

SAINT LUCIA

IN THE COURT OF APPEAL

CIVIL APPEAL NO.21 OF 2005

BETWEEN:

[1] MICHAEL RAMJEAWAN
[2] RITIE RAMJEAWAN

Appellants

and

DEVELOPMENT CONTROL AUTHORITY

Respondent

Before:

The Hon. Mr. Michael Gordon, QC
The Hon. Mr. Denys Barrow, SC
The Hon. Mr. Hugh Rawlins

Justice of Appeal
Justice of Appeal
Justice of Appeal

Appearances:

Mr. Leonard Ogilvy for the Appellants
Mr. Raulston Glasgow for the Respondent

2006: February 7; 8.

JUDGMENT

[1] BARROW, J.A.: This appeal was seriously handicapped by the failure of counsel for the appellants to properly complete two fundamental requirements of giving notice of appeal. These are the requirements to detail the findings of fact and separately, the findings of law, which are challenged; see Form 23, CPR. 2000. The 16 paragraphs that counsel composed under the heading, findings of fact, were almost pure argument.

[2] There was no identification, as a fact challenged of the finding of fact that proved to be the bedrock of the decision of Shanks J: that a structure that was approved

for use as a residence was in fact being used as a church.¹ The grounds of appeal did not touch even tangentially upon this finding

[3] It became clear in the course of argument that the appeal was un-arguable. This was because the argument that counsel wished to advance was that the appellants had a constitutional right to practise their religion in their place of residence. The premise that the building was their residence was simply not available to the appellants. The judge had found as a fact that it was not their residence. This fact was not challenged. In the result we dismiss the appeal.

[4] Counsel for the appellants resisted the respondent's claim for costs. The usual rule is that costs follow the event. If this rule is to be departed from it has to be for a stated reason, otherwise it is an arbitrary decision; see *Rochamel Construction Ltd. v National Insurance Corporation*.² Counsel argued for a departure from the rule on the basis that the appellants had raised a claim to rights under the constitution and a different rule applied to constitutional claims. The general principle in relation to such claims was expressed in *Baldwin Spencer v A.G. of Antigua & Barbuda*³ as being not to order costs against a private citizen seeking to enforce his constitutional rights. The principle now finds expression in CPR rule 56.13 (6):

“The general rule is that no order for costs may be made against an applicant for an administrative order unless the court considers that the applicant has acted unreasonably in making the application or in the conduct of the application.”

[5] The several references to the “applicant” and the “application” underscore the point that the rule exists in relation to an application for constitutional relief. In the instant case the appellants were not the applicants. They were the defendants to a claim by the Development Control Authority for an injunction to stop them from using the building as a church. There is no general rule that no order for costs may

¹ (see paragraph 16 of the judgment).

² *St. Lucia Civil Appeal No. 10 of 2003*, at para[21]

³ [1999] 3 LRC 1 at 25

be made against a defendant who invokes the constitution. I can see a compelling reason why there should be no such rule in favour of a defendant: such a rule would be an invitation to defendants to throw in to their defence, as a matter of course, a constitutional invocation as a nostrum against costs.

- [6] In the instant appeal I would accede to the respondent's claim and I would order costs of \$5000.00 to take account of both this hearing and of the earlier hearing before this Court on 25th October, 2005 when the court struck out two of the four grounds of appeal and adjourned the appeal to allow the appellants to amend the remaining grounds of appeal.

Denys Barrow, SC
Justice of Appeal

I concur.

Michael Gordon, QC
Justice of Appeal

I concur.

Hugh Rawlins
Justice of Appeal