

11/11/94

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE FULL COURT

SUIT NO. M78/94

COR: THE HON. MR. JUSTICE RATTRAY - C.J. (AG)  
THE HON. MR. JUSTICE PANTON  
THE HON. MR. JUSTICE REID

BETWEEN	DR. PAUL WRIGHT (Administrator for the Estate of George Brown-Warren deceased)	APPLICANT
AND	JAMAICA RACING COMMISSION & VINCENT EDWARDS	RESPONDENT

Berthan MacCaulay, Q.C., Dr. Randolph Williams instructed by  
Mrs. Margarette MacCaulay for Dr. Paul Wright

Dennis Morrison, Q.C., Richard Ashenheim instructed by  
Milholland, Ashenheim & Stone for Jamaica Racing Promotions

Antoinette Haughton from Gifford, Haughton & Thompson  
for Vincent Edwards.

Date: 7th December, 1994.

RATTRAY, C.J. (AG)

On the 7th December 1994 we dismissed the application for an Order of Certiorari to quash the decision of the Jamaica Racing Commission which reversed on appeal the decision of the Tribunal established under section 26 of the Jamaica Racing Commission Act which had allowed the claim of the applicant to be paid the sum of \$51,785 for Veterinary Services, deworming, vaccination and care of a horse named Tracy D belonging to the second respondent Vincent Edwards. We then promised to give our reasons in writing and we do so now.

The applicant is the administrator of the Estate of George Brown-Warren deceased, who at the time of his death owned a Farm known as Wonderland Stud Farm. The secondnamed respondent was the joint owner along with one Derrick DaCosta of the mare Tracy D. The horse was bought at a yearling sale in 1986 and taken to Wonderland Stud Farm owned by Mr. Warren but with which the secondnamed respondent had some connection as he was the trainer of Mr. Warren's horses and was a sort of consultant on the Farm.

As Mr. Warren died in 1988 the only information relating to the arrangement with respect to Tracy D was that given by the secondnamed

respondent. The applicant is one of three Administrators of the estate of the deceased, Letters of Administration having been granted by the Supreme Court on the 17th August, 1989. On the 19th March, 1992 a Bill was sent by the Administrator of the Estate in respect of Tracy D relating to pasturage, veterinary services, vaccination, deworming, examination, blacksmith's shoe and trim covering a period 1st August, 1985 to 12th February, 1992 and amounting to \$38,336.00. It is noted that the Bill is addressed to Messrs. K. Kameka and D. DaCosta c/o AJAS Ltd. A statement was later sent to the secondnamed respondent for payment to be made of a sum of \$51,785.00. The horse had been removed from Wonderland Farm on the 28th August, 1992 and the bill would cover up to that date. When Mr. Edwards refused to pay the bill a complaint was made by the Administrator to the Jamaica Racing Commission which then appointed authorised persons under section 26 of the Jamaica Racing Commission Act to investigate the matter. The Tribunal so appointed had a hearing on the 26th January, 1993. The record of this hearing was exhibited in the proceedings before us.

It is clear from the record that neither the Administrators nor anyone else on their behalf could assist the Tribunal in determining the arrangement between Mr. Edwards and Mr. Warren with respect to the horse Tracy D's presence on the Farm. Mr. Edwards account in a letter to the Commission dated September 8, 1992 was that:

"The mare TRACY D was sent to Wonderland Stud Farm for breeding, and through carelessness of the farm management the back of the mare was broken during a service, therefore rendering her useless for breeding. The owner of the farm, Mr. George Warren Brown accepted liability and promised a live foal for the mare TRACY D which he decided to keep on the farm as his own property. I therefore do not hold myself responsible for the mare. In fact, due to the untimely death of Mr. George Warren Brown (Mr. George Warren Brown) I have not received the foal promised. In view of the above explanation, I therefore dispute the amount stated."

Before the Tribunal Mr. Edwards reiterated his contention and pointed out that the horse was there from 1986, Mr. Warren died in 1988 and that the first bill he received was in 1989:

"The arrangement that I had with Mr. Warren at the time is that the horse will be destroyed because it is useless and that he would have given me a foal because

"the horse was injured on the farm. So I had no idea that the horse was still in existence until when I get this bill which was the 19th of the third, 1992."

He explained the relationship between Mr. Warren and himself in connection with Wonderland Farm as follows:

"When I say Farm Manager I wasn't the one who manage the farm as such. I bought all the horses for him, I was training for him and I give technical assistance. In other words, the whole place was . . . The grass was planted by me, it was wired by me."

None of this was of course disputed. Nevertheless the Tribunal found as follows:

"Our decision after deliberating, all the points raised (1) that Messrs. Edwards and DaCosta failed to prove any arrangement between themselves and the operators of Wonderland Stud Farm. They didn't ask for the mare TRACY D to stay on the farm without incurring any fees; and, (2) in the absence of any such agreement. We find that the sum of Fifty One Thousand, Seven Hundred and Eighty Five Dollars is due to the administrators of the estate from the period 1st August, 1989 to 20th August, 1992."

The secondnamed respondent thereafter appealed the decision of the Tribunal under the provisions of section 27 of the Jamaica Racing Commission Act.

The appeal was duly heard on the 1st September, 1994 and the decision of the Commission was as follows:

"The Commission accepted that there was an agreement between George Warren and Vincent Edwards vis-a-vis the transfer of five horses and that there was also an agreement for Mr. Warren to destroy the mare TRACY D after an accident during service.

Mr. Edwards cannot therefore be held liable for costs incurred for the keep and care of TRACY D after the accident and consequently the appeal is therefore allowed and the decision of the Operations set aside."

It is this decision which the applicant seeks to have the Supreme Court quash by means of an Order of Certiorari directed to the Jamaica Racing Commission. The grounds on which the Relief was sought were as follows:

- (1) that extraneous matters were taken into account by the members of the Commission in reaching their decision;

- (2) that the Racing Commission purported in making its decision to reverse a finding of fact based upon the credibility of a witness and thus wrongfully exercised its jurisdictional powers.

At the commencement of the proceedings before us the Court pointed out to counsel for the applicant that the application had not exhibited the record of the appeal hearing by the Jamaica Racing Commission, which reviewed the finding of the Tribunal and came to a contrary conclusion.

Counsel for the applicant however did not consider this to be necessary.

This left the Court without the material which would assist it in determining what factors the Commission took into account or did not take into account in arriving at its decision.

It is clear however that if the only evidence as to the arrangements under which the horse Tracy D was taken to the Wonderland Stud Farm came from the secondnamed respondent, and the applicant could proffer no evidence as to this, the question of law which would arise is as to whether in the absence of evidence from the applicant to sustain the agreement alleged, a determination by the Tribunal in favour of the applicant could stand. The decision would rest, not on the credibility of the secondnamed respondent but on the failure of the applicant to sustain the alleged agreement. It is trite law that he who alleges must prove. The Jamaica Racing Commission undoubtedly had jurisdiction to hear and determine "an appeal to the Commission against a decision given by a person acting in pursuance of any function delegated under section 26 (see Jamaica Racing Commission Act - section 27). It has jurisdiction further to "allow the appeal and set aside the decision." (section 27 (3)(b)). The Act does not set out the procedure to be followed on the hearing of the appeal. The procedure in any event has not been challenged by the applicant. The failure to exhibit the record of appeal keeps us in the dark in this regard. There is no material provided to ground the complaint that the Commission exceeded its jurisdiction.

In all the circumstances we refused to issue the Order of Certiorari as prayed and dismissed the application with costs to the respondents.