

THE EASTERN CARIBBEAN SUPREME COURT

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

SAINT LUCIA

Case Number: SLUHCV2024/0248

IN THE MATTER of Part 56 of the Civil Procedure
Rules (Revised Edition) 2023

-and-

IN THE MATTER of an Application for Judicial
Review

BETWEEN:

KADEEM TAYLOR

Claimant

-and-

SAINT LUCIA AIR AND SEA PORTS AUTHORITY

Defendant

Before the Honourable Mr. Justice Alvin Pariagsingh

Appearances: Mr. Horace Fraser for the Claimant

Ms. Shari – Ann Walker and Ms. Tianah Foster for the Defendant

2024: December 10
2025: February 17

**JUDGMENT
Claim for Judicial Review**

Natural Justice; Right to be heard before adverse decision made; Right to be given particulars of allegations; Delay in making application; Cross Examination in Judicial Review; Availability of Damages in Judicial Review.

INTRODUCTION:

[1] **PARIAGSINGH, J:** - Before the Court is the Claimant's claim for judicial review of the Defendant's decision contained in its letter dated 15 March 2022, denying the Claimant's application for a Port Pass.

[2] The Claimant is a member of the Red Cap Association. By virtue of an agreement between the Red Cap Association and the Defendant, its members were permitted to provide baggage/porter services to passengers at Hewanorra International Airport and to have unescorted access to the restricted areas of the airport for the purpose of executing their services. For a period of approximately six (6) years before the impugned decision, the Claimant was able to offer his services as a member, having had the benefit of a Port Pass issued by the Airport Manager.

[3] In early 2022, upon the expiry of this Port Pass, the Claimant applied to the Airport Manager for the issuance of a new Port Pass. By a letter dated 15 March 2022, the Airport Manager, Mr Edgar Stephen, wrote to the Claimant and indicated that:

“SLASPA regrets to inform you that pursuant to these investigations, it has been determined that you do not meet the criteria to be granted access to the Ports, therefore your application for a Port Pass has been denied.”

[4] The Claimant seeks judicial review of the Defendant’s decision contained in the letter dated 15 March 2022. The Claimant contends that the decision was in breach of the rules of natural justice and fairness and that he had a procedural and substantive legitimate expectation that he would be given the opportunity to be heard before a decision adverse to him was made. The Claimant also contends that the rejection of his application, based on the alleged allegation, was unreasonable, irrational, and unlawful, without due process and observance of natural justice. The Claimant also seeks damages, interest, and costs.

[5] In opposition to the claim, the Defendant relies on the procedures set out in the Operational Procedures of the Saint Lucia Air and Seas Port Authority (SLASPA) Security Identification Badge System (SIBS). Under this system, section 21 of Part 1 requires a background check to be carried out. Under section 22(1) of Part 1 of SIBS, if a disqualifying offence is identified, the application must be referred to the Chief of Port Police, who, after consultation with an authorising officer (General Manager or an officer

authorised by the General Manager), will either refer the application to the vetting team or issue a notice of disqualification to the applicant.

[6] Section 2 of Part 2 of SIBS states that possession of a controlled drug is a disqualifying offence. Section 19 of Part 1 gives the General Manager of SLASPA the authority to delay or refuse to issue an ID Badge or Temporary Pass or withdraw an ID Badge that has already been issued, without stating any reason for doing so.

[7] The Defendant contends that when background checks were carried out on the Claimant, it was discovered that he travelled to the USA and, during his stay in New York, was arrested and charged with possession of cocaine with intent to supply. The Defendant also asserts that the Claimant spent time under house arrest while in the USA.

[8] The Defendant's case is that it was not required to furnish the Claimant with any additional information beyond the decision communicated in its letter of 15 March 2022. It contends that it was not necessary to invite the Claimant to respond to the findings of its background check, on the basis of national security. The Defendant also contends that:

“... those who are responsible for National Security must be the sole judges of what National Security requires, and the judicial process is unsuitable for determining issues concerning National Security.”

[9] The Defendant invites the Court to dismiss this claim, with costs.

