

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATES' CIVIL APPEAL NO. 09/08

**BEFORE: THE HON. MRS. JUSTICE HARRIS, J.A.
 THE HON. MR. JUSTICE MORRISON, J.A.
 THE HON. MR. JUSTICE DUKHARAN, J.A.**

| | | |
|----------------|---|---|
| BETWEEN | WELCH THOMAS | PLAINTIFF/APPELLANT |
| AND | CARIBBEAN AVIATION TRAINING CENTRE | 1ST DEFENDANT/ RESPONDENT |
| AND | CAPTAIN ERROL STEWART | 2ND DEFENDANT/ RESPONDENT |

Oswest Senior-Smith for the appellant

Respondent is unrepresented and absent.

24th November, 2008 and 3rd April, 2009

HARRIS, J.A.

1. On November 24, 2008 we allowed the appeal herein. We set aside an order of Her Honour Miss Jennes Anderson in which she ruled that a claim filed by the appellant fell within the purview of the Employment (Termination and Redundancy Payments) Act. We remitted the matter to the Corporate Area Resident Magistrate's Court for a rehearing, ordered costs of \$15,000.00 and promised to put our reasons in writing. This promise we now fulfil.

2. The appellant is an Aircraft Maintenance Engineer. He was jointly employed by the respondents, the 1st Respondent being a company registered under the laws of Jamaica and the 2nd Respondent, the Chief Executive Officer of the 1st Respondent. The Appellant alleges that he continued employment with the respondents by performing duties for the month of April and tendered a notice of termination of his employment with the respondents with effect from April 30, 2006. Having not received compensation for work done during the month of April, he commenced an action against the respondents.

3. Paragraph 4 of the Particulars of Claim reads:

“The Plaintiff’s Claim against the 1st and 2nd Defendants is for the sum of Fifty Thousand Dollars with Interest and Costs, and for Damages, for that, in accordance with the Contract of Employment between the Parties the Plaintiff duly issued his notice of termination of employment with the 1st and 2nd Defendants at around the month ending March, 2006, with effect on the 30th April, 2006; that since the end of his period of engagement on April 30, 2006, the 1st and 2nd Defendants have neglected and/or refused to pay the Plaintiff his due remuneration of Fifty Thousand Dollars (\$50,000.00) despite demands.”

4. The Learned Resident Magistrate refused to hear the claim on the ground that she was not seized of the jurisdiction to entertain it by virtue of section 17 of the Employment (Termination and Redundancy Payments) Act.

5. The grounds of appeal are as follows:

“(a) That the Learned Resident Magistrate erred in fact when she concluded that the Claim was based upon the termination of the Contract of Employment.

- (b) That the Learned Resident Magistrate erred in fact and in law when she concluded that the contract of employment falls under Section 17 of the Employment (Termination and Redundancy Payments) Act and that the Claim for Fifty Thousand Dollars (\$50,000.00) is therefore outside the Court's jurisdiction.
- (c) That the Learned Resident Magistrate erred in fact and in law when she concluded that the claim falls under the Employment (Termination and Redundancy Payments) Act."

6. The Learned Resident Magistrate found that the claim is grounded in the termination of a contract of employment and that it falls within the ambit of section 17 of the Employment (Termination and Redundancy Payments) Act. She outlined the definition of "an employee" and "employer" as stated in section 2 (1) of the Employment (Termination and Redundancy Payments) Act. She then made reference to Parts I – IV of the Act. In dealing with Part IV she said:-

"Miscellaneous" contains Section 17 which is subtitled "Jurisdiction of Resident Magistrates' Courts" and which states:

•Notwithstanding any provision in any enactment limiting the jurisdiction of Resident Magistrates' Courts **in relation to claims arising from contract**, a Resident Magistrate's Court shall have jurisdiction in **any action arising from a contract** **or** from any claim in respect of a redundancy payment, in which the amount claimed does not exceed seven thousand dollars. (my emphasis)

The contract there referred to is taken to mean a contract with an employer as outlined in the above definition of 'Employee' and the fact that it is

separated from claims in respect of a redundancy payment, by a disjunctive **OR** it is taken to refer to claims arising from contract of employment which may not necessarily include matters relating to redundancy.

Thus once the Resident Magistrate is satisfied that the dispute arise (sic) out of a contract of employment and the sum being claimed exceeds the statutory limit of seven thousand dollars, then that Resident Magistrate is within his/her right to strike the matter from his/her court as being outside of her/his jurisdiction."

7. The issue arising is whether the appellant's claim falls exclusively within the ambit of section 17 of the Employment (Termination and Redundancy Payments) Act and as a result the Learned Resident Magistrate would have been precluded from hearing and determining it.

8. First, I think it apt to make brief reference to the provisions of the Act. Section 2 (1), the interpretation section, does not define the word "contract". It however, defines "employee" and "employer". The definitions are as follows:-

"In this Act, unless the context otherwise requires-

...

