

EASTERN CARIBBEAN SUPREME COURT
BRITISH VIRGIN ISLANDS

IN THE HIGH COURT OF JUSTICE

CLAIM No: BVIHCV 2021/0210

BETWEEN:

HONOURABLE JULIAN WILLOCK
SPEAKER OF THE HOUSE OF ASSEMBLY

Claimant

And

(1) THE RIGHT HONOURABLE SIR GARY HICKINBOTTOM
AS COMMISSIONER OF THE COMMISSION OF INQUIRY
(2) BILAL RAWAT
(3) ANDREW KING
(4) RHEA HARRIKISSOON
(5) ATTORNEY GENERAL

Defendants

Determined on paper with no written submissions

2021 August 27

JUDGMENT

[1] **JACK, J [Ag.]**: On 18th January 2021 the then Governor of this Territory appointed a Commission of Inquiry under the **Commissions of Inquiry Act 1880**¹ to inquire into a number of matters, but primarily “to establish whether there is information that corruption, abuse of office or other serious dishonesty in relation to officials, whether statutory, elected or public may have taken place in recent years.” The Rt Hon Sir Gary Hickinbottom, a retired Lord Justice from the English Court of Appeal and the first defendant in these proceedings, was appointed as the commissioner.

¹ Cap 237, Revised Laws of the Territory of the Virgin Islands.

- [2] The appointment of the commission has given rise to much political controversy and dispute. These political issues are not matters for this Court to determine in the current proceedings, which are brought by the Honourable Julian Willock, the Speaker of the House of Assembly, as claimant.
- [3] After his appointment, Sir Gary brought in a team of UK lawyers to assist him in his inquiry. These comprised: Bilal Rawat, a barrister called to the bar of England and Wales in 1995; Andrew King, a solicitor admitted in England and Wales in 2009; and Rhea Harrikissoon, a solicitor admitted in England and Wales in 2012. These are respectively the second, third and fourth defendants. None have been admitted as legal practitioners in this Territory, although an application that they be admitted is due to be heard on 26th October this year. The fifth defendant is the Attorney-General of this Territory.
- [4] The relief sought by the claimant in the current application, which is listed for hearing on 2nd September 2021, is an injunction restraining Mr. Rawat, Mr. King and Ms. Harrikissoon acting as barrister or solicitor in the Commission of Inquiry unless and until they are admitted as BVI legal practitioners.
- [5] Before considering the interlocutory relief sought, I should mention one matter of drafting. In both the amended claim form, the various applications and the three affidavits which Mr. Willock has sworn, he refers to the Commission of Inquiry as “the Inquisition”. This in my judgment is inappropriate. Mr. Willock no doubt has strong views on the legitimacy of the inquiry. The Court, however, requires parties before it to behave with civility to each other. The Court will not tolerate abusive language of any description. Describing the Commission of Inquiry as an inquisition does not meet this standard. Nor does any implied comparison of Sir Gary with the late Tomás de Torquemada. The Court will not entertain political point scoring by litigants before it.
- [6] Accordingly, I shall give permission to the claimant by 4pm on 1st September 2021 to amend his claim form and applications so as to substitute “commission” in place

of “inquisition.” In default of such amendment, I shall strike out the claim. I shall also strike out the claimant’s three affidavits but permit him by the same time to re-swear and file them on the e-Litigation Portal, but with the amendment which I have stated.

[7] Because this order is made *ex parte*, the claimant has the right to apply to the Court to vary or discharge this order.

[8] The substantive point raised by Mr. Willock is that Mr. Rawat, Mr. King and Ms. Harrikissoon are practising BVI law without being admitted to the roll of legal practitioners in the BVI. This question has been the subject of three recent decisions. The first is of the Court of Appeal in **Yao Juan v Kwok Kin Kwok**,² on appeal from me³; the second and third are decisions of mine, **Re Summer Fame Ltd (In Liquidation)**⁴ and **Re Lenux Group Ltd; JSC Mezhdunarodniy Promyshlenniy Bank v Lenux Group Ltd**.⁵ None directly address the point raised by Mr. Willock as to whether the work Mr. Rawat, Mr. King and Ms. Harrikissoon do in assisting the Commission of Inquiry amounts to “practising [BVI] law”.

[9] The **Legal Practitioners Act 2015**⁶ provides:

“2(1) In this Act, unless the context otherwise requires,

...

