

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

Judgment Done

SUIT NO. CL M94 OF 1998.

BETWEEN	NEVILLE LEWIS	PLAINTIFF
AND	THE ATTORNEY GENERAL OF JAMAICA	1ST DEFENDANT
AND	THE SUPERINTENDENT OF THE ST. CATHERINE DISTRICT PRISON	2ND DEFENDANT

BEFORE: THE HONOURABLE MR. JUSTICE WOLFE CHIEF JUSTICE
THE HONOURABLE MR. JUSTICE COOKE
THE HONOURABLE MR. JUSTICE KARL HARRISON

Dennis Daley, Q.C., Richard Small, Hilare Sobers and Miss Helga McIntyre
Lennox Campbell, Senior Assistant Attorney General, Lackston Robinson and
Mark Harrison for the Defendants

Heard: December 1, 3, 1998 and January 7, 1999.

WOLFE, CJ

The plaintiff was arrested on or about November 11, 1992, and charged for the murder of Victor Higgs. The offence was alleged to have been committed on or about the 18th day of October, 1992. The evidence adduced revealed a gruesome killing of the deceased. During the pre trial period the plaintiff was remanded in custody.

On October 14, 1994, the plaintiff and his co-accused Peter Blaine were both convicted of Capital Murder and sentenced to suffer death in the manner prescribed by law.

He subsequently appealed to the Court of Appeal in Jamaica and on July 31, 1995, his appeal was dismissed. He further petitioned the Judicial Committee of the Privy Council for special leave to appeal and on May 2, 1996, his petition was dismissed.

Having exhausted all his domestic remedies, he turned his attention to the International Human Rights Bodies, to which Jamaica is a signatory, seeking relief for breach of his constitutional rights. He first moved the United Nations Human Rights Committee in May 1996 alleging violations of Articles 9 and 10, inter alia, of the International Covenant on Civil and Political Rights which articles, inter alia, entitle an arrested person to trial with a reasonable time or to release.

This Body, in July 1997, having considered the matter, found that there had been violation of Articles 9(3) 10(1)(20(a) of the International Convention. In particular, they found that the plaintiff had not been afforded a trial within a reasonable time, and that he was entitled to an effective remedy, including compensation.

The Government of Jamaica, was obviously not of the same mind as the international body and so did not accede to its recommendation.

The plaintiff thereupon turned to the Inter-American Commission on Human Rights, seeking relief.

The nature of the complaint requires me to set out a chronological sequence of events from then until the date of this application.

1. On August 7, 1997, His Excellency, the Governor General caused to be issued a notice in the Jamaica Gazette Extraordinary setting out the time periods which should apply to and the procedure for applications from or on behalf of prisoners under sentence of death to the United Nations Human Rights Committee and the Inter-American Commission on Human Rights where a petition or an appeal to the Judicial Committee of Privy Council has been refused, abandoned, withdrawn or dismissed.
2. On September 12, 1997, Messrs. S. J. Berwin & Co. by letter advised His Excellency the Governor General that a Communication was submitted to the Inter-American Commission of Human Rights on behalf of the Plaintiff.
3. On September 15, 1997, the Governor General's Secretary replied to Messrs. S. J. Berwin & Co. requiring them to submit proof of having filed a petition to the Inter-American Commission on Human Rights, by October 6, 1997, failing which steps might very well be taken to give effect to the sentence.
4. On October 2, the Plaintiff petitioned the Inter-American Commission on Human Rights.
5. On October 31, 1997, the Commission advised the Government of Jamaica of the plaintiff's petition and requested a response from the Government.
6. On December 2, 1997, the Government responded as requested.

7. On January 5, 1998, the plaintiff submitted comments on the Government's response.
8. On February 10, 1998, the Government submitted its reply to the Plaintiff's comments.
9. On May 25 and 29, 1998, Messrs. S. J. Berwin & Company, wrote to the Governor General's Secretary requesting an assurance that no steps would be taken to execute the plaintiff before the final determination of his petition by the Commission.
10. On June 2, 1998, the Governor General's Secretary responded that no such assurance could be given having regard to the instructions published by the Governor General on August 7, 1997 and further advised that the deadline for the Commission to finally determine the plaintiff's petition was August 10, 1998.
11. On July 29, the Commission advised the plaintiff's London Solicitors that it had advised the Jamaican Government of the request for a stay of execution pending a determination of the petition at the Regular Session to be held between September 28 and October 16.
12. On August 10, 1998, the letter of July 29 was sent by facsimile to the Governor General's Secretary and requested an undertaking that the Governor General in Privy Council would not exercise any of its function under sections 90 and 91 of the Jamaica Constitution until the Commission had the opportunity to consider the Plaintiff's petition.

13. On August 10, 1998, the Governor General's Secretary replied by facsimile advising that the undertaking sought could not be given having regard to the Instructions which had been published on August 7, 1997.
14. On Friday, August 14, the death warrant was read to the Plaintiff signifying that he would be executed on August 27, 1998. He was removed to the condemned cells on the said day.

