REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

MAG. APP. NO.7 of 2013

BETWEEN

KATHLEEN BOSTIC

APPELLANT

AND

LICENSING COMMITTEE FOR ST. GEORGE WEST

FIRST RESPONDENT

LISA MAILLARD

SECOND RESPONDENT

PANEL: A. Mendonça, J.A.
N. Bereaux, J.A.

APPEARANCES: Mr. K. Scotland appeared on behalf of the Appellant
Mr. N. Byam appeared on behalf of the First Defendant
Mrs. L. Maillard appeared in the person.

DATE DELIVERED: February 8th, 2013

JUDGMENT

Delivered by A. Mendonça, J.A.

1. This is an appeal from the refusal of the Licensing Committee for St. George West on 5th February, 2013, to grant an occasional licence and a dance hall licence to the

Appellant in respect of the premises at No.31 Amethyst Avenue, Diego Martin. The Appellant requires the licences to host a Carnival party scheduled for Sunday 10th February, 2013 at the premises.

2. The Appellant applied for two occasional licences under section 44 of the Liquor Licences Act Chap 84:10 for two parties to be held on Sunday 10th February, 2013 between the hours of 3:30 am to midday. The Second Respondent, ("the objector") who represents the interest of the residents of Amethyst Avenue, Diego Martin opposed the grant of the licences. The application in respect of St. Michael's Parish Hall on Wendy Fitzwilliam's Boulevard, Diego Martin was granted while the other in respect of No.31 Amethyst Avenue, Diego Martin, the subject of this appeal, was refused.

3. In refusing the application, the Committee considered that the area is densely residential and that the Avenue is about one thousand and thirty feet long and nineteen feet wide with pavements ten feet to the west and nine feet to the east. The Committee found that access to and from Amethyst Avenue by the residents would be restricted during the eight hour period carded for the event, as it was expected that some two thousand five hundred people would be in attendance filling the street. The Committee found that parking facilities for Amethyst event was about one thousand feet away at the Pearl Parkway which meant that persons would attempt to park on the streets nearer to the event. This would further restrict access of the residents to and from the avenue. The objector, raised concerns regarding the constant noise level and the indiscriminate littering by patrons of the event. Although the Appellant suggested that the event fostered camaraderie amongst the residents, the Committee was of the view that the event only benefited a few residents to entertain their friends and family.

4. The Appellant argues before this Court that:-

(a) The Committee erred in finding that the proposed barricades on Amethyst Avenue interfered/blocked the free access by the residents to their properties although acknowledging that the barricades could be removed upon request of any resident.

(b) Further, the Committee erred in finding that the residents would be unable to leave their residences at all during the eight hours carded for the event.

(c) The Committee erred in finding that the Amethyst party has out-grown Amethyst Avenue.

(d) The Committee found that the evidence of a Church contribution and assistance given to a family who attends the church was "entirely for the profit of the promoter." This finding in the absence of any supporting evidence demonstrates a predisposition by the Committee not to grant the application and an implication of bad faith against the Appellant.

(e) The finding that there was no evidence of any benefit to the wider community of Diamond Vale for the past eighteen years goes against the evidence and in particular the evidence of the objector.

(f) The Committee erred in finding that the event only benefits a few residents to entertain their family and friends. There was no evidence to support such a finding.

(g) There was no evidence to support the finding that the Diamond Vale areas can be reasonably served by one event at the Parish Hall on the date in question, to the exclusion of the Appellant's event. This also does not take into account the fact that the event served Diamond Vale area for eighteen years.

(h) The Committee erred in not having proper regard for the non-objection by the Trinidad and Tobago Fire Service Department; the Ministry of Health; The Environmental Management Authority and the Regional Corporation.

5. One's home is one's castle as the saying goes, and it represents sanctuary, security, a place of peace and quiet from the daily travails. Some residents may not object to all that the home represents, being invaded, but when they do, consideration needs to be given to the objection. The objection must be valid and must be reasonable. As to the validity, it must be established by evidence; and as to the reasonableness, it must not be capable of being viewed as overly sensitive or overly intolerant. Carnival is, of course, a national festival. People from all walks of life look forward to it and participate in it in some, if not every aspect of it. However, in our plural society, we must recognize and accept that there are also those who do not participate, and who do not really look forward to the festival. If they object to a carnival fete in their neighborhood, on the basis of noise and other concerns, that objection cannot on the face of it, be dismissed as merely overly sensitive or intolerant. Consideration must be given to the evidence.

