REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civil Appeal No. 160 of 2011

Between

THE CHIEF IMMIGRATION OFFICER
THE MINISTER OF NATIONAL SECURITY

Appellants

And

SUSAN RUTH JACKSON
JORDAN MATTHEW LEIBA (an infant)
(suing by his next friend and mother Susan Ruth Jackson)

Respondents

PANEL: **I. ARCHIE, C.J.**
P. JAMADAR, J.A.
N. BEREAUX, J.A.

APPEARANCES: **N. Byam, R. Chaitoo and M. Benjamin for the appellants**
I. Benjamin, R. Heffes-Doon and M. Harper for the respondents

DATE DELIVERED: March 9th, 2018

I agree with the judgment of Bereaux J.A. and I have nothing to add.

I. Archie
Chief Justice

I too agree.

P. Jamadar
Justice of Appeal

RULING

Delivered by Bereaux, J.A.

[1] On 3rd July, 2017, we allowed, in part, the appeal of the Chief Immigration Officer and the Minister of National Security. The broad question was whether as a result of her adoption by citizens of Trinidad and Tobago the first respondent, Susan Jackson ("Susan"), who was born in Jamaica, was herself a citizen of Trinidad and Tobago. If Susan was held to be a citizen then it followed that Jordan Matthew Leiba ("Jordan"), her son, was also a citizen and the Chief Immigration Officer's decision to seize both their passports was unlawful. We held that Susan and Jordan should not have been successful in their claim and the trial judge was wrong to have upheld their claim. We set aside the trial judge's declaration that the first appellant's decision to seize and his subsequent decision to refuse to restore the respondents' passports were illegal. We also set aside the trial judge's order to quash the decisions of the first appellant. The initial seizure of the passports was not unlawful. However the effect of Section 37 of the Adoption of Children Act, No. 67 of 2000 ("the Act") which was proclaimed subsequent to the seizure of the passports, was that the respondents were retroactively entitled to citizenship and, therefore, to be issued their passports. The Act came into effect on 18th May 2015 (after the date of the High Court judgment). Section 37 expressly states that it applies to adoptions which took place before the coming into force of the Act. We therefore upheld the trial judge's declarations that the first and second respondents were citizens of Trinidad and Tobago and that they were entitled to the renewal and/or reissue of their passports.

[2] We held that each party should bear their own costs both on appeal and in the High Court. Counsel for the respondents asked to be heard on the subject. Submissions from the other side were to follow within fourteen days thereafter. The respondents filed their submissions on 6th July, 2017. To this date, no submissions have been received from the appellants.

[3] The order, provisionally made, that each party should bear their own costs, both on appeal and below, is confirmed for the reasons to follow.

[4] In deciding on who should be liable to pay costs, the court must have regard to all the circumstances (CPR Part 66.6(4)). Of particular relevance in this matter was whether it was reasonable for either party to have pursued a particular allegation or to have raised a particular issue (CPR Part 66.6(5)(c)). In this case, it was reasonable for the respondents to have brought their claim, seeking to establish that Susan and Jordan were citizens of Trinidad and Tobago and that the seizure of their passports had been illegal. They had been led to believe, through the issuance of their passports over the years, that they were citizens of Trinidad and Tobago.

[5] The appellants' pursuit of the appeal was also quite reasonable. The matter of whether or not the immigration officers had acted unlawfully in seizing the passports had to be settled. The law as it stood before Section 37 had to be interpreted. The trial judge's analysis indicated that the appellants were under a misapprehension concerning the law and had acted unlawfully. This misapprehension could potentially have had consequences in other immigration matters. As such, it was reasonable for the appellants to pursue this appeal in order to have these issues authoritatively clarified.

[6] Neither party can be said to have unjustifiably brought the other to court. The respondents were merely defending rights that they were led to believe they had. The appellants had a good case based on the law as it existed at the time of the impugned decision and in fact, they would have succeeded but for the proclamation of the Act which retrospectively gave citizenship to Susan and Jordan (long after the passports had been seized).

[7] Part 66.6(5)(b) of the CPR requires the court to have regard to whether a party has succeeded on particular issues, even if he has not been successful in the whole of the proceedings. The central issue in this matter was whether Susan was a citizen of Trinidad and Tobago. Each party had some degree of success on this matter. The appellants' view of the law was to some extent upheld as this Court disagreed with the trial judge's view of the state of the law prior to the date on which Section 37 came into effect. We found that the seizure of the passports was not unlawful at the time. The respondents described the question of the unlawfulness of the action of the State at the time of the seizure of the passports as a "subordinate issue". This issue however was tied to the central question of

Susan's citizenship. The seizure of the passports was not unlawful because Susan was not a citizen according to the law as it stood at that time. But Susan and her adoptive parents had no intention to deceive. They were misled by the officers at the Trinidad and Tobago High Commission in Jamaica. Had they been properly advised they could have regularized her citizenship long before she migrated to Canada. Bearing these facts in mind, we consider that it is fair in all the circumstances that the order for costs be affirmed.

Nolan P.G. Bereaux
Justice of Appeal