

**IN THE EASTERN CARIBBEAN SUPREME COURT
COMMONWEALTH OF DOMINICA**

**IN THE HIGH COURT OF JUSTICE
(CIVIL DIVISION)**

CLAIM No. DOMHCV2024/0192

BETWEEN:

BURNEY RYAN

Claimant

- and -

THE ATTORNEY GENERAL OF DOMINICA

Defendant

APPEARANCES:

Mr Vishaal Siewarsan and Mr Jared Jagroo led by Anand Ramlogan S.C., Counsel
for the Claimant

Mr Jason Lawrence with Ms Sasha Sukhram led by Mr Anthony Astaphan, S.C.
and Mr Rishi Daas, S. C., Counsel for the Defendant

2025: January 27 (Written Submissions)

February 10 (Written Submissions)

February 24 (Oral Submissions)

March 20

RULING

FACTS

- [1] **JAWARA-ALAMI, J.:** By way of Fixed Date Claim Form dated and filed 24th
September 2024, the Claimant herein seeks reliefs against the Defendant as
follows:

1. A determination of the Supreme Court, by way of Declaration or otherwise, on questions on the contract/agreement between the Government of Dominica and Montreal Management Company Est (“MMCE”)
2. A declaration that contract/agreement between the Government of Dominica and the MMCE which involves the establishment and operation of a housing programme/project in Dominica was or is and/or continues to be illegal and unconstitutional;
3. A declaration that the payment of money into and out of private accounts instead of into the Consolidated Fund under the MMCE contract was, and continues to be illegal and unlawful because it was/is in breach of and contrary to the Commonwealth of Dominica Citizenship By Investment Regulations, the Constitution, the Finance Administration Act, the Financial Regulations and Procurement and Contract Act;

[2] The Application

In response to being served with the Fixed Date Claim Form and Affidavit In Support, the Defendant/Applicant(hereinafter referred to as “the Defendant”) filed a Notice of Application to Strike Out the Fixed Date Claim pursuant to Parts 26.1(2)(i), (k), (q), (y), 26.3, 30.3 and 30.4 of the Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023 and/or the inherent jurisdiction of the Court as follows:

1. The Claimant’s Fixed Date Claim Form and affidavit in support both filed on 24th September 2024, be struck out;
2. Alternatively, that paragraphs 8-46 of the Claimant’s affidavit filed on 24th September 2024 be struck out on the various grounds set out below;

3. That the instant proceedings be stayed pending the determination of the instant application;
4. That the time for the filing and service of the Defendant's affidavit in reply be stayed and/or extended until a date after the determination of this application; and
5. The Claimant pay the costs of this application to the Defendant.

[3] The application is supported with an Affidavit In Support dated and filed on 6th January 2025 and the grounds of the application are largely based on jurisdiction, delay, no reasonable grounds for bringing the claim, abuse of process and Hearsay evidence¹.

[4] The Fixed Date Claim Form came on for 1st Hearing on 13th January 2025 and the Court determined that the jurisdictional challenge will be heard first and foremost as it has the effect of determining the claim if successful. Further, it is trite that the issue of jurisdiction is threshold and is paramount in the adjudication of any matter. Once raised it has to be promptly considered and decided upon because the existence or otherwise of jurisdiction goes to the very root of the matter.

[5] The application was heard by way of written briefs and the parties were ordered to file and serve Written Submissions on or before 27th January 2025, for the Defendant, and 10th February 2025 for the Respondent/Claimant. The matter was adjourned to 24th February 2025 for hearing.

Defendant's Submission

[6] The Defendant submits that the Claimant's claim is brought pursuant to section 16(1) of the Constitution in the form of what was formerly known as an interpretation summons by way of declaration to resolve or correct public law

¹ Notice of application to strike fixed date claim form filed by the defendant on 6th January 2025

issues. The Defendant submits that matters which are permitted to be filed pursuant to section 16 of the Constitution are expressly limited to those which allege breaches in relation to a particular person under any of the provisions covered from Section 2 to 15. That, Section 16 sets out the Constitutionally prescribed modality by which a person may obtain redress in respect of a breach of any of the fundamental rights enshrined in sections 2 to 15 of the Constitution as accepted and held in the case of **John Moise v Attorney General**². The Defendant also submits that further to rule 56.3(4)(b) of the CPR, the Claimant's affidavit must state the provision of the Constitution which has been, is being, or is likely to be breached which the Claimant has not done, nor has the Claimant advanced any breach of his constitutional rights and also cites the case of **Spencer v Attorney General**³.