6. In this case, Ms. Maillard, the objector, complains of the effect the event would have on her. These are summarized by the Committee in its reasons as follows: "*Ms. Maillard and Mr. Mohan, [who also gave evidence on behalf of the objector] gave evidence of indiscriminate parking, being unable to access their homes, excessive noise from the sound system, disturbing the elderly and undesirable characters lurking about, and sexual acts in cars and against lampposts. And evidence was also given that the number of persons attending this party may have grown over the years to about three thousand persons last year.*"

7. The core reasons for which the Committee refused the application are summarized in paragraphs 4 and 5 of its conclusions. The Committee questioned "*What if Ms. Maillard or any other resident of Amethyst, who has signed the petition objecting to this*

event, wishes to get to their homes? They must ask for the barricade to be removed or park elsewhere and walk, or do not leave their residence at all for that period of eight hours." The Committee was of the view that the rights of these residents must not be so affected, even for one minute, that the residents must have the free will to access their properties whenever they desire. And they went on to say that, "*Amethyst avenue is a small roadway, a public road and with two thousand five hundred carefree and fun-loving Trinbagonians, 'eating ah food', wining to the sweet soca and calypso music and consuming alcohol, Ms. Maillard and other unfenced properties, especially, will suffer the brunt of these fetters, as they have been subjected to for the past eighteen years. The Committee feels that Amethyst Breakfast Party has outgrown Amethyst Avenue.*"

8. So the question, in this case, is whether the Committee was right in the exercise of its discretion to refuse the licence. On a review of the exercise of a discretion, the approach of this Court is not in doubt. The Court must be satisfied that the Committee was plainly wrong. This, in effect means that we must be satisfied the Committee erred in principle, and exceeded the generous ambit within which reasonable disagreement is possible. We cannot merely substitute our decision for that of the Committee because we may not agree with it. The discretion is, of course, informed by findings of fact, and it is well established that this Court is slow to interfere with findings of fact, where the finder of fact enjoys an advantage that this Court does not enjoy. So that, when the issue, for example, turns on credibility, the Committee, in this case, enjoyed a distinct advantage over this Court, and we will only in limited circumstances interfere with the finding of fact, such as where the Court may have overlooked a matter of substantive evidence.

9. Some of the findings of fact of the Committee have been challenged before this Court as is evident from the grounds of appeal. We will refer to the grounds as they have been set out above. However, the submissions of Mr. Scotland, counsel for the Appellant in support of the grounds do not seek, at times, to argue every aspect of

the grounds of appeal, and we assume that where they do not, the ground of appeal as framed has not been pursued.

10. So we start with the (a) the Committee erred in finding that the proposed barricades at Amethyst interfered/blocked the free access of residents to their properties, despite the acknowledgment by the Committee that the barricades may be removed upon the request of any resident. This, it was accepted by Mr. Scotland, in the course of argument, is a finding that is supported by the evidence. The fact of the matter is that the evidence does support the fact that the free access of the objector to her property was interfered with. There were barricades on Amethyst Avenue. One was in front of the driveway of the Second Respondent. The fact that the barricades could be removed does not mean that the free access of the residents was not infringed. The Second Respondent also complained of the people in the roadway. The clear inference is that the barricades and the party-goers in the road interfered with the access to her property. There is, therefore, evidence to support the finding of the Committee that the residents' access to their premises was affected.

11. The second finding of fact that was challenged is that, residents would be locked in and not be able to leave their respective residences at all during a period of eight hours [see ground (b) of the grounds of appeal]. When Mr. Scotland was asked to show the Court where this finding was made, it was clear that the Committee did not make an explicit finding that the residents could not move for eight hours. What the Committee said was that the residents had certain options, one of them was to stay put for eight hours until the party was finished. So we really see nothing arising in ground (b). It was an option that they had, and I don't think any objection can be made to that. The other options that the Committee stated were available to the residents were to ask for the barricades to be removed if they desired to leave the area, or if returning to their homes, they would have to park away from their home and walk. This emphasized the fact that the free access to their homes was impeded.

