

THE EASTERN CARIBBEAN SUPREME COURT

GRENADA

IN THE HIGH COURT OF JUSTICE
(CIVIL DIVISION)

CLAIM NO. GDAHCV2023/0410

BETWEEN:

BYRON L.J. CAMPBELL

Claimant

and

THE ATTORNEY GENERAL

Defendant

Appearances:

Mr. Ruggles Ferguson KC, with him, Mr. Paul Mc Burnie for the Claimant
Ms. Aleya Williams, Crown Counsel, and Ms. Régine Mondesir, Crown Counsel,
for the Defendant

2026: February 20;
April 30.

DECISION ON ASSESSMENT OF DAMAGES

- [1] **MICHEL M:** The Claimant was employed by the Government of Grenada in the position of Head of Rural Development from October 2018. His employment was terminated by the Government of Grenada by letter dated 20th February 2023, effective 28th February 2023. By claim form and statement of claim filed on 18th August 2023, the Claimant commenced these proceedings against the Defendant, the Attorney General, pursuant to section 14(2) of the **Crown Proceedings Act**,¹ seeking general damages for breach of contract by the Government of Grenada; an order directing payment of certain sums to him by the Government of Grenada; in the alternative, an assessment of the claim on a quantum meruit basis and payment to the Claimant for his professional services provided for the period October 2018 to February 2023; costs and further and other relief.
- [2] The Defendant failed to file an acknowledgement of service or defence to the Claimant's claim within the time limited by the **Civil Procedure Rule (Revised Edition) 2023** ("CPR 2023"), and at the request of the Claimant, default

¹ Cap. 74, Laws of Grenada.

judgment was entered for the Claimant by the Court Office for an amount to be decided by the Court. A subsequent application by the Defendant to set aside the default judgment was refused by the Court and directions were issued for an assessment of damages.

- [3] The Claimant filed an affidavit together with exhibits and written submissions for the assessment of damages. The Defendant filed the affidavit of Mr. Mike Sylvester, Permanent Secretary in the Ministry of Finance, and written submissions for the assessment of damages. The Claimant and Mr. Sylvester were both cross examined at the assessment of damages hearing. The parties also filed brief written closing submissions following the assessment of damages hearing.

Approach to Assessment of Damages following a Default Judgment

- [4] Guidance on assessments of damages following the entry of default judgment has been provided by the Court of Appeal. In **Michael Laudat et al v Danny Lambo**,² Edwards JA, delivering the judgment of the Court of Appeal stated:

“Ordinarily, at an assessment of damages hearing the court would not enquire into matters of liability because the defendant, having failed to file an acknowledgment of service and/or a defence is taken to admit liability as pleaded. At the assessment of damages hearing, the court is not required to re-open the application or request for default judgment; and it would not be appropriate to go behind the default judgment order or assess the merits of the pleadings in relation to the cause of action while the default judgment stands. The issue of the defendant’s liability having been settled by the default judgment, the only issue for the court is how much in compensatory damages is due to the claimant upon the evidence adduced by the claimant in proof of any special damages claimed and general damages. Where damages for any pleaded causes of action have not been proven by the evidence, the claimant would generally not be entitled to damages under that head of claim.

- [5] In the later judgment of the Court of Appeal in **Keith Claudius Mitchell (Minister of Finance in the Government of Grenada) et al v Capital Bank International Limited**,³ in answering the question of what matters are concluded by a default judgment, Blenman JA, delivering the judgment of the Court of Appeal explained:

“[36] Turning to the default judgment, I agree that it is incumbent on the judicial officer at the assessment hearing based on a default judgment to scrutinize the pleadings in order to determine what the default judgment represents. I have no doubt that as a

² Commonwealth of Dominica HCVAP2010/016 (delivered 15th December 2010, unreported) at para. 30.

³ GDAHCVAP2015/0034 (delivered 22nd April 2017, unreported).

general rule the default judgment does not represent a decision that all of the loss or damage alleged by the claimant was indeed suffered by him or attributable to the defendant; authority for this proposition is Lunnun v Singh read together with Kok Hoong v Leong Cheong Kweng Mines Ltd.

[37] The Court in Lunnan v Singh highlighted that on an assessment of damages all questions going to quantification of damage, including the question of causation in relation to particular heads of loss claimed by the claimant, remain open and could be raised by the defendant provided that they are not inconsistent with liability alleged in the statement of claim. Further, in Kok Hoong v Leong Cheong Kweng Mines Ltd the Court held that default judgments, though capable of giving rise to estoppels, must always be scrutinized with extreme particularity for the purpose of ascertaining the bare essence of what they must necessarily have decided and they can estop only for what must “necessarily, and with complete precision” have been thereby determined.”

[6] With the above principles in mind, I will consider the Claimant’s case and the Defendant’s position on the assessment of damages.

Background to Claimant’s Claim

[7] On 1st October 2017, the Claimant was contracted by the Government of Grenada through the Ministry of Finance to serve as Programme Manager for the Market Access and Rural Enterprise Programme (“MAREP”), for a period of one year, on certain terms set out in a written contract, including:

- (i) Payment of a monthly salary to the Claimant of \$8,240.00 from 1st October 2017 to 31st December 2017, followed by a 3% increase to \$8,487.20 effective 1st January 2018 to 30th September 2018;
- (ii) Full time access to a vehicle provided to the Claimant, with the cost of fuel (equivalent to seventy-five (75) gallons per month) and maintenance being borne by the project;
- (iii) A mobile phone allowance of \$200.00 per month provided to the Claimant; and
- (iv) Termination of the MAREP Contract by the Government of Grenada, by not less than 30 days written notice of termination to the Claimant, to be given if the Claimant does not remedy a failure in the performance of his obligations under the contract within 30 days after being notified or within any period as the Government of Grenada may have subsequently approved in writing

[8] The Claimant pleaded in his statement of claim, and his evidence is that in May 2018, he was appointed by the Government of Grenada to the position of Head

of Rural Development effective 1st October 2018, with initial responsibility for two projects, being the Climate Smart Agriculture and Rural Enterprise Programme (“SAREP”) and the Basic Needs Trust Fund (“BNTF”). This appointment came by way of letter dated 17th May 2017 from Ms. Patricia Clarke, Permanent Secretary, Ministry of Finance, Planning, Economic Development and Physical Development. The date of Ms. Clarke’s letter was an obvious error and ought to have been 17th May 2018. I will therefore refer to it as letter dated 17th May 2018 throughout the rest of this decision. The letter informed the Claimant that he was appointed to the post of Head of Rural Development in charge of the Climate Smart Agriculture and Rural Enterprise Programme (“SAREP”) commencing 1st October 2018

[9] It is important to set out the contents of the letter dated 17th May 2018 in full:

“Dear Mr. Campbell,

Subject: Appointment of Head of Rural Development

The Ministry of Finance, Planning, Economic Development and Physical Development is please [*sic*] to inform you that you have been appointed as the Head of Rural Development as of October 1st, 2018.

