

ST.CHRISTOPHER AND NEVIS

IN THE COURT OF APPEAL

CIVIL APPEAL NO.68 OF 2000

BETWEEN:

THE ATTORNEY-GENERAL OF ST. CHRISTOPHER AND NEVIS

Appellant

and

ANGELA JASMINE INNISS

Respondent

Before:

The Hon. Mr. Albert Redhead
The Hon. Mr. Joseph Archibald, QC
The Hon. Mr. Frederick Bruce-Lyle

Justice of Appeal
Justice of Appeal (Ag.)
Justice of Appeal (Ag.)

Appearances:

Dr. R. Cheltenham, Q.C for the Appellant, Miss G. Edwards with him
Mr. K. Hudson-Phillips, Q.C. for the Respondent, Sir P. Inniss and Mr. T. Byron with him.

2001: October 3;
2002: January 14.

JUDGMENT

[1] **REDHEAD J.A:** The respondent, Angela Jasmine Inniss, from the record was qualified as a Barrister-at-Law in or about the year 1988.

[2] On 18th June, 1996 she entered into a contract with the Government of St. Christopher and Nevis as Registrar and Additional Magistrate. The contract was for a period of two [2] years. By effluxion of time it would have expired on or about 19th June, 1998.

[3] By Clause 8(1) of the contract it was stipulated as follows:-

“The Government may **at any time** determine the engagement of the person engaged on giving her three months notice in writing or on paying her one month's salary.”

[4] The Registrar, as administrative head of the Supreme Court is required to have a very close working relationship with the resident judge, however from the record there seemed to have been animosity between them. The Registrar wrote, what I would, regard as caustic letters to the judge. So much so, I apprehend, that from advice given to the respondent, she in a subsequent letter withdrew and expunged certain paragraphs from a letter written to the judge on 23rd June, 1997.

[5] In the letter of 1st July, 1997 withdrawing the offending paragraphs she wrote in paragraph 2 thereof:-

“To the extent that certain paragraphs in my letter have apparently been interpreted in a manner which I never intended, I do hereby withdraw paragraphs 6 and 7 and also the last sentence of my said letter under reference”

[6] Undoubtedly the government became concerned about the deteriorating relationship between the resident judge and the Registrar and sought a way out of the impasse. This, among others, caused the learned trial judge to make the comment:-

“...the result of a desire on the part of the Executive to rid itself of this “turbulent” Registrar.”

[7] The respondent herself in her affidavit in support of her motion by sub-paragraph V1 states:-

“The Prime Minister asked me if there were some other position with the Government that I wanted? He told me that the post of Solicitor General was vacant....”

[8] And at sub-paragraph iii she deposed inter alia:-

Mr. Edmeade (Chief Secretary Ministry of National Security and Information) said:

“Miss Inniss, all I want to know is what you are going to do. Mr. Justice Smith [the resident judge] is returning to office next week and we have promised him that you will not be in office next week and we have promised him that you will not be in office when he returns”. I then said to Mr. Edmeade, “ As your are aware I am a contract officer. If you wish me to leave, pay me my contract and I will leave, for I have done nothing which interferes with the terms of my contract. If not, I will stand by and await due process”

- [9] On 20th February, 1998 the Permanent Secretary Establishment Division wrote Miss Inniss, the respondent, in the following terms:-

“Dear Miss Inniss,
In accordance with Clause 8(1) of your employment contract between His Excellency the Governor-General and yourself, and dated the 18th day of June 1996, the Government decided to “determine your engagement” as registrar of the Supreme Court and Additional Magistrate with immediate effect.
You will be paid one month’s salary in lieu of notice in keeping with the terms of your contract and your gratuity will be pro rated to reflect the period of your employment.
On behalf of the Government and the People of St. Christopher and Nevis, I take this opportunity to thank you for your service to the Federation and wish you every success in your future endeavours.

Yours faithfully,
Morlene Whittaker
Permanent Secretary Establishments.”

- [10] As a result of the termination of the respondent’s employment she brought a motion before the High Court claiming declaratory reliefs and damages.

- [11] By paragraphs 1,2 and 3 of the motion the respondent sought declarations that Section 83(3) of the Constitution of St. Christopher and Nevis was contravened in the following manner:-

By paragraph 1

It was contended that a letter dated 20th February, 1998 and addressed to the applicant (respondent) stipulating that:-

“in accordance with clause 8(1) of your contract of employment the Government decided to terminate your engagement as Registrar of the Supreme Court and Additional Magistrate with immediate effect” did not remove the Applicant from the aforesaid office of Registrar of the High Court of Justice of this Honourable Court and was a contravention of the provisions of Section 83(3) of the Constitution of St. Christopher and Nevis calculated to affect, and affecting, the interests of the Applicant.

