IN THE SUPREME COURT OF BELIZE, A.D. 2008

CLAIM NO. 334

(BELIZE TELEMEDIA LIMITED APPLICANT/CLAIMANT
(
BETWEEN (AND
(
(LOIS M. YOUNG RESPONDENT/DEFENDANT
((Doing Business as Lois Young Barrow & Co.)

Before: Hon Justice Sir John Muria

15th July 2008

Mr. *Andrew Marshalleck* and ***Mrs. Naima Badillo*** for Applicant/Claimant
Mr. Fred Lumor S.C. for Respondent/Defendant

J U D G M E N T

NOTICE OF APPLICATION *– application for interlocutory injunction – form of order sought "until the hearing of the claim or further order" – principles to be applied – need for applicant to show serious question to be tried – attorney-client confidential information on severance pay – duty of attorney to preserve confidentiality – waiver confidentiality by former client – withdrawal of claim for severance pay – basis of claim no longer exists – no serious issue to be tried – exercise of Court's discretion refusing interlocutory injunction*

Muria J.: This is an application for an interlocutory injunction pending the determination of the claim brought by the applicant against the

respondent, to restrain the respondent Lois M. Young (doing business as Lois Young Barrow & Co.) from acting for, representing or advising or in any way assisting Mrs. Christine Perriott in ***Claim No. 142 of 2007 (Christine Perriott v Belize Telecommunications Limited and Belize Telemedia Limited.***) The actual term of the order sought in this application is as follows:

> *"an order that the respondent be restrained from in any way acting for, representing or advising or in any other way assisting Mrs. Christine Perriott in Claim No. 142 of 2007 in the Supreme Court of Belize."*

The substantive relief prayed in the Claim itself is in exactly the same term as that sought by the applicant in this application and it states as follows:

> *"An Order that the Defendant be restrained whether acting by its partners, employees or agents or otherwise howsoever from in any way acting for, representing or advising or in any other way assisting Mrs. Christine Perriott in Claim No. 142 of 2007 in the Supreme Court of Belize."*

The nature of the temporary relief sought is an important consideration in this application, and as such I will return to it later in this judgment. For now, it would be helpful to turn briefly to the background of this case.

Brief Background

The respondent had been the attorney and legal counsel for BTL (the former undertaking of the applicant) from 1987 to 2004. In addition, the respondent was also the Company Secretary of BTL between 1990 and 2004. In February 1995, following a dispute between BTL and its employees, the respondent rendered a legal advice in writing to BTL over the question of severance pay to BTL employees. In her written legal opinion to the BTL, the respondent advised that BTL was under no legal obligation to pay severance pay to the BTL employees. In subsequent letters dated 12th and 18th October 2004, the respondent advised BTL that the effect of the judgment in Action 580 of 2003, was that BTL might be liable to make severance pay to its employees.

The respondent's letter dated 16 February 1995 is referred to in paragraph 4 of Ediberto Tesucum's affidavit sworn to on 22 May 2008 and filed herein on 23 May 2008 in support of this application and exhibited as "ET1." Among other things, the letter says:

"Dear Mr. Tesucum,

"Further to my letter of 25th January 1995 on the matter of severance pay to BTL employees, I repeat and elaborate on my opinion that:

(1) that by section 193 of the Labour Act and employee is not entitled to severance pay under section 183 (provision for the payment of one week's wages in respect of each year of service up to a maximum of forty-two weeks) or to any corresponding benefit under a collective agreement (as in the BTL collective agreement now being negotiated). In addition to a pension, age benefit, retirement benefit or benefit under a scheme to which the employer is required to contribute, for the same years of service. The two benefits are in the alternative.

(2) that the Social Security Act introduced a scheme for pension, age benefits and benefits, to which BTL is required to contribute and therefore BTL is not liable under section 183 of the Labour Act to pay benefit for severance in its collective agreement.

(3) furthermore, even if it was argued that the Social Security Scheme only came into effect in 1985 and was not contemplated at the time section 193 was introduced in 1979, the fact of the matter is that BTL has contracted into a private pension scheme whereby a pension, age benefit, retirement or benefit is payable and therefore by virtue of this falls squarely into the provisions of Section 193.

The bottom line is that there is no legal requirement to pay severance under the Labour Act or to negotiate for severance in the collective agreement.

……..

