

IN THE COURT OF APPEAL OF THE SUPREME COURT OF  
JUDICATURE

APPELLATE JURISDICTION

G U Y A N A

CIVIL APPEAL NO. 79/2000

BETWEEN:

**LEWIS BURNETTE**

Appellant/Plaintiff

- and -

- 1. GUYANA MINING ENTERPRISE LTD.**
- 2. LINDEN MINING ENTERPRISE LTD.**

Respondents/Defendants

BEFORE:

**Hon. Madam Justice Desiree P. Bernard** - **Chancellor**  
**Hon. Madam Justice Claudette M.C. Singh** - **Justice of Appeal**  
**Hon. Mr. Justice Ian Chang** - **Justice of Appeal**

Mr. A. Chase, SC with Ms. D. Younge for Appellant  
Mr. R. Ramkarran, SC with Mr. K. Ramkarran for second-named  
Respondents  
No appearance for first-named Respondents

2002: November 5

2003: March

J U D G M E N T

BERNARD, C.:

The Appellant was employed with the Respondents as a drill operator, and was dismissed summarily on 14<sup>th</sup> February, 1990. He was given twelve (12) days' pay in lieu of notice, but continued to reside in the Respondents' house which he had occupied as part of his conditions of service. In April, 1992 he alleged that he was forcefully removed from the house and his personal belongings detained by the Respondents. He instituted proceedings against the Respondents for wrongful dismissal, detinue and damages. On

30<sup>th</sup> June, 2000 his claim was dismissed on the ground that the first-named Respondent Company was dissolved prior to the institution of the Appellant's proceedings, and the second-named Respondent Company was not a juristic person when the cause of action arose. The Appellant appealed to this Court.

The main ground of appeal is that the learned trial judge misdirected himself on the issue of the existence of the second-named Respondent as a public corporation. Counsel for the Appellant contended that the intent of Order 19 of 1992 made under the Public Corporations Act 1988 and under which the assets of the first-named Respondents were transferred to Berbice Mining Enterprises Ltd. when it went out of existence from July, 1992 was to shield its assets from overseas creditors and to make arrangements for discharge of liabilities to the said creditors. He drew the Court's attention to the Preamble of the Order which made reference to the fact that the first-named Respondents were no longer able to operate in an efficient and profitable manner, and that it was necessary to carry out a programme for the rehabilitation of the Linden operations of the first-named Respondents. He pointed out that Clause 5(4) of the Order provided that it did not apply to amounts due to any employee of Guymine under his contract of employment with the said company; further, the second-named Respondent Company was a live and subsisting corporation when the Appellant's writ was issued, and under Clause 7(6) it was liable for sums payable to any employee of Guymine in respect of accrued rights relating to any outstanding leave or leave salary, vacation passage and other similar matters of those in employment after the appointed day. Counsel submitted that this Clause showed a clear intent to protect the interests of those in the employ of Guymine on the appointed day, and there was no provision in the Order

depriving an employee of earned benefits if he was not in the actual employ of Guymine on the appointed day. He also referred to Clauses 4 and 9 which he contended were not intended to exclude or debar further or new litigation in respect of non-scheduled debts or lawful claims nor to obliterate inchoate claims which local persons had against Guymine. If this were so it may have the effect of rendering Order 19 unconstitutional and an infringement of Article 142 of the Constitution. In any event, the Respondents in their Defence admitted that the first-named Respondents had paid the Appellant the equivalent of 31½ days' vacation leave, and he was entitled to his refund of pension contribution with interest. Further, the second-named Respondents had taken over responsibility for the Appellant's belongings and his rights, and Counsel contended that the Appellant could have proceeded against either Bermine or Linmine.

Counsel for the Respondents, however, submitted that a company once dissolved is dead, and judgment cannot be obtained against it. He agreed with the learned trial judge's finding that Order 19 extinguished the rights of the Appellant by not providing for them as there is nothing in the Order concerning rights of employees dismissed prior to the appointed day. He contended that when the Appellant's cause of action arose the second-named Respondent company was not in existence. He made reference to "Craies on Statute Law", 7<sup>th</sup> Edn., and the case of Lazard Bros. & Co. v. Midland Bank Ltd. (1932) ALL ER, Reprint, 571 to which Counsel for the Appellant also referred but distinguished; also Walsh v. Secretary of State for India (1863) 10 HLC, 367. He submitted, further, that if this Court reads into Order 19 that the Appellant's rights were preserved this would collide with corporate liability, and referred to the case of Morris v. Harris (1926) ALL ER Reprint, 15.

In determining whether the Appellant's action can be maintained against the Respondents jointly or severally one has to ascertain the import of Order 4 No. 19 of 1992 made under the Public Corporation Act 1988. The Preamble to the Order indicates that the Linden Bauxite Mines of the first-named Respondent company were no longer being operated efficiently and profitably and needed to be rehabilitated by divestment in order to discharge obligations to its creditors. It was intended that the operations at Berbice be severed from those at Linden, and in this regard all the property (including land and buildings) of the first-named company in Berbice was transferred to the Berbice Mining Enterprises Ltd. and all other property not specifically mentioned in the order was transferred to the second-named Respondent company.

Clause 5 of the Order provided for the adjudication of liabilities of Guymine by an adjudicating authority, but Clause 5(4) stipulated that the said clause did not apply to amounts due to any employee of Guymine under his contract of employment. Clause 7 provided for the employees of Guymine continuing in employment if they chose, and for Bermine or Linmine to pay severance pay to any employee of Guymine whose employment was terminated from the day immediately preceding the appointed day. Clause 7(6) stipulated that the liability for payment of pension benefits to employees of Guymine whose employment was terminated by the appointed day and who were allocated to Bermine or Linmine, and for the liability for sums payable to any such employee in respect of accrued rights relating to any outstanding leave or leave salary was transferred to Bermine or Linmine.

All of these clauses of Order 19 seem to relate to persons who were in the employment of Guymine on the appointed day which was the date on