- [7] Additionally, the Defendant submit the originating motion did not set out any sections of the Constitution that had been purportedly breached and that the Claimant did not plead or particularize "a proper or viable constitutional case entitling them to any relief under section 16 of the Constitution" and since the Claimant's claim does not allege breaches of any rights under sections 2 to 15, the Court has no jurisdiction to entertain any constitutional relief as claimed,

Claimant's Submissions

- [8] In response, the Claimant submits that whether the Court has jurisdiction or not is a question of law and Section 103 of the Constitution is the source of the Court's jurisdiction. The Claimant also submits that even if section 103 of the Constitution did not exist, the Court would nevertheless have jurisdiction by virtue of the Privy Council's decision in the case of **Dumas v the Attorney General**⁴. In that case, the Claimant submits, the Privy Council held that "**barring any specific**

² DOMHCVAP2008/0005

³ [1993] 3 LRC 1

⁴ [2017] UKPC 12

legislative prohibition, the court in the exercise of its supervisory jurisdiction and as guardian of the Constitution, is entitled to entertain public interest litigation for constitutional review of alleged non-Bill of Rights unlawful constitutional action", and that the approach to be taken in this issue of standing is a flexible and generous approach, bearing in mind all of the circumstances as well as the public importance of the issues raised and the rule of law, are significant considerations..

- [9] The Claimant further submits that in respect of the technical procedural objection raised by the Defendant, the Court of Appeal held in **Dumas** that even if the action had been wrongly initiated, any procedural error could and should have been corrected under rule 26.8 of the CPR. That, in **McLeod v The Attorney General of Trinidad and Tobago**⁵ the Court of Appeal held that procedural missteps in the initiation of a claim should not be fatal to its continuation. Additionally, the Claimant submits that he has "relevant interest" for the purposes of section 103 which need not be a personal or private interest as held in **Payne v Attorney General St Kitts**⁶ and that this case involves matters of great public importance touching on the state's use of public funds; the awarding of government contracts; transparency around the way in which public funds are received, held and spend; the matter in which people may become citizens of Dominica; the way in which money intended to fund public housing in Dominica is dealt with; and the state's discharge of its functions under the Constitution and under statute.

Issues for Determination

- [10] Having canvassed the arguments above the issues arising for the just determination of the application instant, is formulated as follows;
1. Whether the Court has jurisdiction to entertain the claim for constitutional relief erroneously commenced Under Section 16 of The Constitution

⁵ C.A. CIV. 17/1979

⁶ H.C. No. 7 of 1981

2. Whether the amendment of the claim form is permissible at this stage of the proceedings

Resolution of Issue No 1-The Law and Discussions

[11] To determine the issue for resolution, I will begin by recalling the fundamental principles embedded in the Constitutions of the independent Caribbean States, which constitute the primary foundation for the power of judicial review.. That is, each Constitution contains, inter alia, a supremacy clause, a Bill of Rights enforceable by the judiciary and a redress clause granting the court a wide discretion to afford appropriate relief to any person whose fundamental rights under the Constitution has been infringed.

[12] With this in mind, it is apparent that the Claimant's initial claim was brought under Section 16 of the Constitution which provides for the enforcement of the constitution by the High Court: and it provides inter alia that;

“16. (1) If any person alleges that any of the provisions of sections 2 to 15 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the High Court for redress

[13] The Claimant has in fact conceded in its submissions that the right section of the Constitution to bring such a claim is not Section 16 but Section 103(1) of the Constitution of Dominica which provides that:

“Subject to the provisions of section 22(5), 38 (6), 42(8), 57(7), 115(8), 118(3) and 121(10) of this Constitution, any persons who alleges that any provision

of this Constitution (other than a provision of Chapter I thereof) has been or is being contravened may, if he has a relevant interest, apply to the High Court for a declaration and for relief under this section.”

