

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

NMIS

IN THE FULL COURT

SUIT NO. M 130 OF 1996

BEFORE: THE HON. MR. JUSTICE PANTON
THE HON. MR. JUSTICE REID
THE HON. MR. JUSTICE JAMES (G.)

BETWEEN JAMES MUNROE APPLICANT
AND THE ATTORNEY GENERAL RESPONDENT

Lord Gifford, Q.C., Heron Dale
and Gayle Nelson for the applicant

Neville Fraser and Miss Lile Armstrong
for the respondent

Heard: April 14, 15 and 17, 1997

PANTON, J.

The applicant was the Commissioner of Lands. He was appointed to that position in the public service in April, 1989. In two months, he will be sixty years old. In a letter dated October 18, 1996, the Chief Personnel Officer advised the applicant's attorney-at-law that the Governor-General, acting on the advice of the Privy Council, had ordered that the applicant should be retired in the public interest and, on the advice of the Public Service Commission, had given approval for the following:

- (1) the applicant's retirement to commence on October 15, 1996;
- (2) the applicant's pension to be reduced by seventy-five percent;
- (3) the applicant to lose the salary withheld during his interdiction; and
- (4) the applicant to be paid for vacation leave due to him up to July 10, 1995.

Prior to this communication from the Governor-General's Secretary, there had been a disciplinary hearing by a committee of three distinguished citizens, appointed by the Governor-General on the recommendation of the Public Service Commission, into charges brought against the applicant. At the end of that hearing, the committee found the applicant guilty on some charges and recommended to the Commission that the applicant be retired in the public interest and that his pension be reduced by one-third.

That recommendation did not find favour with the Public Service Commission in that the Commission recommended to the Governor-General that instead of retirement the applicant should be dismissed with effect from April 1, 1996 (All Fools' Day). In the exercise of a right that the law gives him, the applicant requested a reference of his case to the Privy Council. This was granted. The result was the communication of October 18, 1996, referred to above.

The applicant held one of the highest offices in the public service of his country. The post is one which is provided for in the Crown Property (Vesting) Act which came into operation thirty-seven years ago.

Section 3 of that Act provides thus:

- (1) "The Governor-General may from time to time appoint a fit and proper person to be Commissioner of Lands.
- (2) The Commissioner for the time being shall be a corporation sole by the name of the Commissioner of Lands and shall have power to acquire, hold and dispose of land and other property of whatever kind.
- (3) The Commissioner shall have an official seal which shall be authenticated by the signature of the Commissioner and shall be officially and judicially noticed."

These provisions clearly show that the position of Commissioner of Lands is no ordinary position in the public service.

For completeness, it should be mentioned that subsection (4) of section 3 states that except in accordance with the provisions of any enactment or under any power or directions contained in any transfer, conveyance, will or other instrument, the Commissioner shall not, without either general or special authority in writing from the Minister responsible for Crown Lands, "sell, convey, exchange, grant, assign, surrender or yield up, mortgage, lease or let any land vested in him by or under this Act."

Section 4 provides further in subsection 2:

"All lands acquired, by whatever means, on or after the commencement of this Act, for the use of the Government of this Island, other than the lands acquired by the Minister of Housing for the purposes of the Housing Act, shall be vested in the Commissioner for the time being and held by him and his successors in the said office in trust for Her Majesty, her heirs and successors---

- (a) for the purposes for which such lands are purchased, taken or held under any enactment; or
- (b) in accordance with the terms of the transfer, conveyance, lease, will or other assurance executed in relation thereto."

The nature of the applicant's employment made him subject to The Public Service Regulations, 1961.

Proceedings for dismissal were taken out against him in accordance with Regulation 43. No complaint has been made as to jurisdiction. Several charges were laid. We need only concern ourselves with the three charges that are relevant to these proceedings. This is how the charges were put to him by the chairman of the committee:

"James Munroe,

You are charged with having committed the following acts of misconduct while attached to the Lands Department as the Commissioner of Lands.

CHARGE 1

That in respect of Government land situated at Lot 38 Shettlewood, in the parish of Hanover, you James Munroe, being the Commissioner of Lands, caused the said land to be allotted to your wife, Hermine Layne, by directly making a recommendation to that effect to the Minister of Agriculture and without disclosing her identity as your wife in a situation in which there was conflict of interest and duty, and in preference to other applicants who were either ordinary residents in the parish of Hanover or occupiers of the land."

