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JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 60/2000

**COR. THE HON. MR. JUSTICE FORTE, P.
THE HON. MR. JUSTICE BINGHAM, J.A.
THE HON. MR. JUSTICE LANGRIN, J.A.**

BETWEEN THE JUNIOR DOCTORS ASSOCIATION

**A N D THE CENTRAL EXECUTIVE OF THE JUNIOR
DOCTORS ASSOCIATION
(being sued in a representative capacity
on behalf of themselves and all other
members of the Junior Doctors Association)**

**A N D CHRISTINE PARRIS
MIKE MILLS
LEROY THOMPSON
TANYA BROWN-BRYAN
KISHA MITCHELL
ANDREW MANNING
WAYNE FONG
SHAWN JONES
LOXLEY CHRISTIE**

APPELLANTS

A N D THE ATTORNEY GENERAL

RESPONDENT

FOR JAMAICA

Richard Small and Norman Davis
for the appellants

Douglas Leys and Carolyn Tai
instructed by Director of State Proceedings
for the respondent.

July 27, 2000, and February 19, 2001

LANGRIN, J.A.:

This is an appeal from a contempt of court order made on April 19, 2000 pursuant to Section 32 of the Labour Relations and Industrial Disputes Act. On July 27, 2000 we allowed the appeal. These are our reasons in writing. The order arose out of an industrial dispute between the Junior Doctors Association (hereinafter called the "JDA") and the Ministry of Health and the University Hospital of the West Indies.

The order is stated as follows:

"That each of the persons listed below is hereby ordered to do 200 hours of medical care at the named institutions:

Christine Parris
Mike Mills
Leroy Pottinger

Tower Street Adult Correctional Centre, South Camp Road Rehabilitation Centre, Fort Augusta Women Correctional Centre, Saint Catherine District Prison, Tamarind Farm Adult Correctional Centre and Rio Cobre Juvenile Correctional Centre. The details of the above assignments are to be worked out between the contemnors and the Commissioner of Corrections, Col. John Prescod.

Tanya Brown Bryan , The School of Hope for children with mental retardation and the Half Way Tree Lock Up.

The details of the above assignments are to be worked out between contemnor and Miss Christie Rodriques of the School of Hope and the Superintendent of Police, Half Way Tree Police Station.

Kisha Mitchell, Saint Andrew Settlement Clinic and Homestead Boys Home, Stony Hill. The details of the above assignments are to be worked out between the contemnor and Mr. Jos. Chambers of the Saint Andrew Parish Church and the Superintendent of Homestead Boys Home.

Andrew Manning, The Golden Age Home, Saint Joseph Hospital and Jacob's Well (Operated by Brothers of the Poor) Hanover Street. The details of the above assignments are to be worked out between the contemnor and Major Desmond Clarke of the Golden Age Home and Rev. Fr. Ambrose of Jacob's Well.

Wayne Fong, Marie Atkins Night Shelter and Central Police Lock Up. The details of the abovementioned assignments are to be worked out between the contemnor and Mrs. Carol Anthony of Marie Atkins Shelter and the Superintendent of Police in charge of Central Police Station.

Shawn Jones, Saint James Infirmary and Catherine Hall Lock Up. The details of the above assignments are to be worked out between the contemnor and Matron, Nora Chambers of the St. James Infirmary and the Superintendent of Police in charge of Montego Bay Police Station.

Loxley Christie, Seaview Gardens Health Centre and Hunt's Bay Police Station Lock Up. The details of the abovementioned assignments are to be worked out between Nurse Lewis of the Seaview Gardens Health Centre and the Superintendent of Police in charge of Hunts Bay Police Station.

All the contemnors must make contact with the respective contact persons on or before 4:00 p.m. on Wednesday, April 26, 2000 and advise the Registrar of the Supreme Court, in writing by Friday, April 28, 2000 of the arrangements which

have been made to give effect to the carrying out of the order herein.

The programme of medical care must commence not later than Saturday, May 6, 2000.

No contemnor must be assigned to perform more than two (2) hours work on any one day unless the contemnor agrees so to do.

There will be no Order as to Costs".

It is necessary also to relate in summary the facts of this case which I take from the affidavit evidence on the record of appeal.

The relevant parties were in the process of negotiations concerning salaries and other emoluments for members of the JDA. After unsuccessful negotiations the JDA by letter dated March 30, 2000 informed the Ministry of Health that the members of the JDA had decided to work from 8:00 a.m. to 4:00 p.m. Monday to Friday, not including public holidays or weekends. The Minister of Labour invited the parties in dispute to a reconciliation meeting on March 30, 2000. That meeting ended in a deadlock. The Minister on March 31, 2000 pursuant to Section 9 (3) of the Labour Relations and Industrial Disputes Act referred to as the "LRIDA" referred the dispute to the Industrial Disputes Tribunal ("IDT") for settlement. The parties in dispute appeared before the IDT on March 31, 2000 when an Order to cease industrial action was made and also that the Junior Doctors should resume normal duties by 4:00 p.m. March 31, 2000.

The Junior Doctors did not resume normal working hours as stated in this Order.

