

**THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV2015/0026

BETWEEN:

OWEN ADRIANI ROACH

Claimant

AND

**THE ATTORNEY GENERAL
THE REGISTRAR OF THE HIGH COURT**

Defendants

Appearances:

Dr. David Dorsett of Watt, Dorsett & Company for the Claimant

Ms. Alicia Aska of the Attorney General's Chambers for the Defendants

2016: October 6th

JUDGMENT

[1] **HENRY, J.:** The claimant is a native-born citizen of Montserrat. On the 8th March 2004 he was admitted to practice as a Barrister and Solicitor in Montserrat and duly enrolled as such. On the 5th March 2014, he made an application under the Legal Profession Act 2008 to be admitted to practice as an Attorney-at-Law in Antigua and Barbuda. A copy of the application was served on the first defendant in accordance with section 16 (2) of the Legal Profession Act, 2008. The first defendant responded to his then Counsel indicating that he was unable to support the application as presented due to non-compliance with certain provisions of the law.

[2] By Fixed Date Claim filed herein, the claimant seeks the following relief:-

1. A declaration that the order of the Eastern Caribbean Supreme Court sitting in the jurisdiction of Montserrat made on 8th March 2004 whereby the applicant was admitted to practice as a legal practitioner before the court of the Eastern Caribbean Supreme Court is an order enforceable within the jurisdiction of Antigua and Barbuda.

2. A declaration that the applicant is entitled to be admitted to practice as an attorney-at-law on account of section 9(3) of the Supreme Court Order, it being the case that the applicant is the beneficiary of an order made on 8th March 2004 by the Eastern Caribbean Supreme Court whereby the applicant was admitted to practice as a legal practitioner before the Eastern Caribbean Supreme Court.
3. A declaration that the applicant is entitled to the enforcement of the order made on 8th March 2004 by his name being registered on the Roll as a person admitted to practise law within the jurisdiction of Antigua and Barbuda.
4. A declaration that the non-registration of the applicant on the Roll constitutes a contravention of the applicant's right to liberty as guaranteed by section 3 of the Constitution of Antigua and Barbuda.
5. An order that the 2nd respondent do enrol the applicant as an attorney-at-law upon the payment of the prescribed fee for enrolment.
6. Damages.
7. Interest Pursuant to section 27 of the Eastern Caribbean Supreme Court Act.
8. Costs pursuant to CPR 56.13(5).
9. Interest to section 7 of the Judgments Act.

The Claimant's Submissions

- [3] The claimant submits that the conjoint effect of sections 2 (1), 4 (1), 9 (3) and 10 of the Supreme Court Order is that the order made on 8th March 2004 may be executed and enforced in Antigua and Barbuda. He states that the order of the court is that the claimant was admitted to the bar of the Supreme Court, namely the Eastern Caribbean Supreme and no other. Section 4 (1) establishes a single "Supreme Court" not multiple courts. Therefore the order admitting the claimant to the bar of the Supreme Court was an order admitting the claimant to a single court. The practical way in which the enforcement of the said order is effected is by the registration of the claimant on the Roll of attorney-at-law in Antigua and Barbuda. Since it is the second defendant who is responsible for entering the name of attorneys-at-law on the Roll; in the circumstances the claimant is entitled to an order directing the second defendant to enrol the claimant accordingly.
- [4] With regard to the alleged violation of the claimant's right to liberty under section 3 of the Constitution, the claimant refers the court to the case of **Nagle v Feilden**¹ and the words of Salmon LJ where he stated that a person's right to work at his trade or profession is just as important to that person as his right of property. Further, that just as the courts will intervene to protect a person's right of property, so they will also intervene to protect a person's right to work. The claimant, he submits has a constitutional right to liberty and to earn a living as he will and it is the public's right to benefit from his labours. The claimant has a right to earn a living so that he can support himself. He is therefore entitled to the declarations sought.