2.....the said letter was null and void as purporting to usurp the power to exercise disciplinary control over the Applicant in her office of Registrar of the High Court of Justice.....,so as to affect her interests therein, in contravention of the provisions of Section 83 (3) of the Constitution of St. Christopher and Nevis; and

3.....that there was a contravention of the provisions of section 83 (3) of the Constitution of St. Christopher and Nevis affecting the interests of the Applicant, by reason of denial of the Applicant's right to due process of law, such denial of her right being effectuated by the inherent vice of the method contrived to remove the Applicant from the office of Registrar of the High Court of Justice of this Honourable Court”

- [12] The Respondent claimed damages for the infringement of her constitutional rights. The Respondent also claimed an award for exemplary damages.
- [13] When this matter came on for hearing before this court it was discovered by the court, and rightly conceded by learned Queen's Counsel for the appellant that there was a breach by the appellant of the terms of the contract by the appellant when the appellant purported to terminate the respondent's contract of employment in accordance and by virtue of the terms of clause 8(1) of the contract.
- [14] Section 8(1) of the contract stipulates:
“The government may **at any time** determine the engagement of the person engaged on giving her three month's notice in writing **or on paying her one month's salary**” [my emphasis].
- [15] It was on this limb of the contract (that is paying her one month's salary in lieu of the three months notice) that the appellant purported to terminate the respondent's contract. However, it was discovered and conceded at the hearing that the respondent was never paid the one month's salary in conformity with that clause of the contract. It was therefore a breach of the respondent's contract.
- [16] Notwithstanding, that this matter must be resolved on the question of quantum of damages, it was conceded and argued by both sides that in order to arrive at the right award of damages an analysis must be undertaken as to whether a constitutional breach occurred, i.e. a breach of Section 83(3) of the Constitution, or whether it was only a contractual breach.

[17] Learned Queen's Counsel, Mr. Hudson-Phillips, argued strenuously that it was a breach of the constitution. Whereas Learned Queen's Counsel, Dr. Cheltenham, likewise argued that what occurred was a mere technical breach of contract. I now analyse the competing arguments in order to arrive at, what I hope to be the right conclusion.

[18] Mr. Hudson-Phillips, Queen's Counsel, argued that the respondent's contract could not properly be legally terminated unless it was done in accordance with and by virtue of the provision of Section 83(3) of the Constitution of St. Christopher & Nevis which provides:-

"The power to be exercise disciplinary control over persons holding or acting in offices which this Section applies and the power to remove such persons from office shall vest in the Governor General acting in accordance with the recommendation of the Judicial and Legal Services Commission.

Provided that before making any recommendation as to the exercise of the powers conferred by this subsection in any case, the Judicial and Legal Services Commission shall consult the Public Service Commission."

[19] Learned Queen's Counsel, Mr. Hudson-Phillips, argued from the stand point that the respondent had security of tenure in her employment and was protected by the Constitution and her employment could not be terminate in the manner in which the appellant purported to do.

[20] Mr. Hudson-Phillips argued that as a breach of her constitutional rights exemplary damages are recoverable.

[21] In support of this argument both in this court and the court below, learned Queen's Counsel in his skeleton argument argued:-

"The termination of the applicant in the manner complained of was indeed an oppressive arbitrary and unconstitutional action.....we respectfully submit that this case like **Attorney-General of Antigua and Barbuda v Lake** (1998 53 W.I.R 155) has to be distinguished from cases involving breaches of constitutional rights and submit that the award of damages made in regard to the breaches of constitutional provisions should be punitive as to be sufficiently strong [to] deter to [sic] Government and the agents from intentional breaches of the constitutional protection afforded to public officers under the Chapter VII of the constitution and specifically a deterrent from interference with quasi-judicial officers. After the decision of the Privy Council in **Attorney-General of Antigua and Barbuda and others v Lake (Cuthwin)** the Government of Antigua and Barbuda **negotiated** an

out of Court Settlement of this matter in the sum of \$2.7million. We respectfully submit that owing to the age of the (respondent) the fact that she was appointed to more than one substantive post [sic] and the fact that her termination in the circumstances complained of constitutes a direct interference with a member of the judiciary the settlement awarded to Dr. Lake by the Government of Antigua and Barbuda should serve as a guide to this Honourable Court of the nature and extent of damages to (be) awarded to successful applicant involving issues of this kind.”

