

**IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)**

SAINT LUCIA

CLAIM NO. SLUHCV2008/0629

BETWEEN:

MARTIN SATNEY

Claimant

And

THE ATTORNEY GENERAL

Defendant

Appearances:

Mr. Oswald W. Larcher with Mr. Horace Fraser of Counsel for the Claimant

Mrs. Brender Portland-Reynolds of Counsel for the Defendant

2009: December 10 & 15.
2010 June 21

DECISION

- [1] **GEORGES, J (Ag.):** Pursuant to Section 87 (2)(b) of the St. Lucia Constitution Order 1978 ("the Constitution") the Claimant a career public servant was on the 15th November 2005 appointed by the Governor General on a three year contract to the office of Permanent Secretary assigned to the Ministry of Agriculture Forestry and Fisheries with the Government of St. Lucia.

- [2] The three year contract was embodied in an agreement dated 7th December 2005 and was stated to expire on the 14th November 2008. Annexed to it was a schedule setting out the conditions to which the agreement was subject and was to be read and construed.
- [3] On 30th May 2007 the Claimant received a memorandum from Mark A. Louis Permanent Secretary in the Ministry of Public Service determining his contract of employment dated December 07, 2005 with effect from August 27, 2007 in accordance with Section 6(1) of his contract of employment.
- [4] He was required to proceed on the 53 working days vacation due him as at Monday June 11, 2007.
- [5] He would be paid a gratuity at the rate of 25% of the total salary paid to him from November 07, 2005 to August 27, 2007. Further he would be paid one month's salary as per section 6(1) of his contract of employment.
- [6] Section 6(1) of the Claimant's contract of employment states that:

“(1) The Government may at any time determine the engagement of the person engaged by giving him three months’ notice in writing or paying him one month’s salary.”

- [7] By originating motion dated and filed 30th June 2008 the Claimant claimed against the Attorney General a number of declarations alleging inter alia that his removal from office was in breach of natural justice without just cause capricious and repugnant to Sections 1 and 87(2) of the Constitution and was therefore null and void.
- [8] A declaration is also sought that the Claimant's removal from office was a deliberate arbitrary and oppressive act and as such was an abuse of power. It is further alleged that the dismissal was done at pleasure or whim and fancy in breach of the constitutional protection afforded to the Claimant as the holder of a constitutional office.

- [9] The Claimant further seeks an order that the Defendant pay compensation/damages to him for loss of earnings including emoluments and benefits and for the inconvenience and distress suffered and additional damages to reflect the public's outrage at the Defendant's capricious oppressive and arbitrary action.
- [10] The originating motion is supported by a 30-paragraph affidavit sworn by the Claimant on 17th June 2008 which substantially reiterates the terms of his engagement and the circumstances surrounding the determination of his contract of employment and attaching the documentary exhibits relating thereto.
- [11] By letter dated 15th July 2007 the Claimant sought the intervention of the Chairman of the Public Service Commission on the issue of his dismissal and the Chairman by letter dated 6th September 2007 stated that his request could not be considered by the Commission as the Constitution did not give the Commission power to rectify an alleged wrong committed by another person or authority. The Chairman went on to refer the Claimant to the Court of Appeal decision of the Attorney General of St. Christopher and Nevis vs Angela Jasmine Innis Civil Appeal No. 6 of 2001 (unreported) ("the Innis Case") which had held that clause 8(1) of a contract of employment which stated that ***"the Government may at any time determine the engagement of the person engaged on giving three months' notice in writing an or paying one month's salary..."*** was not ultra vires the constitution of Saint Kitts and did not amount to a removal as prescribed by Section 83(3) of the Constitution of St. Kitts. Reliance was evidently being placed on the Court of Appeal's decision in the Innis Case as well as Section 6(1) of the Claimant's contract of employment.
- [12] In light of the foregoing the Ministry of the Public Service felt that it could not unfortunately accede to the Claimant's request or that of his Counsel Mr. Oswald W. Larcher who had written Mr. Mark Louis Permanent Secretary of the Public Service on 18th July 2007 seeking an explanation for the Claimant's purported dismissal from office which he described as unconstitutional and requesting that he be reinstated forthwith or be paid the balance of his contract in the sum of \$163,114.00.

[13] Section 87(1) of the St. Lucia Constitution states (in part) that:

This section applies to the offices of Secretary to the Cabinet, permanent secretary etc.

[14] And Section 87(2) provides (in part) that:

The power to appoint persons to hold or act in offices to which this section applies... and ... the power to exercise disciplinary control over persons holding or acting in such offices and the power to remove such persons from office shall vest in the Governor General, acting in accordance with the advice of the Public Service Commission.

[15] Acknowledgement of service was filed by the Defendant on 9th July 2008 and pursuant to Part 10.3(5) of the Civil Procedure Rules (CPR) the Defendant applied for and obtained from the Claimant an extension of time from 31st July 2008 for a period of 47 days to the 31st October 2008 to file his defence. Eventually legal submissions were filed on behalf of the Claimant as well as the Defendant by their respective Counsel on 26th June 2009 and the matter came on for hearing.

