

Recd
17/7/14

2011

No. 120/M

DEMERARA

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE

CIVIL JURISDICTION

BETWEEN:

JUAN ANTHONY EDGHILL

Applicant

-and-

FREDERICK KISSOON

NATIONAL MEDIA AND PUBLISHING
COMPANY LIMITED

Respondents

In the matter of contempt of Court

Mr. A. Chase for the applicant ✓
Mr. N. Hughes for the first named defendant
Mr. Persram for the second named defendant

DECISION

The applicant filed a motion for contempt of Court in the following words:-

- (a) That a writ of attachment be issued against the respondents for penal consequences for the publication of an article in the "Kaieteur News" of Wednesday 20th July 2011 at page 10 thereof under the caption "Achilles' heel of the Gorgons" with respect to proceedings No. 211-W of 2011 Demerara (H. O. Corbin -v- the Attorney General et al)

pending before the High Court of the Supreme Court of
Judicature.

(b) Such further and other order as the Court deems just.

(c) Costs.

The Motion was supported by an Affidavit in Support which alleged
at paragraph 6 that:-

“The first named respondent contributed and caused to be
published by the second named respondents in the aforesaid
“Kaieteur News” an article under the caption “Achilles’ heel of the
Gorgons” in which are expressed views and opinions touching the
above Court proceedings and which are aimed, calculated and
directed to prejudice a fair and impartial hearing thereof.”

In his Affidavit in Answer, the first named respondent swore at
paragraph 6 that the statements attributed to him “are statements of
fact which in no way can impact upon and or influence the
deliberations of this Honourable Court.”

In his Affidavit in Answer, the second named respondents stated at
paragraph 5 “that the allegation made that the publication was
aimed, calculated and directed to prejudice a fair and impartial
hearing of Action 211-W of 2011 is wholly erroneous and
misconceived. That was never the reason for publication of the
article namely the making of comments and opinions deliberately

aimed at unlawfully influencing the decision of the Court. Rather the publication like all publications are intended to be an exercise and enjoyment of the newspapers freedom of expression under Article 146 of the Constitution.”

After the matter came up for hearing on the 9th May 2012, Mr. Hughes for the first named respondent, submitted that the proceedings were bad in law, that the Motion was not the proper proceedings since it is not an originating procedure, there being no existing proceedings, and therefore not consistent with the Rules of the High Court.

Mr. Chase, Senior Counsel, replied that these are contempt proceedings and therefore the practice and procedure is the same as laid down in the 1943 edition of the Laws of Guyana, Chapter 9 section 5 – “the Supreme Court shall have the same powers for contempt as exercised in England in the High Court and the practice and procedure shall be the same as in England.”

Mr. Chase also referred to Order 1 Rule 3 of the High Court Rules Cap. 3:02 “where rules silent rules of the Supreme Court of England shall be applicable before 1970.” Senior Counsel further stated that the practice in England is that “contempt of court” is brought by motion. He also referred to Order 52 Rule 1 and stated that an

application to the court or judge shall be by motion, and Order 52 Rule 3 that an application can be made by motion.

Mr. Ramjattan for the second named respondents submitted that the High Court Rules Cap. 3:02, Order 40 defines specific areas that can be dealt with by motion, and that no grounds for the application was given in the motion and that the correct procedure is by way of Originating Motion for attachment.

Mr. Hughes also submitted that the Rubric does not confer jurisdiction there being no basis upon which the application was brought, no mention being made of the Laws of Guyana relied on, only the words "in the matter of contempt of Court" which is not sufficient to confer jurisdiction on the Court.

The court found that the parties having submitted themselves to the jurisdiction of the court by filing their affidavits in answer it will not interfere with the procedure adopted by the applicant.

However this court applied the principle laid down in **Harmsworth v Harmsworth** (1987) 3 All ER 816 where it was stated at page 821 that

:-

"So the test is, does the notice give the person alleged to be in contempt enough information to enable him to meet the charge? In satisfying this test it is clear that in a suitable case if lengthy

particulars are needed, they may be included in a schedule or other addendum either at the foot of the notice or attached to the notice so as to form part of the notice rather than being set out in the body of the notice itself. But a reference in the notice to a wholly separate document for particulars that ought to be in the notice seems to me to be a quite different matter. I do not see how such a reference can cure what otherwise would be a deficiency in the notice. That information is required to be available to the respondent to the application from within the four corners of the notice itself. From the notice itself the person alleged to be in contempt should know with sufficient particularity what are the breaches alleged.”

In this court’s opinion what the applicant applied for does not refer to any breaches at all but simply states that the applicant is objecting to a publication of proceedings in the High Court. Proceedings in the high court, unless held in camera, are public and can be viewed by anyone and the media or anyone can publish comments and in the absence of stating what the breach is this court found that the motion could not stand and should be struck out.

As stated in the authority cited supra, at page 822:-

“The court has in each case a discretion to waive the irregularity, either under CCR Order 37 Rule 5 (1) in the case of the county court, or under RSC Order 2 in the case of the High Court. But there is this difference between a committal application and other

applications. Such is the importance which the law attaches to the liberty of the subject that normally the procedural rules must be strictly complied with in the case of a committal application, and it would only be in an exceptional case that in the absence of the consent of the respondent it would be just to waive an irregularity in a committal application. Hence it would only be in an exceptional case that, in the absence of such consent, the court would exercise its discretion and waive such an irregularity."

The court therefore dismissed the applicant's motion with costs in the sum of \$50,000 to each defendant.

Diana F. Insanally

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Puisne Judge

Date: 27th June 2012