational and related expenses incurred by him for academic year 2005-06 as a result of the decision against which complaint is made.
- (5) An order of prohibition restraining the Defendants from implementing further unlawful decision or engage in further unlawful acts to terminate, stop, or frustrate the continuation of the Claimant's scholarship before its lawful expiry.

[16] The issues for determination are:

- 1) **Who was the decision maker;**
- 2) **The duration of the scholarship and whether a legitimate expectation arises; and**
- 3) **Whether the decision of 20th May 2005 was illegal, irrational and/or procedurally improper**

[17] The basis of judicial review rests on the free standing principle that every action of a public body must be justified by law. Judicial review is concerned not with the decision, but with the decision making process. This principle of law has been enunciated on myriad occasions. Thus the role of the Court in judicial review is merely supervisory and therefore the question is not whether the judge disagrees with what the public body has done but whether there is some recognizable public law wrong.

[18] In identifying the circumstances when judicial review may be available and when a court can exercise its inherent jurisdiction of judicial control, Sir Vincent Floissac had this to say in the case of Chief Immigration Officer of the British Virgin Islands v Burnett (1995) 50WIR 153:

There is no doubt that the High Court has an inherent jurisdiction (either by way of judicial review or otherwise) to supervise and judicially control certain decisions and actions of public authorities constituted by law to make those decisions or to take those actions. Subject to the formalities prescribed by rules of court, the jurisdiction is exercisable whenever a public authority (purporting to exercise a constitutional, statutory or prerogative power) has made or taken or intends to make or take a justifiable judicial quasi – judicial or administrative decision which affects or will affect a complainant who has locus standi by way of a relevant or sufficient interest in the decision or action and who alleges and proves that the decision or action is or will be illegal, irrational or procedurally improper”.

[19] Part 56.2 of the Civil Procedure Rules 2000 allows an application for judicial review to be made by any person who has sufficient interest in the subject matter of the application. This includes any person who has been adversely affected by the decision which is the subject of the application.

Who was the decision maker

[20] It is the argument of the Claimant that the role and position within the public administration matrix is coloured by the fact that administrative law is rooted in the law of partnership and that the law of partnership itself is based upon agency principles. Therefore each partner is agent for the other partner. The Claimant argues that a government department does not operate on its own, that it operates through agents, the public servants. Citing the case of Carltona Ltd v Commissioners of Works (1943) 2 AER 560 in which Lord Greene MR stated "constitutionally the decision of the officer is the decision of the Minister", the Claimant contends that where the Defendant holds out an officer as having the authority to do certain things, then this would essentially be the Government acting, the officer being the alter ego of the Minister.

[21] The Claimant further states that the Government operates on the Indoor Management Rule, a principle applied in the case of Royal British Bank v Turquand (1856) Ex Ch 101 and confirmed in Rolled Steel Products (Holdings) v British Steel Corp. (1986) CA 104, to the effect that " a non – insider or a third party dealing with the Defendant is entitled to assume that there has been due compliance with all matters of internal management (administration) and procedure" and even an unauthorized act of an officer/agent of the Defendant acting with apparent or ostensible authority will bind the Defendant.

[22] Counsel for the Defendants submits that the Claimant has premised his entire case on a decision he claims was made by the Ministry of Education, that to determine who was the decision maker, regard must be had to the creation of the authority, that it was the Cabinet of Saint Lucia which granted the decision to create the scholarship award, the decision approving the award to the Claimant and the decision to revoke.

[23] Counsel further submits that the documentation exhibited by the Claimant in his pleadings indicate that the decision to award the scholarship was made by the Government of Saint Lucia through the Cabinet and not by the Ministry of Education and therefore such decision could only be revoked by the Cabinet. Counsel suggests that a clear distinction has to be made between the managers of the scholarship and the person who communicated the decision as approved to the decision maker. For this contention, Counsel relied on the case of Ogilvy v Minister for Legal Affairs Civil Appeal No. 7 of 2001 (St. Lucia) in which the Court of Appeal held that the Appellant failed to satisfy the Court that the Respondent was the decision maker – the one who decided against the Appellant’s application or who authorized the Permanent Secretary to do anything and so the presumption of regularity should prevail and the Appellant’s appeal failed.

[24] Part IV of the Constitution of Saint Lucia deals with the Executive arm of Government. It includes provision for the Cabinet of Ministers, allocation of portfolios to Ministers and performance of their functions.

[25] Section 61 provides:

(1) There shall be a Cabinet of Ministers for Saint Lucia which shall consist of the Prime Minister and the other Ministers.

(2)

(3) The functions of the Cabinet shall be to advise the Governor-General in the Government of Saint Lucia and the Cabinet shall be collectively responsible to Parliament for any advice given to the Governor-General

by or under the general authority of the Cabinet and for all things done by or under the authority of any Minister in the execution of his office.

(4)

[26] By Section 62 it is provided:

The Governor General, acting in accordance with the advice of the Prime Minister, may, by direction in writing, assign to the Prime Minister or any other Minister responsibility for any business of the Government, including the administration of any department of Government:

Provided that responsibility for finance shall be assigned to a Minister who is a member of the House.