This Programme consist [*sic*] of two projects, namely the Basic Needs Trust Fund (BNTF) and the Climate Smart Agriculture and Rural Enterprise Programme (SAEP). Please note that you will be guided by the terms and conditions of your previous contract as Programme Manager for the Market Access and Rural Enterprise Programme (MAREP) and will receive a monthly salary of EC\$8,487.20, in addition to a travelling allowance of EC\$600.00 effective as of May 1st, 2019 [*sic*]. Your total package will be in the amount of EC\$9,087.20 per month .

We are also to inform you that this appointment letter will be used in the absence of a formal contract which will be issued pending the results of the job analysis process.

Attached to this letter is a copy of the Terms of Reference (TOR) for the above mentioned position as a guide in performing your duties.

Thank you and please be guided.”

[10] The Claimant was later written to by Ms. Ophelia Wells-Cornwall, Acting Permanent Secretary, Ministry of Finance, Planning, Economic Development and Physical Development by letter dated 24th October 2018 indicating to him that the Government of Grenada had taken a policy decision to merge two of its programmes, namely, the Basic Needs Trust Fund (BNTF) and Climate Smart Agriculture and Rural Enterprise Programme (SAREP) under one umbrella

programme captioned, Rural Development. The Claimant was asked to provide a report on the deliverables on the previous programmes and a plan for the way forward. The Claimant was also informed that all contracts under the MAREP concluded on 30th September 2018 and was asked to indicate whether he would accept the position of Head of Rural Development along with the requisite responsibilities. By letter dated 29th October 2018, the Claimant wrote to Ms. Wells-Cornwall informing that he accepted the offer from the Government of Grenada to be the Head of Rural Development along with its requisite responsibilities.

[11] Throughout this decision, I will adopt the terminology used by the Claimant to describe his contracts with the Government of Grenada. The “MAREP” contract refers to his former contract as Programme Manager for the Market Access and Rural Enterprise Programme for the period October 2017 to September 2018, and the SAREP contract refers to the contract as Head of Rural Development which covered the period October 2018 to February 2023.

[12] The Claimant pleaded in his statement of claim, and stated in his affidavit that his new contract commencing on 1st October 2018, the SAREP contract, stated *inter alia* the following express terms:

- (i) The Claimant would be guided by the terms and conditions of the MAREP Contract;
- (ii) Payment of a monthly salary to the Claimant of \$8,487.30 (being the last salary the Claimant received under the MAREP Contract);
- (iii) Payment of a travelling allowance of \$600.00;
- (iv) The formal SAREP contract would be issued pending the result of the job analysis process.

[13] The Claimant further pleaded and stated in his affidavit that in addition to the expressed terms contained in the SAREP contract commencing 1st October 2018, there existed certain implied terms of the SAREP contract. The Claimant alleged that those implied terms were always the subject of mutual understanding between the Claimant and the Government of Grenada as follows:

- (i) That an upgraded salary and other benefits payable under the SAREP Contract would be finalized and formalized;
- (ii) The formalization of the job description for Head of Rural Development would take place following a job analysis by the Department of Public Administration (“DPA”);
- (iii) Once the job description was formalized, the SAREP contract would be accordingly upgraded and made retroactive.

- [14] After taking up the appointment, the Claimant was subsequently written to by Ms. Patricia Clarke, Acting Permanent Secretary, by letter dated 27th November 2019, informing him of an amendment to his appointment as Head of Rural Development dated 1st October 2018, to highlight the inclusion of a monthly telephone allowance.
- [15] The letter further explained that the Programme consisted of two projects namely the Basic Need Trust Fund (BNTF) and SAREP. The letter further asked the Claimant to note that he would be guided by the terms and conditions of his previous contract as Programme Manager for the MAREP and would receive a salary of \$8,487.20 in addition to a traveling allowance of \$600.00 and a telephone allowance of \$200.00 effective as of 1st October 2019.
- [16] The letter confirmed that the Claimant's total package will be in the amount of \$9,287.20 per month. The letter also again informed the Claimant that his appointment letter would be used in the absence of a formal contract which will be issued pending the results of the job analysis process. The letter also indicated that attached to the letter was a copy of the terms of reference for the position as a guide in performing his duties.

Termination of Employment

- [17] By letter dated 20th February 2023 from the Permanent Secretary, Ministry of Economic Development, Planning, Tourism and Creative Economy, the Claimant was advised that a decision was taken to terminate his contractual engagement with the Government of Grenada as Head of Rural Development as his services were no longer required. The Claimant was further advised that his termination was effective 28th February 2023 and that in lieu of notice of termination he would be paid two months service fee for the months of March and April 2023 in the sum of \$18,174.40.
- [18] The thrust of the Claimant's present claim is that his termination was in breach of the termination clause of his contract. In the written submissions filed in support of the Claimant's assessment of damages, learned counsel for the Claimant confirmed that the Claimant's claim was on the basis of *inter alia*, termination of employment without cause (wrongful dismissal) breaching the express terms of his employment contract with the Government of Grenada.
- [19] The Claimant's case is that the procedure and cause for the termination of his contractual engagement under the SAREP contract was an express term laid out in section 15 of the MAREP contract which terms were incorporated into the SAREP contract. The Claimant further averred that this was pending formalization of the updated salary and other benefits (based on the alleged implied terms of the contract).

- [20] Section 15 of the MAREP contract, which was incorporated into the SAREP contract, provided that the Government of Grenada may terminate the contract, by not less than 30 days written notice of termination to the Claimant, to be given if the Claimant did not remedy a failure in the performance of his obligations under the contract within 30 days after being notified or within any period as the Government of Grenada may have subsequently approved in writing. The provision further provided that unsatisfactory performance (evaluated twice a year) was a cause for unilateral termination.
- [21] The Claimant pleaded and his evidence is that the Government of Grenada's termination of his contract failed to detail any misconduct of the Claimant and that the Government of Grenada's failure to mention wrongdoing on the Claimant's part, meant that no misconduct existed to justify the Government of Grenada's termination of the Claimant. The Claimant therefore averred that the Government of Grenada breached the termination clause of his contract by dismissing his services arbitrarily and without any cause or misconduct, and as a result, the Claimant's termination was unlawful. The Claimant therefore sought damages for breach of contract.
- [22] The Claimant further alleged in his statement of claim, that at the time of the Claimant's termination, the Government of Grenada failed to fulfill its obligations under the SAREP contract by:
- (i) Terminating the services of the Claimant in breach of the termination clause of the MAREP Contract, which terms were incorporated into the SAREP Contract, pending formalization of the upgraded salary and other benefits;
 - (ii) Terminating the services of the Claimant without addressing the Government of Grenada's outstanding obligation to provide the Claimant with the formal SAREP Contract containing the upgraded salary and other benefits, following the results of the job analysis process; and
 - (iii) Terminating the services of the Claimant without compensating the Claimant the outstanding monies due to him under the pending formalized SAREP Contract, which would be retroactive to 1st October 2018 for the Claimant's four plus years of carrying out his duties as Head of Rural Development, in anticipation of the formalized and concluded SAREP Contract.

