

SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

Claim No. SLU HCV 0224 of 2005

BETWEEN:

RODNIEL THEODORE

Claimant

AND

1. THE ATTORNEY GENERAL
2. DIRECTOR OF PUBLIC PROSECUTIONS

Defendant

Appearances:

Tonjaka Hinkson for Claimant
Dwight Lay for Attorney General

.....
2005: May 6, 13
.....

JUDGMENT

Introduction

1. **SHANKS J:** The Claimant professes to be a member of the Ethiopia African Black International Congress, which is accepted by the Attorney General to be a religious denomination for the purposes of the Constitution of St Lucia. The Claimant is charged with an offence in the Magistrate's Court. At a hearing on 17 March 2005 the Claimant remained outside court while his attorney Mr Hinkson informed the Magistrate that his religious beliefs required him to wear a distinctive headdress rather like a turban and sought permission for him to enter the court wearing it. The Magistrate stated that he was not aware of any law that allowed the Claimant to wear his turban in court and required him to remove it before entering the court. The case was adjourned without a

substantive hearing and the Magistrate promised to research the point in the meantime.

2. Before the matter came back before the Magistrate the Claimant brought this constitutional motion to challenge the actual or threatened infringement of his rights under section 9(1) of the Constitution. The relevant part of that section says this:

“Except with his own consent, a person shall not be hindered in the enjoyment of his freedom of ...religion...and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice, or observance”.

3. The Attorney General has drawn attention to Art 10 of the St Lucian Code of Civil Procedure which states that “Persons present at sittings of the Courts must remain covered, and in silence”. It is common ground that, subject to the constitutional point I am asked to resolve, that provision prohibits anyone attending a court in St Lucia from wearing any kind of headdress and that the Magistrate was therefore entirely right in his instinctive reaction that it was not permissible for the Claimant to attend court in his turban. Mr Hinkson says that Art 10 is unconstitutional and thus void in so far as it conflicts with his client’s rights under section 9(1). I am reminded by Mr Lay for the Attorney General and bear in mind that there is a presumption that existing laws are constitutional and that the burden is on the Claimant to satisfy the court that this is not so.

Religion

4. As I have indicated the Attorney General accepts that the Ethiopia Black International Congress of which the Claimant professes to be a member is a religious denomination (and thus a religion: see section 9(6)). I am sure he was right to make that concession. It is not for the court (or anyone else) to embark on an inquiry into an asserted religion to judge its validity (see *R v Secretary of State for Education and Employment ex parte Williamson* [2005] UKHL 15 per Lord Nicholls at para 22). Provided a religious belief is consistent with basic standards of human dignity or integrity, relates to non-trivial matters and is coherent in the sense of being intelligible and capable of being understood in the way explained by Lord Nicholls at para 23 of the *Williamson*

decision, in my judgment it is properly regarded as a religion for the purposes of the Constitution of St Lucia in the same way as it would be for the purposes of the European Convention on Human Rights.

5. However, Mr Lay sought to challenge the genuineness of the Claimant's professed religious belief. Where the genuineness of the Claimant's professed belief is in issue the court must inquire into the matter and decide the issue as a question of fact; but the inquiry is limited and is designed only to ensure that the assertion of religious belief is made in good faith, that it is "neither fictitious, nor capricious, and that it is not an artifice" (see *Williamson* case at para 22).
6. The Claimant asserts in his affidavit dated 24 March 2005 that he is a member and avid follower of the Congress (see para 5). Mr Lay declined my invitation to cross-examine him as to the genuineness of that assertion (or on any other point). He relied however on the fact that the Claimant had appeared at an earlier hearing before the Magistrate on 20 January 2005 not wearing a turban and had raised no objection. The Claimant's explanation for that was that at the time of the earlier hearing he was still in custody and had been ordered by the police to remove his turban and advised by his solicitor to cooperate with the police. This seems to me an entirely plausible explanation which negates any inference that his professed religious belief is not genuine. In the circumstances, having carried out the limited inquiry I refer to above, I am quite satisfied that the Claimant is a genuine member of the Congress.

Practice and manifestation

7. The Claimant's evidence at paras 6 and 7 of his affidavit dated 24 March 2005 is that the turban is part of his religious attire, that the custom of the religion requires that a different coloured turban is worn depending on the day of the week, that he never removes it in public save for reasons of personal hygiene, that this is essential to the practice of the religion and that he felt deprived and humiliated when forced to remove it. Although this evidence has not been challenged Mr Lay says that the Claimant has not proved that the wearing of the turban forms part of the practice of his religion.

8. The requirement to adhere to particular forms of dress and ways of wearing hair are very familiar instances of personal conduct shaped by religious belief which are manifestations of such belief (see: *Williamson* case para 17) and the Claimant produces a photo of members of the Congress at a choir session wearing the turban which confirms the practice (see "RT1"). *Prima facie* I would therefore be inclined to accept the Claimant's evidence unless there were some substantial grounds for thinking it was wrong. No such grounds were presented by Mr Lay who found himself forced to rely on the assertion that Rastafarianism, under whose broad umbrella the Congress comes, requires its adherents to wear dreadlocks and not turbans. Assuming, as I am prepared to do, that he is right in this assertion, a moment's thought about other more familiar religions which are divided into different sects and denominations would indicate that such a discrepancy is unlikely to be of any significance in indicating that the practice contended for here is not part of the practice of this particular religious group, even if the group associated with Rastafarianism which may have different practices.
9. I am therefore satisfied that the wearing of the turban at all times while in public is part of the practice of the Claimant's religion and that he manifests his religious belief by adhering to that practice.