[14] **Section 103(2)** of the Constitution gives the High Court jurisdiction to hear applications made under that section, ***“to determine whether any provision of this Constitution (other than a provision of Chapter I thereof) has been or is being contravened and to make a declaration accordingly”***.

[15] **Section 103(5)** dealing with standing provides that; ***“A person shall be regarded as having a relevant interest for the purpose of an application under this section only if the contravention of this Constitution alleged by him is such as to affect his interests.”***

[16] Now, without much of an academic exercise, it is blatantly clear that the supervisory jurisdiction of the court is provided for under Section 103 of the Constitution above which gives jurisdiction to this court to hear this claim and therefore cloaks it with the necessary authority, In **R v Tower Hamlets London Borough Council, ex p Chetnik Developments Ltd**⁷, the court's had this to say on the supervisory jurisdiction of the court that; ***“Judicial review is a special supervisory jurisdiction which is different from both (1) ordinary (adversarial) litigation between private parties and (2) an appeal (rehearing) on the merits. The question is not whether the judge disagrees with what the public body has done, but whether there is some recognisable public law wrong”***.

[17] In **R v Board of Visitors of Hull Prison, ex p St Germain**⁸ the courts are referred to as the ***“ultimate custodians of the rights and liberties of the subject so that declining jurisdiction would be tantamount to abdicating a primary function***

⁷ [1988] AC 858, 872B-F

⁸ 1979] QB 425, 455B-E

of the judiciary, *the courts must remain ready, willing and able to hear a legitimate complaint in this as in any other field of our national life*".

[18] Undoubtedly, the authorities cited above are clear that the courts should exercise jurisdiction where the claimant has standing and a legitimate concern raised as to a question of statutory interpretation, as such what remains is simply to determine whether the amendment of the originating process subsequent to the filing of the application to strike is fatal to the claimant's case.

Resolution of Issue No 2.-Whether the amendment of the claim form is permissible at this stage of the proceedings

[19] The claimant filed his amended claim on 3rd February 2025. The defendant's notice of application to strike out was filed on 5th January 2025 whilst the first hearing of this claim took place on 13th January 2025. Clearly the Claimant amended his claim to pre-empt the application of the Defendant to strike out and the Defendant extensively premised its arguments on the decision from the case of **AG of St. Lucia v Darrel Montrope**⁹, that; the courts have noted that under the CPR this approach is improper and it established that there are two grounds upon which an amendment is prohibited: ***"(1) Where the first case management conference has passed; (2) Where an application to strike has been filed"***.

[20] The Defendant contends that Contrary to the claimant's submission, the first case management conference has already taken place and in any event, the application to strike was filed before the purported Amended Fixed Date Claim Form was filed. Further, the Defendant contends that the Claimant having conceded that reference to section 16 of the Constitution is wrong¹⁰ and having failed to seek leave of the court to amend, it is submitted that this claim must be struck out as sought.

⁹ [ECSC] SLUHCVP2019/0021

¹⁰ Paragraph 4 of the Claimant's Submissions in Opposition filed on February 3rd 2025

[21] It is settled in **Marcia Ayers-Caesar v The Judicial and Legal Service Commission**¹¹ that Part 20 of the CPR on amendments of statement of case does not apply to Part 56 applications and the learned Justices noted that the threshold and hierarchical requirements of CPR Part 20.1¹² have no formal application to applications under Part 56, particularly in relation to amendments to applications for judicial and constitutional review, and as such these applications are to be dealt with on general principles, bearing in mind the overriding objective, as well as, the principles and processes in Parts 24 to 27¹³. Given that Part 20 does not apply herein, considerations on whether the amendment was made before the first case management conference or not does not apply in this case instant. Notwithstanding this, parts 24 to 27 of the CPR, apply herein and provide wide powers of case management and noteworthy is Part 26.8 which gives the court the general powers to rectify procedural missteps.

