

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

MONTSERRAT

CLAIM NO. MNI HCV 2013/0022

IN THE MATTER of the decision of the Government of Montserrat not to ratify
"Montserrat, My Country" as the National Song of Montserrat

IN THE MATTER of an application for Judicial Review

IN THE MATTER of an application for an Administrative Order

BETWEEN:

DENZIL EDGECOMBE

Applicant

and

(1) THE PREMIER
(2) THE HONOURABLE ATTORNEY GENERAL

Respondents

Appearances:

Mr. David Dorsett for the Claimant/Applicant

Ms. Karen Reid with Mrs Sheree Jemmotte-Rodney for the Defendants /Respondents

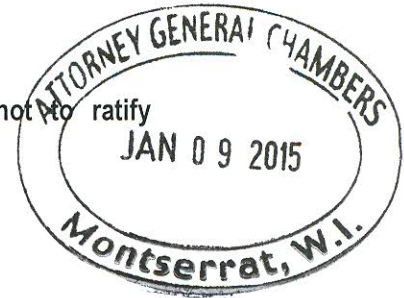
2014: December 19
2015: January 9th

DECISION

[1] COMBIE MARTYR, J. [Ag.]: By an Order of the Court of Appeal made in MNI HCV AP 2013/0003 on the 27th October 2014, setting aside the decision of the court below on the basis that there was an error of law, leave was granted to the Claimant/Applicant to apply for judicial review on the limited ground namely ***"whether he had a legitimate expectation that his song would have been ratified as the national song of Montserrat after its selection in 1995...."*** (the Order)

THE FIXED DATE CLAIM FORM

[2] Pursuant to the Order, the Claimant on the 14th November 2014 filed a Fixed Date Claim Form in which he seeks judicial review of the decision of the



Government of Montserrat not to ratify the Claimant's song 'Montserrat My Country' as the National Song of Montserrat.

[3] The Fixed Date Claim Form is supported by an Affidavit of the Claimant in which the Claimant/Applicant seeks the following remedies:

- (1) A Declaration that the Applicant had a legitimate expectation that the song composed by him and titled "Montserrat My Country" would have been ratified by the Legislative Council and become the national song.
- (2) A Declaration that the legitimate expectation of the Applicant was unlawfully and unfairly frustrated by the 1st Respondent so as to amount to an abuse of power on the part of the 1st Respondent.
- (3) Damages
- (4) Costs pursuant to CPR 2000 r 56.13 (5).
- (5) Interest pursuant to section 7 of the Judgments Act.
- (6) Any other relief that the court deems fit pursuant to section 20 of the Supreme Court Act.

THE APPLICATION OF THE DEFENDANTS/RESPONDENTS FILED 26TH NOVEMBER 2014

[4] Service of the claim was duly acknowledged by the Defendants by the filing of an Acknowledgement of Service on the 26th November 2014 and by an Application of the Defendants presented to this Court on 19th December 2014, the Defendants seek to strike out certain of the remedies sought by the Claimant as set out in paragraphs 2, 3, 5, and 6 of the Fixed Date Claim Form, pursuant to **CPR 26.3 (1) (a) and or (c)** and more specifically set out hereunder:

- **A Declaration that the legitimate expectation of the Applicant was unlawfully and unfairly frustrated by the 1st Respondent so as to amount to an abuse of power on the part of the 1st Respondent.**
- **Damages**
- **Interest pursuant to section 7 of the Judgments Act.**
- **Any other relief that the court deems fit pursuant to section 20 of the Supreme Court Act.**

[5] The Grounds for the Application can be summarized as follows:

- (1) The Court of Appeal having found that the issue of delay had to be approached differently and had to be considered against the background of all the relevant circumstances brought out in the evidence before the court and the relief that is being sought in this case.
- (2) The grant of leave to seek a declaration in relation to the Claimant's legitimate expectation would not be detrimental to good administration or cause substantial hardship or prejudice the rights of any person, the court

exercised its discretion under CPR 62.2A (3) to give leave to the applicant to apply for judicial review on the limited ground namely “**whether he had a legitimate expectation that his song would have been ratified as the national song of Montserrat after its selection in 1995.**”

- (3) The Claimant must therefore be limited to leave granted by the Court of Appeal and can only seek the declaration that the Claimant had a legitimate expectation that his song would have been ratified by the Legislative Council as the national song of Montserrat and Costs.
- (4) Any other inquiry would exceed the Order and ought to be struck out on the procedural rules as aforementioned.

ORAL SUBMISSIONS OF COUNSEL

- [6] Counsel for the Defendants reiterated and sought to expound on the grounds and issues set out in the Notice of Application and Affidavit in support of Amelia Daley by submitting that the Court of Appeal granted leave on the basis of the limited ground and only after the court considered the issue of delay and all relevant matters and circumstances. Counsel stated further that paragraphs 2, 3, 5, and 6 of the Fixed Date Claim Form constitute remedies outside the limited ground granted by the Court of Appeal for founding the claim for judicial review and as such should be struck out.
- [7] Counsel cited the Court of Appeal case from Saint Lucia HCVAP 2012/006-**General Aviation Services Ltd et al v The Director General of the Eastern Caribbean Civil Aviation Authority et al** as authority for asserting that permission was only granted where the Court of Appeal was satisfied that an arguable case of **only one** ground for seeking judicial review existed which merited investigation at a full oral hearing with all the parties and all the relevant evidence, the Claimant ought not be allowed to pursue any other ground, relief or remedy for which permission or leave was not granted.
- [8] In response to Speaking Points and authority filed by Counsel for the Claimant on the 18th December 2014, Counsel for the Defendants submitted that the Court of Appeal in the exercise of its discretion in granting leave to the Claimant limited to that one ground only, the court considered all matters alleged and complained of by the Claimant, the issue of delay, its jurisdiction under Section 20 of the Supreme Court Act to grant the relief and remedies sought, including damages, all of which were canvassed by the Claimant before the Court of Appeal.
- [9] Counsel asserted that the Court must give permission for the Claimant to include those remedies or relief as set out in paragraphs 2, 3, 5, and 6 of the Fixed Date Claim Form. According to Counsel the Fixed Date Claim Form for