

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

IN CHAMBERS

CLAIM NO. 2010 HCV01860

BETWEEN	THE HONOURABLE DOROTHY LIGHTBOURNE, C.D., Q.C.	CLAIMANT
AND	CHRISTOPHER MICHAEL COKE	1 ST DEFENDANT
AND	JOSEPH MAYER MATALON for and on behalf THE PRIVATE SECTOR ORGANISATION OF JAMAICA	2 ND DEFENDANT
AND	THE MOST HONOURABLE PORTIA SIMPSON-MILLER, O.N.	3 RD DEFENDANT

Dr Lloyd Barnett instructed by Dr. Adolph Edwards for the Claimant

RNA Henriques Q.C, Richard Small and Amanda Wong instructed by
Livingston Alexander and Levy for the 2nd Defendant

K.D Knight Q.C., John Junor, Abe Dabdoub and Seymour Stewart
instructed by Dabdoub and Company for the 3rd Defendant

Heard: May 5th and 11th 2010

Jones J.

[1] The sole issue to be determined on the two Applications for Court Orders dated April 27, 2010, and April 29, 2010, is this. Does The Honourable Portia Simpson-Miller O.N "the Leader of the Opposition" have a legal interest in the legitimacy and correctness of the decision by The Honourable Dorothy Lightbourne C.D., Q.C. "the Minister" to decline to issue an authority to proceed under the Extradition Act for the extradition of Christopher Michael Coke? It is a proposition of law that no person

should be made a Defendant in declaratory proceedings, without having some legal interest in opposing the declaration sought. The Minister has asked for a declaration regarding the propriety of her declining to issue an authority to proceed under the Extradition Act arising from a request from the United States of America for the extradition of Christopher Michael Coke. The claim by the Minister named the Leader of the Opposition as a Defendant on grounds that she took issue with the right of the Minister to decline to issue an authority to proceed with the extradition request. The Leader of the Opposition asks to be removed as a Defendant as she took no part in the requests for extradition to the United States of Christopher Michael Coke.

[2] It is common ground between the parties that:

- a) Christopher Michael Coke has not been served and therefore not a party to these proceedings.
- b) The Leader of the Opposition has not claimed any relief from the Minister in these proceedings, nor has the Minister claimed any relief from the Leader of the Opposition.
- c) The Minister has conceded that the President of the Private Sector Organisation of Jamaica, in the Acknowledgment of Service filed on his behalf, has indicated he is not defending the claim, and has said in these proceedings, that he is not disputing the right of the Minister to decline to issue an authority to proceed under the Extradition Act. In these circumstances it cannot be said that the President of the Private Sector Organization of Jamaica has any legal interest in defending the claim by the Minister and should cease to be a party. I so order.

[3] The Minister under the Extradition Act is the responsible Minister in the Government of Jamaica with the power and authority to issue the authority to proceed under the Extradition Act. She says that a dispute has arisen with the United States Law Enforcement Authorities in respect to her decision not to extradite Christopher Michael Coke. She contends that she has properly exercised her discretion with respect to the extradition requests.

[4] The Leader of the Opposition has made public statements questioning the right and authority of the Minister to determine the merits of the extradition requests. The Leader of the Opposition has taken the view that the Minister has acted wrongly in delaying or declining to issue the authority to proceed and through these statements has chastised the Minister for not sending the matter to the courts. The Minister, in exercising her authority under the Extradition Act, saw this criticism as outrageously unfair. She filed an action in this court asking for declaratory relief with respect to the issues raised by the Leader of the Opposition. The Acknowledgment of Service filed on behalf of the Leader of the Opposition has made it plain that she intends to defend the claim and is disputing the declarations sought.

[5] Dr. Lloyd Barnett and Dr. Adolph Edwards "Counsel for the Minister" offer two main arguments. First, they make the point that for the Leader of the Opposition to have a legitimate interest in the declaratory proceedings she need not have any involvement in the actions of the United States Government or in the assessment made by the Minister. They argue that the only requirement for the Leader of the Opposition to create a legal interest in the proceedings sufficient to be named as a party, is for her to publicly criticise the Minister for not acting lawfully in the conduct of her duties or responsibilities under section 8 of the Extradition

Act. They say that the Leader of the Opposition is a constitutional position and she has a duty to criticize and object to any action taken by the Government or Minister of Government which is contrary to Jamaican law.

[6] Counsel for the Minister provides by way of example, the sweeping criticisms by the Leader of the Opposition that the Minister, by not signing the authority to proceed, is attempting to circumvent the normal extradition process. They say in response that the Extradition Act requires the Minister to give consideration to the material submitted to her. They argue that this statement by the Leader of the Opposition raises an implication that there is no propriety in the Minister's decision to refuse to issue the letter of authority. They say it also raises the legal issue as to whether the Minister has the right to consider the material placed before her by the Government of the United States of America, and if so, what she is required to take into account in making her decision.

[7] Section **19.2(4) of the Civil Procedure Rules (CPR) 2002** provides that the court may order any person to cease to be a party if it considers that it is not desirable for that person to be a party to the proceedings. There is no explicit definition of what is meant by "desirable" but guidance is given by the learned authors of **Zamir & Wolf, The Declaratory Judgment (1993) 2nd Ed.** who make the point that:

No person should be made a Defendant unless "he has a true interest to oppose the declaration sought" or unless there is some other good reason why he should be a party.

[8] It is evident that where persons having a real interest in the dispute are made parties, they will present arguments which the court can take into account in arriving at a decision regarding the granting or refusal of the declaration sought. Where this is so, the court can, at the end of the

proceedings, be sure that it has taken into account the interests of the persons likely to be affected by the decision of the court.

