

MONTserrat

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO: 51 OF 1997

BETWEEN:

CHARLESWORTH PIPER

Plaintiff

and

THE ATTORNEY GENERAL

Defendant

And

CIVIL SUIT NO: 52 OF 1997

BETWEEN:

ALARIC LYNCH

Plaintiff

and

THE ATTORNEY GENERAL

Defendant

Appearances:

Mr. Warren Cassell for the Plaintiff
The Defendant appearing in person

2001: March 23
May 21

JUDGMENT

- 1] **SAUNDERS, J.** These cases both involve alleged breaches of the Constitution of Montserrat. Each applicant has made allegations of torture, inhuman or degrading

treatment meted out to them. At the time of the alleged abuses, the applicants were inmates at the Prisons in Montserrat.

[2] It is unnecessary for me to detail the facts giving rise to the Motions. A procedural point has been taken by the respondent and this judgment concerns itself only with that point. The Attorney General has objected to the matters being tried at all because of the inordinate lapse of time in bringing them on for trial

[3] Both Motions were filed on the 27th June, 1997. There is on file, in one suit, an affidavit of service of both the Motion and the accompanying affidavit. Service was apparently effected on the Attorney General and the Superintendent of Prisons on the 30th June, 1997. Nothing further was done nor any action taken on this suit until 24th November 2000 when a Change of Solicitor was filed. In the other suit, service was apparently effected on the Superintendent on the 30th June, 1997 but the file does not disclose any affidavit of service on the Attorney General. The Attorney General is unable to say whether or not his office was ever served with these documents. On the 24th November 2000 a Change of Solicitor was filed.

[4] Following the Change of Solicitor, there was a flurry of action in the suits. In January 2001 Notices of Intention to Proceed after a Year's Delay were filed and served. The papers were served (or re-served) on the Attorney General. On the 8th March, 2001 the Prison Superintendent filed an affidavit in each suit denying the allegations. The matters came before me for hearing on 23rd March 2001. At the hearing the Attorney General submitted

in limine that the suits ought to be dismissed for want of prosecution in view of the excessive delay in bringing them on for trial.

[5] The plaintiffs have given the court no explanation whatsoever for their delay. can take judicial notice of the fact that 1997 was a particularly difficult year for Montserratians as a result of intense volcanic activity but that cannot justify the fact that these cases languished for three years with nothing being done about them. That is an unacceptable and unreasonable delay. The respondents were entitled to take the view that the plaintiffs no longer desired to proceed.

[6] agree with the Attorney General that these cases should be dismissed. The case of *Smith v. Commissioner of Police (1997) 51 WIR 409* and the Indian cases cited therein provide ample authority for the view taken by the Attorney General would accordingly dismiss both suits with no order as to costs.



Adrian D. Saunders
High Court Judge