



In The Supreme Court of Bermuda

CIVIL JURISDICTION

2015: No.321

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

AND IN THE MATTER OF THE LIQUOR LICENSE ACT 1974

AND IN THE MATTER OF DECISIONS BY THE COMMISSIONER OF POLICE TO REFUSE PERMISSION TO THE APPLICANTS TO OPERATE CROWN & ANCHOR TABLES AT CUP MATCH 2015 AND TO REFUSE TO PROVIDE REASONS FOR THAT DECISION

BETWEEN:

(1) **KENITH CLIFTON BULFORD**

(2) **JOHN BERNELL JEFFERIS**

Applicants

-v-

THE COMMISSIONER OF POLICE

Respondent

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

1. On July 29, 2015, the day before the 2015 two-day Cup Match holiday, the Applicants applied for judicial review of the decision of the Commissioner of Police under section 1 of the Liquor License Act 1974 to refuse them permission to manage Crown & Anchor tables. Crown & Anchor is a game of chance which cannot lawfully be carried out on licensed premises without a permit issued by the Commissioner. In his Judgment, the Chief Justice described the background to the applications as follows:

“1. The centrepiece of the annual ‘Cup Match’ holiday in Bermuda is an annual cricket match inaugurated in 1902 as part of Bermudian descendants of slaves’ celebration of Emancipation on August 1, 1834. In an unusually philosophical radio commercial for a local supermarket chain (‘Lindos’) which ran over this year’s holiday period, the spirit of Cup Match was defined as “a spirit of restorative justice for all those in our community who have been marginalised.”

2. Cup Match takes place on the grounds of one or other of two traditionally Black working men’s clubs. It is a festive occasion now attended by thousands of locals and visitors with diverse backgrounds. It is also an occasion where various vendors, typically small-scale entrepreneurs, are able to enjoy a prominence and access income-generating opportunities that may be shut off to them for most of the rest of the year. A major attraction away from the cricket field at Cup Match is popular dice-based game of chance known as ‘Crown & Anchor’. The game is played at multiple tables under a large tent and is colloquially referred to as the ‘Stock Market’.”

2. The Applicants argued that the Commissioner had no right to carry out a criminal record check on prospective operators of Crown & Anchor tables as part of the procedure for obtaining a permit. The Court rejected that argument and accepted submissions on behalf of the Commissioner that the power to carry out such checks could be read into the discretionary power contained in the Liquor License Act. Section 1 of the 1974 Act defined various games of chance played on licensed premises as “unlawful” but exempted:

“the game known as crown and anchor if played on the premises of any licensed club in accordance with the conditions of a permit issued by the Commissioner of Police”.

3. The Applicant’s alternative argument was that they had no criminal record which could be used for disqualifying them as table operators, having regard to the provisions of the Rehabilitation of Offenders Act 1977. The Commissioner conceded that this was the case, but contended that he was entitled to refuse permission for the

Applicants to operate tables based on confidential Police intelligence which could not be disclosed.

4. The Chief Justice held that the ability to use confidential Police intelligence as part of the vetting process, which was not even claimed in the Commissioner's own 'Crown & Anchor Permit' form, was not within the scope of Commissioner's regulatory power under section 1 of the Liquor License Act. That high-level of vetting, which Parliament had not expressly authorised, could not be said to be essential to the effective workings of a statutory provision designed to regulate occasional gambling activities on licensed premises in a community sports setting. Accordingly:
 - (a) the Commissioner's decision to refuse permission for the Applicants to operate tables at Cup Match was set aside; and
 - (b) the Commissioner was directed to approve the Applicants as Crown & Anchor table operators at Cup Match.
5. The scope of the merely implied power to prevent prospective table operators from accessing the commercial opportunities in question should be given a narrow interpretation, the Court held. This was in part because the Applicants as Bermudians had a constitutional right not just to reside in Bermuda but also to make a living here, a right recently recognised in the case of *Melvorn Williams-v-The Minister of Home Affairs* [2015] SC (Bda) 45 Civ (15 July 2015). Such an interpretative approach was also consistent with the policy underlying the Rehabilitation of Offenders Act 1977 of enhancing employment opportunities for those who had in the past fallen afoul of the law.
6. The Court also noted that it was only in exceptional circumstances (such as where national security interests were involved), that the Courts would uphold decisions made by the Executive branch of Government which were justified solely on the grounds of undisclosed secret intelligence material.