

SAINT LUCIA

IN THE COURT OF APPEAL

HCVAP 2008/019 and 020

BETWEEN:

MICHEL MAGLOIRE a.k.a MICHAEL MAGLOIRE

Appellant/Claimant

and

THE ATTORNEY GENERAL

Respondent/Defendant

Before:

The Hon. Mde. Ola Mae Edwards

Justice of Appeal

The Hon. Mde. Janice George-Creque

Justice of Appeal

The Hon. Mr. Davidson Baptiste

Justice of Appeal [Ag.]

Appearances:

Mr. Horace Fraser for the Appellant/Claimant

Ms. Georgis Taylor-Alexander, Solicitor General for the
Respondent/Defendant

2009: October 20, 23;
November 20.

ORAL JUDGMENT

[1] EDWARDS, J.A.: This is an appeal against Cottle J's award of \$5,793.39 to the appellant on 20th March 2008, for damages, following the trial of the claim brought by the appellant for breach of his employment contract with the Government of St. Lucia as a Magistrate.

[2] The facts as disclosed in the judgment of Cottle J are as follows:

- (a) The claimant was employed by the Government of St. Lucia as a magistrate. The term of engagement was to have been for one year from 4th January 2000, to 3rd January 2001. The written contract between the parties was not executed until 23rd February 2000.

- (b) Subsequently, the claimant and the Government entered into consecutive one year contracts in 2001, 2002 and 2003. Each contract was in the form of a written document executed after the expiry of the previous term of service and expressed to operate retroactively.
- (c) At the expiration of each contract the claimant would continue working and sometime later his employment would be regularized by the execution of a contract. However this state of affairs changed without warning.
- (d) The claimant's 2003 contract expired on 3rd January 2004. He continued to work. He fully expected that as he had indicated a willingness to enter into another one year contract and the Government had given no indication of any inclination to the contrary, he would in due course be presented with a written contract to sign. But it was not until 7th May 2004, that the claimant became aware that he had been appointed to the post of magistrate not on a one year contract, but on a month to month basis for the period of 4 months with effect from 2nd January 2004, and that his last monthly contract came to an end as at the 30th April 2004.
- (e) The claimant stopped working on 7th May 2004. Understandably aggrieved he brought a claim for breach of contract.
- (f) The learned trial judge found that the dismissal of the claimant constituted a breach of his contract for one year; and that the terms of the contract are certain as they are the same terms as applied in the 4 previous annual contracts. Thereafter the judge reasoned:

"The Court of Appeal has held that in a case where the facts were similar in **Judicial and Legal Services Commission v Horace Fraser** Civil Appeal 24 of 2005 from St. Lucia, that the Claimant there was entitled to one month's salary in lieu of notice. I apply the reasoning of Barrow JA in that case. "it is settled law that where a party to an employment contract is given the right in the contract to terminate and he wrongfully terminates in breach of the contractual provision for termination, the damages that he will be liable to pay for wrongfully terminating will not be greater than he would have been liable to pay had he terminated in accordance with the termination clause in the contract." I award the Claimant \$5,793.39 being one month's salary with the legal

officer's allowance included. Costs to the Claimant is awarded at \$5,000.00 pursuant to the Order at the Case Management Conference."