- [23] The Defendant having failed to file an acknowledgement of service and defence to the Claimant's claim, the issue of the Defendant's liability on the Claimant's for damages for wrongful dismissal was crystalized by the Default judgment.

Measure of Damages

- [24] The parties were in agreement that the primary objective of damages for breach of contract is to put the non-breaching party in the position that they would have been in had the contract been performed fully.

- [25] The approach to the measure of damages in an action for breach of contract generally, was explained in **Lord Lavarack v Woods of Colchester Ltd**,⁴ by Diplock LJ as follows:

"The general rule as stated by Scrutton LJ in *Abrahams v Herbert Reiach Ltd*, that in an action for breach of contract a Defendant is not liable for not doing that which he is not bound to do, has been generally accepted as correct and in my experience at the Bar and on the Bench has been repeatedly applied in subsequent cases. The law is concerned with legal obligations only and the law of contract only with legal obligations created by mutual agreement between contractors – not with the expectations, however reasonable, of one contractor that the other will do something that he has assumed no legal obligation to do. So if the contract is broken or wrongfully repudiated, the first task of the assessor of damages is to estimate as best he can what the plaintiff would have gained in money or money's worth if the Defendant had fulfilled his legal obligations and had done no more."

- [26] In the context of an employment contract, learned counsel for the Claimant, in his written submissions, referred to the House of Lords judgment in **Addis v Gramophone Company Limited**,⁵ in which the appellant, the manager of the Defendant, was dismissed and given the contractually required six months' notice. Lord Gorell stated the following in relation to the measure of damages:

"The general rule is clear that damages in contract must be such as flow naturally from the breach, or such as may be supposed to have been in the contemplation of the parties as the result of the breach....Under the first branch of this rule the plaintiff recovers the net benefit of having the contract performed. He is therefore to be put in the same position as if the contract had been performed. If it had been performed, he would have had certain salary and commission. He loses that, and must be compensated for it."

- [27] Two issues arose on the assessment of damages to enable the Court to determine the quantum of damages to be paid to the Claimant on his claim. The

⁴ [1966] EWCA Civ 4.

⁵ [1909] AC 488 at page 501.

first issue was what compensation was the Claimant entitled to under his contract with the Government of Grenada? And second, for what period under the contract was the Claimant entitled to be compensated for having been wrongfully dismissed?

- [28] I will first deal with the issue of the period under the contract for which the Claimant must be compensated for the Defendant's breach of contract.

For what period is the Claimant to be compensated?

- [29] A further question arose on the Claimant's claim as to whether the Claimant was engaged on a fixed term contract or a contract of an indefinite period. In the absence of any clause in the contract for termination by notice by the Government of Grenada, two results would occur depending on the nature of the Claimant's contract. On a fixed-term contract with no termination by notice clause, any award of damages to the Claimant would be based on the salary and benefits the Claimant would have received for the remainder of the contract as if the contract had been performed. If, however, the contract was for an indefinite term, damages would be awarded based on a period of reasonable notice.⁶

- [30] In his affidavit filed in support of the assessment of damages, the Claimant stated that throughout his engagement with the Government as Head of Rural Development, he always understood that under the SAREP contract, he was being guided by the terms and conditions of the MAREP contract. As a result of the terms of the MAREP contract being carried forward into the SAREP Contract, he also understood that he was functioning under yearly fixed-term contracts with the Government of Grenada. By way of letter dated 27th November 2019 from Ms. Patricia Clarke, the then Permanent Secretary in the Ministry of Finance, an amendment was made to his position to include a monthly telephone allowance of \$200 effective 1st October 2019.

- [31] Having read the submissions of counsel for the parties, the parties appeared to be *ad idem* that the Claimant was engaged by the Government of Grenada on successive one year fixed-term contracts since he was first appointed to the position of Head of Rural Development in October 2018. Having reviewed the Claimant's letter of appointment and terms of the MAREP contract which were incorporated into the SAREP contract, I agree. The Claimant's one-year contract which was current at the time of his termination would therefore have ended on 30th September 2023. Thus, at the time of the termination of the Claimant's

⁶ See: *Deca Penn v Scotiabank (British Virgin Islands) Limited* BVIHCV2009/0277 (delivered 28th February 2013, unreported).

SAREP contract as Head of Rural Development on 28th February 2023, seven months remained under his contract.

- [32] Clause 15 of the MAREP contract, which was incorporated into the SAREP contract, did not provide for early termination of the contract by the Government of Grenada. The contract only provided for the Government of Grenada to terminate the contract by a set procedure where there was a failure in performance.
- [33] The default judgment has concluded that the Claimant was wrongfully dismissed by the Government of Grenada. He was not dismissed in accordance with the terms governing his contract. The termination clause which governed his contractual engagement only provided for termination for reason of failure of performance which was not given as a basis for his termination, and in any event, the contract provided a procedure for termination for failure of performance which was not followed. The contract provided no other mechanism for the Government of Grenada to bring an earlier end to the contract. In the circumstances, the Claimant would be entitled to remuneration for the whole of the unexpired portion of his fixed term of his contract which would be for the period from March 2023 to the end of September 2023.

What remuneration was the Claimant entitled to under his contract?

- [34] Although there was common ground between the parties on the remaining period for which the Claimant was entitled to be compensated in damages, the parties differed in relation to the Claimant's remuneration under his contract with the Government of Grenada. The parties agree that at a minimum, the Claimant would be entitled to damages based on the express terms of his contract, being the remuneration set out in the letter of appointment dated 18th May 2018 which was amended by letter dated 27th November 2019. Where the parties are diametrically opposed is on the Claimant's contention that there were certain implied terms into his contract for an upgraded salary upon the completion of a job analysis and that the upgraded salary was to be paid retroactively, thus his measure of damages must reflect these implied terms.
- [35] Therefore, notwithstanding that the Claimant was paid the sum of \$9,287.20 as Head of Rural Development, the Claimant position was that considering the alleged implied terms in the contract of employment as Head of Rural Development, a reasonable increased basic monthly salary for the position of Head of Rural Development was \$11,487.20. Thus, he contended, he should be paid the remaining seven months on his contract at this reasonable increased salary, less the two months' basic salary portion of the payment in lieu of notice paid to him by the Government of Grenada upon the termination of his contract. The Claimant further contended that he should be paid the 53 months unpaid

portion of the increased basic monthly salary retroactive to 1st October 2018 being \$3,000.00 x 53 months.

- [36] The Defendant's position on the other hand was that the measure of damages on the Claimant's claim is confined to the remuneration and benefits which the Claimant was expressly contractually entitled to receive for the unexpired portion of a fixed term contract. The Defendant's position is that the Claimant's remuneration and benefits are that which the Claimant received under the MAREP contract and which his letters of appointment explicitly stated would apply.

