

IN THE PRIVY COUNCIL

No. 29 of 1977

O N A P P E A L

FROM THE COURT OF APPEAL OF THE
COMMONWEALTH OF THE BAHAMAS

B E T W E E N :-

THE ATTORNEY-GENERAL (Defendant) Appellant

- and -

THOMAS D'ARCY RYAN (Plaintiff) Respondent

CASE FOR THE RESPONDENT

Record

10 1. This is an appeal from a Judgment of the
 Court of Appeal of the Bahamas (Hogan, P. Duffus
 and Blair-Kerr J.J.A.) dated the 16th day of March,
 1977 allowing with costs the Respondent's appeal
 from a Judgment of Knowles C.J., sitting with
 Graham J. in the Supreme Court of the Commonwealth
 of the Bahamas, dated the 23rd day of June, 1976,
 whereby it was ordered that the Respondent's
 application that the Court declare and order that
 he was entitled to be registered as a citizen of
 20 the Commonwealth of the Bahamas by virtue of
 Article 5(2) of the Constitution of the Bahamas be
 dismissed.

P.276 l.18-
P.277 l. 12

P.144 l.15 -
P.144 l. 30

2. The question for decision involves the
 construction and application of the provisions of
 Article 5(2), (3) and (4) of the Constitution of
 the Bahamas, the Bahamas Nationality Act 1973 and
 the Public Authorities Protection Act of the
 Bahamas (Ch. 86).

Article 2 of the Constitution states:

30 "2. This Constitution is the supreme law of

Record

P.36 1.34 - the Commonwealth of the Bahamas and, subject
P.36 1.42 to the provisions of this Constitution, if
any other law is inconsistent with this
Constitution, this Constitution, shall prevail
and the other law shall, to the extent of
the inconsistency, be void."

Article 5 of the Constitution states:

P.37 1.19 - (2) Any person who, on the 9th July, 1973 possesses
Bahamian status under the provisions of the
P.37 1.46 Immigration Act 1967 and is ordinarily 10
resident in the Bahama Islands, shall be
entitled, upon making application before 10th
July, 1974 to be registered as a citizen of
the Bahamas.

(3) Notwithstanding anything contained in
paragraph (2) of this Article, a person who
has attained the age of eighteen years or who
is a woman who is or has been married shall
not, if he is a citizen of some country other 20
than the Bahamas, be entitled to be registered
as a citizen of the Bahamas under the
provisions of that paragraph unless he
renounces his citizenship of that other
country, takes the oath of allegiance and
makes and registers such declaration as may
be prescribed:

Provided that where a person cannot renounce
his citizenship of the other country under
the law of that country, he may instead make 30
such declaration concerning that citizenship
as may be prescribed.

P.38 1.1 - (4) Any application for registration under
P.38 1.5 paragraph (2) of this Article shall be
subject to such exceptions or qualifications
as may be prescribed in the interests of
national security or public policy.

THE BAHAMAS NATIONALITY ACT 1973 SECTION 7
STATES:

P.38 1. 32 - "7. Any person claiming to be entitled to 40
be registered as a citizen of the Bahamas
under the Provisions of Article 5, 7, 9 or
10 of the Constitution may make application
to the Minister in the prescribed manner and,
in any such case if it appears to the

Minister that the applicant is entitled to such registration and that all relevant provisions of the Constitution have been complied with, he shall cause the applicant to be registered as a citizen of the Bahamas:

Record

10 Provided that, in any case to which those provisions of the Constitution apply, the Minister may refuse the application for registration if he is satisfied that the applicant -

P.38 1.46 -

P.39 1.31

- 20 (a) has within the period of five years immediately preceding the date of such application been sentenced upon his conviction of a criminal offence in any country to death or to imprisonment for a term of not less than twelve months and has not received a free pardon in respect of that offence; or
- (b) is not of good behaviour; or
- (c) has engaged in activities whether within or outside of The Bahamas which are prejudicial to the safety of The Bahamas or to the maintenance of law and public order in The Bahamas; or
- 30 (d) has been adjudged or otherwise declared bankrupt under the law in force in any country and has not been discharged; or
- (e) not being the dependent of a citizen of The Bahamas has not sufficient means to maintain himself and is likely to become a public charge,

or if for any other sufficient reason of public policy he is satisfied that it is not conducive to the public good that the applicant should become a citizen of The Bahamas."