- [22] First of all, I disagree and reject that a negotiated out of court settlement could serve as a guide to any court as to the extent of or the nature of damages to be awarded in cases of similar nature, for the obvious reason, among others, that it was never known or revealed in a negotiated settlement what matters are taken into consideration in arriving at the settlement.
- [23] The learned trial judge in giving judgment for the respondent held that clause 8(1) of the contract entered into by the respondent and The Government of St. Christopher and Nevis and under which the Permanent Secretary Establishments purported to terminate the respondent’s contract was null and void and of no effect.
- [24] In so holding the learned trial judge reasoned that the holders of offices specified in section 83 (- magistrates, registrars of the High Court and any public office in the offices of the Attorney-General or department of Director of Public Prosecutions –) provide a service of such importance to the public that Section 83(3) provides a mechanism for their removal which lay outside the control of the Executive and such an officer could not “bargain away” the protection afforded to an office holder under section 83, by contract. Language, in my view, which bears striking similarity, as used by Sir Dennis Byron in:
Attorney-General of Grenada v The Grenada Bar Association (Civil Appeal No. 8 of 1999).
- [25] The Learned trial judge in so doing has elevated, in my view, the registrars, magistrates and crown counsel in the office of the Attorney-General and Department of the D.P.P to the status of Director of Public Prosecutions and Judges.

In **Attorney-General of Grenada v The Grenada Bar Association** (supra) (which is commonly known as the Holdip case).

The background facts to this case are that on 29th November, 1996 His Excellency the Governor-General of Grenada appointed Mr. Malcolm Holdip to the office of Director of Public Prosecutions on contract for a period of two years with effect from 2nd January, 1997. At the end of the two years the government refused to renew his contract. The Bar Association instituted proceedings in the High Court of Grenada seeking declaratory reliefs that the contractual clause appointing Mr. Malcolm Holdip to the office of Director of Public Prosecutions for two years is null, void and of no effect and that Mr. Holdip holds office subject to termination in accordance with the provisions of the constitution and not otherwise.

[26] In, what, I regard, as a well reasoned and comprehensive judgment, Sir Dennis Byron, the Chief Justice reviewed the relevant constitutional provisions which are applicable to the office of the Director of Public Prosecutions.

“Section 86(1) The Director of Public Prosecutions shall be appointed by the Governor-General acting in accordance with the advice of the Judicial and Legal Services Commission.

(5) Subject to the provisions of subsection 7 of this section, the Director of Public Prosecutions shall vacate his office when he attains the prescribed age.

(6) Person holding the office of Director of Public Prosecutions may be removed from offices only for inability to exercise the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.

(7) The Director of Public Prosecutions may be removed from office by the Governor-General if the question of his removal from office has been referred to a tribunal appointed under subsection (8) of this section and the tribunal has recommended to the Governor-General that he ought to be removed for inability as aforesaid or for misbehaviour.”

[27] Sir Dennis Byron at page 5 of the judgment said:

“Security of tenure is the cornerstone of the constitutional provisions for judicial independence. These provisions prescribe that the appointment of the judicial officer is an appointment until he reaches retirement age subject to a condition permitting his removal for inability or for misbehaviour....”

[28] Later the Chief Justice went on to observe:

"Section 84(3) specifically exempts the Director of Public Prosecutions from the application of Section 84, which confers responsibility on the Public Service Commission for the appointment, and disciplinary control of Public Officers. Instead provision is made for the removal of the Director of Public Prosecutions from office only on the ground of inability and misbehaviour and only by the special procedure set out in 86(6)-(9). It is significant that the provisions for the removal of a judge set out in the Courts Order Section 8(4)-(9) prescribe an identical formula, and limit the power of removal to the identical grounds of inability and misbehaviour."

[29] The Learned Chief Justice then went on to make the important observation that:

"I am satisfied that the context of the Constitution does demonstrate that the office of Director of Public Prosecutions is required to be endowed with the same qualities of independence as the judiciary to ensure that the criminal justice system is independent of political and other improper influences and operates on the lofty principles of equality before the law.

.....Under the umbrella of the judiciary stands the Director of Public Prosecutions as one of the guardians, being independently responsible for the institution and conduct of criminal proceedings, according to the same high standards of equality before the law, fairness and freedom from political or other improper influences. Against this background Section 86 must be interpreted to maintain the essential characteristics of that picture. It would seem to my eye, that any diminution in the security of the tenure of the Director of Public Prosecutions will result in a diminution of the independence of the Office of Director of Public Prosecutions, and would be out of harmony with the general picture....."

[30] Sir Dennis Bryon concluded thus

"In my view, the language of the section taken as a whole leads to the conclusions that the Constitution prescribes that the Governor-General appoints during good behaviour and ability to perform; he does not appoint during pleasure. Consequently, the holder of the Office of Director of Public Prosecutions cannot be removed on any ground other than of inability or misbehaviour before he attains the prescribed age. This leads inevitably to the ruling that he cannot be removed on the basis of the effluxion of time."

[31] It was argued by the appellant that the Director of Public Prosecutions by entering into a contract for a period of two years has waived his rights to remain in office until retirement or was estopped from insisting on it by his agreement to a lesser term.

[32] The learned Chief Justice at paragraph 25 of the judgment said:

“.....the provision providing a safeguard is for the benefit of the citizen, as an incident to his right to a fair trial before an independent and impartial judiciary, and it is not the right of the appointee to give away.....”

