

Shanique Myrie v The State of Barbados

Citation: [\[2013\] CCJ 3 \(OJ\)](#)
Date of Judgment: 4 October 2013
Nature of Judgment: Judgment on merits
Composition of the Court: President: D Byron
Judges: R Nelson, A Saunders, D Bernard, J Wit, D Hayton and W Anderson

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

Counsel

- Claimant:
Ms Michelle Brown and Ms Nancy Anderson, Attorneys-at-Law
- Defendant:
Mr Roger Forde QC, Mr Patterson Cheltenham QC, Ms Donna Brathwaite QC, Dr David Berry and Ms Nargis Hardyal Attorneys-at-Law
- Intervener:
Dr Kathy-Ann Brown, Ms Lisa White and Mr O’Neil Francis, Attorneys-at-Law
- Community:
Ms Safiya Ali, Ms Gladys Young and Dr Chantal Ononaiwu, Attorneys-at-Law

Nature of Dispute

The dispute involved a claim brought 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) that the 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.

Summary of Legal Conclusions and Orders

- The Court found that Barbados breached the right of the Claimant to enter Barbados pursuant to Article 45 of the RTC and the 2007 Conference Decision.
- The Court ordered Barbados to pay the Claimant the sum of Bds \$2, 240 for pecuniary damages and the sum of Bds \$75, 000 for non-pecuniary damages. Barbados was further ordered to pay the costs of the Claimant to be taxed if not agreed.
- The Court made no order as to costs of the Intervener or the Community.

Legal Provisions at Issue

- Articles 7, 8, 9, 12, 27, 28, 29, 30, 45, 46, 225, 226, 240 of the RTC

Other Relevant Community Law / Material Relied on

- Decision of the Conference of Heads of Government of the Caribbean Community taken at their Twenty-Eighth Meeting (the 2007 Conference Decision)
- Draft Report of the Twenty-Eighth Meeting of the Conference of Heads of the Caribbean Community

Past CCJ Case Law

- *Hummingbird Rice Mills v The Caribbean Community* [2012] CCJ 1 (OJ)
- *The Attorney General v Jeffrey Joseph and Lennox Ricardo Boyce* [2006] CCJ 3 (AJ)
- *Trinidad Cement Limited v The Cooperative Republic of Guyana* [2009] CCJ 1 (OJ)
- *Trinidad Cement Limited v The Caribbean Community* [2009] CCJ 4 (OJ)
- *Trinidad Cement Limited v The Co-operative Republic of Guyana* [2009] CCJ 5 (OJ)

Other Sources of International Law

- *Case Concerning the Factory at Chorzów* 1928, PCIJ Ser A, No 17
- The Treaty Establishing the European Economic Community (“Treaty of Rome”) 1957
- ECJ, Case 149/79 *Commission v Belgium* Judgment of the Court of 17 December 1980

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 who found that there was no reason to deny her entry. Ms Myrie was, however, again interviewed by another set of officers and accused of lying, being in possession of 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 to Jamaica the following day.

Findings

Ms Myrie alleged that her denial of entry in Barbados and the treatment accorded to her during her detention violated her right to free movement within CARICOM under Article 45 of the RTC and the 2007 Conference Decision. Ms Myrie further claimed that Barbados breached her rights under Articles 7 and 8 of the RTC, respectively, to non-discrimination on the ground of nationality only, and to treatment that is no less favourable than that accorded to nationals of other CARICOM States or Third States. Ms Myrie also requested a declaration that Barbados, through its agents, violated her fundamental human rights and freedoms contained in international human rights treaties; and payment of special and pecuniary damages; and recovery of all her legal costs.

The Court first recalled that the Claimant had fully complied with the requirements set out in Article 222, and that she therefore had standing before the Court. The Court also highlighted that its role of interpreting the RTC necessarily extends to the decisions and other determinations made by relevant authorities in the exercise of their functions to fulfil or further the goals and objectives of the RTC. The Court found support for this in the texts of Articles 9 and Article 222 of the RTC. The Court found that such secondary legislation is in principle part and parcel of Community law, the content of which encompasses the provisions of the RTC, the decisions adopted by competent Organs and Bodies for its further development and implementation, and the judgments of the Court.

