

Tamika Gilbert, Lynnel Gilbert, Royston Gilbert and Glennor Gilbert v The State of Barbados

Citation: [\[2019\] CCJ 2 \(OJ\)](#)
Date of Judgment: 20 May 2019
Nature of Judgment: Judgment on special leave
Judgment on costs
Composition of the Court: President: A Saunders
Judges: J Wit, D Hayton, W Anderson, M Rajnauth-Lee

CCJ Application No	Parties
GDOJ2018/001	Applicants Tamika Gilbert Lynnel Gilbert Royston Gilbert Glennor Gilbert Proposed Defendant The State of Barbados

Counsel

- Applicants:
Mr Ruggles Ferguson, Mr Ferron Lowe, Ms Anika Johnson-Cassone and Ms Sabina Gibbs, Attorneys-at-Law
- Proposed Defendant:
Ms Anika Jackson and Mrs Deidre Gay-Mckenna, Attorneys-at-Law

Nature of Dispute

The dispute involved a claim by the Applicants, Grenadian nationals, that their right to free movement under the Revised Treaty of Chaguaramas (RTC) and the Decision of the Conference of Heads of Government of the Caribbean Community (the 2007 Conference Decision) on the right of entry of CARICOM nationals was hindered by the State of Barbados (Barbados) when officers of the Royal Barbados Police Force arrested, detained and subjected their two daughters to bodily searches in Bridgetown, Barbados. The Applicants sought special leave under Article 222 of the RTC to commence proceedings against Barbados.

Summary of Legal Conclusions and Orders

- The application for special leave was denied.
- The parties were ordered to bear their own costs.

Legal Provisions at Issue

- Articles 7, 45, 222, 225 and 226 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 concerning the right of entry of CARICOM nationals (the 2007 Conference Decision)

Past CCJ Case Law

- *Cabral Douglas v The Commonwealth of Dominica* [2017] CCJ 1 (OJ)
- *Shanique Myrie v The State of Barbados (No 2)* [2013] CCJ 3 (OJ)
- *Trinidad Cement Limited and TCL Guyana Incorporated v The State of the Co-operative Republic of Guyana* [2009] CCJ 1 (OJ)
- *Hummingbird Rice Mills Ltd v Suriname and The Caribbean Community* [2011] CCJ 1 (OJ)

Other Sources of International Law

- N/A

Facts

On 11 October 2016, the Applicants, a Grenadian family consisting of a father, mother and their two adult daughters, travelled to Barbados for one day, primarily to visit the United States (US) Embassy to obtain US Visas. After visiting the Embassy, the family visited a store in Bridgetown during which time the storeowner accused Tamika and Lynnel, the two adult daughters of the Gilbert family, of stealing her cellphone. Officers of the Royal Barbados Police Force were summoned, and the Applicants were questioned about the whereabouts of the storeowner's phone. The girls denied having any knowledge of the phone's whereabouts and informed the officers of their nationality, the purpose of their trip to Barbados and their intention to depart the country later that day. They were subsequently arrested, transported to a nearby police station, and allegedly subjected to a "humiliating" strip search before their release, without charge, on the same day.

Findings

The Applicants sought special leave of the Court under Article 222 of the RTC to bring proceedings against Barbados, alleging that their right to free movement under Article 45 of the RTC and the 2007 Conference Decision was prejudiced by their arrests and detention after entry into Barbados.

The Court, in considering whether the Applicants had satisfied the requirements for special leave under Article 222 of the RTC, focused on the requirements in Articles 222(a) and (b) of the RTC. The Court accordingly considered (1) whether the Applicants had a right to freedom of movement within the territory of the Member State during their visit there pursuant to Article 45 of the RTC and the 2007 Conference Decision, and, if they did, (2) whether they had been prejudiced in respect of the enjoyment of this right in the circumstances of this case. As regards the first issue, the Court found that the right of free movement under Article 45 of the RTC and the 2007 Conference Decision includes, subject to the exceptions in the RTC and particularly Articles 225 and 226, the right to move freely within Barbados, and to depart Barbados without impediment. Accordingly, the Court disagreed with Barbados' contention that the right to freedom of movement under the RTC and the 2007 Conference Decision was simply the right to "automatic stay" or "definite entry" upon arrival in a Member State and could not encompass the circumstances which formed the basis of the Applicants' case. Therefore, the Court was satisfied that the Applicants had shown an arguable case that the right under Article 45 of the RTC and the 2007 Conference Decision was intended to inure to their benefit directly, and that the requirement under Article 222(a) of the RTC was thus satisfied.

The Court then turned to consider whether the Applicants had satisfied the requirement in Article 222(b) of the RTC by establishing an arguable case that they had been prejudiced in the enjoyment of their right to free movement within Barbados. The Court concluded that the Applicants had failed to establish an arguable case in this regard. The Court explained that a breach of the right to free movement within the State of Barbados might occur, for example, in a situation where nationals of other Community member states, although permitted entry into Barbados and granted an automatic stay of six months upon arrival, were without proper justification not allowed to enter into designated spaces or at specified times, whilst nationals of Barbados were allowed such entry. In this case, however, where the Applicants were taken into police custody for the purpose of police investigations, the Court did not agree that they had made out an arguable case that they were prejudiced in the enjoyment of their right to move freely within the State of Barbados. Noting that persons, probably most of them nationals of Barbados, are regularly taken into police custody for the purpose of police investigations, the Court stated that freedom of movement under the RTC does not immunize CARICOM nationals from the operation of law enforcement agencies in the receiving State.

The Court thus considered that, in order to show a breach of the right in question, the Applicants would have had to demonstrate that, in their arrest and detention, there was some element of

discrimination based only on their nationality, contrary to Article 7 of the RTC. The Applicants had failed to do so and had, in fact, not even alleged a breach of Article 7 of the RTC.

The application for special leave was thus denied, and the parties were ordered to bear their own costs.

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