Yours faithfully,
LOIS YOUNG BARROW & CO

Per: Lois M Young Barrow "

In the other letters dated 12th and 18th October 2004, referred to by Counsel, the respondent gave advice that "because of the decision of Judge Barrow in Supreme Court Action No. 403 of 2003, which indicates that BTL may be liable for severance pay" she would not be

able to represent BTL in resisting the claim for severance pay brought by Martha Ayuso et al against BTL.

The nub of the contention by the applicant is that, these letters are confidential communications between the respondent and BTL and as such they should not be disclosed without the consent of the applicant. In support of the arguments based on confidentiality, the applicant relies on the case of ***Prince Jefri Bolkiah –v- KPMG (A Firm)*** [1999] 2 A.C. 222. On the question of whether interlocutory injunction should be granted, the applicant referred the Court to the ***American Cyanamid Co. –v- Ethicon Ltd*** [1975] A.C. 396.

The respondent now represents Mrs. Christine Perriott, former employee of BTL and applicant, in Claim No. 142 of 2007 (***Christine Perriott v Belize telecommunications Ltd and Belize Telemedia Ltd***). In her original claim, Mrs. Perriott claimed that she was unlawfully terminated and has sought orders for re-instatement, payments of compensation and other benefits and entitlements. By a further amendment to the Claim Form on 4th March 2008, Mrs. Perriott claimed severance payment in the sum of $14,062.24. In the

light of the amended claim by Mrs. Perriott in Claim No. 142 of 2007, and the respondent's previous legal advice to BTL as described above, the applicant issued these proceedings on 23 May, 2008.

The respondent, by her affidavit sworn to on 4 June 2008 and filed on 6 June 2008, deposed to the fact that Mrs. Perriott is no longer pursuing her claims for severance pay and constructive dismissal in her Claim No. 142 of 2007. See Exhibit "LY 1/1" which is a copy of the letter written by the respondent to the attorneys for the applicant. As indicated by the respondent in "LY 1/1," the change of position now taken by Mrs. Perriott in her Claim No. 142 of 2007 follows the recent Court of Appeal's decision on 12th March 2008: ***Belize Telemedia Ltd v Christine Perriott*** (12th March 2008) Civil Appeal No. 33 of 2007.

With the above brief background, I now turn to the matters raised in this application.

Form of Relief

The first concern stemming from this present application is the form of relief sought. The purpose of the application is to obtain an interlocutory injunction against the respondent pending the determination of the applicant's substantive claim for permanent injunction. However, the Notice of Application in this case seeks exactly the same relief sought in the substantive claim.

The proper form of relief sought in an application for interlocutory relief is "*until the hearing of the claim or further order*." This is so elementary when one is claiming an interlocutory relief pending the determination of the main action. It is not right to seek an interlocutory relief, nor proper for the Court to grant such relief seemingly without the need to have the claim tried. In this regard, it is hardly surprising that Mr. Lumor S.C. raised query during the hearing of the application as to whether the applicant was pursuing its substantive claim in this application. Mrs. Badillo, only then, advised that the applicant was only pursuing an interlocutory relief and that the substantive claim would be dealt with later.

Applicable Principles

In almost all applications for interlocutory injunctive relief, the celebrated principles enunciated by Lord Diplock in the ***American Cyanamid case*** have frequently been cited and relied upon. Mrs. Badillo, has helpfully recapped these principles in the course of her submission.

It is, I think, useful at this stage to remind ourselves of the object of an interlocutory injunction. It is, as Sir Frederick Jordan, said in his ***Chapters on Equity in New South Wales***, 6th ed (1947) at 146:

> *"The purpose of an interlocutory injunction is to keep matters in* ***status quo*** *until the rights of the parties can be determined at the hearing of the suit."*

In ***The Eastern Trust Company –v- Mackenzie Mann & Co. Ltd*** [1915] AC 750 at 760, the Court also explains the reason for the existence of the Court's jurisdiction to grant interlocutory injunction:

> *"The existence of such a jurisdiction has been part of the equitable jurisdiction of our Courts for centuries, and is*

> *necessary in a case like the present for the safe preservation of the subject matter of the action until the rights of the parties can be finally determined."*

The first question is whether there is "*a serious issue to be tried*." The applicant must show, on the affidavit evidence before the Court, that there is indeed a serious issue to be tried in this case. Whether there is a serious issue to be tried or not is question of mixed fact and law to be ascertained on the evidence before the Court.