"employee" means an individual who has entered into or works (or, in the case of a contract which has been terminated, worked) under a contract with an employer, whether the contract be for manual labour, clerical work or otherwise, be express or implied, oral or in writing, but does not include—

(a)

(b)

and any reference to employment shall be construed accordingly; "

9. Section 3 deals with the period of notice to be given by either party on the termination of a contract of employment. Under section 4 provision is made for certain contracts of employment under which an employer is obliged to provide transportation or a suitable sum to meet an employee's cost of transportation to perform his duties. The appellant's contract of employment is not one which would fall within section 4.

10. Sections 5 to 15 deal with redundancy payments under a contract of employment. The appellant's claim is not one for a redundancy payment. Section 16 provides for the keeping of records by an employer. Section 17 gives the Resident Magistrate's Court limited power to exercise jurisdiction in respect of contracts of employment.

11. Section 17 of the Act reads:

"Notwithstanding any provision in any enactment limiting the jurisdiction of Resident Magistrates' Courts in relation to claims arising from contract, a Resident Magistrate's Court shall have jurisdiction in any action arising from a contract of employment to which this Act applies, and from any claim in respect of a redundancy payment, in which the amount claimed does not exceed seven thousand dollars."

12. It is without doubt that section 17 of the Act expressly places restriction on the jurisdiction of the Resident Magistrate's Court in a claim brought under

that Act arising from a contract of employment or redundancy, which exceeds seven thousand dollars. The Learned Resident Magistrate considered the claim before her as one falling within the ambit of the Act. The question therefore is, does the restrictive provision laid down in section 17 limit the right of a Resident Magistrate from entertaining jurisdiction in claims relating to contracts of employment? I think not.

13. It appears to us that the Learned Resident Magistrate was of the view that the section is exclusionary as it delimits the Resident Magistrate's Court in exercising of jurisdiction over a contract of employment in a claim which does not exceed seven thousand dollars. Neither section 17 nor any other section of the Act imposes a mandatory provision to show that an action arising from a contract of employment cannot be decided in the Resident Magistrate's Court where the amount claimed falls outside the parameter of the statute. Section 17 does not operate to defeat the pursuit of an action in contract in the Resident Magistrate's Court where the claim surpasses the statutory limit prescribed by the section. It must be construed to mean that although there may be enactments limiting the jurisdiction of the Resident Magistrate's Court, a Resident Magistrate may have jurisdiction over claims founded on the Employment (Termination and Redundancy Payments) Act which are not in excess of seven thousand dollars and so far as any other statute permits, if the claim exceeds the statutory limit prescribed by section 17, he or she may hear

and determine any claim under any contract, be it one of employment or otherwise.

14. Section 71 of the Judicature (Resident Magistrates) Act empowers the court to entertain jurisdiction in respect of a claim arising out of contract in which the claim does not exceed two hundred and fifty thousand dollars. The section reads:-

“Each Court shall, within the parish for which the Court is appointed, have jurisdiction in all actions at law, whether such actions arise from tort or from contract, or from both, if-

- (a) the amount claimed does not exceed two hundred and fifty thousand dollars, whether on balance of account or otherwise; and
- (b) either-
 - (i) the cause of action arose wholly or in part within the local jurisdiction of the Court; or
 - (ii) the defendant or one of the defendants, lives or carries on business, or, at some time within six calendar months next before the date on which the action is brought, lived or carried on business, within that jurisdiction.”

15. The foregoing section of the Act expressly ordains that the Resident Magistrate’s Court is empowered to exercise jurisdiction in actions of contract. Section 17 of the Employment (Termination and Redundancy Payments) Act does not in any way prohibit a Resident Magistrate from entertaining claims

founded on contract of employment or other any other contract, in circumstances where the amount claimed falls outside the ambit of that section, provided such claims fall within the jurisdictional limit of the actions which are permitted to be heard in the Resident Magistrate's Court.

16. The claim is one to recover the sum of fifty thousand dollars due and for the recovery of any damages which may flow from the respondents' failure to honour their obligation to pay amounts allegedly due. It has been brought with respect to a sum allegedly due and owing by the respondents for work done by the appellant during the month of April at which time the appellant would have been engaged in the service of the respondent. Although it can be said that the claim is within the context of a contract of employment, the fact that it clearly falls outside the scope of section 17 of the Employment (Termination and Redundancy Payments) Act, it can be classified as one which could attract consideration under section 71 of the Judicature (Resident Magistrates) Act. There can be no doubt that the Learned Resident Magistrate is clothed with jurisdiction to hear and determine the appellant's claim.

17. We allowed the appeal for the foregoing reasons.

MORRISON, J.A.

I agree.

DUKHARAN, J.A.

I agree.