‘costs’ includes fees for any legal business done by a legal practitioner;

‘fees’ includes charges, disbursements, expenses and remuneration;

...

‘legal practitioner’... means a person whose name is entered on the Roll in accordance with this Act;

‘practise law’ means to practise as a legal practitioner or to undertake or perform the functions of a legal practitioner, as recognised by any law whether before or after the commencement of this Act;

² [2021] ECSCJ No 577, BVIHMAP2018/0042 (1st June 2021).

³ [2020] ECSCJ No 148, BVIHC (COM) 162 of 2013 (23rd April 2020)

⁴ [2021] ECSCJ No 585, BVIHC (COM) 2020/0055 (9th June 2021).

⁵ [2021] ECSCJ No 605, BVIHC (COM) 2020/0188 (28th June 2021).

⁶ No 13 of 2015, Laws of the Territory of the Virgin Islands.

...

13(1) Every person whose name is entered on the Roll in accordance with this Act shall be known as a legal practitioner and,

(a) subject to subsection (2), is entitled to practise law and sue for and recover his or her fees for services rendered in that respect;

(b) subject to subsection (2), has the right of audience before any court;

(c) is an officer of the Supreme Court.

(2) No person may practise Virgin Islands law unless his or her name is entered on the Roll in accordance with this Act.

(3) A person who practises law in contravention of subsection (2) or section 15(1) is not entitled to institute or maintain any action for recovery of any fee on account of or in relation to any legal business done by him or her in the course of such practice

...

18(1) Subject to this Act, where a person whose name is not registered on the Roll

(a) practises law;

(b) wilfully pretends to be a legal practitioner; or

(c) makes use of any name, title or description implying that he or she is entitled to be recognised or to act as a legal practitioner,

he or she commits an offence and is liable on summary conviction to a fine of not less than fifteen thousand dollars or to imprisonment for a term of not less than three years, or both.

(2) A person who, not being entitled to act as a legal practitioner, acts in any respect as a legal practitioner in any action or matter or in any court in the name or through the agency of a legal practitioner entitled so to act, commits an offence and is liable on summary conviction to a fine of not less than ten thousand dollars or to a term of imprisonment of not less than two years, or both.

(3) No fee in respect of anything done by a person whose name is not registered on the Roll or to whom subsection (2) relates, acting as a legal practitioner, is recoverable in any action, suit or matter by any person."

[10] It will be seen that practising BVI law in this Territory without being admitted to practice is a criminal offence with stiff minimum sentences. Whether a criminal offence has been committed and whether it is in the public interest for the offence to be prosecuted is normally a matter for the Director of Public Prosecutions and the Attorney-General.

[11] In the current case, Mr. Willock seeks an injunction restraining the three lawyers from allegedly breaching section 18(1) and (2). This raises a question as to Mr.

Willock's standing to bring the current action. The current claim appears to raise no private law cause of action on Mr. Willock's part. Instead, he appears to be bringing the claim as part of his public duties as speaker of the House of Assembly. The papers filed to date do not, however, identify any statutory basis on which he might be acting. (In England, for example, local authorities can bring injunction proceedings of this type, but this is specifically permitted by statute.⁷) There is no general power of public authorities to obtain such injunctions.

- [12] At common law, the only way to bring injunction proceedings to prevent a breach of the criminal law is to bring a *relator* action: **Gouriet v HM Attorney-General**.⁸ The permission of the Attorney-General is required for a claimant to bring such proceedings. That is a discretionary matter for the Attorney-General: see Sam Silkin QC A-G's explanation of his function in **Gouriet** at pp 442-444.
- [13] So far as appears from the papers, Mr. Willock has not yet requested the Attorney-General's permission to bring the current proceedings. That is a matter which will need to be addressed at the hearing of the application on 2nd September. It is arguable that unless and until the Attorney-General gives permission Mr. Willock has no standing to seek an injunction.
- [14] Ellis J, who is hearing the application for admission of Mr. Rawat, Mr. King and Ms. Harrikissoon to the roll of practitioners on 26th October 2021, has considered the question of standing for opponents of their admission. The test for standing in *relator* proceedings, however, is different.

Adrian Jack
Commercial Court Judge [Ag.]

By the Court

Registrar

⁷ Local Government Act 1972 (UK) (c. 70) section 222.

⁸ [1978] AC 435.