[33] There is no comparable section as that of Section 86(6) [(81(6) St. Christopher and Nevis Constitution] which pertains to registrars, magistrates and other holders of offices which are specified under section 83 of the constitution that calls for such an interpretation .

[34] A constitution must be interpreted like any other document bearing of course in mind the reminder given by Lord Wilberforce that a generous interpretation must be given avoiding the “austerity of tabulated legalism” so that the full benefit of the constitutional provisions are enjoyed.”

[35] Dr. Cheltenham argued that the provisions of Section 83(3) become applicable only if there is a removal from office or if disciplinary control is exercised over the officer.

[36] In **Hinds v The Queen** 1976 2 W.L.R 366 at P.377 Lord Diplock said:-
“Chapter VII of the Constitution, the Judicature”, was in their Lordships view intended to deal with the appointment and security of tenure of all persons holding any salaried office by virtue of which they are entitled to exercise civil and criminal jurisdiction in Jamaica. For this purpose they are divided into two categories : (i) a higher judiciary consisting of judges of the Supreme Court and judges of the Court of Appeal, and (ii) a lower judiciary, consisting of those described in Section 112(2) Viz.
“....Resident magistrate, judge of the traffic court, registrar of the Supreme Court, registrar of the Court of Appeal and such other official connected with the courts of Jamaica subject to the provisions of this constitution, may be prescribed by Parliament.....”
The distinction between the higher judiciary and the lower judiciary is that the former are given a greater degree of security of tenure than the latter. There is nothing in the constitution to protect the lower judiciary against Parliament passing ordinary laws (a) abolishing their office (b) reducing their salaries while they are in office **or providing that their appointments to judicial office shall be only for a short fixed term of years.....** The only protection that is assured to them by Section 112 is that they cannot be removed or disciplined except on the recommendation of the Judicial Service Commission with a right of appeal to the Privy Council” (my emphasis).

[37] In my view a clearer exposition of the law on this subject one would have difficulty to find.

- [38] For the avoidance of doubt it is to be observed that Section 112(1) and (2) of the Jamaica Constitution is in identical terms as Section 83 (1) and (2) of the St. Christopher and Nevis Constitution [83(1) corresponds to 112(2) and 83(2) corresponds to 112(1)].
- [39] There is a slight difference between 83(3) and 112(3) in that in the latter the Governor-General acts on the advice of the Judicial Service Commission for the removal or the imposition of any penalty on the officer (same position obtains under 83(3). But if the officer applies for the case to be referred to the Privy Council, the Governor-General shall not act in accordance with the advice but shall refer the case to the Privy Council.
- [40] Provided the Governor-General may suspend the officer pending the determination of the reference to the Privy Council.
- [41] The difference between the two sub-subsections (3) do not in my view alter the position in so far as the argument in the instant case is concerned save to say that in, my opinion, the Jamaican officer is given, it can be argued, a greater degree of security that his Kittitian counterpart in that the Jamaican legal officer has an opportunity to have his matter reviewed by two separate bodies.
- [42] Dr. Cheltenham, Queen's Counsel, contended that the government was seeking to bring the contract to an end under clause 8(1) of the contract. This they had a right to do by virtue of the terms of the contract. The fact that the appellant omitted to pay the month's salary in lieu of notice was a technical breach, he argued.
- [43] Learned Queen's Counsel, Mr. Hudson-Phillips contended that the appellant could not legally terminate the respondent's contract except by virtue of the provision of Section 83(3) of the Constitution.

- [44] In **Endell Thomas v Attorney-General of Trinidad and Tobago** (1982) A.C. 113 at page 126 in interpreting the phrase to remove from office in the police force in the context of Section 99 (1) the Police Service Commission Lord Diplock advised that:
- “In their Lordships’ view, (to “remove”) embraces every means by which a police officer’s contract of employment (**not being a contract for specific period**), is terminated against his own free will, by whatever euphemism, the termination may be described, as, for example, being required to accept early retirement.”
- [45] Later on page 126 of the judgment Lord Diplock said:
- “In their Lordships’ view there are overwhelming reasons why “remove” in the context of “to remove and exercise disciplinary control over” police officers in section 99(1) **and the corresponding sections relating to the other public services must be understood as meaning remove for reasonable cause.** Of which the commission is constituted the sole judge.”
- [46] In **Shrinivas Ganesh v Union of India** (1956) 43 A.I.R 455 Chagla C.J. at page 458 said:
- “Whatever maybe the motive which may influence the exercise of a legal right if the right exists then the motive becomes irrelevant and if in the case where S240(3) or Art.311 does not apply the government has the right to dispense with the Services of a temporary servant, then it is not open to a temporary servant to say that his temporary services were dispensed with for an ulterior motive.”
- [48] Mr. Hudson-Phillips, learned Queen’s Counsel argued that there is a difference between the Indian Constitution and the St. Christopher and Nevis Constitution in that the former under Part 7 of its constitution the Crown can dismiss at pleasure.
- [49] Be that as it may, I entertain no doubt that having regard to the decision in **Hinds** (supra) that appointments of magistrates, registrars of the Supreme Court and other officers of lower the judiciary for a short or fixed term years do not conflict with the constitution of St. Christopher and Nevis.
- [50] The learned trial judge fell into error when he held, following the case of- **The Attorney-General of Grenada and The Grenada Bar Association** (supra). That Section 8(1) of the contract entered into by the respondent was null and void. The **Holdip** case is completely different from the instant. In that the office of Director of Public Prosecutions is constitutionally protected, the duration, or length of time he holds

office is stipulated and cannot be interfered with except by prescribed constitutional methods-