- [3] The grounds of appeal are: (a) that the trial judge erred in not awarding the appellant three months pay in lieu of notice; (b) that the trial judge erred in not awarding the appellant annual leave in respect of his contract for the year 2004-2005; (c) that the trial judge erred in not awarding the appellant his 25% gratuity for the contract year 2004-2005; and (d) that the trial judge erred in not awarding the appellant interest on the damages award. The appellant sought from this court an award based on three months pay in lieu of notice; annual leave for the period 2004-2005; 25% gratuity for the contracted year 2004-2005; interest at 6% from the date of the filing of the claim; cost in this court and in the court below; and any order which the court deems fit.
- [4] The respondent who also filed a notice of appeal against the judgment of Cottle J, requested leave to withdraw this notice of appeal earlier on in the sitting. Consequently, only the appellant's appeal proceeded and the court heard the oral submissions of learned counsel, Mr. Fraser and also had the benefit of his written submissions and authorities.
- [5] It became very evident to the court before the hearing that though Mr. Fraser was not relying on the recent Privy Council authority *Angela Inniss v Attorney General of Saint Christopher and Nevis*²; this authority was now applicable to the assessment of the damages in the appellant's case instead of the approach previously advocated by the Court of Appeal in *Judicial and Legal Services Commission v Horace Fraser*. The Privy Council held in *Inniss* that Ms. Inniss, whose contract of employment for 2 years as a Registrar of the High Court of St.

² Privy Council Appeal No. 29 of 2007 delivered 30th July 2008 by Lord Hope of Craighead. The trial judge awarded Ms. Innis \$100,000.00 on her claim for breach of contract and for constitutional relief under section 96(3) of the Constitution of St. Christopher and Nevis for breach of her right under section 83(3) of the Constitution without specifying what sum was due to her as damages under her contract, though she had claimed that she was entitled to \$53,128.40 exclusive of social security contributions payable on her gross salary among other damages. The Court of Appeal held that the only remedy available was for breach of contract and awarded Ms Innis \$19,351.20 as this was the amount that she would have earned, upon setting aside the award in the court below.

Christopher and Nevis was prematurely and wrongfully terminated after one year and a little less than 9 months by the Government of the Federation, was entitled to an award of damages comprising: the salary that she would have earned had she completed her contract including her social security benefits; her unpaid leave; and her gratuity benefits under clause 4 of her contract.² Clause 4 provided that on the satisfactory completion of her term of engagement she was entitled to a gratuity equivalent to 20% of her salary during the period of her appointment.³

- [6] Not only is there a similar term in the appellant's magistrate's contract where clause 10(a) provides for a gratuity of 25% of the appellant's total salary paid to him under the agreement on the satisfactory completion of his term of engagement; but clause 8(1) of Ms. Inniss's contract and clause 6(1) of the appellant's contract are identical in providing that:

"The Government may at any time determine the engagement of the person engaged on giving... [the engaged person] three months' notice in writing or on pay ... one month's salary."

- [7] Clause 3 of the appellant's contract provides that the salary due under the contract shall be liable to taxation in accordance with the Income Tax Act. Clause 8 provides that the appellant shall be entitled to 23 working days per annum as leave which must be taken during the tour of service.

- [8] Section 5(1) of the Holiday with Pay Act Cap. 16.11⁴ provides :

"Where the employment of an employee who has become entitled to an annual or other holiday is terminated, and the employee has not taken any part of such holiday, the employer is considered to have given such annual or other holiday, or other holiday to the employees from the date of the termination of the employment, and shall pay to the employee in addition to all other amounts due to him or her, his or her average pay in respect of the period of his or her employment with such employer during the period to which such holiday relates."

- [9] Learned counsel, Mr. Fraser submitted that since leave was a benefit under the contract and was not earned, that makes it not apportionable; and so the appellant

² At paragraphs 17 to 19

³ At paragraph 3

⁴ Revised Laws of St. Lucia 2001

is entitled to be paid for the full 23 days or any part thereof he did not enjoy. We agree with this submission.

[10] The learned Solicitor-General, Mrs. Alexander-Taylor, has graciously and commendably conceded. She submitted that like the appellant in *Inniss*, the appellant, Mr. Maglorie would also be entitled to his total salary for the remaining period inclusive of his social security benefits had he completed his contract (i.e. salary with social security benefits for the period commencing 8th May 2004, to 3rd January 2005). She agreed that the appellant is also entitled to 25% of the total salary paid to him under the agreement for 1 year as gratuity; a sum representing salary for the outstanding leave period. He would also be entitled to interest of 6% yearly from the 3rd November 2004, the date the claim was filed, to the 20th March 2008, being the date the judgment was delivered.⁵ He is further entitled to prescribed costs in the court below on the total sum including interest pursuant to CPR 65.5(1); and costs in the appeal being 2/3 of the prescribed costs pursuant to CPR 65.13.

