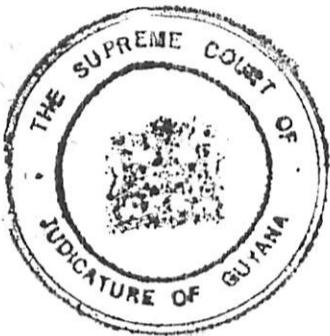


2014 - HC - DEM - CIV - M - 121

IN THE HIGH COURT OF THE SUPREME COURT OF
JUDICATURE
CIVIL JURISDICTION



In the matter of an application by
TERRENCE CAMPBELL for Writs of
Certiorari and Mandamus.

BEFORE:

HON. MR. JUSTICE IAN CHANG - CHIEF JUSTICE (ag.)

Mr. Nigel Hughes for the Applicant.

Mr. Roberts for the named Respondent.

DECISION

On the 6th November 2014, the applicant, Terrence Campbell, by way of Notice of Motion, applied to the court for the following prerogative reliefs:

(a) An order or rule nisi of Certiorari directed to the Minister of Public Works, Transport and Harbours Department, Robesen Benn, directing him to show cause why his decision to prevent only Camex Restaurants Inc. from vending from a mobile food unit on the parameters of



Moleson Creek Customs and Immigration compound while permitting other vendors to vend from the same location should not be quashed as a decision which was arbitrary and/or discriminatory.

(b) An order or rule nisi of Certiorari directed to the Minister of Public Works Transport and Harbours Department, Robeson Benn, to show cause why his decision to prevent Camex Restaurants Inc. from vending from a mobile food unit on the parameters of the Moleson Creek Customs and Immigration compound should not be quashed as a decision which was ultra vires, null and void for reason that the said Ministry has no authority to restrict vending on the public parapet outside of the said compound.

(c) An order or rule nisi of Certiorari directed to the Minister of Public Works Transport and Harbours Department, Robeson Benn, to show cause why his decision to prevent only Camex Restaurants Inc. from vending from a mobile food unit on the parameters of the Moleson Creek Customs and Immigration compound while permitting others vendors to vend from the same location should not be quashed as a

decision which was arbitrary and discriminatory.

(d) An order or rule nisi of Certiorari directed to the Minister of Public Works Transport and Harbours Department to show cause why his decision to refuse Camex Restaurant Inc. a hearing before his decision to prevent Camex Restaurants Inc. from vending from a mobile food unit on the parameters of the Molsen Creek Customs and Immigration compound should not be quashed as a decision which was in breach of the rules of natural justice.

(e) An order or rule nisi of Certiorari directed to the Minister of Public Works Transport and Harbours Department directing him to show cause why his decision to prevent Camex Restaurants Inc. from vending from a mobile food unit on the parameters of the Molsen Creek Customs and Immigration compound should not be quashed as a decision which was ultra vires and in breach of the rules of natural justice for reason of his failure to notify the applicant herein of his reason for his decision to prevent the applicant from vending from the said location.

(f) Such further or other order as this Honourable Court may seem just.”

In his Affidavit in support of Motion, the applicant deposed that he was the managing – director of Camex Restaurants Inc which owns and operates the Churches Chicken franchise in Guyana. Churches Chicken franchise relates to high quality fast foods including fried chicken and fries. The Ministry of Public Works Transport and Harbours Department is legally responsible for the operations of the Canawaima Ferry Service, which manages the Moleson Creek Immigration and Customs compound at Moleson Creek.

In January 2014, Camex Restaurants Inc., using a mobile unit, commenced supplying its products to patrons using the Canawaima Ferry service for commuting with Suriname. The mobile unit travels daily to Moleson Creek and parks on the open area outside the Customs and Immigration compound. That open area is controlled by the Ministry of Public Works Transport and Harbours Department. Numerous vendors such as telecommunication vendor, Digicel, and unlicensed currency changes are permitted to ply their trade there.