Whereas an officer in the respondent's class has the constitutional guarantee that if the officer is to be removed from office or disciplinary procedure is taken against the officer the mode of removal or disciplinary action is stipulated by the Constitution.

- [51] The learned trial judge granted the declarations of the respondent and damages. On the question of damages he asked the question.

“What is the quantum of relief due to the applicant for the direct breach of Section 83(3) of the Constitution?”

- [52] He answered the question thus:

“The answer.....is to such quantum as the court could properly make having regard to the principles governing the award of damages including (an element of exemplary damages as laid down in **Tynes v Barr** 1994 W.I.R) and approved in - The **Attorney-General v Trevor St. Bernard** Civil Appeal No. 12 of 1996 Court of Appeal Grenada (unreported)
Ramesh Lawrence Maharaj v Attorney-General of Trinidad and Tobago (No. 2 of 1978) 30 W.I.R. 310.

All the above authorities cited by the learned trial judge in support of his decision to include an “element” of exemplary damages in the award of damages for the respondent, dealt with damages for **tortious** actions.

The learned trial judge awarded the respondent \$100,000.00 which must have contained an “element” of exemplary damages. This award was wrong in principle and as such this court can interfere.

- [53] Learned Counsel for the appellant argued that these cases were not relevant to the case at bar which dealt with breach of contract as exemplary damages are not awarded in contract

- [54] In Chitty on Contracts 23rd Edition Volume 1 at paragraph 1440 the learned authors referring to **Addis v Gramophone Co. Ltd.** 1908 A.C. 488 said:-

“The House of Lords.....held that exemplary damages could not be awarded for wrongful dismissal: no compensation should be given for the plaintiff’s injured feelings even where the dismissal was carried out in a humiliating manner, nor for loss caused by the fact that the loss made it more difficult for him to obtain other employment. The principle of this decision is not confined to cases of wrongful dismissal, and it would seem to prevent the recovery of exemplary damages for any breach of contract.”

[55] In any event it was argued by learned Counsel for the respondent that exemplary damages are available to the respondent and should be awarded for breach of her constitutional right. I hold that there was no breach of any constitutional right involving the respondent .

[56] In my judgment what was involved was a breach of legal contract which the respondent entered into with the Government of St. Christopher and Nevis.

[57] The measure of damages which the respondent is entitled to in this case is such damage as the law presumes to result from the infringement of her legal right.

[58] It was argued that based on authorities damages should be calculated on the basis of twelve months salary of the respondent.

[59] The principle on which damage is awarded is that the injured party must be compensated, as far as money can, for any loss suffered as a result of the breach of the contract. In other words to put the injured party in the position he would have been, in monetary terms, had the breach not occurred.

[60] Logically, therefore, the respondent is entitled to have damages calculated on the basis of salary for three months because that was the period of notice which she was entitled to had there been no breach of the contract. The respondent has sworn a Supplemental Affidavit on 3rd December, 1999. In paragraph 11 she deposed:-

“The total payment due to me under the contract is fifty three thousand one hundred and twenty eight dollars and forty cents (\$53,128.40) exclusive of social security contributions.”

[61] There was no affidavit controverting this ascertain. However Dr. Cheltenham contended that this sum is mathematically incorrect. The figures from the record seems to support Learned Counsel's contention. The respondent employment was terminated on 20th February. There were three months remaining for her to finish out her two year contract ending on 31st May, 1998. Her salary for January 1998 was \$7,360.00 less contributions of \$809.60 (exhibit A.L57) which leaves a net salary of \$6,450.00. The respondent therefore would have earned approximately \$19,351.20 for the three months.

[62] In **Albert Mendez v The Bank of Nova Scotia** (St. Kitts Branch) (High Court Suit 93/91)-

The Plaintiff in that case had a contract of service with the defendant as Assistant Manager (operations) St. Kitts branch in the defendant's banking operation. The plaintiff was wrongfully dismissed by the defendant . Singh J (as he then was) was called upon to determine what reasonable notice should have been given to the plaintiff and held that in all the circumstances the plaintiff was entitled to nine months notice.

[63] Similarly in **Daniell v Diversey Corporation Ltd** (referred by Singh J in Mendez supra) 3053 H.C. T & T Permand J held that reasonable notice for dismissal of manager for the department was 12 months. He was 54 years old at the time of dismissal and had 2 years with the defendant Company.