Is the default judgment conclusive of the issue of implied terms?

- [37] At the assessment of damages hearing, learned King's Counsel for the Claimant took objection to Counsel for the Defendant's cross-examination of the Claimant on the issue of facts surrounding any agreement between the parties about the Claimant receiving an ungraded salary upon completion of the job analysis process and the upgraded salary being made retrospective. The objection was on the basis that if the Defendant wanted to raise the issue, it should have filed a timely defence. This was also raised in the closing submissions filed on behalf of the Claimant.
- [38] The objection raised the question as to how the Court should approach the unanswered pleadings by the Claimant that there are certain terms implied into his contract of employment.
- [39] As already noted above, although the issue of a defendant's liability may be conclusive on a default judgment, all questions going to quantification in relation to loss claimed by a claimant are open to challenge by a defendant on an assessment of damages provided that it was not inconsistent with the liability alleged in the statement of claim. The pleadings must therefore be scrutinized to determine what the default judgment actually represented.
- [40] In the present case, it is clear that as a result of the default judgment, the Defendant's liability for breach of contract resulting in wrongful dismissal is conclusive. The Court's task on the assessment of damages is to determine what remuneration and benefits the Claimant would have been entitled to were he not wrongfully dismissed. It is correct that on a default judgment, the Court will ordinarily assume that the facts pleaded in a statement of claim are true. Thus, in doing so in the present case, the Court is to examine the pleaded terms of the contract that the parties are bound by. However, whilst the expressed terms of the contract are a matter of fact, the situation in relation to implied terms is different.

- [41] The question of whether a term is implied into a contract is a matter of law to be determined by the Court. This was explained by Barrow JA in **Dominica Agricultural and Industrial Development Bank v Marvis Williams**⁷ where the learned Justice of Appeal stated the following:

“Failure to deny a fact

- [39] Even, however, if I were to agree that the appellant failed to deny the implied term, the consequence would not necessarily be what counsel for the respondent urged. Counsel submitted that the normal consequence of failing to deny a material fact in a statement of claim is that the court may treat the fact as admitted. For present purposes I will take that proposition as correct. Nonetheless, there is a distinction involved in the factual content of a plea of an express term and a plea of an implied term. Pleading an express term is pleading the fact that an event occurred. In the case of a contract that fact is that the parties expressed agreement on a certain term and agreed that such term was to form a part of their bargain. This accords with the general rule that facts are to be pleaded: rule 8.7 (1). The default position, that a fact that is not denied is deemed to be admitted, operates in a clear way when a fact is pleaded.

- [40] The position is different with an implied term because the fundamental premise underlying reliance upon an implied term is the non-existence of a fact. The party relying on an implied term is really stating that the parties did *not* express agreement on a certain term and did *not* agree that it was to form part of their bargain. The party who pleads an implied term is therefore asking the court, as a matter of law, to find that the term that was not expressed should nonetheless be treated as a part of their bargain because the law regards it as necessary in the circumstances to do so or because it is a term that the law regards as normally incident to a bargain of the particular type; see **Liverpool City Council v Irwin**.¹⁶ *[1977] AC 239 at 257H per Lord Cross of Chelsea* Pleading an implied term is therefore giving notice that the party will be asking the court, as a matter of law, to supply a missing fact.

- [41] In such a case the pleader should state the facts that enable the court to supply the absent term. In that case, if such facts are not denied they are deemed to be admitted, under the rule for which counsel for the respondent contended. But if no fact is pleaded, to what can there be deemed to be an admission? A corollary of the rule that facts must be pleaded is that there is no obligation to plead matters of law. There can be no sanction, therefore, against a party who fails to plead to a matter of law.”

⁷ Commonwealth of Dominica Civil Appeal No. 20 of 2005 (delivered 29th January 2007, unreported).

- [42] In my view, in carrying out this assessment, the Court must determine whether on the facts pleaded by the Claimant, the terms contended by the Claimant are implied in the contract between the parties. Those pleaded facts are assumed.
- [43] Any damages to be paid to the Claimant would be based on a calculation of his contractual salary and monetary entitlements for the remainder of his contract with the Government of Grenada. As I have previously stated, whilst there is no disagreement between the parties on what the express terms of the Claimant's contract were in calculating these sums, the real dispute between the parties is the Claimant's contention of implied terms which would increase his remuneration and thus his award of damages.
- [44] The Claimant alleges that in addition to the expressed terms of the contract as head of Rural Development, there existed certain implied terms which he alleges were always the subject of mutual understanding between the Claimant and the Government of Grenada. The alleged implied terms were:
- (i) That an upgraded salary and other benefits payable under the SAREP Contract would be finalized and formalized;
 - (ii) The formalization of the job description for Head of Rural Development would take place following a job analysis by the Department of Public Administration ("DPA");
 - (iii) Once the job description was formalized, the SAREP contract would be accordingly upgraded and made retroactive.
- [45] The Defendant's position is that at no material time was it indicated to the Claimant that pending the result of the job analysis process, his monthly compensation would be increased.

Implied Terms

- [46] It would be useful to set out the law on implied terms in some detail given that it is a crucial aspect of this assessment of damages.
- [47] The learned authors of **Halsbury's Laws of England**⁸ define implied terms as follows:

"In addition to the terms which the parties have expressly adopted, there may be other terms imported into the contract, these latter being generally known as 'implied terms'. Under this heading, the types of

⁸ Volume 22 (2025) at para. 163.

terms in question are sometimes divided into terms implied as a matter of custom or usage, terms implied 'by law' and terms implied 'in fact'. Terms implied 'in fact' may be explained as terms which give effect to the unexpressed intention of the parties and terms implied 'by law' as terms implied on broader grounds of fairness or social policy, but these distinctions and explanations should not be overstated. The intention of the parties is not irrelevant to terms implied by law since it may be possible for the parties, subject to any statutory control, to state expressly that they have excluded such terms; and the reasonableness of a term on grounds of fairness or social policy is a factor which may be taken into account in establishing the intention of the parties, though it is not sufficient in and of itself. In addition, some terms are implied into a contract simply by virtue of the type of relationship between the parties (for example, employment, landlord and tenant) and, while probably best classified as terms implied by law, they may also be explained as giving effect to the presumed intention of the parties; certainly where it has become established that such terms will always be implied into contracts of a particular type in the absence of any contrary agreement. As a consequence, it may not always be entirely clear whether some terms which are regularly implied by the courts are best explained as terms implied in fact, or by law, or on some hybrid basis.

[48] The learned authors expressly note that the implication of terms is a question of law.

