

SAINT LUCIA

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

Suit No. 972 of 1999

IN THE MATTER of an Application by
(1) **CONWAY BAY LIMITED** and
(2) **SANDY BAY LIMITED** for Judicial Review

AND IN THE MATTER of order 44 of
The Rules of the Eastern Caribbean
Supreme Court

AND IN THE MATTER of an Application for
Certiorari against the Coroner pursuant to a
Verdict of The Coroner's Inquest dated
13th July, 1999

BETWEEN:

(1) **CONWAY BAY LIMITED**
(2) **SANDY BAY LIMITED**

Applicants

(1) **THE CORONER**
(2) **THE HONOURABLE ATTORNEY GENERAL**

Respondents

MONICA PLUMMER

Opposant

Appearances

Mr. Anthony Mc Namara for Applicants
Mr. Paul Thompson for the Respondents
Mr. Parry Husbands Q.C. for the Opposant

2001: 26th April
2002: 8th January

JUDGMENT

[1] **d'Auvergne J.:** On the 23rd day of February 2000 the Applicants filed a notice of motion for an order of certiorari to quash a verdict of the Coroner's Inquest returned on the 13th day of July, 1999, wherein it was recorded that Pascal Conza, Donald Paul and Trevor James "died as a result of an explosion of a boat owned by Sandals Halcyon and that the explosion was caused by the inadequate maintenance of the said boat by the boat captain Mr. Mervin Mathurin and the mechanic Mr. Andrew Celestin and by extension their employer Sandals Halcyon"

[2] The grounds proposed for the relief sought are as follows:

- (1) That the verdict was wrong in law both in substance and on the face of it.
- (2) That the verdict was contrary to the Provision of **Section 27(4) of the Coroner's Ordinance No. 35 of 1965** in that without making a finding of murder or manslaughter it purports to name parties who "caused" and "by extension" "caused" an explosion which resulted in the death of three named individuals.
- (3) That the verdict is framed in such a way as to appear to determine a question of civil liability which is in excess of the jurisdiction of the Coroner's Inquest.
- (4) That there was no evidence that Sandals Halcyon caused any explosion either by extension or otherwise.
- (5) That the verdict was contrary to natural justice.

[3] In order to appreciate the legal issues in this case I think it is important for me to state the purpose and function of a Coroner's Inquest and to relate them to the facts.

- [4] The proceedings before the Court arise out of an inquest touching the deaths of Pascal Conza, Donald Paul and Trevor James which were caused as a result of an explosion of a boat owned by Sandals Halcyon on the 19th day of October 1997.
- [5] At the inquest various witnesses gave *viva voce* evidence and after instructions by the Coroner, returned a verdict, noted earlier viz on page 2 in this judgment.
- [6] At the hearing before me, only affidavit evidence was considered and the matter was argued by Counsel for the Applicants and Counsel for the Opposant. Counsel acting on behalf of the Respondents told the Court that he was not opposing the application of the Applicants.
- [7] Learned Counsel for the Applicants argued that the verdict of the Coroner was in breach of **Section 27 (4) of the Coroner's Ordinance No. 35 of 1965 of the Laws of St. Lucia** (herein after referred to as the Coroner's ordinance) which provides:

"After hearing the evidence the jury shall give their verdict, and certify it by an inquisition in writing, setting forth, so far as such particulars have been proved to them, who the deceased was and how, when, and where the deceased came by his death, and if he came by his death by murder or manslaughter, the persons, if any, whom the jury find to have been guilty of such murder or manslaughter, or of being accessories before the fact to such murder."

[8] Learned Counsel compared the above provision to that of England and quoted extensively from **Atkins Court Forms 2nd Edition Vol 13** and urged the Court to consider the provisions of **Section 62** of the said Coroner's Ordinance which states:

"The forms in the schedule hereto may be used in all matters to which they apply, and when so used shall be sufficient in law. Where any form required by this Ordinance is not contained in the said schedule, the Coroner shall follow as nearly as possible the forms which would be adopted in England under similar circumstances"

[9] The English position as stated by **Atkins Court Forms 2nd Edition Vol 13 Page 12** is as follows:

"That Inquest is a public hearing of witnesses to establish the circumstances and cause of untimely or unexpected death. It is neither a trial issues, nor a disciplinary tribunal. It is a Court of record and its proceedings are directed to ascertaining four matters which are

- (1) the identity of the deceased
- (2) the medical cause of death
- (3) where, when and by what means did the deceased come by his injuries which caused his or her death; and
- (4) the categorizing of the death or verdict; that is it is an accidental, lawful or unlawful killing or natural death."

