

SAINT LUCIA

IN THE COURT OF APPEAL

CIVIL APPEAL NO.3 OF 2005

BETWEEN:

HORACE FRASER

Appellant

and

[1] JUDICIAL AND LEGAL SERVICES COMMISSION
[2] CHAIRMAN OF THE JUDICIAL AND LEGAL SERVICES COMMISSION
[3] SIR DENNIS BYRON

Respondents

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 Appellant
Mr. Sydney Bennett, QC with Ms. Patricia Augustine for the Respondents

2005: October 26;
October 28.

JUDGMENT

[1] **BARROW, J.A.:** The claimant obtained Judgment in Default of Defence against the three defendants who had thought it wasteful to file a Defence given that they had filed, before the expiration of time for filing a Defence, an Application to Strike Out the Claim. This Claim was for Defamation arising out of statements made by the Commission and by its Chairman on different occasions, essentially as I understand it, of a similar nature. The claimant was, at the material times, a Magistrate.

- [2] The Application that the defendants made to strike out the Claim was based on Article 28 of the Civil Code and that Article provides that:
- “no public officer or other person fulfilling any public duty or function can be sued for damages by reason of any act done by him in the exercise of his functions nor can any judgment be rendered against him unless notice of such suit has been given to him, at least one month before the issuing of the Writ of Summons.”
- [3] It is a provision that is well known to the law. In other jurisdictions its equivalent is the Public Authorities Protection Act.
- [4] The Court of Appeal of Belize in **Castillo v Corozal Town Board**¹ held that non-compliance with the requirement of giving notice was fatal. The court had no jurisdiction to overlook or waive the non-compliance with the provision. If not complied with no judgment could, as a matter of law, be entered against a protected person.
- [5] Promptly upon learning that judgment in default of the defence had been entered against them, the defendants applied to set aside the judgment. Expectedly, they relied on Article 28 as one of the bases for setting aside.
- [6] In a clearly reasoned judgment, Mr. Justice Shanks held that Article 28 had the effect that it appeared to have. He set aside the judgment on the basis that the defendants had a complete defence to the claim which, he held, was therefore bound to fail. Accordingly, he dismissed the claim.
- [7] It is a course not likely to be taken but it is one that **CPR 2000** clearly permits. Indeed, in a clear case, it is a course that it would be wrong not to take. Rule 15.2 states the basic rule that the court may give summary judgment on a claim if the claimant has no real prospect of succeeding on the claim. In addition, Rule 26.3 permits the court to strike out a statement of case if it discloses no reasonable ground for bringing claim. If, therefore, a claim is bound to fail it is the duty of the court to put an end to it at the proper moment.

¹ (1983) 1 Bz.L.R. 365; 37 W.I.R. 36

- [8] The claimant argued, principally, that none of the defendants fell within the protected category. Counsel sought to conflate the two categories of protected persons referred to in Article 28 “public officer or other person fulfilling any public duty or function”. Counsel argued that the other person must be a public officer. Counsel was quite unable to explain why the law would refer to persons other than a public officer and intend or require that person to be a public officer. In my respectful view it was an argument utterly without merit.
- [9] Counsel also sought to argue that even if the first defendant, the Commission, and second defendant, the Chairman of the Judicial and Legal Services Commission, were protected as being persons fulfilling a public duty or function, the same could not be said of the third defendant, Sir Dennis Byron.
- [10] Sir Dennis was at all material times the Chief Justice and Chairman of the Judicial and Legal Services Commission. The occasion at which he allegedly defamed the claimant was at a meeting with members of the Bar Association and Judges of the Supreme Court. Counsel argued that because the meeting was not open to the public it was a private meeting and therefore what Sir Dennis did was not done in the exercise of a public duty or function.
- [11] I am unable to see with the argument. It seems fairly obvious from the pleading that this was the Chief Justice meeting with lawyers and Judges. He was meeting with them not as the private individual, but as the Chief Justice and head of the judiciary. I fail to see how the Chief Justice could have been doing anything other than performing a public function. I cannot imagine that the lawyers were present other than in their professional capacities and that the High Court and Appeal Court Judges were there other than as judicial personages. The statement of claim specifically identifies the lawyers and Judges as such and not as private individuals. It is as such that the lawyers and Judges met with the Chief Justice, as the Chief Justice, one deduces from the Statement of Claim.
- [12] I am satisfied from the claimant’s statement of case that the allegations against the third defendant were consistent only with the third defendant acting in an official capacity and

therefore as a person fulfilling a public duty or function. There is nothing in the Statement of Claim which suggests otherwise. Accordingly, I do not see any basis for excluding the third defendant from the ambit of Article 28.

[13] I would therefore dismiss the appeal with costs to the respondents, in the sum of \$4,455.00 in this court and \$6,750.00 in the court below.

Denys Barrow, SC
Justice of Appeal

I concur.

Michael Gordon, QC
Justice of Appeal

I concur.

Hugh Rawlins
Justice of Appeal