[49] Based on the Claimant's pleaded case, it is important to look closer at the learning on implication by fact. The learned authors of **Halsbury's Law of England**⁹ relying on the judgment of **BP Refinery (Westernport) Pty Ltd v Shire of Hastings**¹⁰ state:

"A term may be implied 'in fact' where it is 'necessary' to give effect to the intention of the parties. The courts have developed a number of tests and may take into account a number of factors to determine whether a term of the contract may be implied on this basis. It has been said that: the term in question must be reasonable and equitable; it must be necessary to give business efficacy to the contract, so that no term will be implied if the contract is effective without it; it must be so obvious that 'it goes without saying'; it must be capable of clear expression; and it must not contradict any express term of the contract. Recently, it has been suggested that these 'tests' should be seen in the context of a broader approach which largely assimilates the test for implication in fact with interpretation, in the sense that there is only one question: if the implied term is included, is that what the instrument, read as a whole against the relevant background, would reasonably be understood to mean? It is not yet entirely clear whether this broad approach is accepted; nor whether it represents any significant change in the law.

⁹ At para. 166.

¹⁰(1978) 52 ALJR 20 at 26, PC, per Lord Simon of Glaisdale.

What it attempts to make clear, in particular, is that implication in fact turns on an objective assessment of the intention of the parties: it is not critically dependent on proof of an actual intention of the parties.”

- [50] This sort of modern approach was based on the dictum of Lord Hoffman in **Attorney General of Belize v Belize Telecom Ltd.**¹¹ The principles from the **Belize** case were helpfully summarised by the Court of Appeal in **Crema v Cenkos Securities Plc**.¹²

“37 In the *Belize* case, the Privy Council was dealing with the question of how a court should decide whether a term was to be implied into the articles of association of Belize Telecommunications Ltd. But, in giving the advice of the Board, Lord Hoffmann made it clear that the principles he set out were applicable to all types of written instrument, including contracts wholly in writing and statutes. However, in my view the principles stated by Lord Hoffmann at paras 16–18 of the Board’s advice are equally relevant to contracts that are partly oral and partly in writing and also those that are wholly oral, with any necessary modifications to suit specific cases.

38 The principles are: (1) a court cannot improve the instrument it has to construe to make it fairer or more reasonable. It is concerned only to discover what the instrument means. (2) The meaning is that which the instrument would convey to the legal anthropomorphism called “the reasonable person”, or the “reasonable addressee”. That “person” will have all the background knowledge which would reasonably be available to the audience to whom the instrument is addressed. The objective meaning of the instrument is what is conventionally called the intention of “the parties” or the intention of whoever is the deemed author of the instrument. (3) The question of implication of terms only arises when the instrument does not expressly provide for what is to happen when some particular (often unforeseen) event occurs. (4) The default position is that nothing is to be implied in the instrument. In that case, if that particular event has caused loss, then the loss lies where it falls. (5) However, if the “reasonable addressee” would understand the instrument, against the other terms and the relevant background, to mean something more, ie that something *is* to happen in that particular event which is not expressly dealt with in the instrument’s terms, then it is said that the court implies a term as to what will happen if the event in question occurs. (6) Nevertheless, that process does not add another term to the instrument; it only spells out what the instrument means. It is an exercise in the construction of the instrument as a whole. In the case of all written instruments, this obviously means that term is there from the outset, ie from the moment the contract was agreed, or the articles of association were adopted or the statute was passed into law.

¹¹ [2009] 1 WLR 1988.

¹² [2011] 1 WLR 2066.

39 Lord Hoffmann went on to make two further points, at paras 21–27. The first is that the phrases which courts have used as “tests” to decide whether a term should be implied (eg that the term is necessary to give “business efficacy” to the contract, or that the term is one that was “obvious”) can detract from the task that the court has to undertake. That is to see whether the proposed implication spells out what the instrument would reasonably be understood to mean. Lord Hoffmann emphasised that those tests are not freestanding. Secondly, the oft-expressed requirement that an implied term must not just be reasonable but be “necessary” simply reflects the requirement that the court has to be satisfied that the term must be implied because that is what the contract must mean.

- [51] It seems to me that based on the authorities, the application of terms does not involve the insertion into an agreement or contract of new material or additional terms, the implied terms, if at all implied, are as a result of establishing what the agreement necessarily means.
- [52] In construing the parties agreement the Court would not ordinarily receive evidence of the negotiations or evidence of the parties intentions. The court would consider the evidence as to the factual background known to the parties at the time or before the date of the contract. The authorities also suggest that there is a general presumption against implying terms into written contracts.
- [53] The learned authors of **Halsbury’s Laws of England**¹³ suggest a slightly wider approach to the implication of terms in the context of an employment contract:

“Given that the employment relationship is explained legally in contractual terms, the ordinary law of contract is applicable. Classically, a term may be implied into a contract either on the ‘officious bystander’ test or the ‘business efficacy’ test; both of these tests are essentially subjective, looking for implied agreement by the parties, with the emphasis against the implication of a term merely because it appears reasonable to the court. These tests may well be applied in cases concerning contracts of employment, but arguably a generally wider approach is justified in this context, not only because the implied term will be more frequently used as a device to impose a particular legal solution or requirement on to contracts of employment as such, but also because historically contracts of employment have left more to be filled in by implied terms than most other types of contract. Moreover, the need to fill such gaps may be more urgent, either to fulfil statutory obligations, or simply in order to make legal sense of an employment relationship that clearly exists in practice. Arguably, therefore, orthodox contract law on the implication of terms may need to be stretched in the context of employment, in particular by placing more emphasis on what would be reasonable terms, and by allowing the court to look at the

¹³ Vol. 39 (2021) at para. 113.

parties' behaviour during the employment but subsequent to the entering of the contract of employment.

A term may be implied from custom and practice, provided that it is certain, general and reasonable; this will particularly be the case where either the employee took the employment subject to the custom or practice, or that custom or practice grew up during the employment and the employee impliedly accepted it (as, for example, by taking benefits under it). An implied term, even one based on custom and practice, cannot, however, negate or alter a clear express term, although there may be scope for the use of implication in order to interpret an express term."

The Claimant's Evidence in relation to the Implied Term

[54] The Claimant's affidavit set out his evidence as to the terms he contends were implied into the SAREP contract for his position of Head of Rural Development. His affidavit evidence was fully for the assessment of damages even though every detail is not set out in this decision.

[55] Amongst other things, in his affidavit, the Claimant described his duties as Head of Rural Development. He stated he was responsible for providing strategic leadership, direction and oversight of the technical, financial, human resource and other aspects of the Rural Development Unit to enable the Unit's achievement of its goals and the delivery of relevant and quality services for sustainable community development. He stated that his core management and oversight duties covered two projects, being the Climate Smart Agriculture and Rural Enterprise Programme and the Basic Needs Trust Fund. He stated that these were two national multi-million development-related programmes, the former being funded by the Caribbean Development Bank (CDB) in the sum of US\$2.5 million, and the latter funded by the International Fund for Agricultural Development (IFAD) in the sum of US\$14 million. He stated that at the time, the Ministry of Finance acted as the Lead Agency for these two programmes.

