



# In The Supreme Court of Bermuda

CIVIL JURISDICTION

2015: No. 127

IN THE MATTER OF THE BERMUDA CONSTITUTION

BETWEEN:

MELVERN WILLIAMS

Applicant

-v-

(1) MINISTER FOR HOME AFFAIRS

(2) ATTORNEY GENERAL

Respondents

## **JUDGMENT SUMMARY ISSUED BY THE SUPREME COURT OF BERMUDA**

**This summary is provided to assist in understanding the Judgment of the Court. It does not form part of the Judgment. The Judgment itself is the only authoritative document. The full Judgment is available at [www.judiciary.gov.bm](http://www.judiciary.gov.bm)**

1. On July 15, 2015 in an ex tempore judgment (i.e. an oral judgment subsequently transcribed into writing) the Chief Justice granted the Applicant's application for constitutional relief by:
  - (a) declaring that the Applicant as a naturalised British Overseas Territories Citizen belonged to Bermuda for the purposes of section 11(5) of the Bermuda Constitution and was accordingly entitled to work in Bermuda without a work permit under section 60(1) of the Bermuda Immigration and Protection Act 1956;

- (b) declaring that section 60(1) of the 1956 Act should now be read as exempting not just persons who possess Bermudian status but also all other persons who belong to Bermuda under section 11(5) of the Constitution from the need to obtain permission from the Minister to work;
  - (c) awarding the Applicant \$25,000 for lost earnings and \$5000 in damages for breach of his constitutional rights.
2. The Applicant was born in Jamaica and became a naturalised British Overseas Territories Citizen on December 16, 2014. On March 13, 2015 the Applicant’s employer terminated his employment because the Department of Immigration instructed them that he was working without a work permit. He applied for a declaration that his constitutional rights as a person who belonged to Bermuda had been contravened because:
- (a) his right to reside in Bermuda as a person who belonged to Bermuda under section 11(5) (b) of the Constitution included the right to work without restrictions; and/or
  - (b) section 60 of the Bermuda Immigration and Protection Act 1956 discriminated against him on the grounds of his place of origin by exempting one class of person protected by section 11(5) of the Constitution from Immigration restrictions (Bermudian status holders), but not others, like himself, who were likely to have a foreign place of origin.
3. The Supreme Court held that sections 11 and 12 of the Constitution clearly envisaged that all persons who belong to Bermuda would be treated equally in terms of enjoying unrestricted employment rights in Bermuda. Section 5 of the Bermuda Constitution Order provided that all laws in force before the Constitution entered into force in 1968 should be read “*with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution.*” The Court declared that section 60(1) of the Bermuda Immigration Act 1956 should henceforth be modified to include the following underlined words:

*“60.(1) Without prejudice to anything in sections 61 to 68, no person—*

*other than a person who for the time being possesses Bermudian status or who otherwise is deemed to belong to Bermuda for the purposes of section 11(5) of the Bermuda Constitution.; ...”*

4. In awarding only “modest” damages for breach of the Applicant’s constitutional rights, the Chief Justice noted that the Ministry’s actions which resulted in the wrongful termination of the Applicant’s private employment was based on a view of the law which had not been challenged (before the present case) since 1968.
5. The following are the main constitutional and statutory provisions which were considered by the Court:

**(a) Section 11 of the Constitution**

*(1) Except with his consent, no person shall be hindered in the enjoyment of his freedom of movement, that is to say, the right to move freely throughout Bermuda, the right to reside in any part thereof, the right to enter Bermuda and immunity from expulsion therefrom.*

*(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision-*

*(d) or the imposition of restrictions on the movement or residence within Bermuda of any person who does not belong to Bermuda or the exclusion or expulsion therefrom of any such person; ...*

*(5) For the purposes of this section, a person shall be deemed to belong to Bermuda if that person—*

*(a) possesses Bermudian status;*

*(b) is a citizen of the United Kingdom and Colonies by virtue of the grant by the Governor of a certificate of naturalisation under the British Nationality and Status of Aliens Act 1914;*

*(c) is the wife of a person to whom either of the foregoing paragraphs of this subsection applies not living apart from such person under a decree of a court or a deed of separation; or*

*(d) is under the age of eighteen years and is the child, stepchild or child adopted in a manner recognised by law of a person to whom any of the foregoing paragraphs of this subsection applies.”;*

**(b) Section 12 of the Constitution**

*“(1) Subject to the provisions of subsections (4), (5) and (8) of this section, no law shall make any provision which is discriminatory either of itself or in its effect...”*

*(4) Subsection (1) of this section shall not apply to any law so far as that law makes provision—*

*...(b) Subject to the provisions of subsections (4), (5) and (8) of this section, no law shall make any provision which is discriminatory either of itself or in its effect...”*

**(c) Section 60(1) of the Bermuda Immigration and Protection Act 1956**

*“(1) Without prejudice to anything in sections 61 to 68, no person—*

*(a) other than a person who for the time being possesses Bermudian status; or*

*(b) other than a person who for the time being is a special category person; or*

*(c) other than a person who for the time being has spouse’s employment rights; or*

*(cc) other than a permanent resident; or*

*(d) other than a person in respect of whom the requirements of subsection (6)<sup>1</sup> are satisfied,*

*shall, while in Bermuda, engage in any gainful occupation without the specific permission (with or without the imposition of conditions or limitations) by or on behalf of the Minister.”*

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<sup>1</sup> Section 60(6) applies to the spouses of United States consular officers or employees.