

MONTSERRAT

IN THE COURT OF APPEAL

MISCELLANEOUS APPEAL NO.2 OF 1993

BETWEEN:

LORAIN UNDERWOOD

- Appellant

and

THE COMMISSIONER OF POLICE

- Respondent

Before: The Rt. Hon. Sir Vincent Floissac - Chief Justice
The Honourable Mr. C.M. Dennis Byron - Justice of Appeal
The Honourable Dr. Nicholas J.O. Liverpool - Justice of Appeal

Appearances: Mr. O. Sergeant for the appellant
Mr. J. Kirnon for the respondent

1993: April 30.

JUDGMENT

SIR VINCENT FLOISSAC, C.J.

On the 5th March, 1993, Magistrate A.B. Ryan denied the appellant a liquor licence on the ground that "There is a sufficient number of licenced premises to meet the needs of the neighbourhood". In so doing, the learned magistrate purported to act under section 19 (a) (vi) of the Liquor Licence Ordinance Cap. 235 of the Laws of Montserrat which provides that:

"An application for a licence under this Ordinance may be refused on any one or other of the grounds following, that is to say -

(a) in case of premises not already licensed that - (vi) there is a sufficient number of premises already licensed to meet the needs of the neighbourhood."

In refusing the licence, the learned magistrate said:

"It is clear from the section that the Court has a discretion to grant or not to grant a licence when objection is founded on section 19.

I do not agree that the police led no evidence to substantiate their objection under the law. I therefore uphold the objection of the police to the grant of a general licence to this applicant. In so doing I take into consideration (1) The neighbourhood in which the applicant's premises is located - that is a small residential area of about 150 residents.

(2) There are two schools and two churches and a Roman Catholic Convent located in close proximity to the applicant's premises.

(3) There are already four licensed premises operating under general licence in close proximity to the applicant's premises and about 10 others within a radius of about 200 yards of the applicant's premises."

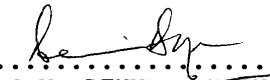
The evidence is that there are 400 residents in the neighbourhood and not 150 residents as stated by the learned magistrate. The learned magistrate therefore exercised her judicial discretion on wrong facts. We do not know how she would have exercised that discretion had she not misdirected herself as to the population of the neighbourhood.

Further, the licence is evidently required for the purpose of enhancing the profitability of a restaurant which the appellant operates. The licence requested therefore goes to the root of the appellant's existing means of livelihood.

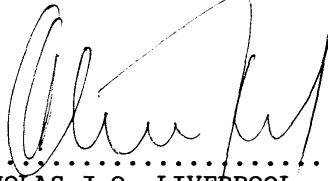
In those circumstances, we would allow the appeal and remit the matter to the magistrate for rehearing and determination on the true facts.



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SIR VINCENT FLOISSAC
Chief Justice



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C.M. DENNIS BYRON
Justice of Appeal



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NICHOLAS J.O. LIVERPOOL
Justice of Appeal