[27] It is stated in section 69 that:

Where any Minister has been charged with responsibility for any department of government, he shall exercise general direction and control over that department; and, subject to such direction and control, every department or government shall be under the supervision of a public officer whose office is referred to in this Constitution as the office of a Permanent Secretary: provided that two or more government departments may be placed under the supervision of one Permanent Secretary.

[28] It seems then that while the Cabinet is collectively responsible for all things done in the execution of its functions, it would be also held responsible for actions carried out by a single Minister while executing the functions of his office. That Minister in turn is

responsible for the actions of his Permanent Secretary who is in control of the administration of the Government department.

Lord Greene in the Carltona case (supra) M. R. said at page 563 :

“In the administration of Government in this country the functions which are given to ministers (and constitutionally properly given to ministers because they are constitutionally responsible) are functions so multifarious that no minister could ever personally attend to them The duties imposed upon ministers and the powers given to ministers are normally exercised under the authority of the ministers by responsible official is of the Department..... Constitutionally, the decision of such an official is of course, the decision of the minister. The minister is responsible. It is he who must answer before Parliament for anything that his officials have done under his authority,.....”

[29] Perusal of the various pieces of correspondence reveals the following: the scholarship was awarded by the Government of Saint Lucia, the Claimant was advised of the award of the scholarship by the Ministry of Education (see paragraph 7 above); the bond which was signed by the Claimant was with the Government of Saint Lucia through the Director of Finance of the Ministry of Finance. The letter by which the Claimant was informed of the refusal of further payment of the award and which instigated this action was forwarded by the Ministry of Education (see paragraph 13 above).

[30] A subsequent letter dated 21st September 2005 was sent to the Claimant. It read:

Dear Mr. James

I refer to your letter dated August 8, 2005 regarding the continuation of your scholarship.

We regret to inform you that your request for funding of an additional year of study at Holborn College was not approved. You failed the first year of your law degree programme and as a result your programme of study has changed from a three year to a four year programme.

According to existing policy, a student under a Government funded scholarship programme who repeats a year due to failure is required to fund that year.

Sincerely,

Esther Braithwaite

Permanent Secretary (Ag)

Education and Human Resource Development

- [31] In the Carltona case (supra) the letter which gave rise to the action was written by an officer for and on behalf of the Commissioner of Works. It was on the headed letter paper of the Ministry of Works and Planning with which the Commissioner of Works was held to have the requisite statutory connection. That letter said:

“ I have to inform you that the department have come to the conclusion that it is essential” (emphasis supplied).

[32] In the Ogilvy case (supra) on the other hand the letter was written by the Permanent Secretary of the Ministry of Legal Affairs and stated:

With reference to your applicationfor the position of Magistrate with this Ministry and your subsequent interview, I wish to advise you that you were unsuccessful as a candidate for employment as a Magistrate”.

[33] The Judge whose decision was upheld by the Court of Appeal found that the applicant did not satisfy the court that the letter in itself showed either that the Minister of Legal Affairs was the decider or that the Judicial and Legal Services Commission as the regular authority was the decider.

[34] In delivering the judgment of the Court of Appeal, Archibald JA (Ag) had this to say:

“ From the letter the proper conclusion must be that the Minister of Legal Affairs did nothing, took no part and made no decision in the appellant's application to which the letter referred, that the applicant failed to satisfy the Judge or the Court of Appeal that the Minister of Legal Affairs, decided against the application or authorized the Permanent Secretary to do anything, that in the circumstances the presumption of regularity should prevail”

[35] Thus it can be seen that in contrast to the Carltona case where it was the department which “came to the conclusion” thereby making the Commissioner of Works responsible for the actions of the officer sending the letter, in the Ogilvy case there is no such indication as to the author of the decision.

[36] Similarly, in the present case, the letter from the Ministry of Education is couched in such terms that it is not possible to conclusively divine that it was the Ministry of Education or the Permanent Secretary which made the decision to terminate the award. The relevant letter, that of 20th May 2005, (see paragraph 13) refers to the “Government of Saint Lucia” awarding the scholarship and “consequently the Government of St. Lucia” not being responsible for payment.

[37] While it is understood that within the Cabinet, the Minister of Education is seized with the responsibility for the portfolio of education on behalf of the Government, it cannot be assumed that because, as in the case at bar, the matter relates to education that it was the Ministry/ Minister which made the decision. It is clear from the memorandum exhibited by the Claimant that it was the Cabinet which awarded the scholarship and which would therefore be responsible for terminating it. The Ministry of Education was merely the harbinger of the news. Cabinet has not by any indication divested itself of responsibility, for the scholarship.

[38] Thus while I unhesitatingly accept the Claimant’s argument with respect to the authority of the Permanent Secretary and his being responsible as the alter ego of the Minister, he has in my view failed to substantiate his allegations and therefore prove to the satisfaction

of this court, that the first Defendant was the decision maker whose actions are subject to judicial review.

[39] Having come to this conclusion, the Claimant's action must fail. In the circumstances other identified issues will not now be considered.

ORDER

The Claimant's application for judicial review is hereby dismissed.

Costs to the Defendants to be assessed.

SANDRA MASON

High Court Judge