The affidavits of Dean Boyce and Ediberto Tesucum demonstrate clearly that the sole basis for seeking to restrain the respondent from acting for Mrs. Perriott against the applicant in Claim No. 142 of 2007 is that the respondent is in possession of confidential information on the claim by Mrs. Perriott for severance pay in the sum of $14,062.94 in that Claim. Thus having previously acted for the applicant and given legal advice in writing on the question of severance pay, the respondent, argued the applicant, cannot now act for Mrs. Perriott in her Claim No. 142 of 2007 against the applicant. That is the serious

issue, in the view of the applicant, to be tried in the substantive claim in this case.

The case of ***Prince Jefri Bolkiah*** relied upon by the parties in this application clearly established that a solicitor is under a duty not to communicate to others any information in his possession which is confidential to his former client. Not only that disclosure of such information is prohibited, but also to ensure that the former client is not put at risk by the disclosure or use of the confidential information against him. The Court's power to intervene emanates from the need to protect confidential information obtained from the former clients, rather than to prevent any conflict of interest or breach of fiduciary relationship between the solicitor and his former client. This is succinctly put by Lord Millett, at pp.578 – 579:

> *"The court's jurisdiction cannot be based on any conflict of interest, real or perceived, for there is none. The fiduciary relationship which subsists between solicitor and client comes to an end with the termination of the retainer. Thereafter the solicitor has no obligation to defend and advance the interests of his former client. The only duty to the former client which survives the termination of the client relationship is a*

continuing duty to preserve the confidentiality of information imparted during its subsistence."

In contrast, some of the cases between lawyers and former clients, decided by the Courts in Australia, were dealt with, not only on the basis of preserving the duty of confidentiality, but also on other grounds such as to prevent breach of fiduciary duty or lawyers' status as officers of the Court. One such case is that of ***Spincode Pty Ltd v Look Software Pty Ltd*** (2001) V.R. 501 where the Court of Appeal of Victoria was critical of the position taken by the House of Lords in ***Prince Jefri Bolkiah case***. Brooking JA of the Victorian Court of Appeal had this to say at 522:

"In their Lordships' view, the duty of loyalty perishes along with the retainer from which it sprang, the only survivor being that aspect of the duty which protects confidential information. Once the retainer has gone the '[lawyer] has no obligation to defend and advance the interests of his former client.' … But why should we not say that 'loyalty' imposes an abiding negative obligation not to act against the former client in the same matter? The wider view, and the one which commends itself to me as fair and just, is that the equitable obligation of 'loyalty' is

not observed by a [lawyer] who acts against a former client in the same matter."

His Honour went on to say:

"But if this result cannot be achieved as a matter of equitable obligation why should not the law impose, and the court enforce, an obligation arising otherwise than in equity? … A possible approach would be to say that it was an implied term of the contract of retainer between the [lawyer] and the company in the present case that the [lawyer] would not act against the company in the dispute in relation to which they had been retained by it. But I need not pursue this, since in my view a negative equitable obligation arose."

Other cases have followed ***Spincode***, including ***McVeigh v Linen House Pty Ltd*** [1999] 3 V.R. 394; ***Australian Liquor Marketers Pty Ltd v Tasman Liquor Traders Pty Ltd*** [2002] VSC 324; ***Corporate Systems Publishing Pty Ltd v Lingard*** [2004] WASC24.

In Belize, it is my respectful view that the position established in ***Bolkiah's case*** accords with our circumstances and should be followed. In fact it has been followed recently in ***Narda Garcia v***

Senator Godwin Hulse et al (2 July 2008) Supreme Court of Belize Action No. 496 of 2006.

Having reached the view that the only duty which survives the termination of client relationship is a continuing duty to preserve the confidentiality of information imparted during its subsistence, the applicant, in this case, now bears the burden of establishing (i) the respondent is in possession of the confidential information and has not consented to its disclosure; (ii) the information is relevant to the new matter adverse to the applicant. Once these are established, the onus shifts to the respondent to show that there is no risk of disclosure or misuse of confidential information belonging to the former client.

To determine these questions, it is necessary first to turn to the two pieces of legal advice concerned in this application.

