

IN THE CARIBBEAN COURT OF JUSTICE  
Original Jurisdiction

CCJ Application No GDOJ2018/002

Between

David Bain

Claimant

And

The State of Trinidad and Tobago

Defendant

THE COURT,

composed of A Saunders, President, and J Wit, D Hayton, W Anderson and A Burgess,  
Judges

having regard to Originating Application and the annexures thereto filed on behalf of the Claimant on the 27<sup>th</sup> day of November 2018, and the Defence and annexures filed on behalf of the Defendant on the 22<sup>nd</sup> day of January 2019, having regard to the Case Management Conference held on the 30<sup>th</sup> day of January 2019 where a hearing of preliminary issues was ordered and the Orders of the Court dated the 30<sup>th</sup> day of January 2019 and the 8<sup>th</sup> day of February 2019, the written submissions and supplemental submissions of the Caribbean Community filed on the 18<sup>th</sup> day of February 2019 and the 2<sup>nd</sup> day of May 2019 respectively, the written submissions of the State of Grenada together with annexures filed on the 20<sup>th</sup> day of February 2019, the written submissions and submissions in reply for the Claimant together with annexures filed on the 6<sup>th</sup> day of March 2019 and the 3<sup>rd</sup> day of April 2019 respectively, the written submissions of the State of Trinidad and Tobago together with annexures filed on the 27<sup>th</sup> day of March 2019, and to the hearing of the preliminary issues at the Seat of the Court and via video conference on the 7<sup>th</sup> day of May 2019

and after considering the written and oral submissions made on behalf of:

- **The Applicant**, by Mr Ruggles Ferguson, Mr. Ferron Lowe and Mr. Patrick Superville, Attorneys-at-Law
- **The Defendant**, Mr Rishi P. A. Dass, Ms Sasha Sukhram and Mr Sean Julien, Attorneys-at-Law
- **The State of Grenada**, by Mr. Adebayo Olowu
- **The Caribbean Community**, by Dr Corlita Babb-Schaefer and Ms. Sandra Bart

Delivers on the **29<sup>th</sup> day of May 2019** the following

## Judgment

### Introduction

[1] Pursuant to Article 222 of the Revised Treaty of Chaguaramas (the Treaty), this court on 20 November 2018 granted special leave to the Claimant, David Bain, to bring his claim against the Defendant, the State of Trinidad and Tobago. Essentially, he was seeking as a national of a Caribbean Community (CARICOM) State to enforce his right to freedom of movement as clarified by this court in *Shanique Myrie v State of Barbados (No 2)*<sup>1</sup>. He claimed:

- (i) A declaration that his right to freedom of movement provided for under Caribbean Community Law as embodied in Article 45 of the Revised Treaty of Chaguaramas (the Treaty) and a Decision of the Conference of Heads of Government of the Caribbean Community taken at their Twenty-Eighth Meeting was infringed by the Defendant on 14 December 2017 when he was denied entry into the Republic of Trinidad and Tobago, detained and sent back to Grenada.
- (ii) Damages for breach of the right to freedom of movement.
- (iii) Further or other relief.
- (iv) Costs.

[2] Since consideration of certain preliminary legal issues (set out at [6] below) if resolved in favour of the Defendant will obviate the need for a costly hearing to determine disputed factual issues, this court set down this hearing to resolve those preliminary issues. To assist this hearing, pursuant to a Case Management Order of 30 January 2019, the Claimant provided certain exhibits, the State of Grenada supplied written submissions as to the Claimant's Grenadian citizenship, Grenadian drivers' licences and identification cards, and the CARICOM provided written submissions as to travel documentation for presentation by nationals of CARICOM States. The CARICOM also provided oral submissions at the hearing.

### The factual background

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<sup>1</sup> [2013] CCJ 3 (OJ), (2013) 83 WIR 104.

