

SAINT LUCIA

IN THE COURT OF APPEAL

CIVIL APPEAL NO.8 OF 2002

BETWEEN:

MARTINUS FRANCOIS

Secretary/Member St. Lucia Freedom Party

Appellant

and

PETRUS COMPTON

[Attorney General of Saint Lucia]

Respondent

Before:

The Hon. Sir Dennis Byron
The Hon. Mr. Albert Redhead
The Hon. Mr. Ephraim Georges

Chief Justice
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

Mr. Martinus Francois for the Appellant
Ms. Louise Blenman, Solicitor General with Ms. Viki Ellis, Senior Crown Counsel
for the Respondent.

2002: October 28;
2003: June 18.

JUDGMENT

[1] **BYRON, C.J.:** On the 12th day of November, 2001 the Deputy Governor General, acting on the advice of the Prime Minister and in pursuance of Section 55 of The Saint Lucia Constitution Order 1978 (The Constitution) dissolved Parliament and issued a Writ calling General Elections on Monday December 3rd 2001. Section 55 (2) of The Constitution provided that:

“Parliament, unless sooner dissolved, shall continue for five years from the date of the first sitting of the House after any dissolution and shall then stand dissolved”.

December 3rd was some nine (9) months and three (3) weeks before the five-year period would elapse. The elections were contested by five parties including The Saint Lucia Freedom Party which amassed a total of 12 votes out of the overall 62,490 votes cast.

- [2] Mr. Martinus Francois is an Attorney-At-Law and Secretary and founding member of The Saint Lucia Freedom Party.
- [3] On the 20th day of December 2001, Martinus Francois instituted proceedings in the High Court contending that calling elections before the five year period had elapsed was unconstitutional and unlawful contravening his fundamental rights under Sections 10(1), 11(1), 13(1) [namely freedom of expression, freedom of assembly and association and not to be discriminated against] and Sections 55(1) (2), (4) and 56 (1) of The Saint Lucia Constitution Order 1978 [The Constitution]. He asked the Court to invalidate the 3rd December, 2001 General Elections and make ancillary orders.
- [4] The learned trial Judge in a carefully reasoned judgment concluded that there was no evidence of any contravention of the provisions of the constitution as alleged or at all, and that no cause of action had been disclosed to the court. The learned trial Judge dismissed the case and commented that Martinus Francois wasted the Court's time rendering these proceedings an abuse of the process of the Court and ordered the Claimant to pay costs of \$ 20,000.00.
- [5] The several grounds of appeal challenged the interpretation of Section 55 of the Constitution, the decision making process under the said section, and the order for costs.
- [6] The first challenge was to the Interpretation of Section 55 on the meaning of the words "at any time" in subsection (1) which provides:
 - (1) "The Governor General may at any time prorogue or dissolve Parliament."

- [7] The Appellant contended that at any time meant at any time mentioned in section 55 and no other time. The times mentioned in the section were the five-year period in subsection (2) and the provisions in subsection 4 which deal with situations where the Prime Minister advises, there is a vote of no confidence and the office of the Prime Minister becomes vacant. We do not think it necessary to say more than that the natural and ordinary meaning of the words should be applied. They impose no restriction on the time at which Parliament may be dissolved. We reject the grounds of appeal relying on this proposition.
- [8] His second challenge was that Section 55(2) made the dissolution of the Parliament automatic and independent and even beyond the Governor General's discretion. He contended that the words 'shall continue for five years from the date of the first sitting of the House after any dissolution and shall then stand dissolved' takes the discretion of the Governor General or even the 'advice' of the Prime Minister and makes it entirely a question of the operation of law. The simple rebuttal to that argument is that the phrase relied on by counsel was preceded by the phrase "unless sooner dissolved". This clearly refers to the power to dissolve at any time conferred by subsection (1). These submissions are also rejected.
- [9] Marinus Francois also alleged that no evidence was adduced to show whether the Governor General had in fact acted on the advice of the Prime Minister or excused his independent decision.
- [10] The position is well settled and was referred to in the St. Kitts case¹ where Floissac CJ states:
- "The Governor General's decision is therefore protected by Section 116(2) of the Constitution which provides that:
- 'Where by this Constitution the Governor General is required to perform any function in his own deliberate judgment or in accordance with the advice or recommendation of, or after consultation with, any person or authority, the question whether

¹ **Blake** (1994) 47 WIR 180; 183

the Governor General has so exercised that function shall not be inquired into in any court of law...
...A court is not empowered to usurp the powers of the authority by substituting its own opinion or decision for the decision of the authority which is the constitutionally, statutorily or legally authorized decision maker.”

- [11] In dismissing the appeal I should state that Section 55 of the Constitution is clear and unambiguous. It is lawful for General elections to be held at any time during the five-year period. The provisions were scrupulously followed as the Governor General acted on the advice of the Prime Minister.
- [12] The issues raised on appeal have all been advanced in the court below and we affirm the ruling of the Trial Judge completely. We do not need to substitute our language for the language used in the court below.
- [13] The Appellant also contended that no order for costs should be awarded citing². As in the lower court, this court rejects this argument because there was no bona fide dispute or serious issue for adjudication.
- [14] Although I hesitate to adopt the language of Counsel for the Respondent that the appeal was frivolous, vexatious and an abuse of process but I am of the view that it is in close proximity thereto.
- [15] I think it appropriate for an award for prescribed costs to be made. I would vary the order made by the learned trial Judge, which exceeded the prescribed costs.

² **Baldwin Spencer v Attorney General** Civil Appeal No.20A of 1997; Antigua and Barbuda

[16] The appeal is therefore dismissed and the order of the costs in the court below varied from \$14,000.00 and award \$ 9,333.33 on appeal.

Sir Dennis Byron
Chief Justice

I concur.

Albert Redhead
Justice of Appeal

I concur.

Ephraim Georges
Justice of Appeal [Ag.]