The first is that contained in the letter 16 February 1995 and referred to earlier in this judgment. In that letter, the advice was that the applicant was, by law, not legally obliged to make severance

payments to its employees. That advice was tendered in the course of the respondent's professional retainership by the applicant of her services. It relates to a dispute between the applicant and its employees, particularly on the issue of severance pay. This document is clearly relevant to the issue of severance pay. The letter is confidential information which must not be disclosed to another person without the applicant's consent. The respondent is under duty not to disclose it to the detriment of the applicant. I will return to this document later, but in the meantime and on the question of confidentiality, I hold that the letter dated 16 February 1995 is confidential information.

The letters of 12th and 18th October 2004, were referred to but not exhibited to the affidavit of Dean Boyce. However, it is obvious that these two letters, written by the respondent to BTL, sought to inform BTL that the respondent would not be able to resist the claim for severance pay by BTL employees in ***Martha Ayuso et al -v- BTL,*** Action No. 580 of 2003 in the Supreme Court, following the judgment of the Supreme Court in Action No. 403 of 2003 delivered by Justice Barrow. Like, the letter dated 16 February 1995, these two letters

were written while the respondent was retained by BTL as their attorney and concerned the issue of severance pay. They are, therefore, confidential information. Whether the confidential information were favourable or not, to the client does not take away the confidentiality of the information nor does it lessen the duty of the attorney who is in possession of the information.

The Court's jurisdiction on this aspect of the law is based on the protection of confidential information. Thus both the legal advice contained in the letter of 16 February 1995 and the two letters of 12th and 18th October 2004 are confidential information and the respondent is bound to maintain that confidence unless and until she is relieved of that duty by the applicant or by Order of the Court: ***Prince Jefric Bolkiah***.

Exercise of Court's Discretion

I accept that on the evidence before the Court, the applicant has established the proposition that the respondent has an unqualified duty to preserve the confidential information contained in the letters of 16 February 1995 and 12th and 18th October, 2004. It is on this basis

that the applicant seeks to restrain the respondent from acting for Mrs. Perriott in Claim No. 142 of 2007.

The case of ***Prince Jefri Bolkiah*** upon which the applicant heavily relied upon, establishes, among other things, two central points. The first, is, that the only duty surviving the termination of a retainer of a solicitor by former client is the duty to preserve the confidentiality of information imparted during the existence of that relationship. The second point is that the 'sole' basis upon which a lawyer could be restrained is that if there is a risk of misuse of the confidential information.

Mr. Lumor S.C, with his usual acumen, took a straight shot at the 'bull's eye' as it were. Counsel submitted that first, Mrs. Perriott had withdrawn her claim for severance pay, as from 29 May 2008 as per the respondent's letter of same date, addressed to the applicant's attorneys. As such the sole basis for the restraining order sought against the respondent no longer exists. Thus, there is no longer any serious issue to be tried, in so far as severance pay is concerned,

and so no injunction, temporary or otherwise can be made against the respondent in this case.

Secondly, Mr. Lumor S.C. argued that the applicant has waived confidentiality in respect of the claim for severance pay. Counsel suggested that the applicant has waived confidentiality on the matter of severance pay when it instructed the respondent to write to Richard Stuart, Attorney at-law for BTL employees in April 2003, conveying to Mr. Stuart the same advice given to BTL that it had no legal obligation to make severance pay to its employees. Mr. Lumor S.C. submitted further that the applicant has waived the attorney-client confidentiality in this case through the disclosure by Martha Vasquez Molina in her Sixth Affidavit sworn to on 11 April 2008 and filed in Court in Claim No. 142 of 2007 between Christine Perriott and the applicant.

Let me deal first with the question of waiver. Despite the issue being raised by Mr. Lumor S.C., neither Mrs. Badillo nor Mr. Marshalleck suggested that the issue of waiver is inapplicable in this case. I must point out and there can be no doubt about it, that the attorney has the

unqualified obligation to preserve the confidentiality of information obtained during attorney-client relationship, but that, the privilege of that confidentiality belongs to the client, not the attorney. So it is only the client who can waive or modify that privilege.

As regards the letter written by the respondent on instructions from BTL to Richard Stuart, in my view, that cannot constitute a waiver of the attorney-client confidentiality in this case. This is because the information sent to Mr. Stuart was a response from one Attorney (the respondent) to another (Mr. Stuart) conveying the client's position to that other Attorney. It was not a disclosure of the confidential information itself.