[56] The Claimant further stated that at the time of his termination, the formal SAREP contract had still not been issued to him notwithstanding the existence of the following implied contractual terms which had always been the subject of mutual understanding between him and the Government of Grenada:

- (i) The formal SAREP Contract would be issued to him pending the results of a job analysis process which was being undertaken by the Department of Public Administration ("DPA").
- (ii) Pending the results of the DPA's job analysis process and the formalisation of a job description for the Head of Rural Development, he would be guided by the terms of a previous contract for a much lesser role, being Programme Manager for the Market Access and Rural

Enterprise Programme (the MAREP contract), which had ended on 30th September 2018;

- (iii) Given that his job duties as Head of Rural Development had increased substantially, an upgraded salary and benefits would be payable to him following the completion of the job analysis process and the formalisation of the job description for the position.
- (iv) Upon finalisation of the job description, the upgraded salary and benefits payable to him under the SAREP Contract would be made retroactive to the start date of the contract – 1st October 2018.

[57] The Claimant stated that the DPA job analysis was completed on or around April 2021 and the anticipated written draft contract for Head of Rural Development along with the finalised job description for the said position was provided to him by way of email dated 27th June 2022 from Ms. Donnalee Benjamin, Administrative Assistant in the Rural Development Unit. He stated that at the time of reviewing the draft contract, he observed that it was silent on the salary payable to him (evidenced by the dashed lines in clause 3 of the same).

[58] The Claimant stated that this was so as negotiations/meetings were to subsequently take place between him and the Permanent Secretary in the Ministry of Finance to ultimately agree on the salary for the post. The Claimant stated that he was eager to have his upgraded/increased salary finalised and so he consistently followed up in writing for the meetings concerning the same to take place. However, despite his many written requests, for over a year, to meet and conclude the payment terms under the formal SAREP Contract, these promised meetings never took place.

[59] Under cross-examination by learned counsel for the Defendant, the Claimant confirmed that he first worked under the MAREP contract from October 2017 to September 2018 and that the contract had set his salary at \$8,240.00 from October 2017 and that the salary increased to \$8,487.20 from January to September 2018.

[60] The Claimant agreed that he was later appointed as Head of Rural Development by letter dated 18th May 2018 from Ms. Patricia Clarke, Acting Permanent Secretary, Ministry of Finance and that he accepted that appointment in writing. He agreed that the letter stated he would be guided by the contractual terms of MAREP. He agreed that under the MAREP contract he was not paid allowances and received a flat salary. However, the Claimant indicated that a vehicle was provided to him full-time under the MAREP contract.

[61] The Claimant agreed that the new appointment letter for Head of Rural Development from Ms. Patricia Clarke, Acting Permanent Secretary included a vehicle allowance. The Claimant stated however that the vehicle he had under

the MAREP contract was removed and stated that that is why the second appointment made mention of a vehicle allowance and then a telephone allowance. He confirmed that the telephone allowance was provided by an amended letter of appointment.

- [62] The Claimant agreed that under the SAREP contract he was being paid a total of \$9,287.20 each month. He agreed with learned counsel for the Claimant that the sum he was paid for Head of Rural Development was higher than the salary of \$8,487.00 paid to him under his previous MAREP Contract. The Claimant clarified, however, that the MAREP contract provided no further benefits to him like the SAREP contract. He disagreed with learned counsel for the Defendant that his total salary under the SAREP contract was an increase in benefits to him as he stated that a full-time vehicle was removed and replaced by \$600.00 travelling allowance. He agreed, however, that the allowance was given to him to cover the vehicle.
- [63] The Claimant agreed with learned counsel for the Defendant that each month he received his salary under the SAREP contract and never had any issues receiving that salary. The Claimant further agreed that he was never paid \$11,487.20 as his monthly compensation. He agreed that there was no written agreement fixing his monthly compensation as Head of Rural Development at that amount. The Claimant agreed that he was paid what he was offered in the appointment letter from Ms. Patricia Clarke, Permanent Secretary, as amended but qualified his response by saying that it was as a temporary measure pending a job description. The Claimant stated that the letter of appointment stated pending the job analysis and that his cannot be isolated from the rest of the latter, but agreed that he was paid what he was offered and accepted it.
- [64] The Claimant stated that he had seen the job analysis subsequently prepared because it was done in conjunction with him and agreed with learned counsel for the Defendant that the appointment letter made reference to the job analysis process. Learned counsel for the Defendant read out to the Claimant the portion of the letter appointment him as Head of Rural Development which made to the job analysis. The Claimant agreed that the letter of appointment did not say that his salary would be increased after the job analysis was conducted. He agreed that the letter of appointment expressly says that a formal contract would be issued pending the result of the job analysis process and did not say his salary would be increased after the job analysis was completed.
- [65] When asked by learned counsel for the Defendant whether he would agree that the job analysis was not conducted for a salary increase, the Claimant stated that he was agreeing with her, but elaborated that the DBA does not figure out remuneration. He stated that this is done by the Permanent Secretary in the line

Ministry. He stated that the job analysis is the first stage and then the second stage is determining the remuneration in relation to the job analysis.

- [66] Following on from that, learned counsel for the Defendant indicated to the Claimant that what he was corrected and then stated to him that that was why his appointment letter said that he would get a formal contract pending the job analysis. The Claimant agreed. Learned counsel for Defendant further stated to the Claimant that the letter did not say he would get a salary increase. The Claimant again agreed that it did not, but stated that it need not say that as it was understood. He stated that the DPA, as he understood it, does not determine salaries. He stated that the DPA performs the job analysis and then the remuneration is negotiated with the client and the Government, usually the Permanent Secretary in the Ministry. The Claimant agreed that the job analysis was for formalizing his contract and again agreed that the initial letter of appointment sent to him and the amended letter of appointment sent to him did not make mention that after the job analysis was conducted salary negotiations would occur. The Claimant stated that the letter said that a formal contract would be issued and that's the process of doing a formal contract.
- [67] The Claimant stated he did not raise concerns about his salary as there was no need to do so. The Claimant then clarified that on receiving the job analysis, his responsibility was to communicate to the Permanent Secretary in the Ministry of Finance with a draft contract and the job analysis, asking for a meeting to discuss the conclusion of a contract which included this remuneration, because the draft contract submitted to the Ministry of Finance, the only aspect that was missing to negotiate was the remuneration.
- [68] The Claimant indicated that he did not understand that there could be any question of challenge to his salary by him because all the parties understood including himself and the Government that a new salary would happen under the new contract. The Claimant again agreed with learned counsel for the Defendant that he was sent an appointment letter with a fixed salary and that he agreed to accept it, however, he stated that it was a temporary measure because it said pending the job analysis and new contract.
- [69] Under further cross-examination by learned Counsel for the Defendant, the Claimant stated that MAREP, a much smaller project was concluding and the Government of Grenada came up with the Rural Development Unit with new projects to be included there and that he was therefore requested as a temporary measure to continue to take on this responsibility, which he accepted as a temporary measure pending the job analysis and a formal contract and that this was what the parties were proceeding on.