In June 2014, without any form of notification to Camex Restaurants Inc of its intention to prohibit vending from the mobile unit and without affording Camex Restaurants Inc an opportunity of being heard, Canawaima Ferry Service arbitrarily

prohibited Camex Restaurants Inc from vending on the aforesaid parapet. But, the other vendors were not so prohibited and continued to vend their products and services from the same location. Only Camex Restaurants Inc was prevented from vending from the said location.

On or about the 19th May 2014, the applicant wrote to the Canawaima Ferry Service challenging the decision to prohibit Camex Restaurants Inc from vending its products and demanding that it be allowed to do so (Exhibit A). But the said Ferry Service failed to respond or to even acknowledge the receipt of the letter. By letter dated the 10th June 2014, the applicant again wrote to the Canawaima Ferry Service requesting the removal of the prohibition on the basis that it was discriminatory and without legal basis (Exhibit B). But the Canawaima Ferry Service failed or refused to remove the prohibition.

He deposed that his counsel has advised him that Canawaima Ferry Service has no lawful authority to prohibit or prevent Camex Restaurants Inc from vending on the public parapet outside of the Moleson Creek Compound and that the decision to prohibit Camex Restaurant Inc. from so doing was arbitrary. His counsel has further advised him that the failure of Canawaima Ferry Service to notify him of the reasons for the prohibition and to provide him with an opportunity of being

heard before making such a decision was in breach of natural justice. His counsel has further advised him that the decision to target only the applicant as a vendor was discriminatory, arbitrary, and an abuse of power by Canawaima Ferry Services.

In his Affidavit in Answer on behalf of the Minister of Public Works, Babraj Babram, Permanent Secretary of that Ministry, deposed that the Camex Restaurants Inc. commenced vending in the canteen of the Moleson Creek Ferry Service in April 2013 with the permission of the Ministry. Sometime later, Camex Restaurants Inc., commenced vending on the Ministry's property without permission in contravention of the policy of the Ferry Service which had been in effect since November 1998. He deposed that all persons who were vending without permission were so informed and removed. Digicel was the only entity which was permitted to sell at the location since Digicel had made an arrangement with the Canawaima Ferry Services Inc.. Since all persons vending without permission were removed, the decision to prohibit Camex Restaurants Inc. from vending within the precincts of Canawaima Ferry Service was not made arbitrarily. He deposed that the Camex Restaurants Inc. was invited to utilize the canteen area for vending purposes but the invitation was declined. He further deposed that the applicant was given notice of the reason for the decision to prevent vending within the precincts of the Canawaima Ferry Service. He contended that the failure of the applicant to obtain

permission prior to establishing a vending facility within the property of the Ministry – despite having been informed of the illegality of his actions – resulted in the prohibition.

In his Affidavit in Reply, Terrence Campbell deposed that the location at which Camex Restaurants Inc. previously vended was outside of the compound owned and controlled by the Ferry Service. He was never offered any opportunity to pay the Ministry for the use and occupation of the public area outside of the compound. He stated that the refusal or failure of the Ministry to afford Camex Restaurants Inc an opportunity to vend outside of the compound was arbitrary, unreasonable and ultra vires. He contended that the location at which Camex Restaurants Inc. was vending was a public area outside the Ferry Services compound which is not an area on which the Ministry can arbitrarily determine who should vend. He further contended that the policy adopted by the Ministry was discriminatory, arbitrary and unreasonable in that a policy which states that the Ministry would determine to whom it wishes to offer contracts to the exclusion of all other persons without offering those persons an opportunity of applying must be one which no reasonable person could have formulated.

It does appear that the applicant's claim is that Camex Restaurants Inc. was vending not within the compound of the

Ferry Service but outside of it using a mobile unit which would be parked outside of the compound on the parapet.

The management of all roads and parapets lies with the Chief Roads Officer under section 5 (1) of the Roads Act, Chapter 51:01 which provides:

“The Chief Officer shall have the general care and supervision of the roads of Guyana, and subject to the directions of the Minister, shall be entrusted with and responsible for the laying out making, repairing, widening, altering, deviating, maintaining, superintending and managing them.”