The affidavit of Martha Vasquez Molina is in a different position. There is no dispute that the affidavit of Martha Vasquez Molina disclosed the confidential information (the Legal Opinion) in the letter of 16 February 1995. It is annexed to that affidavit as "**Exh MM105**" set out in its entirety. This is a perfect example of a disclosure to an adversary or even a third party, of a confidential information by a client. Martha Vasquez Molina, a senior executive in the

management of the applicant, was acting on behalf of the applicant when she filed her sixth affidavit in Claim No. 142 of 2007 disclosing the confidential information (Legal Opinion) in the Letter dated 16 February 1995. By doing so, the applicant has waived that attorney-client confidentiality in this case. A similar position can be found in the Canadian case of ***Smith –v- Smith*** [1958] O.W.N. 135 (H.C.J) where the client was held to expressly waive solicitor-client privilege where he filed an affidavit disclosing the substance of the solicitor-client communication.

Thus in my judgment, while holding that the legal opinion dated 16 February 1995 is confidential information between Attorney-Client, and the respondent has the unqualified duty to preserve it, the applicant, through disclosure by Martha Vasquez Molina in her affidavit dated 11 April 2008, has waived that confidentiality. As Lord Millett said in ***Prince Jefri Bolkiah***:

> *"The information was imparted to KPMG in confidence, and they are bound to maintain that confidence unless and until they are relieved of that duty by Prince Jefri's consent or an Order of the Court."* ***(Underlining is mine)***

The respondent in this case was relieved of that duty also by the applicant's consent to the disclosure, through Martha Vasquez Molina's affidavit, of the confidential information contained in the document dated 16 February 1995.

The other issue raised by Mr. Lumor S.C. and which will affect the exercise of the Court's discretion in this application is the fact that Mrs. Perriott has withdrawn her claim for severance pay. The evidence to confirm that Mrs. Perriott withdrew her claim for severance is contained in paragraph 21 of the affidavit of the respondent sworn to on 4 June 2008 and filed on 6 June 2008, which states:

> *"21. On the 12th day of March 2008 the Court of Appeal set aside the interim reinstatement order. Accordingly the claim for constructive dismissal on 9th November 2007 and for severance of $14,062.94 as of 9th November 2007 will not be pursued by Christine Perriott.*
> *A copy of the letter from Barrow & Co. dated 19th May 2008 and my reply dated 29th May 2008 on this subject is now produced and marked* ***L.Y.1****."*

For completeness, I also set out the respondent's reply dated 29 May 2008 to Letter from the applicant's Attorney dated 19 May 2008:

"Barrow & Co.
Attorneys-at-law
Coney Drive
Belize City
Attn: Mr. Andrew Marshalleck

May 29, 2008

Dear Sir

Re: Claim No. 142 of 2007
Christine Perriott vs. BTL, BTL

I am in receipt of your letter dated 19th May 2008 in which you point out a misconception on my part and then end with threats, as usual.

Indeed when I responded on 17th April 2008 to your letter of 12th April 2008, I was thinking of 'reinstatement' rather the 'constructive dismissal'. I have consulted with my client Christine Perriott about not pursuing her claim for constructive dismissal in light of the 12th March 2008 Court of Appeal ruling. As a result my client has asked me to inform you that she will not be pursuing her claim for constructive dismissal and for notice pay amounting to $4,545.07 and for severance pay of $14,062.94 as of 9th November 2007.

Yours faithfully.
LOIS YOUNG BARROW & CO.
(Sgd.)

Per: Lois M. Young

LMY/eq

c.c. Christine Perriott"

With Mrs. Perriott now no longer pursuing her claim for severance pay, there is no longer any reason for restraining the respondent to act for Mrs. Perriott in Claim No. 142 of 2007 based on that claim. There is therefore no "serious issue to be tried' any more. The serious issue cannot be general. It must be specific to the claim against the respondent. In this case the claim against the respondent is a permanent injunction to restrain her from acting for Mrs. Perriott in Claim No. 142 of 2007 on the ground that the respondent as former Attorney of BTL gave legal opinions on the question of severance pay to employees of BTL, which opinion is confidential information prepared for the benefit of the BTL. The basis for that claim has disappeared and so there is no live issue left to justify imposing a restraining order against the respondent in this case.