- [70] The Claimant stated that the job analysis was concluded and once it was concluded, his responsibility was to quickly communicate with the Ministry of Finance to have the new contract concluded with the new salary code. He stated that this was supposed to be negotiated, and he never had that opportunity, having worked and having performed the functions of the Head of Rural Development.

The Defendant's Evidence

- [71] The Defendant's evidence on the assessment of damages as it relate to the alleged implied terms was set out in the affidavit of Mr. Mike Sylvester, Permanent Secretary, Ministry of Finance. Mr. Sylvester stated that at no time was it indicated to the Claimant that pending the results of the job analysis process that his monthly compensation would be increased. Further, that the job analysis process is not conducted for the purpose of increasing an officer's salary. He stated that the job analysis is used to curate a job description to give each public officer an explanation of the work that is expected and further, the job analysis lists the key tasks and responsibilities assigned to each officer.
- [72] Under cross-examination by learned King's Counsel for the Claimant, Mr. Sylvester admitted that he was not part of the negotiating process for the Claimant's engagement as Head of Rural Development as he was out of the Ministry of Finance from 2017 to 2020. He admitted that after assuming the position as Acting Permanent Secretary, Ministry of Finance upon his return, he had received correspondence from the Claimant about meeting about his contract.
- [73] Mr. Sylvester stated to learned King's Counsel for the Claimant that he was aware of the role of the DPA and that it was to develop job descriptions and also to make determination of the qualification and experience that are required for a role in the public service. Mr. Sylvester agreed with learned King's Counsel that qualifications and experience are factors in the determination of salaries but stated that in the case of projects as is the present case, remuneration would be based on negotiations, and advertisements but that Cabinet approved remuneration packages.
- [74] Mr. Sylvester also agreed that after the October 2018 contract was made, there was no formal renewal of the Claimant's contract and that the Claimant's initial contract which from October 2018 remained the contract in effect.
- [75] Mr. Sylvester further gave evidence as to efforts by the Claimant in having a formal meeting to discuss his contract but that the meetings did not materialize. He stated that the Rural Development project was subsequently moved to the Permanent Secretary of Economic Development and he had not completed his

assessment/investigations of the issues raised by the Claimant in relation to his contract as Head of Rural Development.

- [76] Mr. Sylvester further agreed with learned King's Counsel for the Claimant that at the material time, the Claimant's contract as Head of Rural Development would ultimately have fallen under the domain of the Permanent Secretary of the Ministry of Finance, however, he stated that Cabinet would ultimately approve any terms under the contract. He agreed that the accountable officer in the Ministry of Finance would have to make a submission to Cabinet but ultimately it was a matter for Cabinet to make its determination.

Analysis and Conclusion on Implied Terms

- [77] Considering the authorities set out above, the affidavit evidence and the evidence elicited under extensive cross-examination, I am unable to conclude that the terms alleged by the Claimant should be implied into his employment contract. I have reached this conclusion for the following reasons.
- [78] Whilst the Claimant may be of the view that it would be reasonable and fair that he received a higher salary because of the work he did as Head of Rural Development, the Court should not readily imply a term into a contract to improve it to make it fairer or more reasonable. The Court's task is to determine what the contract between the parties means.
- [79] The express terms of the Claimant's contract for the position Head of Rural Development, as accepted by the parties, clearly provided for the Claimant's remuneration. The letter of appointment dated 17th May 2018 from Patricia Clarke, Permanent Secretary, was unambiguous. The Claimant was advised that he was appointed as Head of Rural Development as of 1st October 2018 and that he would be guided by the terms of his previous contract as Programme Manager for MAREP. Notably, the letter did not provide for his salary merely by implication of the terms in the MAREP contract, rather, the letter specifically advised that the Claimant would receive a monthly salary of \$8,487.20, in addition to a travelling allowance of \$600.00. The letter confirmed that this total package would be in the amount of \$9,087.20 per month. That letter of appointment was subsequently amended to also include a telephone allowance effective as of 1st October 2019.
- [80] The letter of appointment and amended letter of appointment provided for the Claimant's remuneration, the terms and conditions that he should be guided by and advised the Claimant that the appointment letter would be used in the absence of a formal contract which would be issued pending the result of the job analysis process. It clearly laid out all the terms expressly agreed between the parties.

- [81] It is because the Claimant's letter of appointment did not say that following the job analysis process he would receive an upgraded salary, retrospective to the start of his contract as Head of Rural Development, that he is now asking the Court to supply that missing fact by implying such terms. But the terms the Claimant contends should be implied into the contract do not relate to any unforeseen circumstances but rather relate to his remuneration which was clearly in the contemplation of the parties. Further, I do not hold the view that the implications of the terms the Claimant seeks would lead to any other interpretation of express term in the contract relation the pending job analysis and formalizing of the contract.
- [82] In my view, if the Claimant's remuneration was to be upgraded and applied retroactively after the job analysis process and the issuance of his formal contract, the appointment letter would have said so, and the Claimant's own evidence is that it does not say so.
- [83] The implication of the terms as contended by the Claimant would also not give business efficacy to the contract. The contract did not lack efficacy, it expressly provided for the Claimant's remuneration and the efficacy of the contract is clearly demonstrated by the fact that the Claimant served in the position of Head of Rural Development for multiple years and was paid his monthly salary as stipulated in the contract, which he accepted.
- [84] Constructing the contract without implying the terms contended by the Claimant, there is nothing to suggest that the contract would not work without the implication of the terms in relation to an upgraded salary. There is therefore no need to read into the Claimant's contract that after the job analysis process and issuance of a formal contract that he would be paid a higher salary which would be retroactive. The Claimant of course was free to negotiate a higher salary if he so desired, but as I have already stated, in my view, if the Government of Grenada had intended that the Claimant would receive a retrospective upgraded salary it would have made provision for it in the contract agreed by the parties.
- [85] I am also of the view that the terms the Claimant contends should be implied into his contract as Head of Rural Development would not meet the officious bystander test. I am unconvinced that the officious bystander or reasonable person would take the view that it would go without saying that notwithstanding that the parties have expressly agreed the terms of the Claimant's salary, that his salary would be upgraded and paid retrospectively upon completion of the job analysis.
- [86] In my view, the meaning of the Claimant's contract, based on the letter of appointment from Ms. Patricia Clarke, Permanent Secretary and all the

background knowledge which would reasonably be available to parties coming out of the Claimant's previous engagement by the Government of Grenada under the MAREP contract, is simply what the letter of appointment says on its face. The Government of Grenada was creating the post of Head of Rural Development, the Claimant's appointment would be on the same terms and conditions as the MAREP contract and his salary and allowances as Head of Rural Development would be as set out in the letter of appointment and that the letter of appointment would be used in the absence of his formal contract which would be issued pending the result of the job analysis. Objectively, the parties expressly set out their agreement as to the Claimant's remuneration in the letter of appointment. The completion of the job analysis in my view, would do no more than settle the description of the Claimant's position of Head of Rural Development which would be set out in his formal contract.

