MOTION FOR DECLARATION

SUIT NO. M44 of 1979

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

(CONSTITUTIONAL COURT)

B E F O R E — The Hon. Mr. Justice Chambers
The Hon. Mr. Justice Carey

B E T W E E N — DAVID CHAMBERLAIN
ROOSEVELT EDWARDS — APPLICANTS

A N D — THE ATTORNEY GENERAL
THE SUPERINTENDENT OF PRISONS, ST. CATHERINE DISTRICT PRISONS — RESPONDENTS

Dennis Daley and A. Jones - for Applicants

Lloyd Ellis - for 1st Respondent

R. Langrin - for 2nd Respondent

3rd July, 1979

CHAMBERS, J.:

I will ask my brother Carey, J. to give the first judgement.

CAREY, J.:

In the face of considered judgments by this Court in which it was held that a Motion seeking precisely the same declaration supported by affidavits reflecting the same facts, was

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without vestige of merit, we are again troubled by another Motion of the same genre. It is now more than obvious that a group of attorneys is resolved to persist in a course of conduct that may well render them liable in contempt of court. The Court has already ruled on the matter and an appeal has been lodged. Beyond a peradventure to lodge exact replicas of earlier applications amounts to a flouting of the Court's decision.

It is quite improper for any attorney to abuse the process of the Court. To bring proceedings for the sole purpose of delay is to be guilty of such conduct and there are authorities in the book that the Court will grant attachment against an attorney who acts in this way. See Riley v. R. (1801) Rowe 657; McMasters v. Graham (1858) 3 N.S.R. 417. Such conduct is also unethical: an attorney is sworn to assist in maintaining the integrity of the administration of justice. The canons bind him to do so.

There can be no excuse for this resolution to persist in this present course of conduct seeing that these are all (but for me) experienced and competent attorneys who must appreciate that their resort to the judicial process is fore-doomed to dismal failure. At the hearing of the earlier Motion Riley and Ors v. Attorney General & Ors., no argument, properly so called, was put forward by any of the applicants attorney, one of whom expatiated on the abolition of the death penalty, an issue which clearly did not arise in that Motion. He for one was explicitly acknowledging the obvious fact that the Motion was devoid of merit.

In continuing to lodge these applications, it would seem rather that certain attorneys are retaining the applicants as clients, rather than the reverse, which is the normal and the accepted mode of proceeding. The pattern in all these applications is the same. The Privy Council determines that sentence is to be

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carried into effect, a date is fixed; on the eve of the execution, applications are lodged: always it is one Motion filed by the same attorney, supported by affidavits in identical form, from the condemned men. I very much doubt myself whether this conjoint Motion supported by separate affidavits from the several applicants is procedurally correct but I do not pause to burden my observations with matters of a technical character.

It should now be abundantly clear that any further applications of a similar nature can only serve to demonstrate wilfil and contumelous conduct and must render all those who take part by lodging and/or appearing in support, as being in contempt of court.

One further comment I would add and it is this, the plain duty of counsel is to make their plea elsewhere. To raise up hopes in these persons under sentence of death, in this way, cannot by any manner of means be right. For, it is counsel, if they believe in their own arguments, who are now inflicting torture on these prisoners by their continued misconceived applications in this Court.

As to this present application, I would dismiss it with costs, such costs to be paid personally by the attorney on the records.

CHAMBERS, J.:

Before stating whether I agree or not with my brother Carey, J., I must comment that it appears to me that Mr. Dennis Daley, Attorney for the Applicants, after the first Judgment was read, decided to leave the Court, and when asked whether he wished to say anything about costs, just left the Court after stating he has nothing further to say on behalf of himself and the others. I must say that previous to this, in the cases referred to by Carey, J., I had said that they, the attorneys, were playing games with the Constitution and making it an abuse of the process of the Court, adopting by their conduct an abuse of the process of the Court.

Now, I must state that I fully agree and concur with the Judgment delivered by Carey, J., and I agree that costs should be awarded against the attorney on the Record in this Motion personally, such costs to be taxed or agreed.

The order of the Court is that the Motion is dismissed with costs to be taxed or agreed. Such costs to be paid by the attorney on the Record personally.