See also **Saunders v SSMC** (unrepresented) 1993 H.C. St. Kitts

Area manager of defendant's company Singh J as he then was held that nine months was reasonable notice.

[64] I mentioned these cases because they were referred to the court in argument

[65] It should be noted however in all these cases where the court was required to determine what was reasonable notice in the circumstances the contract was silent on the issue of notice. But in the case at Bar the parties have contracted that the notice that should be given by either side if there is to be a termination is three months.

- [66] In the premise therefore the respondent is entitled to damages calculated on the basis of three months salary less contributions which she would have made.
- [67] The decision of the learned trial judge is hereby reversed. The declarations made are set aside. The damages awarded to the respondent are set aside.
- [68] Judgment is entered on the Counter Claim for the respondent in the sum of \$19,351.20.
- [69] During argument Dr. Cheltenham expressed the view that the respondent would be entitled to damages calculated on the basis of six months pay. It is therefore my fervent hope that the appellant would honour this concession and make a payment based on six months salary.
- [70] The respondent to have three-fourths of her costs in this appeal and in the court below, all certified fit for two [2] Counsel. The appellant to have his costs on the respondent's notice certified fit for two Counsel.

Albert Redhead
Justice of Appeal

- [71] **ARCHIBALD J.A (AG.):** I adopt from the judgment of Redhead JA (a) his concise statement of the facts which gave rise to this litigation, (b) the circumstance which led learned Queen's Counsel for the Appellant to concede at the outset of the appeal hearing that the Appellant by his defective termination letter of 20th February 1998 coupled with a failure to pay then or thereafter the required month's salary pursuant to Clause 8(1) of the contract, had breached the contract, (c) his reasoning and conclusion that the judgment of this Court in the Grenada case of **Holdip** relating to the constitutionally entrenched office of Director of Public Prosecutions is not applicable to the instant case of the relatively inferior unentrenched offices of Registrar of the High Court and Additional Magistrate and (d) his statement of some of the rival contentions of learned Counsel before this Court.

[72] It was common ground in the arguments at Bar in this appeal (a) that an issue was quantum of compensatory damages for an admitted breach of contract, (b) that a relevant element was that the Respondent's net monthly salary under the contract was approximately \$6,450, (c) that paragraph 11 of the Respondent's supplementary affidavit was not contradicted or sought to be contracted by any other evidence although the Appellant's learned Queen's Counsel did not agree with it mathematically, and (d) that the main dispute for determination in this appeal was whether damages would be limited to the breach of contract as the Appellant's learned Queen's Counsel Dr. Cheltenham contended, or should be extended for alleged violation of the Respondent's constitutional rights under Section 83(3) of the Constitution including an element of exemplary damages as the Respondent's learned Queen's Counsel Mr. Karl Hudson-Phillips contended.

[73] On the issue of quantum of compensatory damages for breach of contract learned Queen's Counsel Mr. Hudson-Phillips on a survey of relevant precedent cases submitted that an award of damages equivalent to twelve months net salary of the Respondent (ie. \$77,400) would be appropriate. But learned Queen's Counsel Dr. Cheltenham in response reasoned and submitted that an award of damages equivalent to six months net salary (ie. \$38,700) would be appropriate, plus a further "nominal" amount of \$1,500 for loss of opportunity of Further Employment under Clause 12 of the contract having regard to the finding of fact in para 39 of the judgment of the trial Judge that the Respondent "cannot be absolved of all responsibility for the situation which eventually led to her dismissal".

[74] On the issue of violation of constitutional rights it seems appropriate to set out section 83 of the Constitution (relating to the appointment etc. of magistrates, registrars and legal officers) in its entirety as follows:

"83(1) This section applies to the offices of magistrate, registrar of the High Court and assistant registrar of the High Court and to any public office in the department of the Attorney-General (other than the public office of Attorney-General) or the department of the Director of Public Prosecutions (other than the office of Director) for appointment to which persons are required to hold one or other of the specified qualifications.

(2) The power to appoint persons to hold or act in offices to which this section applies (including the power to confirm appointments) shall vest in the Governor-General, acting in accordance with the recommendation of the Public Service Commission:

Provided that before making any recommendation as to the exercise of the powers conferred by this section in any case the Public Service Commission shall consult the Judicial and Legal Services Commission.

(3) The power to exercise disciplinary control over persons holding or acting in offices to which this section applies and the power to remove such persons from office shall vest in the Governor-General, acting in accordance with the recommendation of the Judicial and Legal Services Commission:

Provided that before making any recommendation as to the exercise of the powers conferred by this subsection in any case the Judicial and Legal Services Commission shall consult the Public Service Commission.”