40 The Bahamas Nationality Act, 1973 Section 16 states:

"16. The Minister shall not be required to assign any reason for the grant or

P.58 1.4 -

Record

P.58 l. 10

refusal of any applicant or the making of any order under this Act the decision upon which is at his discretion; and the decision of the Minister on any such application or order shall not be subject to appeal or review in any Court."

The Public Authorities Protection Act (CH. 86)
Section 2 states:

2. Where after the coming into operation of this Act any action, prosecution or other proceeding is commenced against any person for any act done in pursuance or execution, or intended execution of any Act, or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such Act, duty or authority, the following provisions shall have effect:- 10

(a) the action, prosecution or proceeding shall not lie or be instituted unless it is commenced within six months next after the act, neglect or default complained of, or, in case of a continuance of injury or damage, within six months next after the ceasing thereof; 20

3. The points raised by this appeal are whether

(a) the Respondent was entitled at the inception of these proceedings to registration upon compliance with Article 5(3) of the Constitution. 30

(b) The Court's jurisdiction was not ousted by Section 16 of the Bahamas Nationality Act, 1973.

(c) The concluding words to the Proviso to Section 7 of the Bahamas Nationality Act, 1973 are ultra vires the Constitution.

(d) the action is not barred by Section 2 of the Public Authorities Protection Act of the Bahamas (Ch. 86).

(e) the Respondent was not given a fair hearing by the Minister. 40

Record

P.30 1.36

10 The Respondent in his affidavits deposed that he was born on the 26th September, 1925 in Ontario, Canada; that on the 19th May, 1951 he married his wife who was then Sheila Marie Pemberton, in the Bahamas who is now a citizen of the Bahamas by virtue of Article 3(1) of the Constitution; that on the 8th February, 1966 he was granted a Certificate that he belonged to the Bahamas for the purposes of the Immigration Act, 1963 which Certificate has never been revoked; that he is and has been regularly resident in the Bahamas since 1947; that on the 20th June, 1974 in the manner prescribed by the Bahamas Nationality Act (B.N.A.) he applied to be registered under the provisions of Article 5(2) of the Constitution.

P.30 1.40

P.31 1.1 -

P.31 1.9

20 The Respondent further deposed that there were seven children born to his marriage, four of whom were under 21 years of age and of which three were born in the Bahamas; that among the effects of the Minister not approving his application to be registered as a citizen of the Bahamas were

P.32 1.17 -

- 30
- (1) to deprive him of all privileges and rights of a citizen of the Commonwealth of the Bahamas;
 - (2) to compel him to depart from the Bahamas; as a consequence to compel his wife and his children also to depart from the Bahamas;
 - (3) to compel him and his family to dispose of their home in Westward Villas;
 - (4) to cause undue hardship to him at the age of 50 and to his family in compelling them to leave the Bahamas which he voluntarily chose as his home 29 years ago and now to relocate elsewhere;
 - (5) to deprive him of his consequential entitlement to continue his investments in the Bahamas and to enjoy an income from the same;
 - 40 (6) to deprive him of his consequential entitlement to be registered as a voter in the Bahamas.

P.32 1.43

Record

5. The following findings of fact were made from the Appellant's and Respondent's affidavits by Knowles C.J.

P.36 1.4 -

(i) that the Respondent was entitled to apply to be registered as a citizen of the Bahamas under the provisions of Article 5(2) of the Constitution;

(ii) that he did so apply on or about the 20th June, 1974;

(iii) that he was interviewed by Mr. H.C. Walkine the Permanent Secretary to the Ministry of Home Affairs, on the 7th November, 1974, and that copy Notes set out above show substantially the questions asked and the answers given at that interview;

10

(iv) that the Minister of Home Affairs, himself, on the 27th and 28th May, 1975, considered the Plaintiff's application and the said Notes, and other information (if any) in the Respondent's file; and

20

(v) that he purported to refuse the Respondent's application, and directed Mr. Turnquest to communicate a refusal to the Respondent;

(vi) that Mr. Turnquest's letter dated the 16th June, 1975 was received by the Respondent on or about the 21st June, 1975; and

P. 36.1.32

(vii) that, some of the questions which Mr. Walkine should have put to the Respondent at the said interview in accordance with Section 7 of the B.N.A. were in fact put to the Respondent and answered, contrary to the statement contained in paragraph 9 of the Respondent's affidavit, sworn on the 29th April, 1976.