12. With respect to (c) the Committee found that Amethyst party had outgrown Amethyst Avenue, and it was contended by the Appellant that there is absolutely no evidence of this to support this finding by the Committee. This Court is of the view that this is a finding that the Committee was well entitled to make. It certainly can be inferred from the evidence. We start with the position that this party when it was first hosted some eighteen years ago attracted a crowd of a hundred people, now it has grown to estimates of between two thousand five hundred to two thousand eight hundred attendees. It is no longer contained in the premises for which application is made; it has spilled over into the roadway, and into the adjacent park. In fact, according to the evidence of Mr. Vieira, the roadway is the most popular part and the music boxes in the park face in the direction of the road (and the residents who live on the other side of the road) to accommodate the party-goers on the roadway. So we think that that is an inference that clearly can be drawn. The party has outgrown the venue, so much so, that it seems that to properly accommodate the party, the roadway is closed off.

13. Grounds (d), (e) and (f), may be taken together and, in essence, they amount to the proposition that the Committee erred in saying that the event did not benefit the wider community. The complaint of the Appellant is that the Committee failed to take into account two aspects of the evidence. First of all, there was evidence that there were financial contributions to members of the wider community, and second, that there were more esoteric benefits, in that it facilitated camaraderie and kinship among the members of the community at large.

14. As regards the financial contributions, the evidence came from Inspector Mark and Ms. Wood. So far as the evidence of Inspector Mark is concerned, the point was made to Mr. Scotland in the course of argument, and it is one which we have not been persuaded to abandon, that it is hearsay evidence, and the Committee is entitled not to place any weight on it. He gave evidence as to what was told to him

by Mr. Young, and we have the position in this matter, where Mr. Young went into the witness box and gave no such evidence. So we think that the Committee was entitled to give no weight to that evidence. The evidence of Ms. Wood is that of two incidents which she claims were within her knowledge. One was a contribution given to her for her church, and the other was a payment to a bereaved family to meet funeral expenses. Even if that evidence were accepted, it relates to two instances over the course of eighteen years, and, at the very least, establish that the function was essentially one for the benefit of the promoters. However, it is clear to us that what has happened is that the Committee rejected that evidence on the question of credibility, which they were entitled to do.

15. With respect to the more esoteric or abstract benefits, that evidence really came from Mr. Vieira and Ms. Wood. The evidence was to the extent that Mr. Vieira had some friends over, who were going to the party and he would entertain them at his home as well. Similarly, with Ms. Wood, we are not sure if her friends went to the party, but she would have some friends over during the party. That evidence does not in our view support the mooted benefit to the residents at large. The Committee cannot be criticized for inferring from that evidence, that it benefited only a few persons in the community.

16. We now come to (g); Mr. Scotland submitted that the Committee erred in finding that Diamond Vale area can reasonably be served by only one event, namely, the event at St. Michael's Parish Hall, when there was absolutely no evidence to support such a finding. Moreover the Committee failed to take into account the fact that the event served Amethyst Avenue, Diamond Vale area for eighteen years. Even if we accept that there is there no evidence to support the finding that the Diamond Vale area can only be served by one event, in our view, it takes the matter no further. There is no requirement that the area must have a certain number of fetes. Therefore, it is not a factor to be considered in granting a licence, whether the area would not

have a fete that day. Even if that were a factor, it does not follow that because the Amethyst Avenue fete has been around for a long time that a licence should be granted. Each application for a licence has to be determined on its own merits. So far as the Parish Hall event is concerned the Committee found that the evidence before it did not relate to that event. There was from the evidence therefore no objection before it in relation to the Parish Hall event. The Committee accordingly saw no difficulty in granting the licence for that event. The grant of that licence has not been challenged.

17. Mr. Scotland also submitted that the Committee failed to take into account certain factors (ground h). The submission is in effect is that the Committee failed to take relevant factors into account. Certainly this is a basis on which this Court can interfere with the exercise of the discretion by the Committee in refusing to grant the licence.