[75] As to quantum of damages for violation of constitutional rights, learned Queen’s Counsel Mr. Hudson-Phillips contended for the Respondent, inter alia, -

- [a] that the trial Judge was right to hold in paragraph 31 of his judgment that “Clause 8(1) of the contract, under which the Permanent Secretary Establishments purported to act, is ultra vires the Constitution, null and void and of no effect as is his letter of the 20th February, 1998 as is his purported determination of the engagement of the Applicant”, having regard to the judgment of this Court in **Holdip’s** case;
- [b] that the trial Judge was right to make the award of \$100,000 without any obligation to specify the separate amounts for compensatory damages and exemplary damages, on the authority of **Attorney General of Saint Christopher and Nevis and Anguilla v Reynolds** (1979) 3 All E. R. 129 PC at 142(d);
- [c] that the damages award of \$100,000 was totally inadequate, and should be substantially increased as sought in the Respondent’s Notice in this appeal and on the grounds stated therein including bad motive, but limited to a figure between \$150,000 and \$200,000 which would be salutary and inclusive of exemplary damages;
- [d] that it was necessary for the Judicial and Legal Services Commission to be involved in the appointment and also the termination of the services of a quasi-

judicial officer like a Registrar of the High Court or a judicial officer like an Additional Magistrate, in every case, regardless of the circumstances; and that no contract could avoid such involvement;

- [e] that this Court must send a message and demonstrate that the important office of Registrar of the High Court is inviolate, and cannot be a puppet on a string for any administration, and must not be improperly interfered with.

[76] On the other hand learned Queen's Counsel Dr. Cheltenham, citing relevant legal authorities, contended for the Appellant, inter alia, -

- [a] that the trial Judge misapplied the judgment in **Holdip's** case and therefore came to wrong conclusions of constitutional violations in paragraph 31 of his judgment;
- [b] that the \$100,000 award was an unexplained figure out of a hat, and excessive because it involved an element of exemplary damages relating to constitutional violations, while exemplary damages had no place in the law of contract;
- [c] that no disciplinary question or removal from office or constitutional violation was at issue pursuant to section 83(3) of the Constitution, and that the whole matter rested in contract and a straightforward application of Clause 8(1) of the contract;
- [d] that as a matter of law, motive was irrelevant where a party like the Appellant exercised a contractual right;
- [e] that the awarded damages of \$100,000 should be varied downwards and limited to breach of contract; and
- [f] that the Respondent's Notice should be dismissed.

[77] In response to a question from the Bench, learned Counsel Dr. Cheltenham, QC expressed the view, and it appeared to me that learned Counsel Mr. Hudson Phillips, QC agreed with him, that it must be taken as a fair assumption that prior to the commencement of the contract in this case the Judicial and Legal Services Commission was consulted on the contract pursuant to the Proviso to section 83(2) of the Constitution. On that basis I am of opinion that where the Judicial and Legal Services Commission had impliedly authorised a contract which contained Clause 8(1) as cited above, that Commission had given the Appellant full liberty to "determine the engagement of the

person engaged” under that Clause without any prior reference back to the Commission. For this reason, and for the reasons given by Redhead JA, I would uphold the contentions of learned Queen’s Counsel Dr. Cheltenham, and regrettably reject the contentions of learned Queen’s Counsel Mr. Hudson Phillips whose arguments at first almost persuaded me.

[78] At the ending of their legal arguments, learned Queen’s Counsel for both sides took an opportunity to confer upon a global quantum of damages that could do justice to the interests of the parties, and the Court rose. Upon resumption, learned Counsel reported that they were unable to agree as to the basis for arriving at such quantum due to their fundamental disagreement as to whether or not there was a constitutional violation of the Respondent’s rights. In the circumstances learned Queen’s Counsel Dr. Cheltenham finally proposed to the Court an award of \$65,000 damages as being fair and just, while learned Queen’s Counsel did not qualify his earlier proposal for an award between \$150,000 and \$200,000 damages.

[79] On the basis of my opinion that there was no constitutional violation of the Respondent’s rights, I hold that the trial Judge was wrong to conclude that Clause 8(1) of the contract was ultra vires the Constitution; was also wrong to conclude likewise with respect to the termination letter of 20th February 1998; and was also wrong to conclude similarly on the determination of the Appellant’s engagement under the contract; and I would order accordingly.

[80] Had I been persuaded that the trial Judge was right in these respects outlined in the preceding paragraph, I would have been prepared to make an award of damages including exemplary damages in a sum of \$75,000 for the breach of constitutional rights alone, and for the reason that the affidavits and documentation admitted in these proceedings portray to me that the Respondent was not guilty of any misconduct but was the unfortunate inexperienced victim of circumstances in which powerful superior forces allied to get rid of her from her engagement of Registrar of the High Court and Additional Magistrate which she was discharging from her background as a Barrister-at-Law.