30

P.143. 1.40 -
P.143. 1.44

6. On the 23rd June, 1976, Graham J. gave judgment in favour of the Respondent and granted the following declaration: That the Respondent is entitled to be registered as a citizen of the Commonwealth of the Bahamas subject to his compliance with the requirements of Article 5(3) of the Constitution.

40

P.144. 1.22 -
P.144. 1.27

7. Knowles C.J. dismissed the Respondent's application and ordered that the matter be remitted

to the Minister to consider the Respondent's application according to law.

Record

8. On the 8th day of July, 1976, the Respondent appealed to the Court of Appeal of the Bahamas (Hogan P. Duffus and Blair-Kerr J.J.A.) on the grounds that:-

P.152. 1.18

(1) That the learned Chief Justice erred and misdirected himself by holding that the Court had no jurisdiction to make the declaration sought;

P.150. 1.9 -

(2) That the learned Chief Justice erred and misdirected himself by holding that such a declaration was inappropriate in the circumstances and that the Minister and not the Court had a discretion;

(3) That the learned Chief Justice erred and misdirected himself by holding that he would remit the matter to the Minister for a determination of Plaintiff's/Appellant's Application according to law;

(4) That the learned Chief Justice erred and misdirected himself in the construction of paragraph 4 of Article 5 of the Constitution by holding

(a) that the word "application" as used in paragraph 4 meant "the disposal of a thing", and

(b) that the words "application for registration under paragraph 2 of this Article" as used in paragraph 4 should read as being equivalent to the words "Provided that the right to be registered as a citizen under this paragraph".

(5) That the learned Chief Justice erred and misdirected himself by holding that the objective entitlement set out in paragraph 2 and 4 of Article 5 of the said Constitution is satisfied by the subjective opinion of the Minister.

(6) That the learned Chief Justice erred and misdirected himself by holding that Section 7 of the Bahamas Nationality Act was valid

Record

and intra vires the said Constitution.

- P.151. 1.4 - (7) That the learned Chief Justice erred and failed to direct himself that the Defendant/ Respondent was not asking the Court to infer that any of the matters dealt with in the Proviso to Section 7 of the Bahamas Nationality Act applied to the Plaintiff/ Appellant.
- P.151. 11 (8) That the learned Chief Justice erred and misdirected himself by holding that: 10
- P. 77. 42 (a) "..... the decision here, involves a large element of policy".
- P.151. 16 (b) having referred to Mr. Walkine's note of the interview that the Plaintiff/ Appellant had no membership in charitable organizations, etc.
- P. 87. 21 "..... I appreciate that this could be a ground upon which a particular Minister, in the exercise of his discretion, might feel justified in refusing an application to be registered as a citizen" 20
- P.151. 27 (9) That the learned Chief Justice erred and failed to direct himself properly or at all as to the effect of Articles 2, 52 and 54 and 137 upon Article 5 and Section 7 of the Bahamas Nationality Act.
- P.151. 33 (10) That the learned Chief Justice erred and misdirected himself in that despite from the evidence before the Court, the Minister had no lawful grounds to refuse the application of the Plaintiff/Appellant, the learned Chief Justice 30
- (1) refused to grant the declaration sought
- (2) failed to rule that the Minister in the absence of evidence to the contrary acted unlawfully.
- (3) ruled that the matter should be remitted back to the Minister for a determination of the Plaintiff's/Appellant's Application according to law. 40

