



VII Annual Caribbean Court of Justice International Law Moot 2015

Bakker v St Lucia and Bakker v St Lucia and Jamaica (consolidated)

Jolene Bakker, a national of Jamaica and a hard-working domestic helper of 15 years, decided to visit her friend in the affluent area of Rodney Bay in St Lucia.

Bakker packed her bags and boarded her first flight out of Jamaica, in January 2011. Upon arrival at the Hewanorra International Airport, Bakker faced intense rough questioning by an Immigration Officer and was subsequently denied entry into the country. The following morning, having spent the night on concrete floors locked up and without food or water, she was placed on a flight to Jamaica.

Deeply disappointed about her failed attempt to enter St Lucia, Baker brought proceedings against St Lucia in the Caribbean Court of Justice. She complained of the denial of entry into the country and the treatment meted out to her. The Court heard the matter and delivering its judgment in January 2012 in **Bakker v St Lucia** (a) declared that St Lucia had breached Ms Bakker's right under the Revised Treaty of Chaguaramas to enter and remain for 6 months and (b) awarded US\$50,000 in damages for breach of this right.

In January 2013 Bakker, impatient and disgruntled as she was still awaiting the sum she was awarded, decided to initiate proceedings in the High Court of St Lucia to recover the damages. Enthusiast J. accepted that his court had jurisdiction to entertain the matter and decided to make an Article 214 reference of the question whether that court could actually enforce the CCJ award. In particular, he asked the CCJ to decide whether Article 215 RTC, which provision has been enacted by the Caribbean Community Act, 2004, could be interpreted so as to include a proper legal basis for enforcement of a judgment of the CCJ given in its Original Jurisdiction. If that was the case, the Judge reasoned, he could interpret the enacted provision in a similar vein and thus make an enforcement order.

After the referral was made but before it was heard, Bakker became aware that the Government of Jamaica owed the Government of St Lucia US\$25m pursuant to a purely commercial contract for various services provided by St Lucia. Bakker believed that, if need be, she was entitled to recover the sum awarded her from that US\$25m. Her lawyer wrote to the AG of Jamaica and demanded this from the Jamaican government. The AG told Bakker's lawyer

in a private conversation that he would not be against making the payment but that he would do so only after a judicial decision allowing it.

Bakker then filed a claim in the High Court of Jamaica against her Government and the Government of St Lucia requesting a Declaratory Order that the Government of Jamaica would be allowed to deduct from the monies owed to St Lucia the amount of US\$ 50,000 and to pay this directly to Bakker. The Jamaican Judge, Straight-Forward J, confronted with this claim and the resistance of the Government of St Lucia to honour it, decided to make a referral to the CCJ on the question whether prompt compliance with a judgment of the CCJ, as mandated by Article 215 RTC, includes a requirement for a third member state to comply with a third party enforcement order seeking to enforce a judgment of the CCJ against another member state.

The two referrals, in the matters **Bakker v St Lucia** and **Bakker v Jamaica and St Lucia**, having been consolidated by the CCJ, are now before the Court and at the case management conference the parties were ordered to e-mail skeleton submissions and lists of authorities to the Court on or before 4pm (T & T time) on Thursday March 5th 2015. The Court ordered that at the hearing of the referrals:

- (a) Senior Counsel for Bakker show that the proper interpretation of Article 215 of the Revised Treaty is such as to include a legal basis for enforcing the judgment of the CCJ with regard to the award of US\$ 50,000, even at the domestic level.*
- (b) Junior Counsel for Bakker show why the referral by Straight-Forward J was properly made and why the Court has jurisdiction to entertain it.*

The Court further ordered:

- (c) that Senior Counsel for St. Lucia show that a proper interpretation of Article 215 of the Revised Treaty cannot be such as to include a legal basis for enforcing the judgment of the CCJ with regard to the award of US\$ 50,000 and less so at the domestic level.*
- (d) that Junior Counsel for St Lucia (Jamaica having declined to participate in the procedure) show why the referral by Straight-Forward J was not properly made and why the Court would have no jurisdiction to entertain it.*

The date for the hearing was set for Friday March 13th 2015 at the Seat of the Court.