CHARGE 111

"That in respect of the divestment of Government land situated at Lot 41, New Hope in the parish of Westmoreland, you, James Munroe, being the Commissioner of Lands, caused the said land to be allotted to your wife, Hermine Layne, by directly making a recommendation to that effect to the Minister of Agriculture without disclosing her identity as your wife in a situation in which there was a conflict of interest and duty and in preference to other applicants who were either residents of Westmoreland or occupiers of the New Hope property."

CHARGE V

"That in respect of the divestment of Government land situated at Lot 27, Chudleigh House Reserve, in the parish of Manchester, you, James Munroe, being the Commissioner of Lands by directive No. K49/07 of the 30th May, 1994, caused the said land to be sold to Mr. Leonard Henry, for one hundred and seventy-four thousand dollars (\$174,00.00), notwithstanding a valuation of the said land in 1991, by the Deputy Commissioner of Lands for three hundred and fifty thousand dollars (\$350,000.00) and before the receipt of a current valuation which was requested by the Deputy Commissioner on the 2nd May, 1994, and at a price significantly below its current value."

To each charge, the applicant responded "Not guilty".

The proceedings lasted for nine days over a period of nine months. In a report dated March 6, 1996, the committee noted that the system involved the submission of lists of applicants to the Commissioner who in turn would check the lists before submitting the names to the Minister for his approval. The linchpin between the Minister and the lists is the Commissioner who alone can pass title to an applicant. For the Minister to be in a position to determine whether he should approve an allotment to an applicant, it would be expected that the Commissioner would inform him of anything that may have been out of the ordinary.

So far as Charges 1 and 111 are concerned, the committee delivered itself thus:

"The Commissioner was under no legal obligation to make any disclosures with respect to charges 1 and 111. However, we are of the view, and find that he was guilty of a breach of ethics in all the circumstances in not making a full disclosure of his interest in the land allotted to his wife, under whatever name she may have made application. Further, given the RADA policy of one (1) lot to each applicant except where the applicant has made such improvement and wishes to extend his holding he may receive additional allotment, the Commissioner's explanation that his wife could not develop the first lot because it could not be identified so she applied and was given the second allotment is not persuasive. That alone should have made it more imperative that on the aspect of her second allocation without having started development of the first, it was necessary that the Minister ought to have been advised."

In the very next paragraph, the committee dealt with charge V. Due to the conclusion that we have arrived at, there is no need to quote from that paragraph.

In the penultimate paragraph of the report, in apparently summarizing the whole case and its findings against the applicant, the committee said:

"We consider the Commissioner to be guilty of gross misconduct in the exercise of his duty, bearing in mind the importance of his position, the aims and object of his Department in the Ministry, and the standard of performance required by the holder of his post in that department."

Thereafter comes a single line with the recommendation of the committee followed by the date of the report and the signatures of the members of the committee.

THE CHALLENGE TO THE COMMITTEE'S FINDINGS

Lord Gifford, Q.C., for the applicant was careful to point out to the Court that the decisions that he sought to have quashed were those made by the Governor-General on the advice of the Privy Council. However, this required consideration of the committee's findings as well as the recommendation of the Public Service Commission to the Governor-General.

So far as charge V is concerned, Mr. Patrick Robinson, Deputy Solicitor-General, who preferred the charges indicated to the committee that having deliberated on the matter he had concluded that the charge had failed. The committee did not then state its disagreement with learned counsel; nor did it advise the applicant or his attorneys-at-law of its disquiet with the position adopted by Mr. Robinson. As a result, the applicant relied on Mr. Robinson's view that the charge had failed.

Lord Gifford submitted that there was a breach of natural justice in this regard as the applicant had not been given an opportunity to properly answer the charge.

We agree with that submission so far as charge V is concerned.

In relation to charges 1 and 111, Lord Gifford submitted that the committee "failed to make a clear determination". Further, he said, the committee had censured the applicant for a "breach of ethics," when what was before them was a charge of "misconduct".

Mr. Neville Fraser, for the respondent, answered these submissions by referring to the dictionary meaning of the word "ethics", as well as to the well-known principles governing the behaviour of public servants.

