

MONTserrat

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. 29 OF 2001

BETWEEN:

CLEMENT CASSELL

Claimant

and

1. THE COMMISSIONER OF POLICE
2. THE ATTORNEY GENERAL

Defendants

Appearances:

Mr. D. Brandt and Mr. W. Cassell for the Claimant
The Attorney General, Mr. B. Cottle for the Defendants

2001: November 13 and 30.

JUDGMENT

[1] **MATTHEW J. Ag:** On July 31, 2001, the Applicant filed a motion for the committal of the Defendants for disobeying an Order of Saunders J. dated February 22, 1999.

[2] The motion was supported by an affidavit made by Warren Cassell, an attorney at law, to which he exhibited the said order of the Learned Judge.

- [3] On the said February 22, 1999 the Learned Judge ordered that:-
- (1) The sums and moneys in accounts or otherwise over which this Court has jurisdiction and which were taken from or relate to Clement Cassell and in respect of which there is no application for forfeiture be released to Clement Cassell.
 - (2) All documents and things taken from Clement Cassell in respect of which no evidence was led at the trial and in relation to which an application for forfeiture is made, be released to him.
- [4] In his affidavit, Warren Cassell stated that the First Defendant on or about February 19, 2001 was served with a certificate of the Registrar of the High Court, confirming that the said Orders were made.
- [5] Warren Cassell also stated that the First Defendant in a letter dated February 19, 2001 acknowledged receipt of the certificate and stated that the matter was being processed and he would report to Cassell shortly. A copy of the Commissioner's letter to this effect was also exhibited to Cassell's affidavit.
- [6] Cassell stated that notwithstanding, and in breach of the Order, and despite several requests, the First Defendant had continued to keep the sums of money and things taken from and belonging to the Claimant in his possession.
- [7] The Attorney General is the legal officer in Montserrat responsible for criminal prosecutions. The Attorney General entered appearance on behalf of the Defendants on August 31, 2000 but did not file any other documents.

[8] The matter came up for hearing on November 13, 2001.

SUBMISSIONS OF MR. BRANDT IN SUPPORT OF MOTION.

[9] Learned Counsel for the Claimant submitted that several requests had been made for the release of the property of the Claimant but they have been ignored.

[10] Counsel submitted that there has been no counter affidavit sworn explaining why the Order has not been carried out, and the Attorney General, Minister of Justice, who is supposed to see about the administration of justice is ignoring the Order of the Court.

[11] Counsel referred to Rule 1.1 of the Civil Procedure Rules 2000, which states that the overriding objective of the Rules is to do justice. He referred to Blackstone's Civil Practice 2000 page 7 and the case of **CALA HOMES (SOUTH) LTD V CHICHESTER DISTRICT COUNCIL (1999)** 79 PC CR 430 in this regard.

[12] Counsel criticized the old rule that these proceedings may not apply to the Crown. He referred to the case of **BIGUZZI V RANK LEISURE PLC (1999)** 1 WLR 1926 C/A and to BORRIE and NIGEL on the law of contempt.

SUBMISSIONS OF MR. COTTLE AGAINST THE MOTION

[13] The Learned Attorney General agreed that no one can complain with the overriding objective of the Rules to enable the Court to deal with cases justly

but he questioned whether Rules 53.3 and 59.7 could be ignored in dealing with cases justly.

[14] Counsel asked where is the evidence that the Commissioner knew of the Order of the Learned Judge before it was served on him by the Court Bailiff on August 7, 2001.

[15] Counsel submitted that the Order must be indorsed with a penal note and in any case its terms were vague in that nowhere is it indicated what specific property of the Claimant was taken.

[16] Counsel relied on Section 31 of the Proceeds of Crime Act 1999 Laws of Montserrat No. 20 of 1999 and submitted that the criminal law of Montserrat prohibits the Defendants from acting in the way in which Mr. Brandt would have them act.

[17] Counsel submitted that the Defendants have reasonable cause to suspect that if they handed any sums of money to the Claimant they would be guilty of an offence under the Act.

MR. BRANDT IN REPLY

[18] Mr. Brandt submitted that the Order gave the Defendants the opportunity to apply for forfeiture and the Attorney General could not maintain that because he believes that the money was derived from crime he can hold it.

[19] Counsel submitted that the reason why the Defendants have not applied for forfeiture is because there is no reason for forfeiture.

[20] As regards the lack of specificity, Counsel submitted that the Police must return what they took from the Claimant.

CONCLUSIONS

[21] I have no doubt that the overriding objective set out at the beginning of the Civil Procedure Rules 2000 was to govern all the succeeding rules and that Rules 53 and 59 are subject to it.

[22] The Learned Attorney General submitted that Rule 59.7(1) says that Part 53 does not apply to the Crown. It seems to me that the recent Privy Council decision in **JENNIFER GAIRY V THE ATTORNEY GENERAL OF GRENADA** Privy Council Appeal No. 29 of 2000 had the effect of abolishing or curtailing the historic immunities and exemptions of the State.

[23] It is not correct to say that the Commissioner of Police only knew of the Order on August 7 2001 when proceedings for committal were served on him by the Court Bailiff. On February 20, 2001, he wrote Mr. Warren Cassell to the effect that he was currently processing the matter.

[24] But it is not stated that the Attorney General did not know of the Order.

[25] The relevant portion of Section 31 of the Proceeds of Crime Act is as follows:-

"(1) Subject to subsection (3) a person commits an offence if he enters

into or is otherwise concerned in an arrangement whereby-
(a) the retention or control by or on behalf of another person
of the proceeds of that other person's criminal conduct is facilitated
(whether by concealment, removal from the jurisdiction, transfer to
nominees or otherwise); or."

[26] The real concern of the above provision is to prevent one person from assisting in the criminal activity of another. The Order of the Learned Judge refers to the untainted property. It says that the Claimant must receive all his property that are not challengeable, that is, in respect of which there has been no application for forfeiture.

[27] The Defendants cannot confer upon themselves the role of arbiter in determining the nature of the property.

[28] Mr. Brandt during his submissions stated that no application had been made for forfeiture when the Attorney General objected on the ground that Mr. Brandt could not know that. In my view, Mr. Brandt was correct for if there had been any application, his client must have inevitably been served with the application.

[29] I agree with Learned Counsel for the Claimant that the Defendants have treated the Order of the Judge with scant respect. They should know better and must not do that. They should work with, not against, the Judge in the administration of criminal justice in Montserrat.

[30] The persons who presently hold the office of the Defendants are ordered to submit to the Registrar of the High Court, not later than three days from this judgment being served on them personally by the Bailiff of the Court, all the

property described or referred to by Saunders J in his Order dated February 22, 1999.

[31] In the event of their failure to do so, each will be fined \$500.00 to be paid within seven days and in default one week imprisonment.

[32] The Defendants must additionally within fifteen days from the judgment being served on them institute proceedings for the forfeiture or otherwise to determine the nature of the property held, and upon their default in so doing, the property shall be released to the Claimant forthwith.

A. N. J. Matthew
High Court Judge Ag.