

B-01-17-90  
part 2

CAYMANIAN PROTECTION LAW, 1971 - DOMICILE

CIVIL APPEAL NO. 1/73

RE: JAMES DAVID MACDONALD (No. 1)

Before: Smith, Edun and Graham-Perkins, Judges of Appeal

Heard: March 14 and April 30, 1973.

There was no unanimity by the judges on any single point in this appeal. A majority ruling was given on the important points raised as will be seen in the summary following.

In attempting to discern the ratio decidendi, it is necessary to look at the Grounds of Appeal dealt with in the judgments. Although not mentioned in any of the judgments it is fair to assume that each judgment dealt with Grounds 3 and 4 (page 11 of the record).

Ground 3 claimed that the judge misdirected himself as to the meaning of "domiciled" in sections 15 and 16, Law 23, 1971.

Ground 4 claimed that the judge misdirected himself in finding that the appellant was not domiciled in the Cayman Islands at the time of the coming into effect of Law 23, 1971.

Whereas Ground 3 was dealing with a matter of law, Ground 4 was concerned with a matter of fact, that is, the state of the evidence adduced in support of the petition.

Three distinct points were made by the judgments:

1. The majority (Smith and Graham-Perkins J.J.A.) agreed that the petitioner could have acquired a domicile prior to the 1961 law. (Smith - pg. 11; Graham-Perkins - pg. 6-7). They agreed that as the matter was not canvassed in the Court below, it should be remitted for rehearing in the light of the relevant law.  
Edun, J.A., agreed with this proposal, although he was clearly of the view that the facts stated by the petitioner were insufficient for a determination to be made in his favour.
2. The majority (Smith and Edun, J.A.) agreed that in determining domicile in the context of section 15 (b), consideration must be given to the petitioner's status before the coming into operation of Law 23, 1971 - that is, on the 27th March, 1972.  
(Smith - pg. 7; Edun - pg. 1) In other words, they agreed that for there to be a declaration under section 16 (1) as to domicile in his favour, the petitioner must have had a domicile at the time when March 26 was going out and March 27 was coming in.  
Graham-Perkins, J.A., (pg. 12) was of the view that the words "was domiciled in the Cayman Islands at the time of the coming into effect of this Law" prescribed the time by reference to which the question of domicile is to be resolved for the purposes of the law. However, he did not say what time was the correct time neither did he say specifically what law was applicable in determining such domicile. Instead, he hinted (pg. 10) at the common law being applicable when he said "domicil in the 1961 law does not in any way differ from the common law concept of the term". Earlier, on page 7 the learned judge states: "I incline very strongly to the view that the appellant's petition is demonstrably capable of leading to a conclusion that he had .....acquired a domicile of choice".

3. There was no majority on the sufficiency of otherwise of the facts in the petition.

Smith, J.A., did not give an opinion.

Edun, J.A. was of the firm view that the Judge of the Grand Court had approached the facts in the right way as there was no evidence before him that the petitioner's residence was not conditional or temporary (pg. 8).

Graham-Perkins, J.A. states(pp. 12-13)

"There was no evidential basis on which the Grand Court could have concluded that.....his residence could have been conditional or temporary".

He went on to say that he did not observe the least difficulty, in the circumstances of the appellant's petition in establishing on a balance of probability the acquisition of a domicile of choice.