

THE EASTERN CARIBBEAN SUPREME COURT  
IN THE HIGH COURT OF JUSTICE

MONTserrat

CLAIM NO. MNIHCV 2024/0010

BETWEEN:

[1] Juliet Joan Johnson Clarke

Claimant

and

[1] HE The Governor of Montserrat

[2] The Attorney General of Montserrat

Respondents

Appearances:

Mr. David Dorsett for the Claimant

Ms. Renee Morgan for the Respondents

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2024: JUNE 12, 21

DECEMBER 18

2025: JANUARY 31

MARCH 6  
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**RULING**

**COTTLE [AG.]:**

[1] The Claimant instituted this claim for judicial review. She complained that her termination of employment as Chief Magistrate of Montserrat was unfair. I set out here the relief she prayed for.

[2] The Applicant applies for an administrative order for judicial review of the decision of the Governor and Government of Montserrat to terminate the Applicant's employment as Chief Magistrate by letter dated 25th March 2025 (sic)

[3] Remedies and nature of relief sought:

1. A declaration that the decision of the 1st Respondent to terminate the employment of the Applicant as Chief Magistrate was irrational, unreasonable, and procedurally unfair.
2. A declaration that the decision of the 1st Respondent to terminate the employment of the Applicant as Chief Magistrate was unlawful on account of it being irrational, unreasonable, and procedurally unfair.
3. A declaration that the decision of the 1st Respondent to terminate the employment of the Applicant as Chief Magistrate was null and void and of no legal effect it being unlawful.
4. Damages including damages for breach of contract
5. Costs
6. Interest pursuant to section 7 of the Judgments Act.
7. All such remedies whatsoever as the Applicant may appear to be entitled to pursuant to section 20 of the Supreme Court Act.

[4] As a preliminary point the Respondents sought to have the claim dismissed. They say that it is patent that there is no factual foundation to ground the claim.

[5] As I understand the argument, the Respondents say that the claim presupposes that:

1. That as at March 25, 2024 the Claimant was employed by the Government of Montserrat as Chief Magistrate;
2. That as at March 25, 2024 the Claimant's employment was not terminable solely under the provisions of contract but subject to constitutional requirements of being for cause and procedurally fair.

- [6] The Respondents contend that neither is true and absent such a factual basis the claim falls away and should be dismissed.
- [7] The Claimant resists the application for summary determination of the claim for judicial review. Counsel for the Claimant says that this is not a case of appointment but rather a case of employment. While the Claimant was never appointed to the post of Chief Magistrate she was employed as Chief Magistrate. Facts are disputed and this is not an apt case for summary disposition.
- [8] Some background will assist to illuminate the dispute.
- [9] By letter of 30th October 2023, the Claimant was offered employment as Chief Magistrate. The offer letter was subject to terms and conditions being agreed between the parties. Some terms were set out in the letter. There was no fixed date at which the employment of the Claimant would commence though there was a suggested or proposed start date of 15th December 2023. Other terms were not set out. The Claimant travelled to Montserrat. The incumbent Chief Magistrate remained in post as her term of office was set to end on January 31st 2024. Once the Claimant had arrived on island in December 2023, she was informed that her employment as Chief Magistrate could not take effect until 1st February 2024, to allow for the contractual employment of the incumbent Chief Magistrate to come to an end. At the beginning of February 2024, the Claimant met with the first Defendant. The Claimant was informed that information reaching Her Excellency the Governor had raised questions as to the suitability of the Claimant for appointment as Chief Magistrate. The Governor offered to appoint the Claimant as Senior Magistrate for the month of February 2024 while the incumbent Chief Magistrate would remain in post. This would afford the opportunity to have the Claimant carry out duties as Senior Magistrate so her performance could be evaluated. Satisfactory performance as Senior Magistrate would allow for the Claimant to be then appointed as Chief Magistrate.
- [10] The Claimant took the oath of office as Senior Magistrate but did not carry out duties as Senior Magistrate. On February 28th, 2024, the Governor wrote to the Claimant enquiring why she had not availed herself of the agreed opportunity to demonstrate her competence as a judicial officer. The Governor also indicated that she was prepared to

appoint the Claimant as Senior Magistrate for the month of March 2024 to allow her performance as Senior Magistrate to be evaluated with a view to her subsequent appointment as Chief Magistrate. The following day the Claimant responded that she was declining the appointment as Senior Magistrate. She indicated that she was prepared to serve as Chief Magistrate under a contract for a period of 2 years. She denied that she had agreed to be appointed as Senior Magistrate. That denial is at odds with the fact that she took the oath of Office as Senior Magistrate. She subscribed to the oath after she had sworn. The Governor again wrote to the Claimant on March 13th, 2024, asking for reasons why her engagement should not be terminated. Two days later the Claimant responded. She asked for additional time to respond and sought to have the Governor provide her with the source of the information which had caused the Governor to be uneasy about appointing the Claimant as Chief Magistrate. The Governor wrote to the Claimant again on 25th March 2024. She terminated the Claimant's employment and paid her three months' salary.