[10] He further pointed out that Atkins also states that "the Coroner and the jury must not express any opinion on any matter other than those referred to in (1) to (4) above

- [11] **Criminal Law Act 1977 Sec. 56(1)** referred to in **(vol 47 Halsbury's Statutes 3rd Edition Page.108** states that "the verdict must not be framed in such a way as to **appear** to determine any question of Criminal or Civil liability of a named person except the deceased" **Inquest 541/2590/6/80 Croydan Coroner's Court** [my emphasis]
- [12] Learned Counsel argued that the above is a similar charge as stated in **Section 27(4)** of the **Coroner's Ordinance**; that unless there is a finding by the jury that the deceased came by his death by murder or man slaughter then it is not within the juries' competence or charge to name any person as being guilty or responsible for causing the death.
- [13] Learned Counsel for the Applicants contended that the "**How**" in **Sec. 27(4)** of **St. Lucia Coroner's Ordinance** has undergone some changes in the last twenty five (25) years but that has been very limited and applied only with reference to special circumstances.
- [14] He further argued that the contention of the Applicants as stated in the Notice of Motion and supporting affidavits of Konrad Wagner, the General Manager of Sandals la Toc but who before the 19th October 1997 (the day of the explosion from which the three above named persons came by their deaths) and for some time after, was the General Manager of Sandals Halcyon, an International Resort Hotels with Resorts in several Caribbean Islands including St. Lucia was that, there was no finding by the jury of murder or manslaughter and therefore no party at all, could be named as being either criminally or civilly culpable or responsible and therefore the statement in the verdict that the deceased died - - - "as a result of an explosion of a boat" "and that the explosion was caused

by the inadequate maintenance” by two named persons “and by extension their employers” a third named person or entity, clearly suggest and indicates civil liability not only in the two named persons, but also in their employer.

[15] Learned Counsel said that the said Coroner's ordinance has not been modified as the 1988 Coroner's Act of England and therefore the pre 1988 principles in England applies in St. Lucia.

[16] **He quoted from Halsbury's 4th Edition Vol 9 [published in 1974] paragraph 1128 page 687** which states:

“if the verdict is that the death of the deceased was due to murder, manslaughter or infanticide, the inquisition should state the offence in accordance with the statutory forms relating thereto.”

[16] He emphasised the fact that this had not been done and that nowhere in the verdict was the word manslaughter mentioned; that the wording of the verdict related to the explosion being “Caused by inadequate maintenance of the said boat” which suggest only the possibility of civil liability in negligence.

[17] He argued that by no stretch of the imagination could it be said that Sandals Halcyon as employer could be named as criminally culpable, even under the principle of vicarious liability which only relates to statutory offences of strict liability designed to control or regulate employers.

[18] Learned Counsel quoted that definition of manslaughter from the Criminal Code of St. Lucia.

Section 168(1) of the Criminal Code of St. Lucia is defined as

“Causing the death of another person by unlawful harm”

Section 168(2) states”

“If the harm was caused by culpable negligence he is guilty only of manslaughter by negligence.”

[19] He vociferously argued that Section 27 (4) of the Coroner’s Ordinance stated murder or manslaughter and not to the separate and distinct offence of manslaughter by negligence.

[20] He urged the Court to consider the Common Law Authorities and Judicial Interpretation of statutes relating to the juries’ charge which he said would be helpful in recognising the intent behind the wording of our Section 27 (4).

[21] He quoted from the English Coroners Rules 1953, in particular Rule 33, now incorporated in The Coroner’s Rules 1984 Rule 42 of England which states:

“No verdict shall be framed in such a way as to appear to determine any question of (a) criminal liability on the part of a named person and (b) civil liability.”

[22] Learned Counsel dealt with “lack of care, neglect and self neglect” He said that from the decisions handed down it is clearly shown that the Courts have adopted their interpretation of the law to changing circumstances in the very limited and specialized area involving

persons in the care of hospital, institutions or government authorities and establishments such as prisons.

[23] He quoted extensively from **R v Southwark Coroner, Ex Parte Hicks 1987 2AER 140.**

R v North Humberside and Scunthorpe Coroner Ex Parte Jamieson 1994 3AER

[24] He concluded his arguments by urging the Court to either vary the verdict of the Coroner's Inquest by removing any suggestion or indication of liability whether criminal or civil in relation to any of the parties as named therein or to quash the said verdict.

[25] Learned Counsel for the Opposant stated that the Coroner's summation to the Jury was impeccable and therefore the verdict should not be interfered with.