[11] Having directed the parties to calculate and agree on the total damages and prescribed costs based on the entitlements of the appellant mentioned at paragraph 10 above, at the continuation of the hearing on 23rd October 2009, the parties requested more time to agree on the computation. Counsel also referred the court to another decision of the Privy Council which may be relevant to the assessment of the appellant's damages: *Dr. Astley McLaughlin v His Excellency the Governor of the Cayman Islands*.⁶ Lord Bingham of Cornhill made the following statements in delivering the judgment of the Judicial Committee of the Privy Council concerning the compensation payable to Dr. McLaughlin, the appellant, following his dismissal or purported dismissal from the Government Service of the Cayman Islands on 31st December 1998:

“14. It is a settled principle of law that if a public authority purports to dismiss the holder of a public office in excess of its powers, or in breach of natural justice, or unlawfully (categories which overlap), the dismissal is,

⁵ See Articles 1008 and 1685 of the Civil Code of St. Lucia

⁶ Privy Council Appeal No. 83 of 2006 delivered on 23rd July 2007

as between the public authority and the office-holder, null, void and without legal effect, at any rate once a court of competent jurisdiction so declares or orders. Thus the office-holder remains in office, entitled to the remuneration attaching to such office, so long as he remains ready, willing and able to render the service required of him, until his tenure of office is lawfully brought to an end by resignation or lawful dismissal....

16. Mr. Lynch also pointed out that even where dismissal is invalid the court does not necessarily hold that the officer has remained in office throughout. This again is so....

17....But the Governor acted wrongfully in purporting to dismiss him [Dr. McLaughlin]. He applied for judicial review with reasonable promptitude. He was initially refused relief, wrongly, and appealed. He obtained employment in the United States of America pending the first decision of the Court of Appeal and is willing to give credit for the salary earned. Since that decision he has been ready, willing and able to serve the Government if and when permitted to do so."

- [12] The Privy Council held that Dr. McLaughlin was entitled to recover arrears of salary since 1st April, 1999, and to the payment of pension contributions on his behalf, making allowance for his earnings in the United States, until he resigns or his tenure of office lawfully comes to an end.
- [13] The appellant in his statement of case, and also in his witness statement (at paragraph 18), testified at the trial that he suffered loss of earnings from 8th May 2004, to 3rd January 2005, which also included emoluments, gratuity and accrued leave. This fact was never challenged by the respondent by pleadings or evidence. Consequently, there is no evidential material before this court that would enable the making of any allowances for earnings of the appellant obtained during the period 8th May 2004, to 3rd January 2005.
- [14] On 23rd October 2009, the court adjourned the hearing to 20th November 2009; and gave further directions for the agreed calculations and computation of the total damages and prescribed costs that the appellant is entitled to, to be submitted to the court by 13th November 2009.

[15] The parties have complied and submitted a document which shows that the appellant is entitled to \$106,967.90 for compensation less the sum of \$37,318.83 already paid. The agreed costs of \$5,000.00 in the court below has already been paid to the appellant. For the period 3rd November 2004, to 20th March 2008, the interest at 6% per annum is \$14,042.16.

[16] The result is therefore that leave is granted for the respondent to withdraw his Notice of Appeal filed on 30th April 2008, which stands dismissed. The appeal of the appellant is allowed and the award of damages in the court below is set aside. The award of \$69,649.07 plus \$14,042.16 for interest is made to the appellant with costs in the appeal being 2/3 of \$5,000.00.

Ola Mae Edwards
Justice of Appeal

I concur.

Janice George-Creque
Justice of Appeal

I concur.

Davidson Baptiste
Justice of Appeal [Ag.]