Arising out of the issue of the death warrant the plaintiff commenced proceedings on the 20th day of August, 1998, claiming under section 25 of the Jamaica Constitution that his rights under sections 13, 14, 17 and/or 24 of the said Constitution have been, are being and/or likely to be contravened by the issue of the death warrant.

The following reliefs are claimed.

- (i) An order rescinding the decision of the Governor General to approve and promulgate instructions for dealing with applications to the Inter-American Commission on Human Rights ("The Commission) and the United Nations Human Rights committee by or on behalf of prisoners under sentence of death.
- (ii) Further or alternatively a declaration that the said instructions dated August 6, 1997 are unlawful, void and of no effect as contravening sections 13, 14 and 17 and/or 24 of the said Constitution.

- (iii) An order rescinding the death warrant issued on/or about the 14th instant for the Plaintiff's execution on the 27th instant.
- (iv) A declaration that the issue of the said death warrant while the plaintiff's application is pending before Inter American Commission on Human Rights for violation of the Plaintiff's rights under the American Convention on Human Rights, the plaintiff's rights to equality before the law and the protection of the law guaranteed by sections 13, 14, 17 and/or 24 of the said Constitution, is null and void.
- (v) An order staying the Execution of the Plaintiff.
- (vi) A declaration that the plaintiff's right not to be subjected to torture and inhuman or degrading punishment or treatment is being or is likely to be violated.
- (vii) An interim order staying the execution of the sentence of death on the plaintiff or alternatively, a conservatory order directing the defendants not to carry out the execution of the plaintiff pending the determination of the plaintiff's application to the Inter American Commission on Human Rights and/or pending the hearing and determination of this suit or any resultant appeals therefrom.
- (viii) All such orders, writs and directions as may be necessary or appropriate to secure redress by the plaintiff for the contravention

of his fundamental rights and freedoms which are guaranteed to the plaintiff by the Constitution of Jamaica.

It is common ground that the Jamaica Government signed and ratified the American Convention on Human Rights on the 8th day of July 1978.

In so doing the Government gave rights to citizens to make complaints and denunciations to the Inter-American Commission on Human Rights. Article 44 of the Convention states:

"any person or group of persons, or any non-governmental entity legally recognize in one or more member States of the Organization, may lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a State Party."

It is however important at the outset to take cognizance of PART 1 of the Convention titled - "STATE OBLIGATIONS AND RIGHTS PROTECTED"

Chapter 1 Article 1 stipulates:

"1. The States parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition."

Article 2 titled Domestic Legal Effects states:

"When the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as

may be necessary to give effect to those rights or freedoms."

The above article is, in my view, a recognition by the Commission that the provisions of the Convention become justiciable only if they are enacted in the Domestic Law of the States Parties. It is common ground that the Convention has not been adopted into the domestic law of Jamaica. *H. Lauterpacht in Oppenheim's International Law Vol. 1 (8th Edn. 1955)* in dealing with the theory of how international law and national law interact states:

"If the Law of Nations and Municipal Law differ as demonstrated, the Law of Nations can neither as a body nor in parts be per se a part of Municipal Law. Just as Municipal Law lacks the power of altering or creating rules of International Law so the latter lacks absolutely the power of altering or creating rules of Municipal Law. If according to the Municipal Law of an individual state the Law of Nations as a body or in parts is considered to be part of the law of the land, this can only be so either by municipal custom or by statute, and then the respective rules of the Law of the Nations have by adoption become at the same time rules of Municipal Law.

Wherever and whenever such total or partial adoption has not taken place, municipal courts cannot be considered to be bound by International Law, because it has, per se, no power over municipal courts. And if it happens that a rule of Municipal Law is in indubitable conflict with a rule of the Law of Nations, Municipal courts must apply the former."

(emphasis mine)

The principle enunciated above applies to conventions and international treaties. Therefore, Jamaica not having incorporated the Convention into its

domestic Law breaches of the Convention are not justiciable in the Courts of Jamaica.

Mr. Daley, Q.C. submitted that the instructions issued by the Governor General and published in the Jamaica Gazette Extraordinary of August 7, 1997, were in breach of the Convention, in that the Jamaica Government could not seek to stipulate the time frame in which the Commission should conduct business.

He contended that their Lordships Board, in Pratt and Morgan, having stipulated a period of eighteen (18) months as a reasonable period in which a petition to the UNHRC should be disposed of, the Governor General could not seek to abridge that time frame by issuing a notice requiring the IACHR to dispose of petitions within 6 months of submission.

It is useful to set out what their Lordships' Board said:

"It therefore appears to their Lordships that provided there is in future no unacceptable delay in the domestic proceedings complaints to the UNHRC from Jamaica should be infrequent and when they do occur it should be possible for the committee to dispose of them with reasonable dispatch and at most within 18 months."

It is clear that their Lordships were not saying that the Government of Jamaica had to afford the Commission a period of 18 months to consider the petition. Jamaica, if it desires to speed up the process can require that the Commission complete the consideration within six (6) months.

