

1973

CAYMAN ISLANDS

IN THE COURT OF APPEAL

CAYMAN ISLANDS CIVIL APPEAL NO. 1 of 1973

BEFORE: The Hon. Mr. Justice Smith - presiding
The Hon. Mr. Justice Edun
The Hon. Mr. Justice Graham-Perkins

Re: James D. McDonald - Declaration as to
Caymanian Status

R.N.A. Henriques, for Appellant
G.E. Waddington, Q.C.
Attorney General, and) amicus curiae
Seymour Panton)

13th March, 1973

SMITH, J.A.:

A preliminary objection is taken to the hearing of this appeal on the ground that the "Declaration made by the Grand Court on the 18th of December, 1972, on the hearing of the appellant's application under section 16 of the Caymanian Protection Law, 1971, was final and binding for all purposes of the said Law and no appeal lies in respect thereof."

The matter arises in this way: the appellant claimed to be a person who was domiciled in the Cayman Islands on the 27th of March, 1972 when the Caymanian Protection Law, 1971, came into force. Under s. 15 of that Law, "every British subject who was domiciled in the Cayman Islands at the time of the coming into effect of this Law and has been declared to be so domiciled under subsection (1) of Section 16, is a person of Caymanian status as of right." Section 16(1) provides -

"Any British subject claiming to be of Caymanian Status by virtue of paragraphs (a) or (e) of section 15, or claiming to be ordinarily

resident or domiciled in the Cayman Islands for any purposes of this Law may at any time apply to the Grand Court for a declaration to that effect and the declaration of the Grand Court in that behalf shall be final and binding for all purposes of this Law."

The appellant, by petition, sought a declaration from the Grand Court by virtue of the provisions of s. 16(1).

The matter was heard by the Grand Court and on the 18th of December, 1972 the judgment was delivered in which the appellant's petition was dismissed. He filed a notice of appeal against the decision of the Grand Court and it is this appeal which the learned Attorney General contends is precluded by the words in s. 16(1) -

"the declaration of the Grand Court in that behalf shall be final and binding for all purposes of this Law."

The learned Attorney General referred to the relevant provisions of the law. He referred to the judgment of the Grand Court at page 7 of the record, which is headed 'Declaration.' He contends that in fact the Grand Court made a declaration denying the petition and that although no order in terms appeared to be on the record declaring that the appellant was not domiciled in the Cayman Islands on the relevant date, yet in view of the terms of the order that was made, a formal order to that effect could properly be drawn up and that to draw up such an order was a mere formality. His contention is that what s. 16(1) does is to confer a jurisdiction on the Grand Court when an application is made under that provision to declare affirmatively or negatively whether the applicant was or was not domiciled on the relevant date. A declaration either way, it is said, would be final and binding and not open to question before this Court.

In my view the question of whether or not a declaration was made must appear clearly from the record. Before the Grand Court, the contention of the appellant was that he was domiciled on the relevant date in the sense that that word 'domicile' was defined in the Law of 1971. The contrary contention by the learned Attorney General was that whether or not he was domiciled on the relevant date was to be determined by the law as it stood before the Law of 1971 came into effect. It appears that as far as the judge of the Grand Court was concerned, and it so appears clearly from the record, the facts which the appellant put forward in support of his application was on the basis of his contention as to the meaning of the word 'domicile' in s. 15(b) of the Law of 1971. When the contention of the learned Attorney General was made before the Grand Court, it is clear from the record that the learned judge of that court gave the appellant the option of amending his petition to claim domicile in accordance with the contention of the learned Attorney General if he could do so. This the appellant declined to do and sought to press his point that his contention as to the interpretation of s. 15(b) was the correct interpretation.

At the conclusion of the argument on the 1st of December, 1972, the Court reserved its decision and on the 18th of December, 1972, in delivering its decision it gave its reasons. Although it is headed 'Declaration', the most of what is said in the record under that heading is clearly a judgment giving reasons for the conclusion at the end that "the petition is dismissed."

On the last page of this judgment this is what the record states -

"Mr. McDonald and any others who petition this Court for a declaration under the Cayman Protection Law must satisfy the Court that they were domiciled here when the Cayman Protection Law came into operation, within

the meaning of the definition in Cap. 67."

All that this means is that the learned judge accepted the interpretation for which the learned Attorney General contended before him. Then the judgment goes on -

"Mr. McDonald's petition shows that he arrived in the Cayman Islands on or before the month of October, 1960, but his residence could have been conditional or temporary."

Now this passage is also in reference to the state of the law as it stood immediately before the Law of 1971 came into force, and what is there being said, quite clearly, is that the appellant may or may not be a person who can claim domicile in accordance with the law as it stood. There is nothing in the judgment or in the record to indicate that the judge of the Grand Court was saying that the appellant was not domiciled in the Cayman Islands on the relevant date and what appears is that he had no material before him on which he could make such a finding.

In my judgment, on the evidence before him, the learned judge would have no power to find as a fact, conclusively, that the appellant was not domiciled in the Cayman Islands on the relevant date on the strength of which he could make a declaration to that effect. I am in no doubt that no declaration has in fact been made in this matter though a decision on the petition has been made. Mr. Henriques has contended that even if it could be said that a negative declaration was made, yet what is final and binding under s. 16(1) is an affirmative declaration and not a negative one. The learned Attorney General submits that in the relevant words in the sub-section, the word 'decision' is synonymous with 'declaration', and that therefore what the subsection is really saying is that any decision of the Grand Court in the matter shall be final and binding for all

purposes of the law. With great respect to this contention, I do not agree that the word 'decision' is synonymous with the word 'declaration' and that for the sub-section to apply there must be shown to be a declaration one way or another. ||

I would reserve for further consideration the question whether a negative declaration would be binding and that there could be no appeal from such a declaration. Certainly it is not necessary for a decision on this contention to be given for the determination of this objection. In my judgment it is quite clear that the learned judge of the Grand Court merely dismissed the petition. There is no declaration made which can be said to be final and binding under s. 16(1), and in regard to the dismissal of the petition it clearly comes within the terms of s. 8 of The Judicature (Appellate Jurisdiction) Law, Cap. 73. There is, therefore, a right of appeal to this Court.

I would dismiss the preliminary objection and hold that it is open to this court to hear the appellant's appeal.

EDUN, J.A.:

In the application under section 16 of the Cayman Protection Law, 1971, the question as to whether or not a person is ordinarily resident or domiciled in the Cayman Islands is a question of fact. The effect of the decision of the judge of the Grand Court in this matter is a finding that the applicant is not ordinarily resident or domiciled in the Cayman Islands. A declaration to that effect and in that behalf is final and binding for all purposes of this Law; so states section 16(1).

I would uphold the preliminary objection.

GRAHAM-PERKINS, J.A.:

For the reasons advanced by my brother Smith, I entirely agree with the conclusion at which he has arrived. I, too,

would dismiss the preliminary objection.

SMITH, J.A.:

The order of the majority then is that the preliminary objection fails.