The Concise Oxford Dictionary has several meanings for the word "ethics". Among them are: (a) the science of morals in human conduct; (b) moral principles; rules of conduct. It is clear therefore that a breach of ethics means a breach of the rules of conduct. Lord Gifford was unable to inform the Court of a breach of ethics that did not involve some form of misconduct.

There are clear rules by which the Commissioner of Lands is expected to operate in the situation that faced the applicant. The rules relate specifically to the place of residence of an applicant for a lot being within a certain radius; and, no allottee being the beneficiary of more than one lot. In addition, section 4 (2) of the Crown Property (Vesting) Act cannot be ignored where it clearly states that the Commissioner is a trustee in respect of the lands held by him for Her Majesty, her heirs and successors. In short, he holds the land in trust for the people of Jamaica. It is our view that the committee was very generous to the applicant when it said

that he had no legal obligation to make any disclosures with respect to charges 1 and 111. The committee seems to have overlooked the provisions of section 4 (2) referred to above.

As a trustee with the responsibility of submitting names to the Minister for approval prior to sale, the Commissioner had a duty to communicate to the Minister all information which he had, which on any reasonable view would have been important for the Minister to have in deciding whether a sale should be approved or not.

The committee had before it evidence that the Commissioner's wife used her maiden name in applying for the lots, and that she did not qualify for the lots by residence. That information was not communicated to the Minister and this was not due to an oversight by the Commissioner. He took a conscious decision not to inform the Minister. The committee considered the reason he gave for his failure to inform the Minister. Clearly, the committee was not impressed by it.

In finding that the applicant was guilty of a breach of ethics, the committee alluded to the very particulars that were laid in the charges. It is clear that the committee found the applicant guilty as charged. There is no magic in the use of the word "ethics", as Lord Gifford would have the Court believe. In any event, the matter is beyond doubt-- although we see no doubt-- when in the penultimate paragraph, the committee stated that the Commissioner was guilty of "gross misconduct".

Before closing this chapter on the applicant's conduct, it is appropriate to mention the generally accepted standard of behaviour expected of public servants. In HALSBURY'S LAWS OF ENGLAND (4th ed), Volume 8 at paragraph 1306, the following words appear:

"Conduct of civil servants. Civil servants are subject to a general code of conduct, the fundamental principles of which are that a civil servant must give his undivided allegiance to the State at all times and on all occasions when it has a claim on his services; that he must not put himself in a position where his duty and his private interests conflict and he must not make use of his official position to further those interests; that his private activities must not be such as might bring discredit on the service, for example, heavy gambling and speculation are to be avoided particularly in departments which have access to information which

could be turned to private gain; that he must not only be honest in fact, but also he must not lay himself open to suspicion of dishonesty; and that, if his work involves advising ministers or carrying out ministers' policies, he must retain a proper reticence in matters of public and political controversy, so that his impartiality is beyond suspicion."

As a public servant for thirty-six years up to the time of his retirement, the applicant would have known that his non-disclosure to the Minister was gross misconduct.

Learned Queen's Counsel, during the course of his reply to Mr. Fraser, submitted that the fact that there was a breach of natural justice in relation to charge V meant that the whole proceedings were tainted as it is not known what effect that charge had in relation to the rest of the proceedings. He submitted that the Privy Council should have made a finding to indicate that they had not been contaminated by the finding in charge V.

We find that there is no merit in this submission as the entire proceedings before the committee indicate quite clearly that each charge was given separate consideration. Indeed, the applicant was acquitted of two charges by the committee. Furthermore, the proceedings under regulation 43 are stated to be for dismissal. The applicant was liable for dismissal if found guilty on only one of the charges. As it has turned out, the Governor-General, acting on the advice of the Privy Council, reduced the penalty from dismissal to retirement.

Having taken into consideration the submissions made, and having examined the transcript of the proceedings, we must record that we have seen no question of a lack of jurisdiction, nor have we seen any error of law on the part of the committee or of the Governor-General acting on the advice of the Privy Council. We find that the findings and recommendations of the committee in relation to charges 1 and 111 were well within its competence. The subsequent decisions of the Governor-General acting on the advice of the Privy Council were well-founded in fact as well as law. We see no reason to grant the order sought. The motion is accordingly dismissed with costs to the respondent to be agreed or taxed.

REID, J.

I agree with the judgment that has been written by my learned brother, and I have nothing to add.

JAMES (GRANVILLE), J.

I entirely agree with the reasoning and conclusions herein.