

SAINT VINCENT AND THE GRENADINES

IN THE COURT OF APPEAL

MCRAP 2008/024

BETWEEN:

HAMILTON RICHARDS

Appellant

and

COMMISSIONER OF POLICE

Respondent

Before:

The Hon. Mr. Hugh A. Rawlins

Chief Justice

The Hon. Mr. Michael Gordon

Justice of Appeal [Ag.]

The Hon. Mde. Indra Hariprashad-Charles

Justice of Appeal [Ag.]

Appearances:

Mr. Stephen Williams for the Appellant

Mr. Colin Williams, Director of Public Prosecutions for the Respondent

2008: October 08;
2009: January 12.

Magisterial Criminal Appeal - damage to property - appeal against compensation award - appeal against sentence - ownership of property - delivering up possession of property - failure to vacate premises - unlawful occupation of property - compensation award where property not owned by virtual complainant.

JUDGMENT

[1] **HARIPRASHAD-CHARLES, J.A. [AG.]:** Sometime in the early hours of the morning of 28th September 2007, the appellant and his brother went to a house at Calder which a court determined is owned by them in a suit between them and the

virtual complainant in this case.¹ The house was still being occupied by the virtual complainant and her family when the appellant and his brother threw stones at the house, smashed seven windows and damaged a wooden door and a stereo set. They were subsequently charged with damage to property.²

[2] On 10th June 2008, the learned magistrate found the appellant and his brother guilty as charged and ordered them to pay compensation of \$3,680 in one month or in default, five months imprisonment. The magistrate also ordered them to pay a fine of \$1,000 in one month or in default, three months imprisonment. It is against that decision that the appellant has appealed on four grounds to this court. On the hearing of the appeal, only the last two grounds of appeal were pursued. These grounds are that the award of compensation is excessive and the sentence is excessive.

[3] This is a straightforward case. At the material time, the appellant and his family had been adjudged (and still are) the legal owners of the property at Calder. During the hearing before the magistrate, it emerged that the appellant and his family and the virtual complainant and her family have been in a longstanding feud since 1999 in the High Court over the ownership of this property. In a judgment delivered on 20th June 2007, Matthew J. [Ag.] awarded the property to the appellant and his family. The virtual complainant and her family were ordered to deliver up possession of the property not later than 30th June 2007³. They appealed to the Court of Appeal which dismissed their appeal and ordered them to vacate the premises on or before 31st August 2008⁴. They have failed to and/or refused to do so.

[4] In brief, the virtual complainant and her family were in unlawful occupation of the property on the morning in question when the appellant and his brother damaged it and also, damaged the virtual complainant's stereo set. The magistrate awarded

¹ Claim No. 491 of 2005.

² Contrary to section 267(i) of the Criminal Code, Cap. 124 of the Revised Edition of the Laws of Saint Vincent and the Grenadines, 1990.

³ Claim No. 491 of 2005.

⁴ Civil Appeal No. 13 of 2007 dated the 13 February 2008 and entered on the 18 March 2008.

to the virtual complainant compensation for all of the damaged property including the stereo set. The key question which arises for determination is whether the magistrate erred when she awarded compensation to the virtual complainant for damage to property which did not belong to her.

- [5] The learned Director of Public Prosecutions submitted that the magistrate was correct to award compensation for the damage to the property and the stereo set. He relied on the case of **R v Bonner and others**⁵ to justify the award made by the magistrate. With respect to the learned Director, however, **Bonner** is inapplicable since it deals with theft by a partner of partnership property. The case at bar has nothing to do with such situation.
- [6] Learned counsel for the appellant, Mr. Stephen Williams submitted that the award of compensation of \$3,680 was excessive since the only damaged item which the virtual complainant owned was the stereo set valued at \$1,800. He conceded that the magistrate should have awarded compensation in that amount. The fact is that the virtual complainant cannot be compensated for the damaged door and windows which she does not own. To award her such compensation would represent a windfall.
- [7] That aside, the court cannot countenance persons who take the law in their own hands as the appellant did, in his attempt to evict the virtual complainant and her family from the premises. The law makes adequate provisions for these types of situations⁶. Having defied the law, the magistrate sentenced him to a fine of \$1,000. The sentence was one in the exercise of her judicial discretion. Learned counsel for the appellant has not advanced any reason to show why this court should interfere with the exercise of that judicial discretion.
- [8] In conclusion, I find that the magistrate was wrong in law when she ordered the appellant and his brother to pay compensation of \$3,680. I will therefore reduce it

⁵ [1970] 2 All ER 97.

⁶ CPR 45.4 and 46.1 deal with enforcement of judgments and orders for the possession of land.

to \$1,800 representing the value of the stereo set. The fourth ground of appeal against excessiveness of sentence is dismissed.

- [9] In the circumstances, I would order that the appellant do pay to the virtual complainant compensation in the sum of \$1,800, such sum to be paid within three months of today's date in default he shall serve one month in prison. I would further confirm the order of the learned magistrate that the appellant be fined \$1,000 to be paid within one month in default of which he shall serve three months in prison.

Indra Hariprashad-Charles
Justice of Appeal [Ag.]

I concur.

Hugh A. Rawlins
Chief Justice

I concur.

Michael Gordon
Justice of Appeal [Ag.]