[81] In the result, I would vary the trial Judge's award of \$100,000 downwards to compensatory damages for breach of the contract fixed at the amount of \$65,000 which learned Queen's Counsel Dr. Cheltenham on behalf of the Appellant responsibly and finally proposed to this Court, and I would order accordingly.

[82] It is clear that I agree with Redhead JA in principle that the appeal be allowed to the extent of a variation of the damages downwards limited to compensatory damages for the admitted breach of contract, and that the Respondent's notice be dismissed.

[83] As to costs, I would propose that the Respondent shall have three-fourths of her costs in the appeal and in the Court below, all certified fit for two Counsel; and that the Appellant shall have his costs on the Respondent's Notice, certified fit for two Counsel.

Joseph Archibald, QC
Justice of Appeal [Ag.]

[84] **BRUCE-LYLE J.A. (Ag.):** I have read the judgments of my brothers **Redhead J.A.** and **Archibald J.A. (Ag.)**, and in doing so I adopt the judgment of **Redhead J.A.** pertaining to his narration of the facts that gave birth to this litigation, and the concession of Learned Queen's Counsel for the Appellant, that the Appellant's defective termination letter of 20th February, 1998 and the failure to pay then or thereafter the required month's salary pursuant to Clause 8(1) of the Contract, had breached the Contract. I also agree to the reasoning and conclusion that the judgment of this Court of Appeal in the Grenada case of **Holdip** relating to the constitutionally entrenched office of Director of Public Prosecutions is not applicable to the instant case.

[85] I also agree that the main thread of the arguments at Bar in this appeal were (a) that a relevant element was that the Respondent's net monthly salary under the Contract was approximately \$6450 (b) that an issue was quantum of Compensatory Damages for an admitted breach of Contract.

[86] Having regard to the arguments put forward by Learned Queen's Counsel for the Respondent and cases cited as juxtaposed with the arguments of Learned Queen's Counsel for the Appellant, I agree with **Redhead J.A.** that there was no breach of any Constitutional right involving the Respondent. I am of the view that what was involved was a breach of a Legal Contract which the Respondent entered into with the Government of St. Christopher and Nevis.

[87] I therefore also hold that the measure of damages which the Respondent is entitled to in this case is such damage as the law presumes to result from the infringement of her legal right under the said Contract. I would again on this score agree with **Redhead J.A.** that the principle on which damages are awarded is that "the injured party must be compensated, as far as money can, for any loss suffered as a result of the breach of the Contract. In other words, to put the injured party in the position he would have been, in monetary terms, had the breach not occurred".

[88] The Respondent in a Sworn Supplemental Affidavit, dated the 3rd December, 1999, and at paragraph 11 deposed –

"The total payment due to me under the Contract is Fifty Three Thousand One Hundred and Twenty Eight Dollars and Forty Cents (\$53,128.40) exclusive of Social Security contributions".

This considered logically shows that the Respondent is entitled to have damages calculated on the basis of salary for three months being the period of notice which she was entitled to had there been no breach of Contract.

[89] Dr. Cheltenham however contested the mathematical correctness of this figure quoted in the Respondent's Supplemental Affidavit of 3rd December, 1999. **Redhead J.A.** solved this conundrum by adopting the three month period remaining on the Respondent's Contract as the period of Notice as per the Contract agreement and arrived at a figure (Net) of \$19,351.20 for the three months, which the Respondent would have earned had she completed her Contract.

- [90] Having carefully considered the cases referred to the Court in argument – **Albert Mendez v The Bank of Nova Scotia (St. Kitts Branch) (High Court Suit No. 93/91)**; **Daniel v Diversey Corporation Ltd. (referred by Singh J in Mendez Supra) 3053 High Court Trinidad and Tobago**; and **Saunders v S.S.M.C. (Unreported) 1993, High Court St. Kitts**. I am inclined to and do agree with **Redhead J.A.** that in all the aforementioned cases, where the issue before the Court was one of determining what constituted reasonable notice, the relevant Contracts were silent on the issue of Notice.
- [91] This is not the case in this instant one. In this case at Bar, the parties have contracted that the Notice to be given by either side, if there is to be a termination, is three months. I therefore would agree that the Respondent is entitled to damages calculated on the basis of three month's salary, less contributions which she would have made, and would enter judgment on the Counter-Claim for the Respondent in the sum of \$19,351.40.
- [92] There being no basis for the trial judge's award of \$100,000, which figure seemingly was pulled out of the proverbial hat. I would agree also that that award be lowered to reflect damages for breach of Contract alone, since I am persuaded beyond doubt that there was no infringement or breach of the Respondent's Constitutional rights. The damages in the case of a breach of Contract should be compensatory and not exemplary.
- [93] During the arguments Dr. Cheltenham proposed that the Respondent would be entitled to damages calculated on the basis of six month's pay. I would also hope that the Appellant's would honour this concession and make a payment based on six month's salary to bring this unfortunate episode to a close.

Frederick Bruce-Lyle
Justice of Appeal (Ag.)