

MEMORANDUM

TO: Mr. Lloyd Luckhoo, S.C.
FROM: Sir Lionel Luckhoo, S.C.
DATE: 9th January, 1978.
SUBJECT: Habeas Corpus Proceedings.

C.L.

The Judge has asked this question. Since on the 30th August, 1977, Grace Stoen withdrew the authority to Joyce Touchette to have custody, care and control of the child, and on the 6th October, 1977, Joyce Touchette was joined in the Summons for a declaration to have all the Orders deemed a nullity and since on the 14th October, 1977, Grace Stoen informed Joyce Touchette of the revocation of her authority and since the authority is now withdrawn DOES THIS BRING AN END TO THE CASE BEFORE ME? He said he will hear me later on this.

Hughes seizing upon this approach states that Grace Stoen on our application is entitled to have an Order against Joyce Touchette for the immediate delivery of the infant to her as the authority was revoked by Deed, executed on the 30th August, 1977 and Joyce Touchette was informed of this on the 14th October, 1977.

Bishop J. said, "What you are saying is since she is before the Court she is subject to whatever Orders the Court wishes to make?" Hughes replied, "Yes, the child should be brought to Court by Joyce Touchette and/or should be handed over to Grace Stoen and that Grace Stoen in her last affidavit, which is admitted, is asking (para. 22) for an Order against Joyce Touchette."

The Judge invited me to have Joyce Touchette swear to an affidavit in reply. I told him I do not think this was necessary for this was a continuing saga based upon a wrong premise. The Judge said I must confer with you to see whether we should file an affidavit sworn to by Joyce Touchette.

THE POSITION AS I SEE IT

We have brought a Summons in respect of Habeas Corpus proceedings No. 2584 of 1977. This relates to certain Orders adjudging Jim Jones to be in contempt. We have succeeded in respect of the first part of our Summons, in that Joyce Touchette is added and joined in the proceedings.

We have addressed the Court that the Orders made on the 6th, 8th and 10th September, 1977 be declared void and/or a nullity and of no effect and should be set aside ex debito

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justitiae. We further seek a declaration that the procedure in respect of the service of the Writ and/or the alleged making of John Stoen a Ward of Court and/or to commence proceedings against Jim Jones are all irregular, and finally we seek a declaration that the proceedings by way of Writ of Habeas Corpus are bad in law.

We have argued all of these points. We have nothing further to add.

Hughes is seeking to have an Order made for the production of the child by Joyce Touchette. There is no substantive application for Habeas Corpus against Joyce Touchette before the Court. They have commenced proceedings of this nature before another Judge and that can take its own course. It would be improper for the Court to make any such Order against Joyce Touchette who is seeking to have Orders of this nature made against Jim Jones removed.

Hughes has made a grave error in stating that Joyce Touchette has admitted in her affidavit that she has physical custody of the child. What Joyce Touchette says is that she is entitled to custody under a Notarised Parental Consent document and she goes on to state that Jim Jones and others also have care, custody, supervision and control of the child.

It is a simple matter for Joyce Touchette, if served with Habeas Corpus papers to declare what is in fact true, that she does not have physical custody of the child although she was once entitled to the child.

I do not think we should into the fatal error of seeking to have Joyce Touchette swear to any further affidavit.

IT IS NOW A QUESTION OF LAW NOT OF FACT THAT ON THE BASIS OF THE DOCUMENTS BEFORE THE COURT AT THE TIME WHEN THE ORDERS OF 6TH, 8TH AND 10TH SEPTEMBER, 1977 WERE MADE, THE JUDGE HAD NO RIGHT TO MAKE ANY SUCH ORDER. THE JUDGE MUST RULE EITHER BY ENTERTAINING OUR SUMMONS OR BY DISMISSING IT AND NOTHING MORE.

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SUBMISSIONS

Re: Habeas Corpus Proceedings.

1. Application was bad.

The original application was not supported by affidavit of Grace Stoen.

Atkins Vol. 14 p. 39, 60:

Mother should have sworn to affidavit.

Atkins p. 8:

Where person restrained as a minor, application may be made by parent, guardian or local authority. Only affidavit properly before the Court was that of Haas.

Halsbury Vol. 11 p. 37:

Any person who is legally entitled may initiate proceedings but such application (p. 39) must be accompanied by an affidavit. Haas was not entitled to the custody and his affidavit was unsupported at the time of the making of the Orders. Haas merely purported to be the lawful attorney of Grace Stoen.

Encyclopedia Laws of England Vol. 6 p. 137:

Child has to be handed over personally to parent. There was then no affidavit of Grace Stoen.

The result: Since application was bad, then all that flows from it is a nullity.

2. Service was bad:

Annual Practice Order 54 Rule 6:

Writ must be served personally on the person to whom it is directed, it is only if this is impossible then service on an agent can be made at the place where the person restrained is confined. No proof on record on impossibility of service on Jim Jones.

There was an attempted service but no proof that this was at the place where the minor was confined. There is no provision for affixing on building. The record does not establish impossibility of service personally.

No prima facie case made out for Writ to issue and there were material non disclosures which would void the Writ issue. As for example, the Deed giving custody to Joyce Touchette and others, was not referred to in HaasI affidavit.

On this ground alone the Orders should be revoked.

Halsbury Vol. 11 p. 33:

Irregularities cannot be waived.

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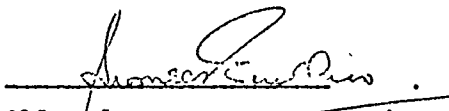
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The result: Orders are a nullity.

2. Since Joyce Touchette is joined, Grace Stoen's affidavit has been admitted. This respectfully contended, cannot be looked at to cure any defects when Orders of 6th, 8th and 10th September, 1977 made. It is what the position was then when Orders were made, not what it is now.

The Orders presently sought by Mr. Hughes cannot be entertained for Joyce Touchette to be called on to produce the child. Grace Stoen has commenced fresh proceedings against Joyce Touchette not before this Court and respectfully contend it would be improper for any such Orders to be made by this Court against Joyce Touchette on Joyce Touchette's present application which is before the Court, and which application we ask the Court to rule on - viz that the Orders of 6th, 8th and 10th September are a nullity.

It is a question of law as to whether what the learned Trial Judge had before him on the 6th, 8th and 10th September, 1977 would entitle the Orders to be made. This is the sole matter for the determination of the Court.


Of Counsel.

*All authorities = Cases = & References
were tendered when we first presented
our case & are not repeated here*

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Americans calling him all day
to influence. Not going to allow anyone
to ' ' him or hell take
stern steps.

Hughes already started proceedings
ag Joyce. et al.

If any paper served. bring to Howell.
only entit to custody not nec. one who
has cur. H.C. issued only ag one who
has cur.

asked Joyce to bring child or reply
to offer that. . . If served she has
no physical custody tho she was entit.

Can't go any further. Court force.

Only if someone admits they have custody.
Whatever judge decides his suby. to fall at
it's on appeal

Has to sit & think about

Using present knowledge as to past pts.

Grace Stone offer was an proceeding - not
terrible here.

Let J 2. come to pt town. Nothing to be served
registration told final that.

Separate proceeding ag. Joyce.

Not accepting any service.

Nothing to worry about.

When they make the order for the child.

Never made full disclosure that
they gave custody orders - Equitable remedy
Ducked facts until last moment.

Can't produce something she doesn't have.

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since when does a person have a rt. to go
thru intenc.

Barlow - noon Nick coming