¹ [1966] 2 QB 633

The Defendants' Submissions

- [5] The defendants submit that section 9 (3) of the Eastern Caribbean Supreme Court Act, does allow the avenue to enforce a judgment of the court in another jurisdiction. However, the court has a discretion and must consider all the circumstances, more particularly, the effect of the said judgment to be enforced and the violation of the law of the state, if any, ought to be a primary consideration. The defendants submit that if the alleged judgment is enforced in Antigua and Barbuda by this court as requested, the outcome would be contrary to the provisions of Article 5 of the Council of Legal Education Agreement and the Legal Professions Act, 2008, and the court cannot act outside the scope of the laws of the State.
- [6] Additionally, the defendants point out that the claimant has failed to submit a copy of the said judgment of the Court in Montserrat upon which he relies. The defendants submit that the enrolment certificate and the certificate of Good Standing are insufficient for this court to make a determination to order an enforcement of an order or to make a declaration that the claimant seeks.
- [7] According to the defendants, the actions of the claimant in trying to manipulate the system in order to avoid obtaining the LEC from the Council of Legal Education, which is a requirement for all other Attorneys at Law wishing to practice in Antigua and Barbuda is unfair, misleading and his claim ought to be dismissed by the court.

The Laws

- [8] The laws regulating admission to practise as an Attorney at Law in Antigua and Barbuda are set out in Part IV of the Eastern Caribbean Supreme Court Act, Cap 143; Part III of the Legal Profession Act, 2008 and section 3 and Article 5 of the Schedule of the Council of Legal Education Act, Cap 114 of the Laws of Antigua and Barbuda.
- [9] In particular Section 16 of the Legal Profession Act 2008, No 22 of 2008 provides:-
16. Application for admission:-
- (1) A person who makes an application to the Court to be admitted to practise law, and who satisfies the Court that he—
- (a) is of good character;
 - (b) has attained the age of twenty-one years;
 - (c) is a citizen of Antigua and Barbuda or of a country listed in Schedule 2;
 - (d) holds the qualifications prescribed for admission to practise as an Attorney-at-Law in Antigua and Barbuda under Article 3 of the Agreement; and
 - (e) has not been disbarred or struck off the Roll of attorneys-at-law of any court of a country listed in Schedule 2, England, Scotland or Northern

Ireland or has not done any act or thing which would render him liable to be disbarred or struck off the Roll of attorneys-at-law of any country; shall, on payment to the Registrar of the prescribed fee, be admitted by order of the Court to practise law.

- (2) A person applying to be admitted to practise law shall—
 - (a) serve copies of the application on the chambers of both the Attorney General and the President of the Bar Association;
 - (b) effect service under paragraph (a) on the same day; and
 - (c) file an affidavit of service.
- (3) The Registrar shall set the date for the court to hear the application to be admitted to practise law not earlier than two weeks from the date of service stated in the affidavit of service.
- (4) Before any person is admitted as an attorney-at-law, the Registrar shall enquire from the Council and the Attorney General whether the person has fulfilled all the conditions for admission laid down by law, and if the Registrar is satisfied that the person has done so, he shall report accordingly to the Court.

Discussion

- [10] There is no doubt that the State has the power to impose restrictions and provide such regulations as it may deem proper for the protection of the welfare of its citizens. Laws and regulations that are necessary for the protection of the health, morals and safety of society are within the legitimate exercise of a State's legislative power. The Constitution of Antigua and Barbuda makes it clear that the fundamental rights and freedoms of the individual guaranteed in section 3 are subject to limitations.
- [11] The right of every person to pursue any lawful business or profession he may choose to pursue is unquestioned. However, that a particular profession may be subject to such regulations as the government may impose for the protection of the welfare and safety of the society is also unquestioned.
- [12] As has been noted² there are many occupations which may be pursued by a person without detriment to the public welfare and therefore need no regulations to control them. But there are other occupations or callings which require special knowledge or training or experience to qualify a person to pursue them with safety to the public interest. When the occupation is of this character, no one can question the power of the State to impose such regulations as it may deem proper for the protection of the welfare of its citizens. While these comments were made in respect of the US State of Oregon's right to regulate the medical profession, the court is of the view that the comments are equally applicable to the practice of law. To engage in the practice of law requires

² Right of States to Regulate the Practice of Medicine and Surgery, The Journal of the American Medical Association, December 31, 1892

special knowledge, training and experience. In recognition of this the Government has put in place certain laws and regulations to ensure the public against the consequences of possible deception and even fraud.

[13] The Legal Profession Act, 2008 states its purpose as an Act to provide for the regulation of the legal profession, for the qualification, enrolment and discipline of its members and for incidental and connected purposes. Section 16 (1) provides that a person who makes an application to the Court to be admitted to practise law, must meet certain requirements. Included is the requirement that the applicant must hold certain qualifications prescribed under Article 3 of the Agreement for admission to practise as an Attorney-at-law in Antigua and Barbuda.