Hindrance

10. What constitutes a hindrance must depend on all the circumstances of the case (see *Williamson* at para 38). It is suggested in Mr Lay's written submissions (at para 11) that there is no material hindrance here because the Claimant is not prevented from wearing his turban otherwise than when he is in court. I cannot accept this submission. The Claimant has no realistic choice but to appear in court to answer the charges against him and, if he is required by law to remove his turban in order to do so, he is clearly hindered in manifesting his religion through the practice of wearing the turban at all times while in public: since the practice requires that the turban is worn at all times any requirement to remove it for a period of time will interfere with and therefore hinder that practice. I therefore reach the clear view that the requirement that the Claimant remove his turban while in court hinders him in the enjoyment of his freedom to manifest his religion in public by wearing the turban at all times and that section 9(1) is,

subject to the argument on 9(5) which I address below, clearly contravened in this case.

Section 9(5)

11. The main point relied on by Mr Lay is section 9(5) which provides a familiar exception to section 9(1):

“Nothing contained in or done under the authority of any law shall be held inconsistent with or in contravention of this section to the extent that the law makes provision which is reasonably required-

(a) in the interests of defence, public safety, public order, public morality or public health...

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.”

12. The first question raised by this provision is whether Art 10 of the Code of Civil Procedure makes provision which is reasonably required in the interests of one of the specified public policies. Mr Lay submitted that Art 10 was undoubtedly required in the interests of public safety and public order but no evidence was presented in support of his case on either. He simply invited me to take judicial notice of recent events in the United States where a judge was shot dead in his court by a Defendant.
13. It does not seem to me that Art 10 can be justified on the grounds relied on. It is obviously possible that firearms will be brought into court secreted in a turban. It is equally possible that a firearm could be brought into court secreted in, say, a nun's habit and I am not aware of any legal provision banning the wearing of such clothing in court on the grounds that weapons could be secreted in it. Nor is the turban banned outside court: if it represented a danger to public safety or order in court it is hard to see how it would not do so outside court. The fact is that Art 10 is a somewhat archaic provision representing the values of a former age when men habitually wore hats and were required to remove them as a sign of respect; it has nothing to do with public safety or public order in my view and is therefore not reasonably required for those purposes.

14. My conclusion on the first question means that I do not need to consider the second question raised by section 9(5), which is whether Art 10 or the banning of the Claimant's turban are not reasonably justifiable in a democratic society notwithstanding that they are *ex hypothesi* provided for in a law which is reasonably required in the interests of public safety or order.

Procedural point

15. Mr Lay raised a procedural point in answer to the Claimant's motion based on the proviso to section 16(2) of the Constitution which says that the High Court "may decline to exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law". He said that the Claimant should have brought a claim for judicial review of the Magistrate's decision not to allow the him to wear his turban in court rather than a constitutional motion and that the court should therefore decline to exercise its powers under section 16.
16. This point is without any merit in my view. Assuming that a claim for judicial review would have been feasible at all it is clear that it must have arisen under the Constitution since it is common ground that, absent the Constitution, the Magistrate was obliged by Art 10 to require the Claimant to remove his turban; there is therefore no "other law" which provides adequate means of redress. In any event, the proviso gives the court a discretion to decline to exercise its powers and does not require it to do so and it seems to me that it would be completely pointless for this court to exercise that discretion so as to decline to act since any judicial review claim would come back to the same court and raise precisely the same issues as have been argued fully already.

Remedy

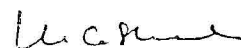
17. It follows from the conclusions set out above that in my view the requirement that the Claimant should remove his turban while in court is an infringement of his rights under section 9(1) of the Constitution notwithstanding the existence of Art 10 of the Code of Civil Procedure. The effect of a conflict between a provision like Art 10 and a provision

of the Constitution is dealt with by section 120 of the Constitution. This says that the Constitution is the supreme law of St Lucia and that if any other law is inconsistent the Constitution prevails and the other law shall, to the extent of the inconsistency, be void. Para 2(1) of Schedule 2 to the Constitution Order also provides that "existing laws" (which include Art 10) shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution.

18. Section 16(1) gives the court an extremely wide discretion as to the orders it can make on a constitutional motion in order to enforce sections 2 to 15. I should clearly make a declaration that the Claimant is entitled to wear his turban in court during the hearing of his case but both parties also invited me to make a wider declaration for the guidance of magistrates in future. I think section 16(1) gives me power to do so. I therefore propose to make the following declarations:

- (1) The Claimant is entitled by virtue of section 9(1) of the Constitution of St Lucia to continue to wear his headdress in court during any hearings in relation to the charges currently outstanding against him;
- (2) Art 10 of the Code of Civil Procedure is to be construed so that any person required to attend court (whether as a party or a witness) who is required to wear any headdress as part of a genuine religious practice or observance must be allowed to attend the hearing wearing such headdress notwithstanding the terms of Art 10.

19. It should be noted that declaration (2) relates only to the construction of Art 10; it does not necessarily mean that the wearing of a particular headdress would always be allowed in all circumstances and whatever other laws were under consideration.



Murray Shanks
HIGH COURT JUDGE (Ag)