[22] The Claimant contends that in **Dumas v the Attorney General**, there was a similar objection based on the fact that the wrong section in the CPR was pleaded and invoked by the Claimant and the Court of Appeal held that even if the action had been wrongly initiated, any procedural error could and should have been corrected under **Part 26.8 of the CPR** (Rule 26.9 for Dominica), which grants the court a general power to rectify procedural mistakes and held as follows;

“Mr. Sinanan, S.C. accepts that once there is standing and jurisdiction, this action is properly commenced by fixed date claim form as an administrative action pursuant to Part 56 of the CPR, 1998105, a position which Mr. Maharaj, S.C. adopts. We note that in the present claim form, no particular part of the CPR, 1998 is invoked. However, if this action had been commenced under Part 62, that error in procedure could have been remedied pursuant to Part 26.8 of the CPR, which deals with the general

¹¹ CA CIV S046/2019; (delivered 22 May 2019)

¹² Amendments to Statement of Case

¹³ Case Management powers of the court

power of the courts to rectify matters where there has been an error of procedure.”¹⁴

[23] Guided by the foregoing authority, I also hold that once jurisdiction is established, the rules of court are intended to and should be interpreted in such a way as to facilitate the ventilation of any relevant issue. This now begs the question whether this Honourable court ought to permit the amendment as prayed and the answer lies in **R (W) v Secretary of State for Education**¹⁵ wherein Singh J, granting permission to amend the grounds for judicial review: said that ***“the interests of justice would be served by permitting the claimant to advance all the grounds that he now wishes to, having had the opportunity to consider the evidence filed on behalf of the defendant. There has been no prejudice to the defendant, who was able to respond to all the arguments which the claimant wishes to pursue”***.

[24] In **Dumas v Attorney General of Trinidad and Tobago** the learned justices also opined on this point that “barring any specific legislative prohibition, the court in the exercise of its supervisory jurisdiction and as guardian of the Constitution, is entitled to entertain public interest litigation for constitutional review of alleged non-Bill of Rights unlawful constitutional action; **provided the litigation is bona fide, arguable with sufficient merit to have a real and not fanciful prospect of success, grounded in a legitimate and concrete public interest, capable of being reasonably and effectively disposed of, and provided further that such actions are not frivolous, vexatious or otherwise an abuse of the court’s process...The public importance of the issues raised and of vindicating the rule of law are significant considerations.**”(my emphasis)

[25] Furthermore, still on the case of **Dumas**, the Learned Justices articulate explicitly at paragraph 32 the need for judges to consider the overriding objective and allow

¹⁴ Pg. 51 of the Claimant’s Bundle of Authorities

¹⁵ [2011] EWHC 3256 (Admin) [2012] ELR 172 at [5]

for the just trial of the claim, by stating that; ***“In addition, the CPR 1998 expressly provides that in the management of an administrative claim (which includes both judicial and constitutional review), a judge in furtherance of the overriding objective, may give any such directions as are required to “ensure the ... just trial of the claim” and allow any amendments to an existing claim or even substitute “another form of application for that originally made.” In the context of judicial and constitutional review, these are intended to be permissively broad and wide, though not unlimited, powers. The constitutional imperative of a rights based approach to public law litigation, makes this demand particularly of judges sitting in constitutional review matters. This is especially so, given that the main public policy objective of constitutional review is the upholding of the rule of law, and in particular, the generous fulfilment of the intent, benefits and promises of the fundamental rights and freedoms that are declared and guaranteed.”***(emphasis mine)

[26] In **George Allert v Joshua Matheson**, it was also stated that; **“There is a public interest in allowing a party to deploy its real case, provided it is relevant and has a real prospect of success. The court is competent to refuse to grant leave to amend the pleadings if the proposed amendments will serve no useful purpose or are fanciful.”** (Emphasis mine)

[27] The settled position of the law therefore is that “a court will not turn its back against a party in litigation merely because he has proceeded to seek for determination of an issue or matter under a wrong law. The Court will decree in favour of such a litigant relief under the relevant and appropriate law if he/she is able to prove or establish his or her right to the relief he or she is seeking. **the principle is now well established that where a relief or remedy claimed under a wrong law is supported by facts establishing the remedy, the claim will not be denied merely because of the wrong law relied upon.** This principle is founded on

justice and common sense. But in order to benefit from the principle the facts relied **upon must support the correct law to be applied**".