[14] The "Agreement" referred to in section 16(1) above means the Agreement, including the protocols thereto, providing for a system of legal education and training and also providing for the establishment of the Council of Legal Education for the Commonwealth Caribbean. The Agreement has the force of law in Antigua and Barbuda by virtue of The Council of Legal Education Act Cap 114 of the Laws of Antigua.

[15] Articles 4, 5 and 6 of the Agreement Provides:

1. The Government of each of the participating territories undertakes that it will recognise that any person holding a Legal Education Certificate fulfils the requirements for practise in its territory so far as institutional training and education are concerned and that (subject to the transitional provisions hereinafter contained and to any reciprocal arrangements that any of the said territories may hereafter make with any other country) no person shall be admitted to practise in that territory who does not hold such certificate. But nothing herein contained shall prevent any territory from imposing additional qualifications as a condition of admission to practise therein.

[16] The claimant does not submit that he meets the qualifications for admission as mandated by the laws of Antigua and Barbuda or that he falls within any of the exemptions set out in the law. Instead, the ground on which he seeks relief is that by a judgment made in Claim No. MMIHCV 2004/007 on 8th March 2004, he was admitted by the Eastern Caribbean Supreme Court to practise as a barrister and solicitor and duly enrolled on the Roll of legal practitioners in Montserrat. He submits that the judgment of the court made on 8th March 2004 is one liable to be enforced in Antigua and Barbuda by virtue of section 9 (3) of the Supreme Court Order and that by virtue of the order he is entitled to be admitted to practice in Antigua and Barbuda.

[17] Sections 9 (3) and 10 provide:-

- 9 (3) The process of the Supreme Court shall run throughout the States and any judgment of the Court shall have full force and effect and may be executed and enforced in any of the States.

10. The High Court and Court of Appeal may exercise such jurisdiction and powers, and any judge or the Chief Registrar of the Supreme Court may exercise such functions, as may be conferred upon them respectively in relation to Montserrat or the Virgin Islands by or under any law in force in Montserrat or the Virgin Islands, as the case may be.

- [18] The claimant has failed to produce the judgment he is seeking to enforce. His evidence is that the file cannot be found. The claimant has produced instead his Certificate of Enrolment issued by the Registrar of the court. It states:-

"I, Veronica Dorsette, Registrar of the High Court of Justice, Montserrat Do Herby Certify that Owen Adriani Roach was on the 8th day of March 2004 admitted to practise as a Barrister & Solicitor of the High Court of Justice, Montserrat, and duly enrolled."

- [19] The claimant has also submitted a Certificate of Good Standing issued by the Acting Registrar of the High Court, Montserrat. It states: This is to certify that Mr. Owen Adriani Roach was on the 8th day of March 2004 called to the Bar in the British Overseas Territory of Montserrat. It notes that no proceedings are pending against him for professional negligence or disgraceful conduct; that he has not been convicted of any crime or adjudged guilty of disgraceful conduct in a professional capacity by a Committee of Inquiry and that he is entitled to practice Law in Montserrat and his name has not been removed from the Roll of Attorneys-at-Law of Montserrat.

- [20] Firstly, a judgment can only be enforced to the extent of the terms stated there in. The court cannot be asked to enforce a judgment which it has not had sight of. At a minimum a duly authenticated copy of the judgment ought to have been put before the court.

- [21] Secondly, the sharing of a court does not diminish the sovereign right of each State to pass laws and regulations governing its citizens and governing the carrying on of business within its borders. When the court sits in a particular country, it is the court of that country empowered by the laws and Constitution of that country with the jurisdiction to enforce that country's laws.

- [22] By its very terms, the effect of the Certificate of Enrolment and the Certificate of Good Standing is that the claimant is entitled to practice law in the British Overseas Territory of Montserrat. The claimant has produced no document evidencing entitlement to enrolment as an Attorney at Law in Antigua and Barbuda. By invoking section 9(3) of the Supreme Court Order, the claimant is seeking, not to enforce the enrolment granted, but to expand the effect and reach of the enrolment to include Antigua. This he is not entitled to do. To be admitted to practise in Antigua and Barbuda the claimant must comply with the requirements in the laws of Antigua and Barbuda.

