

SAINT LUCIA

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

Claim No. SLUHCV 2009/0124

BETWEEN:

FREDERICK AUGUSTUS

Claimant

Vs

MAYOR & CITIZENS OF CASTRIES

Defendant

Appearances:

Mrs. Cynthia Hinkson- Ouhla for the Claimant
Ms. Beverley Downes for the Respondents

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2009: May 28th
June 4th
.....

JUDGMENT

COTTLE J:

- [1] On 20th January, 2008, the Claimant, a street vendor, was selling produce from a cart or trolley in the city of Castries. At the material times he was operating on Bridge Street in the vicinity of the First Caribbean Bank. This is an area in which vending is prohibited by the Castries City Corporation.

[2] Officer Desir, a City Constable came upon the Claimant and acting under the Castries City Bye Laws (No. 87 of 2008) he confiscated the goods and the trolley. On the following day the Claimant went to the City Council Offices. He was required to pay \$100.00 as a recovery fee before his goods were returned to him.

[3] The Claimant brought a constitutional motion. He claimed the following relief:

- (a) *A declaration that the seizure of my goods by a police officer acting for and employed by the Defendant is illegal and unconstitutional*
- (b) *A declaration that the requirement in section 33 of the Castries Corporation Bye-Laws No. 87 of 2008 that I pay a recovery fee of \$100.00 to regain possession is a penalty and therefore unconstitutional and illegal*
- (c) *A declaration that the provisions of section 33 of the Castries Corporation Bye-Laws No. 87 of 2008 inconsistent with the doctrine of the separation of powers*
- (d) *A declaration that I have been denied my right to protection if the law guarantee under section 8 of the St. Lucia Constitution*
- (e) *An order that I am entitled to redress under section 16 of The Saint Lucia Constitution*
- (f) *An order that the Defendant refunds to me the sum of \$100.00 plus interests*
- (g) *Damages for wrongful detention of goods*

(h) *Costs*

(i) *Such other relief that the Court deems fit*

- [4] The basis of the Claimant's challenge to the lawfulness of the actions of the Defendants is that he considers it to amount to deprivation of property without compensation. Such deprivation would be contrary to Section 6 of the Constitution of Saint Lucia.
- [5] The Claimant also argues that the actions of the Defendants offend Section 8 of the Constitution which mandates a fair hearing within a reasonable time of any person charged with a criminal offence. As I understand it the argument runs like this. The Claimant's goods were seized and forfeited. He was not charged with any offence. He was compelled to pay \$100.00 to recover his goods. He was thus denied the opportunity to be heard by an independent and impartial court.
- [6] It is important to set out the applicable statutory frame work.
- [7] Under section 142 (1) of the Castries Corporation Act, Parliament delegated to the Castries City Council, power to make bye laws governing the sale of goods by persons in the City of Castries. This rule making power is to assist in the discharge of the Castries City Council's responsibility for good government, law and order of the City.
- [8] In exercise of the delegated authority the Castries City Council enacted the 2008 Castries Corporation Bye-Laws Section 33 (1) (b) (ii) states:

“A constable may seize as forfeited by Order made in Council all goods and items being sold or offered for sale within the City in a location other than that designated in the vending permit”

All trays, carts, vehicles, covering and other articles used for the purpose of vending shall be liable for seizure

“A recovery fee of one hundred dollars shall be paid to the Council for the return of all goods and items seized under sub bye-law (1) (b)

“Where it appears to the Head Constable or authorized person that anything seized is of a perishable nature or is likely to become deteriorated by being kept, the head Constable or authorized person may order the sale of such thing pending its forfeiture and shall retain the proceeds of sale pending the redemption of the seized goods by the vendor within the time stipulated”

- [9] The Constitutional protection against deprivation of property is limited. Section 6 (a) (ii) permits the taking of property by way of penalty for breach of any law or forfeiture in consequence of breach of any law.
- [10] Several cases were referred to in the helpful written submissions provided by both counsel. Two will be considered as I think they are determinative of this matter.
- [11] The case of James Bristol V Commissioner of Police Civil Appeal 16 of 1997 from Grenada is one. The police impounded the Claimant's vehicle when he was found to be driving with a license that had expired the day before. The Claimant refused to part with the possession of the car and drove away. Section 30 of the Road Traffic Act permitted the police to impound a vehicle being used on the road without a license. Byron CJ considered that “impound” meant to take possession of the vehicle. It was compulsory and unlimited. It was not subject to any regulation. In short it amounted to forfeiture of property. The Court of Appeal held that this violated the fundamental constitutional principle of the separation of powers. This case stands in stark contrast to the

decision of the Privy Council in Learie Alleyne – Forte V Attorney General of Trinidad and Tobago and the Commissioner of Police Privy Council Appeal No. 31 of 1996.

- [12] In the Privy Council case the Claimant's parked vehicle was towed away by the police. He was required to pay the statutory fees for towing and storage before he could recover his car. The Privy Council held that this temporary loss of the vehicle and the requirement to pay a reasonable sum for the removal and storage of the vehicle did not amount to deprivation of the Claimant's property without compensation contrary to the constitution.
- [13] The facts of the instant case are much closer to the Learie Alleyne – Forte case than the Bristol case.
- [14] It would be impossible to regulate the conduct of vending in the city if the constables were not permitted to seize goods without first having an offending vendor convicted. The requirement that a recovery fee be paid is a reasonable one and does not violate the Claimant's right to property in the same way that the fees imposed in Learie Alleyne – Forte which were upheld.
- [15] The Claimant is not denied the opportunity to challenge the detention of his goods. He is free to approach the courts. If he is successful in his challenge, any fees paid can be recovered.
- [16] For the purpose of completeness I address the issue raised of the separation of powers. There is nothing novel in the notion that Parliament can delegate law making authority to the executive branch of Government in some circumstances. The key concern is to ensure that the legislative remains effective control over the executive in its exercise of the delegated legislative authority. Nor can it be said that the imposition of a recovery fee is an usurpation of any judicial function. The fee is a fixed fee of \$100.00, unlike the situation which obtained in the case of J. Astaphan & Co., Ltd V Comptroller of Customs Civil Appeal No. 8 of 1994. Here the City Council has no discretion to determine the fee. No judicial function is performed.

[17] It follows that the Claimant's case against the Defendant is not made out. Applying the reasoning adopted by the Privy Council in Learie Alleyne Forte, the claim is dismissed. I award costs to the Defendants. They have succeeded. Yet I do not wish the award of costs to deter citizens with reasonable complaints from approaching the court. With that in mind I depart from the scale of prescribed costs and fix costs in the sum of \$1,000.00.

BRIAN COTTLE
High Court Judge