It may be useful to set out the terms of section 32 of the Labour Relations and Industrial Disputes Act:

"32.-(1) Where it appears to the Minister—

- (a) that any industrial action is threatened or taken (whether in conformity with the Act or otherwise); and
- (b) that such industrial action is, or (as the case may be) is likely to be—
 - (i) gravely injurious to the national economy, to imperil national security or to create a serious risk of public disorder; or
 - (ii) to endanger the lives of a substantial number of persons or expose a substantial number of persons to serious risk of disease or personal injury,

the Minister may apply to the Supreme court ex parte for an order restraining the parties from commencing or from continuing the industrial action; and the Court may make such order thereon as it considers fit having regard to the national interest.

(2) Where the Supreme Court makes an order under subsection (1) then the parties specified in the order shall be bound thereby and shall thereupon refrain from or discontinue the industrial action.

(3) An order made under subsection (1) may be published in the prescribed manner and

the publication shall, without prejudice to any other form of service, be deemed to be service of notice thereof on all parties specified in the order and all persons threatening or engaged in the industrial action.

(4) For the purposes of this section, subsections 5(B) and 5(C) of section 12 shall apply, *mutatis mutandis*, in like manner as they apply in relation to the provisions of section 12".

On April 1, 2000, the Supreme Court of Jamaica on the application of the Attorney General of Jamaica issued an injunction pursuant to Section 32 of the LRIDA.

The Court granted the following orders:

- (i) That the Respondents be restrained from commencing or continuing any industrial action, and or taking any step or doing any act likely to endanger the lives of a substantial number of persons or expose a substantial number of persons to serious risk of disease or personal injury, or create a serious risk of public disorder in the Jamaican society.
- (ii) That the Respondents be restrained from causing or attempting to cause or doing any act calculated to induce any Junior Doctor from withholding his/her services.
- (iii) That the Respondents be restrained from causing or attempting to cause or doing any act calculated to cause disaffection among the Junior Doctors.
- (iv) That a publication of the Order herein (either by broadcasting same on at least two separate occasions over a commercial broadcasting system operating in Jamaica, or

in at least one newspaper circulating in Jamaica) be deemed Service of Notice of the Order on the Respondents.

- (v) That the Respondents be restrained until the matter has been determined by the Industrial Disputes Tribunal.

It is common ground that the said order was served on the respondents and the members of the JDA failed to comply with the order.

Ground 1 of the appeal states:

- "1. The learned Chief Justice erred in law in making a contempt of court order in these proceedings in that they were and have since been held to be a nullity by this Honourable Court in June 19, 2000 decision. The basis of the decision was that the Junior Doctors Association and The Central Executive of the Junior Doctors Association, who were named as the respondents below, each had no legal personality. In the circumstances, the individual appellants were not parties to the proceedings and the learned Chief Justice therefore had no legal basis to make a contempt of court order against them."

There were several other grounds of appeal filed but in view of the fundamental defect in the original proceedings before the Supreme Court which gave rise to the contempt proceedings it was not necessary in our view to state the other grounds.

We accepted the helpful arguments advanced by Mr. Richard Small in making a distinction between orders which are irregular with

reference to existing proceedings and purported orders in circumstances where there were no proceedings. Mr. Douglas Leys, counsel for the respondent tried to persuade this court that notwithstanding the declaration of nullity against the Supreme Court order by this Court in the previous proceedings, the contempt order should stand. We were not persuaded by his submissions.

The contempt of court order in these proceedings arise from the alleged disobedience of the order of injunction. In a written judgment of this court (***The Junior Doctors Association v The Attorney General*** Motion 21/2000 delivered on July 12, 2000), this court decided that the process by which the injunction was obtained was a nullity and the proceedings a nullity.

The basis of the judgment is that the JDA and the Central Executive of the JDA who were the only named respondents in the court below each had no legal personality. The court also held that in so far as the proceedings purported to be representative proceedings they were not properly constituted, because, by section 97 of the Civil Procedure Code individual members of the Junior Doctors Association ought to have been named as being sued on behalf of themselves and other members. The whole proceedings therefore were a nullity. The only named respondent in the Notice of Motion for Attachment dated April 3, 2000, the contempt of court order of the

Supreme Court and the written judgment were the Junior Doctors Association and the Central Executive of the Junior Doctors Association. It follows that the nine individuals against whom the contempt order was made were strangers to the order of injunction. Neither were they parties to the Notice of Motion for Attachment. This court concluded that there was therefore no legal basis to make a contempt of court order against them.

It is the fundamental failure to comply with the requirements of the law relating to the issue of the proceedings which separates this case from any case which lays down that where there is an error in the order it should be obeyed until set aside. The order granted by the Supreme Court was not addressed to anyone who could be punished for disobedience to the order.

We did not hear the arguments on the other grounds. At the end of the hearing the court indicated that its decision should not be regarded as any approval of the conduct of those persons who sought to disobey the orders of the court.

Accordingly the appeal was allowed and the judgment of the court below set aside and costs awarded to the appellants both here and below to be taxed if not agreed.