

## David Bain v The State of Trinidad and Tobago

Citation: [\[2019\] CCJ 3 \(OJ\)](#)  
Date of Judgment: 29 May 2019  
Nature of Judgment: Judgment on merits  
Judgment on costs  
Composition of the Court: President: A Saunders  
Judges: J Wit, D Hayton, W Anderson and A Burgess

| CCJ Application No | Parties   |
|--------------------|---|
| GDOJ2018/002       | <b>Applicant</b> David Bain                       |
|                    | <b>Defendant</b> The State of Trinidad and Tobago |

### Counsel

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

### Nature of Dispute

The dispute concerned a claim by David Bain, a dual citizen of the United States of America (United States) and the State of Grenada (Grenada), against the State of Trinidad and Tobago (Trinidad and Tobago). Mr Bain alleged that, as a result of his denial of entry into Trinidad and Tobago by immigration authorities, Trinidad and Tobago breached his right to freedom of movement under Article 45 of the Revised Treaty of Chaguaramas (RTC). The Court had, at an earlier stage of proceedings, granted special leave to the Claimant to bring proceedings against Trinidad and Tobago pursuant to Article 222 of the RTC.

### **Summary of Legal Conclusions and Orders**

- The Court dismissed the claim that Trinidad and Tobago had violated Article 45 of the RTC.
- The Court ordered the Parties to bear their own costs.

### **Legal Provisions at Issue**

- Article 45(f) of the RTC

### **Other Relevant Community Law / Material Relied on**

- N/A

### **Past CCJ Case Law**

- *Shanique Myrie v The State of Barbados and The State of Jamaica, Intervening* [2013] CCJ 3 (OJ)
- *Hummingbird Rice Mills Limited v Suriname and the Caribbean Community* [2012] CCJ 2 (OJ)

### **Other Sources of International Law**

- N/A

\*\*\*

### **Facts**

The Claimant, David Bain, is a dual citizen of Grenada and the USA. Upon arrival in Trinidad and Tobago from Grenada, he presented immigration authorities with his immigration form and his United States passport. He was denied entry after being interrogated for previous drug-related charges against a man carrying his name despite his denial of any involvement. He had also presented his Grenada driver's licence and his voter's identification card but was detained and sent back to Grenada the next morning.

### **Findings**

The Claimant argued that, as a Grenadian citizen, he was entitled to freedom of movement within CARICOM under Article 45 of the RTC and that, as such, his denial of entry into Trinidad and Tobago therefore violated Article 45. The main issue in contention was whether the documents presented by the Claimant to immigration authorities were sufficient to establish his Grenadian citizenship, which would enable him to rely on his right to freedom of movement within CARICOM.

The Court considered, first, whether the Claimant had waived his right to be treated as a Caribbean Community national, given his presentation of a completed immigration form

acknowledging citizenship of the United States, along with a valid United States passport. The Court found that the Claimant had not waived his rights as a national of a CARICOM State merely by presenting himself to immigration authorities as a United States national. In this regard, the Claimant was not precluded from holding dual nationalities, nor did the exercise of rights attached to one nationality eliminate the exercise of rights attached to another. This notwithstanding, the Court highlighted that the onus of proof is on the intended entrant into a CARICOM Member State when seeking entry to show that he or she is entitled to seek such entry as a national of a CARICOM State with attendant rights under the RTC.

The Court then considered whether it would make a difference in the establishment of any such waiver of the Claimant's rights under the RTC if the Claimant's disclosure of his Grenadian citizenship occurred before or after the decision was made by the immigration authorities to deny the Claimant entry into Trinidad and Tobago. The Court considered that the Claimant's subsequent presentation of his Grenadian driving licence and Voter's Identification Card did not establish conclusively his Grenadian citizenship, as qualified foreigners also had access to such documents. Similarly, the Court found that he could not rely on his United States passport, which stated Grenada as his birthplace, to establish his Grenadian citizenship, as being born in a country does not always automatically confer or evidence citizenship in that country. In this regard, the Court found that the only acceptable and appropriate travel document to invoke the right to freedom of movement under the RTC is a valid passport issued by a CARICOM Member State.

The Court next considered whether the Claimant had produced sufficient evidence to the immigration authorities to trigger an enquiry on the part of the Defendant that he was in fact a Grenadian citizen with rights under the RTC. The Court reiterated that the burden had to be discharged by the intended entrant into a CARICOM Member State to establish that he is a national of such State with the right to freedom of movement. The Defendant State's immigration officials were therefore not obligated to make reasonable inquiries to confirm or refute the Claimant's citizenship beyond their main obligation as gatekeepers for admittance into the jurisdiction. All that the Claimant had produced to immigration authorities were a United States Passport, a Grenadian driver's licence, and a Grenadian Voter's Identification Card; all of which were not sufficient to establish his Grenadian citizenship. The Claimant did not, therefore, properly or sufficiently establish that he was entitled to the rights of a CARICOM citizen under the RTC. On this basis, the Claimant's claim against the Defendant was dismissed.

With respect to costs, the Court considered that to lighten the financial burden of litigation costs and to encourage private entities to bring claims before the CCJ in its original jurisdiction, it was appropriate for each party to bear its own costs in the proceedings.

\*\*\*

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



Developed by The University of the West Indies Cave Hill TradeLab Clinic