Record

- (11) That the learned Chief Justice erred and misdirected himself in his construction of Section 37 of the Supreme Court Act when he ruled "..... and relying upon the wide powers conferred upon the Court by Section 37 of the Supreme Court Act, I would" P.152. 6
- 10 (12) That the learned Chief Justice erred and misdirected himself in his construction of the Supreme Court (Special Jurisdiction) Rules when he ordered that the action be dismissed and no order is to be made for costs despite the rulings of both Justices of the Court to the effect that Plaintiff's/Appellant's rights under the law had been infringed by the actions of the Minister. P.152. 14
- 20 (13) That in all the circumstances of the case the learned Chief Justice erred and misdirected in failing to make a declaration as made by Mr. Justice Samuel Graham that the Plaintiff/Appellant is entitled to be registered as a Citizen of the Commonwealth of the Bahamas subject to his compliance with the requirements of Article 5(3) of the Constitution. P.152. 24
- (14) That in all the circumstances of the case the learned Chief Justice erred and misdirected himself in law and the rulings and orders made by the said Chief Justice should be rescinded as set aside. P.152 1.33
- 30 9. On the 16th March, 1977, the Court of Appeal gave Judgment allowing the appeal of the Respondent with costs here and in the Court below. P.207 1.23
- Hogan P. after considering all the arguments concluded that the Public Authorities Protection Act (Ch.86) had no relevance to the present proceedings. He further concluded that the appeal should be allowed primarily because:- P.205 1.24 -
P.205 1.30
- 40 (a) the Minister failed to observe the requirements of natural justice when he rejected the Appellant's request for registration and, as a result, the rejection was a nullity: P.205 1.31
- (b) the following words which appear in Section

Record

7 of the Bahamas Nationality Act 1973 are ultra vires:-

"or if for any other sufficient reason of public policy he is satisfied that it is not conducive to the public good that the applicant should become a citizen of the Bahamas": and

(c) on the facts disclosed to this Court no reasonable Minister acting with a due sense of his responsibilities under the legislation would, at the inception of these proceedings, have been justified in refusing the Appellant's application for registration as a citizen.

P.206 1.9

10

P.206 1. 10 -
P.206 1.27
P.207 1. 2-
P.207 1.23

10. Hogan P. then considered whether the Respondent is entitled to the declaration sought. He then held that the Respondent was entitled at the inception of these proceedings to registration upon compliance with sub-Article 5(3) of the Constitution.

20

PP.208 - 275

11. Duffus and Blair-Kerr J.J.A. delivered concurring judgments.

P.278 1.23 -
P.278 1.27

12. On the 14th day of September, 1977 the Court of Appeal of the Bahamas made an order granting the Appellant final leave to appeal to Her Majesty in Council.

13. The Respondent submits that this appeal should be dismissed with costs for the following amongst other

R E A S O N S

30

1. BECAUSE, as the Courts below have rightly held, that the Minister failed to observe the requirements of natural justice when he rejected the Respondent's request for registration and, as a result the rejection was a nullity.
2. BECAUSE, as the Court of Appeal has rightly held, that the Proviso to Section 7 of the Bahamas Nationality Act, 1973 is ultra vires Article 2 of the Constitution.
3. BECAUSE, as the Court of Appeal has rightly held, that Section 2 of the Public

40

Authorities Protection Act (Ch. 86) had no relevance to these proceedings.

4. BECAUSE, as the Court of Appeal has rightly held, that no reasonable Minister acting with a due sense of his responsibilities under the legislation would at the inception of these proceedings have been justified in refusing the Respondent's application for registration as a citizen.

10

5. BECAUSE, the Judgments of both Graham J. and the Court of Appeal were right.

SAMUEL E. CAMPBELL

No. 29 of 1977

IN THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL OF THE
COMMONWEALTH OF THE BAHAMAS

B E T W E E N :

THE ATTORNEY-GENERAL (Defendant)

Appellant

- and -

THOMAS D'ARCY RYAN (Plaintiff)

Respondent

CASE FOR THE RESPONDENT

PHILIP CONWAY THOMAS & CO.,
61 Catherine Place,
LONDON SW1E 6HB.

Solicitors for the Respondent