

VIDEOCONFERENCE

TERRITORY OF THE VIRGIN ISLANDS

Wednesday, 4th June 2014

JUDGMENT

Case Name:

Dimitrios Adamopoulos

v

Georgia Kouda

[SLUMCVAP2012/0005]

Coram:

The Hon. Mr. Davidson K. Baptiste, Justice of Appeal

The Hon. Mde. Louise E. Blenman, Justice of Appeal

The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant:

Mr. Shawn Innocent

Respondent:

Mr. Colin Foster

Issues:

Civil appeal – Domestic Violence (Summary Proceedings) Act – Whether magistrate exceeded powers under the Domestic Violence (Summary Proceedings) Act – District Courts Act – Divorce Act – Interim order – Protection and occupation order

**Result &
Reason:**

Held: allowing the appeal and amending the occupation and protection order, that:

- 1. Section 17 of the Act governs the grant of interim orders on ex parte application. Section 17(1) states that an interim order shall specify a date for a hearing on whether an order, that is a protection, occupation or tenancy order, not being an interim order, should be made in substitution for the interim order. Therefore, the magistrate having made successive interim orders acted without jurisdiction.**

Section 17 of the Domestic Violence (Summary Proceedings) Act applied.

2. The Act did not empower the magistrate to make orders in relation to the custody of children. What the Act empowers a magistrate to do is to make an order for the benefit of a member of the household whether by way of protection order or occupation order. This is distinct from awarding custody of minor children to any of the parties. There was no issue in relation to the necessity of either a protection order or occupation order for the protection of the children of the family. Accordingly, the condition attached to the occupation order herein is null and void on the basis that it is ultra vires the Act.

The Domestic Violence (Summary Proceedings) Act applied.

3. The quantum awarded by way of maintenance payments to a person is limited by the magistrate's jurisdiction conferred by the District Courts Act. The orders for the appellant to contribute to the respondent's school fees and work permit are orders reasonably related to financial arrangements permitted by section 8(2) of the Act. Although empowered, by virtue of section 8 of the Act, to make an order for the financial support of the member of the household where appropriate, the magistrate exceeded his jurisdiction with respect to the monetary limitation contained in the District Courts Act.

Section 8(2) of the Domestic Violence (Summary Proceedings) Act applied; Section 29 of the Domestic Violence (Summary Proceedings) Act applied.

4. Section 4(2) of the Act confers power on the court to grant a protection order once it is satisfied that (a) the respondent (the present appellant) has used or threatened to use violence against or caused physical, mental or emotional injury to a specified person and is likely to do so again or (b) having regard to all the circumstances, the order is necessary for the protection of a specified person. Section 4(2)(b) is not circumscribed by

matters set out in section 4(2)(a). The absence of a finding by the magistrate with respect to the likelihood of future domestic violence would not be fatal to an order based on section 4(2)(b).

Section 4(2) of the Domestic Violence (Summary Proceedings) Act applied.

5. The magistrate, having had the advantage of seeing and hearing the witnesses and observing their demeanour, found as fact that the respondent had been physically abused by the appellant and found it necessary that a protection order be issued. The greater the advantage possessed by the tribunal of fact, the more reluctant the appellate court should be to interfere as character and personality cannot be judged as well from a transcript of evidence as by seeing and hearing those involved. The magistrate made proper use of the advantage he had and no compelling grounds have been shown for upsetting his findings of fact. The Court will not reverse factual findings unless compelling grounds are shown for so doing.

In re D (An infant) (Adoption: Parent's Consent) [1977] AC 602 applied.

6. The statutory prohibitions that a magistrate is empowered to impose when making a protection order are circumscribed by the wording of section 4 of the Act. Section 4(1)(e)(ii) prohibits molestation by following or waylaying the specified person in any way while section 4(1)(e)(iv) prohibits molestation by using abusive language or by behaving in any other manner which is of such a nature and degree as to cause annoyance to, or result in ill-treatment of the specified person. It is not critical that the order should follow the exact wording of the Act. An inflexible approach in construing the order would not be appropriate as it would not give true effect to the intention of legislature. As such, the proscription in the order prohibiting the appellant from ill-treating, threatening or interfering with the respondent whether by assaulting her, abusing

her orally or physically interfering with her in any way likely to cause offence, clearly falls within conduct proscribed by section 4(1)(e)(ii) and (iv) of the Act, notwithstanding the absence of the word “molesting” from the order.

Section 4 of the Domestic Violence (Summary Proceedings) Act applied.

7. The test for apparent bias is whether the fair-minded and informed observer, having considered all the facts, would conclude that there was a real possibility that the tribunal was biased. The Court has ascertained the circumstances bearing on the suggestion that the magistrate was biased. Those circumstances would not lead a fair-minded and informed observer to conclude that there was a real possibility that the magistrate was biased.

Porter v McGill [2002] 2 AC 357 applied.

APPLICATION AND APPEAL

Case Name:

**Andre Penn
v
The Queen**

[BVIHCRAP2013/0006]

Coram:

**The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal**

Appearances:

Appellant:

Mr. Jerome Lynch with him Ms. Lauren Sadler Best

Respondent:

Mr. Wayne L. Rajbansie

Issues:

**Application to set aside order – Indecent assault –
Unlawful Sexual Intercourse – Buggery**

Result / Order:

Judgment reserved.