With respect to Ms Myrie's claim that her rights under international human rights treaties were violated, the Court clarified that its jurisdiction was limited to interpreting and applying the RTC and that it had no jurisdiction with respect to specific claims that Barbados violated Ms Myrie's human rights under international human rights treaties. The Court noted, however, that it could and must take into account principles of international human rights law in shaping and developing Community law, given its authority, as an international Court, to apply "such rules of international law as may be applicable", as provided for under Article 217 of the RTC.

As regards Ms Myrie's claim that her right of entry under the 2007 Conference Decision was violated by Barbados, the Court clarified the parameters of that right, noting that it was a critical element in the case. The Court explained that the right of "definite entry" conferred by the 2007 Conference Decision entails the right of Community nationals to have unrestricted access to, and movement within, the jurisdiction of the Member States, subject to public interest considerations. While the 2007 Conference Decision entitles a Member State to limit the free movement of a national of another Member State if such national is "undesirable" or would become "a charge on public funds", the Court indicated that this entitlement must be construed as an exception to the right of entry and, consequently, the scope of the refusal and the grounds

on which it should be based must be interpreted narrowly, with the burden of proof resting on the Member State that seeks to invoke either ground. The Court considered that the concept of undesirability must be concerned with the protection of public morals, the maintenance of public order and safety, and the protection of life and health. While Member States have some discretion when invoking this exception, the Court explained that the visiting national must present a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, and that the threat posed should, at the very least, be one to do something prohibited by national law.

While Barbados justified its denial of entry to Ms Myrie on the basis that she had told lies to the immigration officials as to the identity of her host in Barbados, the Court found that Barbados had failed to discharge its burden to justify the limitation placed on Ms Myrie's right to entry. Although the truthfulness of replies to questions from border officials is a relevant consideration, the Court found that Barbados had failed to produce sufficient evidence to establish that Ms Myrie posed such a threat as to properly to deem her undesirable.

Concerning Ms Myrie's claim of discrimination on the grounds of nationality under Article 7 of the RTC, the Court considered that discrimination in the context of Community law occurs where there exists treatment that is less favourable than is accorded to a person whose circumstances are similar to those of the Claimant, except for their and the Claimant's nationality. Upon reviewing the evidence in this case, the Court found, however, that Ms Myrie had failed to make a *prima facie* case of discrimination under Article 7.

The Court further dismissed Ms Myrie's claim that, as a Jamaican, she was treated less favourably than nationals of other States in contravention of the right to Most Favoured Nation treatment under Article 8 of the RTC. The Court considered that the right under Article 8 may be regarded as a, albeit limited, manifestation of the principle of non-discrimination, although it is broader in that it also extends to Third, ie, non-CARICOM, States. Given that the Court had dismissed the discrimination claim under Article 7 of the RTC, and no evidence had been proffered with regard to the treatment by Barbados of nationals of Third States, the Court held that a breach of Article 8 of the RTC in this case could not be sustained.

Finally, with respect to Ms Myrie's claim for damages, the Court reiterated that Ms Myrie's treatment by border officials in Barbados constituted a very serious breach of Ms Myrie's right to entry. Accordingly, she was entitled to be awarded compensatory damages for both her pecuniary loss as well as for her moral, non-material or non-pecuniary loss. The Court awarded damages at the high end of the spectrum appropriate for the seriousness of the breach of the right in question, while noting, however, that the nature of the right of entry would not usually attract high damages, and indeed may in some cases attract no damages whatsoever.

In light of the above, the Court concluded that Barbados had breached Ms Myrie's right to enter Barbados and ordered Barbados to compensate Ms Myrie in pecuniary damages in the sum of Bds \$2, 240 and non-pecuniary damages in the sum of Bds \$75, 000. The Court also ordered Barbados to pay Ms Myrie's reasonable costs.

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