[28] This is now the critical issue in the application before the court and what remains therefore is for the claimant to prove that his amendment supports the facts of the case and that he has the **"relevant interest" as provided in Section 103. (1)**¹⁶ or **"sufficient interest"** in the subject matter¹⁷

[29] Sufficient Interest under the **Eastern Caribbean Civil Procedure Rules (CPR) Part 56.2(1)**, includes –

- “ (a) any person who has been adversely affected by the decision which is the subject of the application;
- (b) any body or group acting at the request of a person or persons who would be entitled to apply under paragraph (a);
- (c) any body or group that represents the views of its members who may have been adversely affected by the decision which is the subject of the application;
- (d) any body or group that can show that the matter is of public interest and that the body or group possesses expertise in the subject matter of the application;
- (e) any statutory body where the subject matters falls within its statutory limit; or
- (f) any other person or body who has a right to be heard under the terms of any relevant enactment or Constitution.”

[30] At this juncture, I pose the question: What has the claimant demonstrated to establish “sufficient interest”? The claimant states that he is a longstanding member of the United Workers’ Party and currently serve as the Chairman of the St Joseph Constituency for the United Workers’ Party, that he has held this role for the past three years and Part of his functions and duties as Chairman entail receiving and investigating complaints from constituents about alleged unlawful

¹⁶ Paragraphs 15, 16 and 17 of this Ruling

¹⁷ **The Attorney General v Martinus Francois** Civil Appeal No 37 of 2003

government conduct, matters of public interest and ensuring the interest of the citizens are satisfied. He states that one of the matters that he has received numerous complaints about is the implementation and management of the Citizen by Investment Scheme by the Government¹⁸.

[31] Now, in interpreting the meaning of sufficient interest, the court's attitude has been one of applying a very liberal and relaxed test of standing in judicial review proceedings under CPR Rule 56.2. In the case of **John Mussington v. Development Control Authority (Antigua & Barbuda)**¹⁹, the Eastern Caribbean Court of Appeal ruled that the claimants, who were environmental activists, lacked sufficient interest to challenge a government project. However, the Privy Council later disagreed, finding that their environmental concerns and engagement in public discourse gave them standing.

[32] It was also held in **Treasure Bay (St Lucia) Ltd v Gaming Authority**²⁰ that CPR Rule 56.2(1) and 56.2(2) contains a non-exhaustive list of persons who will be accorded standing and that is clear from the use of the word “**includes**” at the start of CPR Rule 56.2(2).

[33] The case cited above illustrates that courts have interpreted “sufficient interest” flexibly, especially in public interest cases and considering the position of the preceding cases on the flexible approach taken by the courts in the interpretation of sufficient interest, I find that the Claimant falls within the category of persons envisaged in Rule 56.1.2(c) and (d) that “***any body or group that represents the views of its members who may have been adversely affected by the decision which is the subject of the application;***
(d) any body or group that can show that the matter is of public interest and that the body or group possesses expertise in the subject

¹⁸ Claimant's affidavit in support of the application at paragraph 3 and 5

¹⁹ [2024] UKPC 3 Privy Council Appeal No 0116 of 2021

²⁰ SLUHCV 2011/0456 25 September 2014

matter of the application”

[34] Based on the above conclusion, I determine that this Honourable Court is properly seized of this matter by virtue of **section 103 of The Constitution of the Commonwealth of Dominica**; that the claimant’s case is one of public interest, he has sufficient standing and the court has the duty in the furtherance of the overriding objective to allow the claimant to deploy his case and allow the amendment. Therefore, by exercising my powers under Rule 26.8(3) and (4), the Claimant is ordered to regularize his claim before this Court immediately.

Justice Zainab Jawara-Alami
High Court Judge

BY THE COURT
REGISTRAR