[26] He argued that St. Lucia was an independent state and therefore the Interpretation Act of St. Lucia should be used and not English forms, that the jury do not have to return a verdict in any particular form and that moreover negligence is a crime as well as a Tort.

[27] He contended that this matter concerned the Director of Public Prosecution and not the Attorney General who was an intruder.

[28] He urged the Court to give a ruling on the interference of the Attorney General into the work of the Director of Public Prosecutions and quoted from **ReKing's Application 1988 40 WIR Page 15.**

[29] **Conclusion**

An inquest is “a fact finding inquiry directed solely to ascertaining the identity of the deceased, the time and place of death and how, in the sense of, by what means, the deceased met his death and consequently, it was not the function of a Coroner or his jury to determine or appear to determine by the verdict any question of Criminal or Civil liability to apportion guilt or to attribute blame.”

(Per Lord Bingham R v North Humberside and Scunthorpe Coroner, ex parte Jamieson [Supra]

[30] As I see it, the above is a similar charge though more explicit, to that imposed by **Section 27 (4) of the Coroner's Ordinance.**

[31] In that same case viz **exparte, Jamieson, Lord Bingham** went through the origin of the office of the Coroner.

He noted that in January 1936 a report of a departmental committee on Coroners under the chairmanship of Lord Wright was presented to Parliament (Cmd 5070) and that the Committee advised that save in cases of murder and manslaughter an inquest should be limited to ascertainment of facts, and it also expressed concern at reports that inquest were being used to elicit facts and obtain riders for the

purpose of imputing or escaping civil liability and further noted that the committee recommended that:

“A declaratory provision of law that the Coroner’s Court is not concerned with questions of Civil liability, would strengthen the hands of Coroners in dealing with irrelevant issues raised by interested parties and would restrain the tendency shown by some Coroners to examine issues which are outside the proper scope of the inquest.”

[32] I agree with Counsel for the Applicants that the law in St. Lucia is in conformity with the pre 1988 situation in England, before the passing of the Coroner’s Act of 1988.

I disagree with Counsel for the Opposant that the Jury is not obliged to return a verdict in any particular form because Section 27(4) clearly states what they must consider and return in their verdict.

[33] Learned Counsel for the Opposant reminded the Court that negligence is a crime as well as a Tort. However negligence must not be confused with the term ‘lack of care’ which is a special verdict where a person who, owing to his inability to look after himself is being cared for by others , dies and his death is due to starvation or exposure or similar causes brought about by the failure of such other persons to look after his property. ‘Lack of care’ implies something wider than legal negligence. In order to find someone guilty of legal negligence it must be shown that there was a duty of care which was breached.

- [34] It is my judgment that Learned Counsel for the Opposant is mistaken as to the purpose and function of an inquest which is simply “to seek out and record as many of the facts concerning the death as the public interest requires without deducing from these facts any determination of blame”
- [35] There is no doubt that the office of the Attorney General is the department which represents public interest. It is therefore most fitting that the Attorney General be served to appear in Court either as Amicus or as a Respondent. In this case Senior Crown Counsel from the Attorney General’s office represented both Respondents.
- [36] The affidavit of the Opposant blandly states “that the explosion was due to negligence on the part of the Captain . . . and . . . the maintenance Technician of the said boat, both employees of the said hotel” Negligence must be proved. Moreover the proceedings before the Coroner was an inquest and in accordance with **Section 27 (4) of the Coroner’s Ordinance** it is only upon a finding of murder or manslaughter the names of persons can be mentioned.
- [37] In **R v Southwark Coroner, ex parte Hicks 1987 2 AER page 140 Croom-Johnson LJ** said that a Coroner’s Inquest should not be used as a “hunting ground for civil litigation.’

[38] It is therefore recommended that because of the changing times and continuing concern about the Coroner's jurisdiction, a committee should be set up to review the law and practice relating to death certification and Coroners.

[39] My order is that the verdict of the Coroner's Inquest returned on the 13th July 1999 wherein it was recorded that Pascal Conza, Donald Paul and Trevor James died at Choc Bay, Castries on Sunday 19th October 1997 . . ." as a result of an explosion of a boat owned by Sandals Halcyon and that the explosion was caused by the inadequate maintenance of the said boat by the boat captain Mr. Mervin Mathurin and the mechanic Mr. Andrew Calestin and by extension their employer Sandals Halcyon" be and is hereby quashed.

(2) That there be no order to costs.

**Suzie d'Auvergne
High Court Judge**