Under section 2 of the Roads Act, “Chief Officer” means “the Chief Works Officer” and “road” means:

“any public road or street declared by the Minister under section 3 and includes the roadway, water tables, bridges, culverts, parapets, embankments, and drains on the line of the road or street and used in connection therewith.”

Thus, the Chief Works Officer is in charge of managing the parapets which abut the roads or streets.

There can be no doubt that members of the general public have a non-absolute right to use the public roads, streets and

parapets for the purpose of getting from one place to another and that traders can hawk on the roads, pavements and parapets by continually moving from one place to another. However, in **Sandan Singh V New Delhi Corporation** (1993) 4 LRC 204, it was held that the right to trade on the streets did not extend to a citizen occupying or squatting on any specific pitch but merely permitted a citizen to hawk on street pavements by moving continually from one place to another.

In the instant case, while Camex Restaurants Inc. can claim no legal right of occupation on any part of the parapet in the sense that he cannot pitch camp on any part of the parapet, there is no prohibition against it vending thereon from its mobile unit provided that the mobile unit does not take up a position but move continually from place to place. Put another way, vending must be iterant. The Court is informed that the mobile unit is a motor cycle. This issue is occupation rather than vending.

According to the Affidavit in Answer filed on behalf of the named respondent, all the vendors who were occupying various parts of the parapet next to the Ferry Service compound were removed and only Digicel was granted a special permission to vend on the parapet – having worked out an arrangement with the Canawaima Ferry Service Inc which occupies adjacent property which is also under the control and management of

of the nature of the arrangement which was made with Digicel. But, on the assumption that the arrangement was not contrary to statute or public law, nothing appears to preclude Camex Restaurants from making an arrangement with the Ministry or the relevant public authority. The need for a special arrangement tends to show that Digicel cannot be a true comparator.

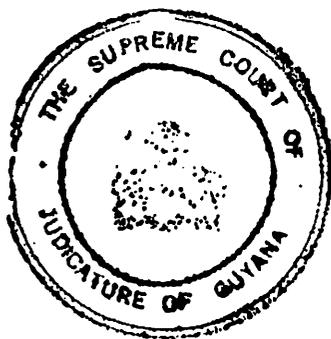
According to the Affidavit in Answer, there is a canteen area within the compound which is rented to food vendors. It would be unfair to other food vendors occupying space within the canteen area at a rental if Camex Restaurants Inc. were to be allowed to use the parapet rent-free outside the compound for the purpose of accommodating a mobile unit from which food is sold. The court is unable to find unlawful discrimination based any of the prohibited grounds such as “race, place of origin, political opinions, colour or creed”. Differentiation of treatment does not *per se* spell unlawful discrimination (See **Nielson V Barker** (1982) 32 WIR 254 at 280, **Bhagwandeem V AG** (2004) LRC 501 at 508 and **Norman Chapman and Mortimer Yearwood V The AG and the Guyana Elections Commission** 166 M of 2005 (G)).

If Camex Restaurants Inc. was using the parapet to vend from its mobile unit on an occupied position or location without any special permission from the Ministry, its occupation in

any special permission from the Ministry, its occupation in contradistinction to its vending was unlawful and the principles of natural justice had no application. As before stated, its vending was not unlawful though its occupation in the course of vending might have been unlawful. It is the view of the court the respondent acted unlawfully in seeking to prevent the applicant from **vending** on the public parapet – although it would have been within its statutory managerial power to prevent the applicant from **occupying** any part of the parapet (for the purpose of vending).

Accordingly, the Orders or Rules nisi of Certiorari granted on the 11th November 2014 must be made absolute. The court so orders.

There will be no order as to costs.



.....*I. N. Chang*.....

Mr. Ian N. Chang, C.C.H, S.C

Hon. Chief Justice (ag.)

Dated this 29th day of May, 2015