

Shanique Myrie v The State of Barbados

Citation: [\[2012\] CCJ 3 \(OJ\)](#)
Date of Judgment: 26 October 2012
Nature of Judgment: Judgment on request for leave to intervene
Composition of the Court: President: D Byron
Judges: A Saunders and J Wit

CCJ Application No	Parties
OA 002 of 2012	Claimant Shanique Myrie
	Defendant The State of Barbados

Counsel

- Claimant:
Ms Michelle Brown, Attorney-at-Law
- Defendant:
Mr Roger Forde QC, Mr P K H Cheltenham QC, Dr David Berry and Ms Donna Brathwaite, Attorneys-at-Law
- The State of Jamaica:
Dr Kathy-Ann Brown and Mr O’Neil Francis, Attorneys-at-Law

Nature of Dispute

The dispute involved a claim by Ms Shanique Myrie, a Jamaican national, against the State of Barbados (Barbados), alleging that (i) the treatment she was subjected to by border officials upon arriving at the Barbados airport, and her denial of entry into Barbados, amounted to a serious breach of her right to free movement under Article 45 of the Revised Treaty of Chaguaramas (RTC) and a Decision of the Conference of Heads of Government of the Caribbean Community taken at their Twenty-Eighth Meeting (the 2007 Conference Decision); (ii) a body cavity search to which she was subjected violated her fundamental rights and freedoms; and (iii) she was singled out and treated less favourably than other nationals based on her Jamaican nationality, contrary to Articles 7 and 8 of the RTC. In these proceedings, the State of Jamaica (Jamaica) sought to intervene in the matter pursuant to Article XVIII of the Agreement Establishing the CCJ (The CCJ Agreement).

Summary of Legal Conclusions and Orders

- The Court granted leave to Jamaica to intervene under Article XVIII of the CCJ Agreement.

Legal Provisions at Issue

- Articles 7, 8, 9, 28(1), 45, 211, 215, 216, 219, 221, 222(c)(ii), 240 of the RTC

Other Relevant Community Law / Material Relied on

- Article XVIII of the Agreement Establishing the CCJ
- Part 10.3, 14 of the CCJ Original Jurisdiction Rules 2006

Past CCJ Case Law

- *TCL and TCL Guyana Incorporated v Guyana* [2008] CCJ 1 (OJ)
- *TCL and TCL Guyana Incorporated v Guyana* [2009] CCJ 1 (OJ)
- *TCL v CARICOM* [2009] CCJ 4 (OJ)

Other Sources of International Law

- Articles 59 and 62 of the Statute of the International Court of Justice

Facts

On 14 March 2011, the Claimant, a national of Jamaica arrived at the Grantley Adams International Airport (GAIA) in Barbados. Upon her arrival, the Claimant was interviewed by an immigration officer and again by other officers and accused of lying, being in possession drugs, after which she was allegedly subjected to slurs and expletives about Jamaicans as well as a demeaning body cavity search. Ms Myrie was subsequently denied entry into Barbados, was detained in a cell under subpar conditions and deported back to Jamaica the following day. Ms Myrie brought an action against the State of Barbados.

On 24 May 2012, the Registrar of the Court sent a Notice to the Community and all CARICOM Member States informing them of the filing of Ms Myrie's Originating Application. The Registrar's Notice invited any person or Contracting Party who wished to intervene in the proceedings to file an application for leave to intervene within six weeks of being served with the said Notice. On 13 July 2012, Jamaica requested leave to intervene in the proceedings, even though it had expressly permitted the proceedings to be brought by its own national in lieu of bringing them itself. The request to intervene was supported by Ms Myrie. Barbados objected to the intervention.

Findings

Jamaica submitted that, its substantial legal interests that may be affected as this case will establish a binding precedent for all Member States and that its interest in seeking to safeguard the rights enshrined in the RTC sufficiently entitled it to intervene in the proceedings.

The State of Barbados objected to the request on the grounds that:

1. Only Ms Myrie and Barbados could be bound by decisions of the matter. As such, Jamaica's interest would be unaffected by the outcome of the proceedings.
2. Jamaica's interest in securing respect for the rules of international law including the provisions of the RTC was too general to secure a successful intervention.
3. Jamaica was precluded from intervening in these proceedings because it expressly permitted its own national to bring the proceedings in lieu of bringing them itself.
4. Due to the exceptional circumstance where a State has formally sought to intervene, granting leave would have cost consequences not contemplated by the parties.

Although the main legal provision at issue was Article XVIII of the Agreement, the Court began with Article 221 of the RTC which provides that, '*Judgments of the Court shall constitute legally binding precedents for parties in proceedings before the Court unless such judgments have been revised in accordance with Article 219*'. The Court found that it was imperative to understand the extent of the powers of the Court to develop legally binding precedents before making clear the correct interpretation of Article XVIII of the Agreement which provides for third party intervention. The Court found that the respective contentions make clear that interpretation of Article XVIII of the Agreement is to a great extent conditioned by an understanding of the meaning of Article 221 of the RTC.

The Court found that due to the nature of the RTC, which is a multilateral regional integration pact through which the State Parties express their intention to establish a community, CARICOM Members recognise as compulsory, *ipso facto* and without special agreement, the exclusive jurisdiction of this Court to hear and determine disputes concerning the interpretation and application of the RTC. As such, the Court considered the interpretation of Article 221 as creating a system of binding precedent for all Member States and the Community should be followed.

Further, the Court found that the decisions it reaches in these proceedings are capable of providing an authoritative precedent to guide the conduct of all Member States. As such, the interest claimed by Jamaica were not too general. The Court found that Jamaica may support the claim (or defence as the case may be) of a party but it must accept the case as it is at the time of intervention. Additionally, the Court found it erroneous to regard Jamaica as automatically abandoning all interest in the claim by permitting its national to bring these proceedings in lieu of pursuing the claim itself as the binding precedent of the judgment will affect Jamaica's obligations ultimately. Lastly, the Court found that neither the likelihood of an increase in costs nor the existence of alternative means for Jamaica to institute proceedings against Barbados provides a good reason to exclude the intervention requested here.

The Court also saw it fit to make brief remarks generally about third-party participation in contentious proceedings. The Rules of the Court expressly permit Member States and the Community not parties in proceedings before the Court, the opportunity to play some part in those proceedings or at least to make submissions on issues in dispute. The Court found that in contentious proceedings it has developed a practice of receiving submissions from States that were not parties to the case then before it. This practice was built on Part 10.3 of the Rules which requires, within fourteen days, notification to the Community and all Member States of the filing of any Originating Application. The Court referred to *TCL and TCL Guyana Incorporated v Guyana* and *TCL v CARICOM* where they welcomed written and written/oral submissions respectively. As per Part 23.2 of the Rules, the Court has the authority to “**require** Member States and organs of the Community not being parties to the proceedings to supply all information which the Court considers necessary for the proceedings.” Likewise, the Court has the discretion to ask Third parties to do so voluntarily. The Court found that it is in this context that one must view Rule 10.3. However, while an Intervener will have a far broader role than one who merely seeks to write submissions, the Court will be minded to monitor and control the extent of an intervention especially where a Member State has opted to not bring the proceedings itself. Lastly, the Court found that an Intervener is not a full-fledged party; the position is merely ancillary.

The Court utilised this moment to extend an invitation to Member States and the Community to make submissions on the issues in dispute in these proceedings whether in relation to the relevant law or the material facts.

The Court granted leave to Jamaica to intervene and made no order as to costs.

This summary should not be used as a substitute for the decision of the Caribbean Court of Justice.