- [3] The Claimant is a citizen of both Grenada, where he was born, and of the United States of America. On Thursday, 14 December 2017, he travelled from Grenada to Trinidad on LIAT flight L1523, arriving at Piarco airport late at about 11.50pm. He presented his immigration form supported by his United States of America (USA) passport. He had also held a Grenadian passport but it had expired about three years previously and he had not had time to renew it. On 18 April 2019, however, he was issued with a new Grenadian passport establishing his Grenadian citizenship. It is not disputed that he was a Grenadian Citizen in December 2017. The dispute is as to whether he actually had sufficient documentation to enable him to establish such citizenship with the border officials of Trinidad and Tobago which would have enabled him to rely upon his above Treaty rights.
- [4] Prior to the arrival of the flight, officials at the Piarco Immigration Office had been formally provided with information relating to drug offences being detected against the name of a man called David Bain on the Advanced Passenger Information System. The notice was given by the Joint Regional Communications Centre, a sub-agency of the CARICOM Implementation Agency for Crime and Security, as such a person was on the International Watch List System. After interviewing the Claimant, despite his strenuous denials as to any drugs convictions, an immigration officer issued him with a Rejection Order. The Claimant was informed of his right of appeal but chose not to exercise it, leaving Trinidad and Tobago a few hours later on the scheduled 5.45am LIAT flight LI1308 on Friday, 15 December 2017.
- [5] According to the Claimant *before* the decision to reject him was taken (though according to the Defendant *after* such decision) the Claimant clearly stated to the immigration officers that he was a citizen of Grenada and so entitled to freedom of movement into CARICOM States like Trinidad and Tobago. In support of this he produced his driving licence, which stated on its face that he was a Grenadian citizen, like his current Grenadian driving licence, though he no longer has the expired licence. He also produced what he called his National Identification Card stating on its face that he was born in Grenada, though, in the light of the written submissions of the State of Grenada, it is accepted that such card could only have been his Voter's Identification Card issued by the Supervisor of Elections,

Grenada having no National Identification Card as such. It also is the case that the USA Passport produced to the immigration officers, while stating the Claimant's nationality to be that of the USA, additionally stated Grenada as the country of his birth, a further matter that it is alleged should have influenced those officers to accept that he was a Grenadian citizen.

### **The preliminary legal issues**

[6] There are three issues.

- a) Whether the Claimant waived his rights to be treated as a Caribbean Community national by the immigration authorities of the Defendant State on his presentation of a completed immigration form acknowledging citizenship of the United States of America, along with a valid United States of America passport, and therefore invoking citizenship of the United States of America.
- b) Whether it would make a difference in the establishment of any such waiver if the Claimant's disclosure of his Grenadian citizenship occurred before or after the decision was made by the immigration authorities of the Defendant State to deny the Claimant entry into Trinidad and Tobago.
- c) Whether the presentation of the Grenada Voter's Identification Card or Driver's Licence was sufficient to conclusively determine the Claimant's Grenadian citizenship and thereby entitle him to be treated by the Defendant as a national of a Caribbean Community Member State.

### **The waiver position under [6] (a) and (b)**

[7] This Court does not consider that the Claimant waived his Treaty rights as a national of a CARICOM State when he presented himself to the Defendant's immigration officials on arrival at Piarco Airport as a United States national, producing his USA passport to support his completed immigration form. This is not a matter of private law rights where if a waiver or an election is not upheld the other party will suffer financial damage. The gate-keeping role of immigration officers is simply to allow entry into the country of those persons providing clear documentary evidence that they have the qualifications required for such entry. A person with dual nationality has two citizenships which exist side by side. The exercise of rights attached to one nationality does not eliminate the right to

exercise rights attached to the other nationality. To exercise any of these rights, however, clear documentary evidence is required.

[8] Thus, if the Claimant had renewed his old Grenadian passport and so, in addition to his USA passport, had a valid Grenadian passport carrying Treaty rights not attached to the USA passport, he would clearly be entitled to rely upon his Grenadian passport with its Treaty rights when, on further thought, he realised it would be better to do so than relying upon the USA passport. There is no justification in those circumstance for insisting on an irrevocable election between valid passports.

[9] It follows that even if the immigration officer had decided on the basis of the submitted USA passport to deny the Claimant entry into Trinidad and Tobago, it then remained open to the Claimant to rely upon his nationality of a CARICOM State to claim his Treaty rights *if* he could forthwith prove such nationality in the absence of a valid up-to-date Grenadian passport. All parties rightly agree that the onus of proof is on the intended entrant into Trinidad and Tobago when seeking entry to show that he or she is entitled to seek entry as a national of a CARICOM State with rights under the Treaty.