There are ample authorities for the proposition that where the basis for the claim for the interlocutory relief no longer exists, there can be no justification for granting an interlocutory injunction. In ***Australian Broadcasting Corporation –v- Lenah Game Meats Pty Ltd*** [2001] H.C.A. 63 (15 November 2001) the High Court of Australia expressed the principle succinctly as follows:

> *"There could be no justification, in principle, for granting an interlocutory injunction here other than to preserve the subject matter of the dispute, and to maintain the status quo pending the determination of the rights of the parties. If the respondent cannot show a sufficient colour of right of the kind sought to be vindicated by final relief, the foundation of the claim for interlocutory relief disappears."*

The substantive claim in that case is for a permanent injunction against ABC and another party restraining them from broadcasting a film taken of the respondent's operations, at a meat processing facility which slaughtered and processed brush tail possums. On examination of the facts the trial judge found that the basis for the substantive claim, including a claim for breach of confidentiality, no

longer existed or could not be established by the time the claim was made. Consequently, the respondent **(*Lenah Game Meats Pty Ltd*.)**

> *"did not make out an entitlement to prevent the appellant from using the film; and that therefore the respondent had no equity, then it was proper to deny interim relief, for there was no justice in restraining the appellant from broadcasting the material."*

So too, in our present case, when Mrs. Perriott through her counsel, the respondent, advised the applicant on 29 May 2008 that she had withdrawn her claim for severance pay, there is then no longer any legal basis upon which the applicant can claim an entitlement to restrain the respondent from representing her in Claim No. 142 of 2007 on the ground that the respondent is privy to a confidential information on the issue of severance pay. Consequently there is no serious issue to be tried.

Even when one looks at the main issue raised in the substantive claim in this case, I do not see, on the evidence so far before the Court, that the applicant can improve its case on the question of

severance pay between this interlocutory application and the substantive hearing.

The principles governing the grant or refusal of interlocutory injunctions are also summarized in ***Castlemaine Tooheys Ltd V South Austraila*** (1986) 161 CLR 148 at 153 where Mason ACJ said:

> *"In order to secure such an injunction the plaintiff must show (1) that there is a serious question to be tried or that the plaintiff has made out a prima facie case, in the sense that if the evidence remains as it is there is a probability that at the trial of the action the plaintiff will be held entitled to relief; (2) that he will suffer irreparable injury for which damages will not be an adequate compensation unless an injunction is granted; and (3) that the balance of convenience favours the granting of an injunction."*

In the circumstances of this case, to adopt the words of Mason ACJ, I am not satisfied that there is a serious question to be tried or that the applicant has made out a *prima facie* case in the sense that if the evidence remains as it is there is a probability that at the trial of the

claim the applicant will be held entitled to a relief. See also ***Beecham Group Ltd v Bristol Laboratories Pty Ltd*** (1968) 118 C.L.R. 618.

It only remains for me to deal with the further point raised by Mr. Marshalleck, namely that although Mrs. Perriott said that she had withdrawn her claim for severance pay in Claim No. 142 of 2007, the claim is still on the pleadings. The short answer to the concern of counsel is that, pleadings are mere averments and do not constitute evidence. If no evidence is offered in support of her pleadings, Mrs. Perriott must be taken to have abandoned those pleadings. See the Western African Court of Appeal Case of ***Ojikutu v Fella*** 14 W.A.C.A. 628 ; and the Nigerian Case of ***Capital Development Authority v Alhaji Musa Naibi*** (18/5/90) Supreme Court of Nigeria Suit No. 190/1989. See also ***Hans Bhojwani v Suraj Baxani*** (21/1/08) Supreme Court of Belize Action No. 539/2001. The fact that the claim for severance pay is still on the pleadings makes no difference whatsoever, since the claim had been withdrawn or abandoned.

The Court is entitled to rely on the assurance of two attorneys of the rank of Senior Counsel at the Bar and who are officers of the Court, that Mrs. Perriott had withdrawn her claim for severance pay as from 29th May 2008. That assurance is also supported by evidence before the Court. It would be mischievous to suggest that the claimant in Claim No. 142 of 2007 still has the option of reviving that claim when the case comes to trial because the claim is still on the pleadings. This is a bad point and should be discarded.

The arguments raised and relied on by Mr. Lumor S.C. are well founded in resisting the application for a restraining order against the respondent in this case. Consequently, the applicant's claim for an interlocutory injunctive relief cannot stand and it must fail.

In the circumstances and for the reasons stated in this judgment, the applicant's application is refused with costs to the respondent to be taxed, if not agreed.

(Sir John Muria)