

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN CHAMBERS

SUIT NO. E317 OF 1990

BETWEEN	KARL SAMUDA	PLAINTIFF
A N D	EDWARD PHILLIP GEORGE SEAGA	FIRST DEFENDANT
A N D	BRUCE GOLDING	SECOND DEFENDANT
A N D	RYAN PERALTO	THIRD DEFENDANT
A N D	NEVILLE GALLIMORE	FOURTH DEFENDANT
A N D	OSWALD HARDING	FIFTH DEFENDANT

Dr. Lloyd Barnett and David Batts instructed by Ian McConnell of Livingston, Alexander & Levy for the plaintiff.

Emile George Q.C., David Muirhead Q.C., and Patrick Foster instructed by Christopher Bovell of Dunn, Cox & Orrett for the defendants.

HEARD: December 6, 12, 13, 17 and 20, 1990.

Oral Judgment delivered in Open Court  
on December 20, 1990.

WALKER J.

In coming to my decision on this Summons for Interlocutory Injunction brought by the plaintiff I have addressed in turn the three relevant questions which, in my opinion, arise for determination. The first question is this: does the nature of the plaintiff's case admit of injunctive relief? If no, that, of course, would be an end of the matter. But if so, the second question that arises is this: On the evidence now before me am I satisfied that there is a serious case to be tried? If no, again I would need to go no further. But if so, the third question is: where does the balance of convenience lie, does it lie in favour of granting, or in favour of refusing the injunction sought?

Having examined the plethora of authorities that have been cited to me by counsel on both sides I have not the slightest doubt that the first question - Does the nature of the plaintiff's

case admit of injunctive relief? - must be answered affirmatively. In this regard I accept the submission of counsel for the plaintiff, Dr. Barnett, that the approach which emerges from the modern authorities, including text book writers, is that injunctive relief may be granted in a situation where a person is expelled from membership of an unincorporated association in circumstances where such expulsion would result in depriving that person of real benefits, or impair his relationship with other members of the association, or disparage his reputation, or adversely affect his conduct in his office or calling. In particular I found the case of John v Rees and Others (1969) 2 W.L.R. 1294 and the later case of Lewis v Heffer and Others (1978) 1 W.L.R. 1061 both of which concerned political parties to be very much in point and most helpful. Of course, implicit in my answer to this question must be a finding which I make that the rules of natural justice as we have come to know them are, indeed, applicable to the facts and circumstances of the plaintiff's case.

I turn next to consider the second question. The plaintiff's central complaint is that his expulsion from the Jamaica Labour Party is invalid as having been carried through in breach of the constitution of the party. He also complains that in the conduct of disciplinary proceedings against him the Disciplinary Committee of the Jamaica Labour Party acted in breach of the rules of natural justice. Specifically, the plaintiff complains that members of the Standing Committee and other members of the Jamaica Labour Party, all of whom had previously made adverse comments about him, participated in those disciplinary proceedings at which he was adjudged guilty of all but one of the several charges preferred against him. These circumstances, the plaintiff contends, give rise to a serious question of actual bias or, at least, a real likelihood of bias. On the other hand the defendants maintain that the Disciplinary Committee acted properly and in scrupulous observance of the rules of natural justice in the conduct of proceedings against the plaintiff. The defendants remain

adamant that the plaintiff was expelled from the party in keeping with the recommendation of dismissal made by the Disciplinary Committee and in strict accordance with the party's constitution as amended. As to the validity of the amendment to which reference is here made there is great controversy between the plaintiff and the defendants. Indeed, these are serious questions which must be tried. So I have no hesitation in responding affirmatively to the second question as I did to the first question.

I come then to the third question: Where does the balance of convenience lie? Were an injunction to be granted that would oblige the Jamaica Labour Party which now, rightly or wrongly, regards the plaintiff as having been legally expelled from the party, to treat the plaintiff as if he had not been expelled. The party would be obliged to accord to the plaintiff all the rights, privileges and entitlements of a legitimate member of the party. The plaintiff would be entitled to be restored to his former status within the party which, according to the undisputed evidence of Mr. Peralto, General Secretary of the party, would give the plaintiff the right to attend and participate in -

- (i) Jamaica Labour Party meetings of the North Central St. Andrew Constituency;
- (ii) Area Council meetings;
- (iii) meetings of the Central Executive;
- (iv) the All-Island General Conference - private business session;
- (v) meetings of the Jamaica Labour Party Parliamentary Group

The plaintiff would also have the right to attend Parliament as a member of the Opposition Jamaica Labour Party. These meetings and bodies I am told, again by way of undisputed evidence from Mr. Peralto, are responsible for formulating and executing the

policies and programmes of the Jamaica Labour Party. It is

Mr. Peralto's opinion:

"That having regard to the public statements of the plaintiff his presence at the above meetings and bodies would serve to undermine them and provide him with access to confidential information which he could use to the detriment of the party.

That the plaintiff's prolonged and sustained public display of disrespect for the officers of the party and its cadre of leadership and the prolonged condemnation of our method of administering the affairs of the party as well as the public demeaning of their character, has created a situation where inter-personal relations in this fraternity would be under severe strain, to the point where it would be impossible to function effectively with the plaintiff as a part of the party structure.

If the plaintiff attends these meetings and bodies then it would be impracticable for any matters of substance to be dealt with and as a consequence this state of affairs would have a detrimental effect on the functioning of the party, and its role as an effective opposition party to the Government in accordance with the Constitution of Jamaica. This would mean that the Jamaica Labour Party would be unable to perform its constitutional role and may not be seriously considered by the electorate as an alternative Government."

On the evidence it is clear to me that as between the plaintiff and the hierarchy of the Jamaica Labour Party mutual trust and confidence no longer exists. Should an injunction be refused the plaintiff will continue to be treated by the Jamaica Labour Party as having been legally expelled from the party. But the plaintiff will still be entitled to take his seat in the House of Representatives as the member of Parliament for North Central St. Andrew, albeit as an independent member of the House as the plaintiff himself appreciates. Furthermore, in these circumstances the plaintiff will suffer no financial or proprietary loss. From the point of view of the Jamaica Labour Party, the party will be free to perform its role in providing an effective opposition to the Government of the country which is, after all, a matter of critical importance to the preservation of the democratic system of Government which we now enjoy.

So on the balance of convenience, and in order to foster progress and good order, the right thing for me to do would be to refuse the injunction. To do otherwise would, as counsel for the defendants, Mr. George, submitted, force upon an unwilling group of individuals constituting a political party an erstwhile colleague in whom all trust and confidence has been lost. That I cannot do. In all likelihood the consequence of such an imposition would be, as Mr. George suggests, a disruption of the party machinery to such an extent as would make it unworkable to the detriment of the country as a whole. On all the evidence that is now before me the fact, if I may put it this way, is that the marriage between the plaintiff and the Jamaica Labour Party has irretrievably broken down and is at an end. The plaintiff and the party must now part and go their separate ways.

In the result, therefore, this summons is dismissed. There will be costs to the defendants to be agreed or taxed. Certificates for one Queen's Counsel and one Junior Counsel granted.