[16] The gist of the Defendant's case as adumbrated at paragraph 11 of this judgment is that in keeping with the terms of clause 6(1) of the Claimant's contract of employment Government could at any time determine his engagement by giving him three months' notice in writing or paying him one month's salary and that did not in any way violate or infringe the protective provision of Section 87(2) of the Constitution as the Eastern Caribbean Court of Appeal had in fact held in the Innis case cited *supra* at paragraph 11.

[17] Although the Court's decision was subsequently overturned by the Privy Council Counsel for the Defendant contended that at the date of the Claimant's termination the Court's ruling was valid and binding and was in fact the law of the land.

- [18] It is manifestly clear as Counsel for the Claimant submitted that the Court of Appeal's interpretation of section 83 (3) of the St. Kitts and Nevis Constitution which corresponds to section 87(2) of the St. Lucia Constitution was erroneous as the Claimant's protective measures under section 87(2) of the Constitution were clearly violated. The Court of Appeal's ruling in the Innis case could be of no avail to the Defendant as it was with respect plainly bad law from its inception.
- [19] The Claimant's employment could only have been validly terminated by the Governor General acting in accordance with the advice of the Public Service Commission as provided by section 87(2) of the Constitution.
- [20] The Court accordingly declares that the purported determination of the Claimant's contract of employment by the Permanent Secretary of the Ministry of Public Service by letter dated May 30th, 2007 was unlawful unconstitutional null and void and of no effect.
- [21] In that regard the decision of Adams J in Emmanuel v AG in Suit No. 194 of 1989 in the High Court of Dominica is illuminating. There the Chief Magistrate of Dominica was retired from his job upon the terms of his contract which ran out and was not renewed by the government. He argued successfully that the non-renewal of his contract amounted to a wrongful termination because his contract had been infected by the constitution so as to provide him with security of tenure.
- [22] Likening the appointment process for the magistracy with that of public officers, Adams J. was firm in his view that the involvement of the Public Service Commission was a *sine qua non* for the legal termination of a magistrate's contract. And the learned Judge further made bold to declare that:

...whatever contract the Chief Magistrate and government may have entered into, neither he nor government was free to enter into such a contract that would violate the provisions of the constitution, and that insofar as the contract under scrutiny does so, it is to the extent of such violation devoid of legal effect...

It is my respectful opinion that Lord Diplock's words in *Thomas v. AG of Trinidad & Tobago* [1982] AC 113 provide enlightening guidance when the security or otherwise of the terms of office of civil servants falls to be considered and that this is so whether a civil servant's departure from office is the result of 'dismissal' or 'removal' or 'termination of service in accordance with the terms of a contract'.

[23] The Court accordingly grants the three declarations sought in his Originating Motion in the following terms that is to say:

- (1) That the Claimant was removed from office by the Defendant in breach of natural justice, without just cause capriciously and with repugnance to Sections 1 and 87(2) of the Constitution and the said removal is therefore null and void.
- (2) That the Defendant's removal of the Claimant from office was a deliberate and arbitrary act which was an abuse of power.
- (3) The Defendant's removal of the Claimant from office was done at pleasure or whim and fancy and in breach of the protective provisions afforded to the Claimant as the holder of a constitutional office.

[24] The Court accordingly orders that the Defendant do pay compensation/damages to the Claimant for loss of earnings as well as other emoluments and benefits in respect of the unexpired period of his contract and general damages interest and costs the request for an order that the Defendant do pay additional damage to the Claimant to reflect the public's outrage at the Defendant's capricious oppressive and arbitrary action is disallowed.

[25] In the result a judgment is entered for the Claimant as follows:

Special Damages

\$

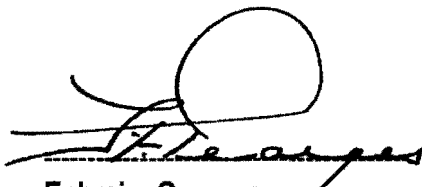
Net salary including emoluments and benefits in respect of unexpired period of contract i.e. 1 st September 2007 to 14 th November 2008.....	118,077.97
Gratuity at rate of 25% of salary less tax.....	22,988.22
Total.....	<u>141,066.19</u>
Interest at 3% per annum from date of filing of Claim 30 th June 2008 to date of hearing 10 th December 2009.....	635.97

General Damages

For distress and anxiety suffered as a result of the wrongful termination of the Claimant's employment.....	<u>5,000.00</u>
Interest at the rate of 6% per annum from date of service of the Claim 30 th July 2008 to date of hearing 10 th December 2009	400.00
Total Damages.....	<u>146,066.19</u>

There will be interest on this global sum at the rate of 6% per annum pursuant to Article 1009A of the Civil Code Cap 4.01 of the Revised Laws of St. Lucia 2006.

Prescribed costs at the rate of 60 % of the total prescribed costs on the Claim in the sum of \$146,066.19 i.e. \$39,909.92 and 60% of that figure being \$23,945.95.


Ephraim Georges
HIGH COURT JUDGE (Ag.)