**Under [6](c) did the Claimant produce conclusive evidence to entitle him to be treated as a national of a Caribbean Community State with rights under the Treaty?**

[10] Paragraph 20 (a) of the Claimant's 3 April 2019 Written Response to the Defendant's Submissions well summarises the Claimant's main case as follows. "The US Passport used by the Claimant combined with the presentation of his Grenadian driver's licence and his Grenadian Voter's ID, were sufficient evidence to establish that the Claimant was a Grenadian citizen. Once the claimant established he was a Grenadian citizen he was entitled to be treated by the Defendant as a CARICOM National." As already mentioned, the evidence produced by the Claimant comprised his Grenadian driver's licence issued by the Commissioner of Police which referred on its face to his Grenadian nationality; his Voter's Identification Card issued by the Supervisor of Elections which stated

that he was born in Grenada; and his earlier produced USA passport which stated that he was born in Grenada.

[11] The written submissions of the State of Grenada make it plain, however, that the fundamental focused function of its domestic drivers' licences and Voters' Identification Cards is internal to permit driving or voting in Grenada, and for which purposes qualified foreigners, who are not Grenadian citizens, may obtain such documents. These documents do not purport to evidence or establish citizenship of Grenada. The focused function of an international Grenadian Passport is to establish citizenship for very significant international purposes, including assuaging other countries' security concerns as to whom to admit within their borders, perhaps taking account of evidence of whereabouts from entry stamps within the passports.

[12] Only Grenada via its Ministry for National Security, Public Administration, Home Affairs and Information Technology, can determine which persons are qualified to be issued with a passport holding themselves out to be Grenadian citizens with intrinsic rights as such. Entry and exit stamps in Passports (or the equivalent information recorded from the input of machine-readable passports) are crucial for determining lawful status of foreigners and their whereabouts over particular periods of time. There is no scope for entry stamps on drivers' licences or Voter's Identification Cards, while an entry stamp on the USA Passport focused solely upon establishing USA citizenship can hardly justify treating the Passport holder as the holder of Treaty rights as a citizen of a CARICOM State. The incidental fact that such Passport happened to state that the Claimant was born in Grenada was not meant to be conclusive evidence that the Claimant was a Grenadian citizen as well as clearly a USA citizen. After all, it is possible that the Claimant had renounced his Grenadian citizenship on or before acquiring USA citizenship or the relevant Minister had stripped him of such citizenship, while mere birth in a particular country does not always automatically confer or evidence citizenship of that country.

[13] It is significant that the Claimant's counsel submitted no evidence of CARICOM States' immigration laws allowing driving licences or voter's identification cards

to prove citizenship of a CARICOM State. This is not surprising in view of the above practical problems and the approach of CARICOM States at Heads of Conference meetings concerned with balancing freedom of entry for CARICOM nationals against significant security concerns.

[14] Traditionally, a passport has been the standard internationally recognised identification document to establish citizenship, originally being very important in times of war to establish whether a person was an enemy alien or a national of a neutral nation. It is still used in CARICOM countries as the basic document for entry into those countries, though immigration laws usually, for example, also allow Laissez-Passers issued by CARICOM itself, the United Nations, the European Union and other accredited international organisations, or Refugees' Travel Documents.

[15] The written and oral submissions of the CARICOM explain that the CARICOM Travel Card (CARIPASS) Treaty envisions a regional machine- readable travel card for travel between CARICOM countries by CARICOM nationals without the need for a formal passport, though to acquire a CARIPASS an applicant has to produce his or her passport, plus a birth certificate if the passport is not machine-readable. The Treaty, however, has not yet been implemented. Moreover, as stated by the CARICOM, the earlier development of having a CARICOM passport bearing the CARICOM logo as an alternative to individual CARICOM States' passports has not been followed through by all such States.

[16] Thus, paragraph 7 of the Caribbean Community's supplemental written submissions states "the appropriate travel document to invoke the right of freedom of movement is the CARICOM passport or a passport issued by a CARICOM Member State," reference being made to a minute of item 5 of the July 2013, 34<sup>th</sup> Meeting of the Conference of Heads of Government: "**Strongly reminded** (sic) Member states to ensure that holders of the passport issued by a CARICOM Member State are granted an automatic six-month stay in accordance with the decisions of the Conference," (though there are, however, exceptions if such a person is "undesirable" or "would become a charge on public funds" as made clear

in a decision of the 28<sup>th</sup> Meeting of the Conference of Heads of Government in 2007 and clarified in *Myrie*<sup>2</sup>).

[17] It follows that the Claimant's submission of his USA passport, his Grenadian driving licence and Voter's Identification Card did not suffice to conclusively establish his Grenadian nationality to the Trinidad and Tobago immigration officers. It thus matters not whether those documents were produced before or after the Claimant was refused entry by Trinidad and Tobago immigration officers.