18. Mr. Scotland submitted further, that the Committee failed to take into account, that the Amethyst party is a one-off event, and it is only for eight hours. However it is not correct to say that the Committee failed to take this factor into account. In the very first paragraph of the Committee's reasons, it is said there that "there were two applications before us, for parties to be held on Sunday, February 10th, between the hours of 3:30 a.m and 12:30p.m" and at paragraph 4 of its conclusions, it is there stated that, "The Committee feels that the rights of these residents must not be so affected even for one minute." It seems to be clear that they had the time frame in mind, but was of the view that even interference for a very short duration would result or should result in the denial of the licence. We consider that the Committee might have put it a bit too strongly, since it is arguable that if the event is for a very short duration, an objection to it might very well be seen to be overly intolerant or insensitive. We do not, however, think that this case, in which the fete is carded to go on for several hours, falls into that category.

19. The other factor mentioned by Mr. Scotland is that the Committee failed to take into account, that there were no reports of any illegal activity. This is in reliance on Inspector Mark's evidence. Inspector Mark could only attest to the period that he came on the job, or was attached to the relevant station, which was not before the previous Carnival, so he couldn't speak to events occurring then. We also accept the argument of Mr. Byam, counsel for the Committee that many Carnival-type incidents go unreported.

20. The other aspect, which it is submitted that the Committee failed to properly take into account, is the evidence of the representative of the Environmental Management Authority (EMA). This witness testified that the EMA had received an application for a noise variation in respect of the Amethyst fete. That application had complied with all legal requirements and from her enquiries there had been no breaches, in the past, of the EMA regulations with respects to this event. The objector's evidence was that the noise from the fete was a major concern and the music was played so loudly that it caused the residents' windows to rattle. The evidence of the EMA's representative was not that the music was played at such a level in the past that it would not be an annoyance. It did not contradict the evidence of the objector. Is it that there was now a new standard set by the EMA that would control the noise to acceptable levels and not cause a disturbance to the adjoining neighbours, such as the objector? This was not answered by the EMA representative. The evidence of the EMA representative, therefore, failed to address the concerns of the objector. The evidence was not of any assistance and was of no probative value. The Committee was entitled to pay no regard to it.

21. Mr. Scotland argued that the Committee failed to consider the fact that the other agencies did not object to the licence. We do not see this as relevant. There is no evidence that the agencies considered the objections of the residents. In any event their decisions are not binding on this Court.

22. With respect to the parking arrangements, we agree with Mr. Scotland that the Committee did not seem to take into account that there was parking at the community centre. The Committee seemed to refer only to the fact that there was parking at Pearl Parkway. Nevertheless, the evidence to which we were referred, and on the record, is that the parking facilities at Pearl Parking and the Community Centre could accommodate six hundred to eight hundred cars. Approximately two thousand eight hundred people were expected to attend the event. We are not satisfied, on the evidence, that six hundred to eight hundred cars are all the cars that can be expected. There was really no evidence of the correlation between the people expected to attend this function and the number of cars expected. In any event, we agree with the Committee that the parking facilities, being some distance away from the fete, even if it were a thousand feet, people would tend to park nearest the event first. So that the evidence of parking facilities does not satisfactorily address the concerns raised as to the indiscriminate parking near the venue, and in particular, on Amethyst Avenue.

23. Mr. Scotland also made mention of the hired security, which was in addition to the members of the Police Service expected to provide security at the event. On the evidence, there was no mention, as far as we can see, of the number of security personnel involved, although a number was given to us, from the Bar table. However, there is no indication as to how such security would be deployed, and their roles and functions. The Committee could not have been satisfied that that would address properly or at all the concerns raised.

24. With the outgrowth and popularity of these fetes, particularly in residential areas, and the increasing complaints of aggrieved residents, the grant of a licence is not a foregone conclusion. There will usually be issues affecting the residents, as well as the party goers themselves, including the disturbances to the residents and the safety of the party-goers as well as the ability of either the resident or the party-goer

to access emergency medical attention if needed. The Committee must be concerned with these in its deliberations, and must ensure that proper standards are maintained. The onus is on the applicant to satisfy the Committee of this.

25. In the circumstances, it is our conclusion that the Committee was not plainly wrong. There is evidence to support the conclusions of the Committee. It is not for us to substitute our own decision. We are satisfied that there was a proper basis for the Committee's conclusion. In these circumstances, this appeal is dismissed.

Date delivered February 8th, 2013

Allan Mendonca
Justice of Appeal

Nolan Bereaux
Justice of Appeal