

IN THE SUPREME COURT
OF TURKS AND CAICOS ISLANDS

Case no D 27/07

BETWEEN

ALEJANDRO BAROTTI

Petitioner

AND

CANDY GIGI BAROTTI

Respondent

T Prudhoe and N Coleman for petitioner/ husband
J Rutley and McKnight for respondent/ wife

Ruling

1. Following the earlier grant of a decree nisi, the Court is now hearing evidence in respect of ancillary relief for the wife.

2. At an early stage in the present hearing, an application was made by Mr. Prudhoe to be allowed to sit in court as a McKenzie friend beside Mr Coleman. I ruled that he could not do so and said I would give my reasons in writing. I now do so.

3. The circumstances in which this has arisen cause me considerable concern and demonstrate how a purely executive action of a public officer made without any stated reason can have a profound effect on the rights of a litigant and the manner of his representation.

4. Mr Prudhoe is a lawyer from overseas. He is also an admitted member of the legal profession in the Turks and Caicos Islands. He has, for some years, appeared for clients here and, each time he does, he obtains a temporary work permit from the Department of Immigration.

5. Mr Prudhoe appears, and has appeared previously, for Mr Barotti in the present action which, since the filing of the original petition in 2007, has wended its slow and tortuous way through the Court.

6. Yesterday, the date that had for some weeks been fixed for the commencement of an estimated four day hearing, Mr Rutley for Mrs Barotti, objected to Mr. Prudhoe's appearance on the ground that he had no work permit. It appears he had ascertained that fact by ringing the Immigration Department to question Mr Prudhoe's status. Despite my inquiry, it has not been explained and I do not know the reason for counsel making such an inquiry. When Mr Prudhoe has appeared previously in this same case, there has been no challenge before the court to his appearance on the grounds of his immigration status.

7. Mr Prudhoe advised the Court that he had, on this occasion, followed the same process as he has previously in order to obtain temporary work permit. On this occasion he was told to provide various documents including a labour clearance; something he has not had to produce previously. He believed that had come about through a mistake. I adjourned the hearing to allow him time to approach the Immigration Department and it was agreed by counsel that, when he did so, he would be accompanied by Mr. McKnight – a reflection of the mistrust and antagonism between counsel which has, sadly, been all too manifest in the preceding stages of this case.

8. This morning, Mr Prudhoe advised the Court that yesterday afternoon he had been asked to provide various documents and had been able to do so. The requirement of labour clearance was also acknowledged to have been a mistake. He was then told to make contact this morning in case anything else was required.

9. When he did so, he was told that he needed written confirmation from the Court that he was appearing as counsel in this case. I provided that, addressed to the Deputy Director of Immigration. However, on presenting that document at the office, Mr Prudhoe was told to wait and shortly afterwards was presented with a letter advising him that his application had been refused. As is apparently the normal practice, no reason was given.

10. The result of this arbitrary decision is that, having appeared in court previously in this same case and having drafted much of the written documentation on instructions from Mr Barotti as his lawyer of choice, he can no longer appear. In consequence, the case has had to continue with junior counsel, Mr Coleman, appearing place of Mr. Prudhoe.

11. It is in those circumstances that Mr Prudhoe applied for leave to sit beside Mr Coleman as a McKenzie friend. His application in court was marred by interruptions from Mr. Rutley suggesting, inter alia, that Mr. Prudhoe had not spoken the truth to the Court, disputing his bona fides when he assured the Court he would appear for no fee and suggesting that the fact he had already received payment for his attendance expenses meant he could not say he was appearing free. I have already commented on the rancour shown by counsel in this case and repeat that it is unfortunate and unproductive for counsel to adopt such an attitude showing, as it does, a subjective involvement in the case that does no service to their clients and ill fits counsel's duty as an officer of the court. In matrimonial matters it is particularly unfortunate where counsels' duty is to strive to achieve a constructive settlement and to avoid heightening emotions in the parties.

12. The present case differs from the circumstances in *McKenzie v McKenzie* [1970] 3WLR 472, and the earlier case of *Collier v Hicks* [1831] 2B&A 663, which it confirmed, in that, in both those cases, the litigant being assisted was an unrepresented lay person. In the McKenzie case, the friend sitting beside him was a qualified lawyer.

13. I asked whether counsel knew of any authority for an instructed lawyer to have another lawyer sitting beside him as a McKenzie friend. They did not. In the short time and with the limited facilities available, I have found little to assist me. However, in *R v Leicester JJ ex p Barrow* [1991] 3 AllER 935 the matter arose and the reference is to a litigant in person.

14. In the circumstances, I am driven to rule that the right to have the assistance of a McKenzie friend is limited to an unrepresented litigant.

15. The result of this unhappy saga is that Mr Barotti is being deprived of his constitutional right to be represented, at his expense by counsel of his choice and for whom a temporary work permit has already previously been granted.

16. It is clear that, had he been sitting beside his otherwise unrepresented lay client, there is no reason why Mr Prudhoe could not act as a McKenzie friend but he may not do so where his lay client is still legally represented.

11 March 2009

Gordon Ward
Chief Justice