[87] Even considering the wider approach to the implication of terms in an employment contract, emphasizing what would be a reasonable term and looking at the parties behaving during the employment subsequent to entering into the contract, I am still not of the view that the Claimant's contract should be read as meaning he was entitled to an upgraded retroactive salary, bearing in mind the parties express agreement.

[88] In light of the foregoing, as a matter of law, I do not consider that any of the terms contended for by the Claimant concerning an upgraded salary were part of the Claimant's contract. In such circumstances, the damages due to the Claimant ought to be calculated based on the salary he received at the time of the termination. I will therefore calculate the Claimant based on the compensation package set out in his appointment letter dated 17th May 2018, which was amended by letter dated November 2019.

Assessment of Damages

[89] Having been satisfied that no implied terms should be read into the Claimant's contract as it relates to remuneration, the assessment of the damages to be paid to the Claimant proceeds based on the remuneration set out in his appointment letters as amended which he received prior to being terminated.

[90] The Claimant's evidence as set out in his affidavit, which is not disputed by the Defendant, is that he was dismissed from the position of Head of Rural Development by the Government of Grenada by letter dated 20th February 2023 effective 28th February 2023, and at the time of his termination, he had been earning the following:

- (i) Salary of \$8,487.20 per month;

(ii) Travelling allowance of \$600.00 per month; and

(iii) Mobile phone allowance of \$200.00 per month.

The Claimant's total monthly remuneration was therefore \$9,287.20.

[91] As already explained, the Claimant is entitled to be compensated for the remainder of his one-year fixed term contract which would have expired at the end of September 2023. Accordingly, the unexpired period of the Claimant's contract was seven months. The total compensation to the Claimant for that seven-month period would have totaled \$65,010.40.

[92] It is accepted by both parties that the Claimant had been paid the sum of \$18,174.40 in lieu of notice by the Government of Grenada when his contract was terminated on 28th February 2023. It is also accepted that the sum paid did include the Claimant's total telephone allowance for the two-month period which would have been \$400.00. Accordingly, the sum of \$18,174.40, less \$400.00 must be deducted from the total compensation the Claimant would receive for the unexpired seven-month period on his contract as Head of Rural Development. The amount to be deducted from the Claimant's compensation, taking into account the missing \$400.00 telephone allowance that ought to have been paid to him, is therefore \$17,774.40. Thus, deducting the sum of \$17,774.40 from the total compensation for seven months in the sum of \$65,010.40 would yield a total sum of \$47,236.00 to be paid to the Claimant on his claim for damages for wrongful dismissal.

Claimant's Alternative Claim of Unjust Enrichment

[93] For the sake of completeness, I will briefly address the Claimant's alternative claim of unjust enrichment seeking an order for payment on a quantum meruit basis.

[94] The learned authors of **Halsbury's Laws of England** discuss the relationship between unjust enrichment and contract law as follows:¹⁴

"Notwithstanding the fact that the law of unjust enrichment has been recognised to be separate and distinct from the law of contract, the relationship between these two branches of the law is important and must be considered in cases where there is a relevant contract. Where the claimant and the defendant are in a contractual relationship, the contract will generally regulate the rights and liabilities of the parties until such time as the contract is discharged or set aside. While an unjust enrichment claim may be possible in cases where there is an extant contract, the courts will not permit a claim for unjust enrichment

¹⁴ Vol 100 (2024) at para. 24.

to subvert a contractual relationship or the contractual allocation of risk between the parties. Whether or not the contract has in fact been discharged or set aside is a matter for the law of contract. However, once the contract has been discharged, the law of unjust enrichment may and often does determine the remedial consequences of the discharge or the setting aside of the contract.”

[95] The Claimant’s unjust enrichment claim was an alternative claim to his claim for damages for breach of contract. In my view, when the Claimant’s statement of claim is properly considered, what the default judgment represents is that the Defendant is liable for breach of the Claimant’s employment contract. The Claimant elected to pursue his claim for damages for breach of contract and the default judgment therefore crystalized this cause of action, and his alternative pleaded claim for unjust enrichment falls away.

[96] In any event, it is generally accepted that there are four elements of an unjust enrichment claim: (i) Has the defendant been enriched? (ii) Was the enrichment at the claimant’s expense? (iii) Was the enrichment unjust? (iv) Are there any defences?¹⁵ Each of the first three elements would have had to be pleaded.

[97] The Claimant’s claim was based on the existence of a valid contract between the parties. There is no question of there being no contractual relationship between the parties or that the contract had been discharged, or that the enrichment, being employment services received by the Government of Grenada fell outside of the scope of the contract of employment between the parties. Whilst more recent authorities suggest that the invalidity of a contract is a relevant, but not a necessary requisite to an unjust enrichment claim, an unjust enrichment claim should respect the contractual provisions. In **Dargamo Holdings Ltd and another v Avonwick Holdings Ltd and others**¹⁶ it was put thus:

“However, as demonstrated by *Roxborough* invalidity of a relevant contract is not a necessary prerequisite to a successful claim in unjust enrichment. That is not to say that claims in unjust enrichment must not respect contractual regimes and the allocations of risk agreed between the parties. On the contrary, as explained by Professor Burrows in *The Restatement* (at 3(6)), an ‘often overlooked but crucial’ element of the unjust factors scheme is:

‘... that an unjust factor does not normally override a legal obligation of the claimant to confer the benefit on the defendant. The existence of the legal obligation means that the unjust factor is nullified so that the enrichment at the claimant’s expense is not unjust ...’”

¹⁵ See: *Dargamo Holdings Ltd and another v Avonwick Holdings Ltd and others* [2022] 1 All ER (Comm) 1244.

¹⁶ *Ibid* at para. 67.

[98] The fact that the Claimant had been legally obligation under the contract of employment to provide his services as Head of Rural Development, it would be difficult to see how the Claimant could have demonstrated that the enrichment to the Government in doing so was unjust. However, in light of my above conclusions in respect of the Claimant's claim for breach of contract, the inquiry of unjust enrichment need not be pursued further on this assessment of damages.

Disposition

[99] In light of the foregoing, I order as follows:

- (1) The Defendant shall pay the Claimant the sum of \$47,236.00 together with interest from the date the last payment of emoluments was made to the Claimant to the date of this order at the rate of 6% per annum.
- (2) The Defendant shall pay the Claimant 60% of prescribed costs in accordance with rule 65.5 of the Civil Procedure Rules (Revised Edition) 2023 and Appendices B and C to Part 65 of the Civil Procedure Rules (Revised Edition) 2023.
- (3) Post judgment interest shall be at the statutory rate of 6% per annum.

[100] I wish to thank learned counsel on both sides for their assistance to the Court.

Carlos Cameron Michel
High Court Master

By the Court



Registrar
Supreme Court
Grenada