[11] On these undisputed facts, it is clear that the Claimant was never appointed to the post of Chief Magistrate. She was given a conditional letter of offer. She was expected to provide references who could attest to her suitability to be appointed as Chief Magistrate. None had been provided at the time the claimant purported to accept the offer of employment as Chief Magistrate. When the concerns as to her suitability for office came to the attention of the Governor, they were raised with the Claimant. She was offered an appointment as Senior Magistrate for one month to allow for her to demonstrate her fitness for office. She agreed to this proposal by the Governor and took the oath of office, swearing to function as Senior Magistrate for one month. This action clearly showed that she treated the offer of employment as Chief Magistrate as having been withdrawn pending her demonstration of fitness for the position. It must be kept in mind that the claimant is an experienced attorney. She was seeking appointment as a judicial officer. She must have appreciated that by consenting to be appointed as Senior Magistrate she was also agreeing that any previous agreement to be appointed as Chief Magistrate was thereby vitiated.

[12] The Claimant cannot seek to have the decision to terminate her employment as Chief Magistrate judicially reviewed as she was never employed as Chief Magistrate. The simple position is that for one to perform the duties of Chief Magistrate the prospective employee

must first be sworn in as Chief Magistrate. Absent an appointment to the post in accordance with section 85(2) of the Montserrat constitution, no person can carry out the functions of Chief Magistrate. The subsection reads:

“Power to make appointments to the offices of Attorney-General, Director of Public Prosecutions and Registrar of the High Court, and to any other office requiring legal qualifications as may be prescribed by law, and subject to subsection (5), to remove or exercise disciplinary control over any person holding or acting in any such office, is vested in the Governor, acting after consultation with the Chief Justice.”

[13] The office of Chief Magistrate is one which demands legal qualifications. I do not agree with counsel for the Claimant that there could be employment as Chief Magistrate when the Claimant was never appointed as Chief Magistrate. Counsel for the Claimant sought to rely on the case of **Braganza v BP Shipping Ltd and another [2015] UKSC 17**. That case can be distinguished from the present case quite easily. Braganza dealt with a breach of contract. In the present case there was no contract to employ the Claimant as Chief Magistrate. The action of the Claimant in taking the oath of office as Senior Magistrate demonstrates that the parties had agreed to forgo the contract to employ the Claimant as Chief Magistrate, and instead enter a contract of employment as Senior Magistrate. This latter contract came to an end by effluxion of time. In any event, the Claimant does not aver any breach of an employment contract as Senior Magistrate.

[14] In my view there is no basis to support a claim for breach of contract by reason of any administrative action by the Governor. Once the factual matrix is appreciated, the claim falls away. One cannot seek judicial review of an action which did not occur. The application to determine this matter on a preliminary point succeeds.

[15] The claim is dismissed. Usually in matters of judicial review the court makes no order as to costs against the unsuccessful applicant. CPR 2023 at part 56.11 (6) provides that the general rule is that no order for costs may be made against an Applicant for an administrative order unless the court considers that the applicant has acted unreasonably in making the application or in the conduct of the application. In my view this application is wholly without merit. The Claimant by her own action clearly showed that she was not appointed as Chief Magistrate. She entered into an agreement to be appointed as Senior Magistrate and took the oath of office. She performed no duties as Senior Magistrate. Despite this she was paid salary at the rate of the Chief Magistrate for

2 months. Inexplicably, the Defendant also paid her 3 months salary at the end of her engagement.

[16] In the circumstances of this case, I find that the Claimant acted unreasonably in bringing this application for judicial review. The Claimant will pay prescribed costs to the first Respondent. I assess those costs at \$10,000.00 as I view the value of this claim to be \$50,000.00 under CPR 2023 Part 65.5 (2) (d).

**The Hon. Brian Cottle**  
(Ag) High Court Judge

**By the Court**

**REGISTRAR**