**Alternatively, did the Claimant produce sufficient evidence to put the Defendant on inquiry that he was a Grenadian citizen with Treaty rights as such, so that the Defendant was under an obligation to make reasonable inquiries to confirm or refute such citizenship and accompanying rights?**

[18] The Claimant's fall-back position is set out in paragraph 20(b) of his above-mentioned 3 April 2019 Written Response to the Defendant's Submissions. He states, "Alternatively, the Claimant produced sufficient evidence to put the Defendant on inquiry that he was a Grenadian citizen and hence entitled to be treated as a CARICOM National. Once the Defendant was placed on such inquiry, it was under an obligation to make reasonable inquiries to confirm or refute the Claimant's Grenadian citizenship and entitlement to treatment as a CARICOM National."

[19] As earlier stated, the onus lies upon an intended entrant into a CARICOM State to establish that he or she is a national of such a State with the accompanying strong right to freedom of movement as established by the Conference of Heads of Government and clarified in the *Myrie* case. As emphasised above, this is very easy to establish conclusively by producing a CARICOM Passport or a passport issued by a CARICOM Member State. Immigration officers are trained to examine such passports for their genuineness and to match the entrant to the passport details, so that persons queuing in immigration lines can be speedily

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<sup>2</sup> N1 [43] and [68]-[76]

admitted, though the odd difficult case can be referred to senior officials in a back office.

[20] The function of an immigration officer is to be a gate-keeper, taking only a short time to open the gate to those who clearly qualify to be admitted, and not to be a private detective involved, at the expense of himself or his employer, in investigations of law and fact to determine whether or not there is some reason that can or cannot be found to help the potential entrant justify being admitted through the gate. It is up to the entrant, who is in the best position to resolve matters, to help himself. By not renewing his Grenadian passport the Claimant deprived himself of the opportunity to establish simply and conclusively that he was a CARICOM national with Treaty rights to admission.

[21] One must also not overlook the practical problems that may arise for a potential entrant if an immigration officer is supposed to take time out to be a detective. It is to be noted that the Claimant was interviewed after midnight in the early hours of the morning of Friday 15 December 2018, while a flight back to Grenada was scheduled for 5.45am that morning. There was no opportunity to contact anyone in the Grenadian Ministry for National Security, Public Administration, Home Affairs and Information Technology to verify the Claimant's nationality. Furthermore, Friday evening is often a busy evening for arrivals and the question naturally arises of what is to happen to an apparently non-CARICOM national if no-one in his claimed CARICOM Member-State Ministry can be contacted till the following Monday morning?

[22] It will thus be seen that the Claimant's fall-back position is misconceived. The straightforward, obligation of the Trinidad and Tobago immigration officials was, subject to the exceptions contained in *Myrie*, to admit the Claimant if he produced a CARICOM Passport or a passport of a CARICOM Member-State, like Grenada. All that he produced, however, were a US Passport and a Grenadian driver's licence and Voter's Identification Card. He did not, therefore, properly or sufficiently establish that he was entitled to the rights of a CARICOM citizen under the Treaty.

[23] Bearing in mind that under international law non-CARICOM nationals generally have no right to enter Trinidad and Tobago whereas CARICOM nationals do have such a right (albeit subject to certain necessary exceptions, the existence of which the receiving State has to establish<sup>3</sup>) the Defendant's refusal to let the Claimant enter its territory is unassailable.

### **Costs**

[24] As regards costs in these proceedings, the court considers relevant the principle it expounded in *Hummingbird Rice Mills Ltd v Suriname and the Caribbean Community*<sup>4</sup>:

“[a]t this nursery stage of the development of Caribbean Community law...the burden of establishing ...basic principles underpinning the Single Market should not weigh too heavily and disproportionately on private entities and thus discourage the bringing of important issues of economic integration law before the Court.”

[25] Accordingly, the parties shall bear their own costs.

### **Order**

[26] The Court dismisses the claims against the Defendant.

[27] The parties shall bear their own costs.

/s/ A Saunders

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The Hon. Mr Justice A Saunders, President

/s/ J Wit

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The Hon. Mr Justice J Wit

/s/ D Hayton

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The Hon. Mr Justice D Hayton

/s/ W Anderson

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The Hon. Mr Justice W Anderson

/s/ A Burgess

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The Hon. Mr Justice A Burgess

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<sup>3</sup> *Myrie* n1, [43],[50] and [67].

<sup>4</sup> [2012] CCJ 2 (OJ) [6].