[9] In **London Passenger Transport Board v Moscrop [1942] A.C 332 at 345**

Viscount Maugham said:

The persons really interested were not before the Court. It is true that in their absence they were not strictly bound by the declaration, but the courts have always recognised that persons interested are or may be indirectly prejudiced by a declaration made by the court in their absence, and that, except in very special circumstances, all persons interested should be made parties, whether by representation orders or otherwise, before a declaration by its terms affecting their rights is made.

[10] Counsel for the Minister asks this court to adopt a liberal interpretation of "legal interest" when considering who is a proper Defendant in a claim. Indeed, they have gone so far as to suggest that "sufficient interest" is the modern requirement. As an example, they cited a group such as the Child Poverty Action Group, which is a civil society group, as having sufficient interest to make an application for a declaration.

[11] I am not persuaded by those submissions. I agree with Mr. K.D Knight Q.C, Mr. John Junor and Mr. Abe Dabdoub "Counsel for the Leader of the Opposition" that there is no evidence that the Leader of the Opposition herself has questioned the right or authority of the Minister to issue the authority to proceed under section 8 of the Extradition Act for the extradition of Christopher Michael Coke. I accept, however, the Minister's statement in her Affidavit in Reply dated May 3, 2010, that members of the Parliamentary Opposition have been highly critical of her having declined to issue the authority to proceed and have demanded that she allow the courts to decide the matter. Whether or not the Leader

of the Opposition made the criticisms on her own behalf or in her capacity as representative of the Parliamentary Opposition that would not, in my view, provide the legal interest justiciable in the courts to be a proper party to declaratory proceedings.

[12] There are two important reasons for this conclusion. First, an interest that is speculative, political or ethical cannot be sufficient and so a person will not be a proper defendant if the declaration of the court will not affect their legal interests either actual or contingent. Counsel for the Minister sought to argue that what is required is for the party to have a legitimate interest not a legal interest. Respectfully, I cannot see the difference.

[13] Lord Diplock put it best in **Gouriet v Union of Post Office Workers [1978] A.C. 435 at 501** when he said:

...the jurisdiction of the court is not to declare the law generally or to give advisory opinions; it is confined to declaring contested legal rights, subsisting or future, of the parties represented in the litigation before it and not those of anyone else

[14] In my judgment, the Leader of the Opposition has no legal interest, in her capacity as Leader of the Opposition, which would be directly affected by the decision of the Minister to refuse to grant an authority to proceed with the extradition of Christopher Michael Coke, or in the granting of the declarations by the court.

[15] Second, declaratory proceedings require a party to confront the Claimant on the issues raised. It is essential to have before the court someone who is able to properly mount a challenge. In **Metzger v D.H.S.S. [1977] 3 All E.R. 444 at 451** Megarry V.C. put it this way:

The court does not make declarations just because the parties to litigation have chosen to admit something. The court declares what it has found to be the law after proper argument, not merely after admissions by the parties. There are no declarations without argument: that is quite plain.

[16] Further, in **Aldrich v Attorney-General [1968] P. 281 at 295**, Ormrod J. had this to say:

...where nothing can be claimed in this court but a bare declaration, the court, in my judgment, ought not to entertain such a claim if the evidence in support of it cannot be properly investigated and verified.

[17] The Leader of the Opposition, without a legal interest in the matter before this court, would be unable to be a "contradictor" and so properly raise a challenge to the Minister for the declaration sought.

[18] The second and weakest argument by Counsel for the Minister is that the Leader of the Opposition filed an Acknowledgment of Service indicating that she does not admit any part of the claim and that she intends to defend it. They argue that the Leader of the Opposition should not be allowed to blow hot one minute and cold the next. She should not be able to argue that she has no legal interest in the matters raised in this claim, in the face of her statement in her Acknowledgment of Service that she intends to defend the claim. However, **CPR 19.3 (2)** provides that an application to remove a party may be made by "an existing party". This provision clearly anticipates that a Claimant may file an Acknowledgment of Service in response to a claim and at a later stage apply to be removed from the claim, as was done in this case.

[19] The learned authors of **Zamir & Woolf** (cited earlier) make the point at page 241 that:

Usually the court will adopt an extremely pragmatic approach to the circumstances of a particular case. It will be reluctant to grant a declaration if the persons who could be prejudiced by the grant of that declaration has not been made a party

[20] In my view, the party whose legal interests may be affected by the grant of the declaration sought by the Minister is the Government of the United States of America. Having regard to the anxiety and discontent caused by the circumstances surrounding the decision of the Minister to refuse to sign the authority to proceed with the extradition request of Christopher Michael Coke, it is important that the Government of the United States be given an opportunity to be heard and to oppose the grant of a declaration. They, however, enjoy sovereign immunity and cannot be named or served to be a party in this matter. The Minister says, however, that they have been made aware of these proceedings and can elect whether they wish to intervene in any capacity they so chose.

[21] The **Civil Procedure Rules 2002** gives the court the power and authority: to protect persons from unnecessarily being joined in proceedings; to include those who the Claimant may not have joined; and to, remove those who have been improperly or unnecessarily made parties to a claim. For the reasons I have given, this court grants an order under **CPR Rule 19.2 (4)** that the Leader of the Opposition cease to be a party to the proceedings for the declaration sought by the Minister. The parties can address me on the issue of costs bearing in mind the provisions of **CPR Rule 56.15 (5)**.