- [23] Section 9 (3) of the Supreme Court Order cannot be invoked so as to add another avenue of admission to practice in Antigua or to bypass the requirements of the duly enacted laws of Antigua and Barbuda. To do so would be to encroach on the power of the legislature to prescribe such reasonable laws as it deems necessary in the public interest. The court is therefore constrained to hold that to be admitted to practice as an Attorney at Law in Antigua and Barbuda the claimant

must meet the qualifications as set out in the laws of Antigua and Barbuda. Until the claimant meets the requirements, he is not entitled to be enrolled as Attorney at Law.

The Constitutional challenge

- [24] Counsel submits that the claimant has brought the instant action as he is fearful that his right to liberty as guaranteed by section 3 of the Constitution is likely to be contravened. He continues that the claimant must have the legal and unfettered right to seek employment so that his enjoyment to the constitutional right to liberty is not abridged. According to him, the language of "inalienable human rights" as stated in the preamble of the Constitution rings a familiar tone as it is closely patterned after the words in the American Declaration of Independence where the inalienable rights of Life, Liberty and the Pursuit of Happiness are enshrined. He concludes that the claimant has a constitutional right to liberty and to earn a living as he will and it is the public's right to benefit from his labours.
- [25] The claimant first made an application to be admitted to practise under the relevant laws of Antigua and Barbuda. Once the Attorney General pointed out to his then Counsel that the claimant did not meet the requirements of the law, that application to the court was abandoned and the instant action commenced. The claimant states in his affidavit that by expressing that view, any prospect of him being admitted to the Bar of Antigua and Barbuda under the Legal Professions Act was effectively "torpedoed". He states that in so doing, the defendant, for all intents and purposes, contravened the claimant's right to liberty as guaranteed by section 3 (a) of the Constitution. This right he says, includes the right to be free in the enjoyment of all his faculties, to be free to use them in all lawful ways, to live and work where he will, to earn a livelihood by any lawful calling and to pursue any livelihood or avocation.
- [26] The fundamental rights and freedoms of the individual enshrined in section 3 are subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.
- [27] The European Court of Justice has recognised a wide range of public interest grounds capable of justifying restrictions on the exercise of fundamental freedoms. Specifically in relation to legal services, the court has accepted that restrictions on freedom of establishment or the provision of services can be justified by the need to protect the interests of the recipients of those services, and by the public interest in the administration of justice.³
- [28] In **Reisebüro Broede v Sandker**⁴ the court stated that "the application of professional rules to lawyers, in particular those relating to organisation, qualifications, professional ethics, supervision

³ See Regina (Lumsdon and Others) v Legal Services Board [2015] UKSC 41 at para 54

⁴ [1996] ECR I-6511 at para. 38

and liability, ensures that the ultimate consumers of legal services and the sound administration of justice are provided with the necessary guarantees in relation to integrity and experience".

- [29] The right of the government to enact laws in the interest of the public welfare is well established. The claimant has not challenged the laws as being too stringent. The claimant has provided no basis upon which the court can conclude that, under these circumstances, the claimant's right to liberty has been violated.
- [30] Further, section 18 of the Act provides that the Attorney General may, before the hearing of an application, object to the application by filing and serving on the applicant an affidavit in which the grounds for the objection are set out. In this case, the Attorney wrote to claimant's Counsel indicating that he, the Attorney General, could not support the application and indicating the basis therefor. If the claimant was of the view that he qualified for admission to the Bar it was open to him to pursue the application and obtain a ruling from the court. A right of appeal lies to the Court of Appeal from an order of the court refusing an application for admissions under section 16. I can find nothing in the actions of the Attorney General that amounts to a violation or likely violation of the claimant's right to liberty.
- [31] The court holds that the documentary evidence indicates that the claimant was called to the bar in Montserrat and duly enrolled as a Barrister and Solicitor. Section 9(3) of the Supreme Court Order cannot be invoked to permit him to be admitted to practice in Antigua and Barbuda without compliance with the requirements of the laws of Antigua and Barbuda. Under these circumstances, the court must also hold that there has not been nor is there likely to be any violation of the claimant's right to liberty under section 3 of the Constitution on Antigua and Barbuda.
- [32] Accordingly, the declarations and orders sought are refused.


CLARE HENRY
High Court Judge
Antigua and Barbuda