DISPOSITION:

[10] The Court holds that the Defendant's failure to give the Claimant an opportunity to respond before denying him a Port Pass is in breach of the rules of natural justice. The denial of the Port Pass based on the results of the background check was unreasonable, irrational, and unlawful, especially considering the Claimant's previous six years of service under the Port Pass.

[11] The Defendant did not properly follow the operational procedures set out in the SIBS. Whilst national security considerations may amount to sufficient grounds to refuse an application for a Port Pass, they do not arise from the evidence and as such, natural justice and procedural fairness considerations cannot be overridden.

[12] The Defendant was obligated to provide the Claimant with specific details of the allegations or material against him and given the opportunity to respond before a decision adverse to him was made and the failure to do so, under the guise of national security, in this case is unlawful. The Claimant is not entitled to damages but is entitled to his costs of this claim.

EVIDENCE IN SUPPORT:

[13] In his affidavit in support, the Claimant deposes that he is a Red Cap baggage handler by trade and has been plying his trade at Hewannora International Airport for a period of six (6) years prior to March 2022. He contends that it is a requirement for members of the Red Cap Association who desire unescorted access to the restricted areas of the airport to apply for and obtain a port pass from the Airport Manager. In early 2022, his port pass expired, and he made an application to the office of the Airport Manager for a new port pass.

[14] On 15 March 2022, the Airport Manager, Mr. Edgar Stephen, wrote to him indicating that the Port Police had conducted investigations and obtained background information about him and had determined that he did not meet the criteria required to be issued a port pass. The letter also informed him that his application had been denied.

[15] About two months after the denial of his port pass, he sought an audience with the Airport Manager, and he was informed that the process of considering the application involved reviewing the recommendation of the Port Police. Based on their recommendation, his application was denied.

[16] The Claimant's evidence is that he then sought the assistance of the executive of the Red Caps Association, but assistance was not forthcoming, as according to him, there was a fear that intervention on his behalf might affect the relationship between the Association and the Defendant.

[17] In early 2023, the Claimant sought the assistance of an attorney at law to mount this challenge (the first attorney). This attorney was not able to assist the Claimant and indicated so after about two (2) months.

[18] The Claimant then sought the assistance of a second attorney, who informed the Claimant that he would not act on his behalf as he had previously acted for the Defendant and was conflicted.

[19] In early 2024, the Claimant sought the assistance of a third attorney. This attorney confirmed in a letter dated 5 April 2024 to the Claimant's current attorney that she was unable to act for the Claimant, as she too was conflicted in the matter.

[20] It was shortly after the Claimant retained his new attorney that this claim was filed on 21 June 2024. The claim was filed 2 years and 2 months after the decision was made.

[21] In respect of damages, the Claimant's case is that the decision threw him into financial ruin. He contends that he was only able to start a small business in December 2023, but the difference in earnings is about \$4,800 to \$5,000 per month compared to what he previously earned.

EVIDENCE IN OPPOSITION:

[22] The Defendant relied on the affidavit of Mr. Daren Cenac, the General Manager of the Defendant, to oppose the claim. In his affidavit, Mr. Cenac contends that the matter involving the Claimant exposed the Defendant to certain national security risks. In his evidence, he sets out the relevant procedure and considerations in the issuance of a port pass. The procedure and criteria are set out in Sections 21 and 22 of the

Defendant's Security Identification Badge System (SIBS). In summary, the procedure is as follows:

- 1) An application must be submitted to the Port Police Department.
- 2) A background check, which includes a criminal history check, employment and school history check, verification of identity and place of residence (including a foreign address if the person resided abroad), is carried out pursuant to Section 21 of Part 1.
- 3) Section 22(1) of Part 1 of SIBS provides that where a disqualifying offence is identified, a notice of disqualification is issued to the applicant.
- 4) Section 2 of Part 2 of SIBS states that having possession of a controlled drug constitutes a disqualifying offence for the purpose of a port pass application.
- 5) Section 19 of Part 1 of SIBS gives the General Manager of SLASPA the authority to delay or refuse to issue an ID badge or temporary pass or withdraw an ID badge that has already been issued without stating a reason for doing so.

[23] The Defendant's evidence is that when the Claimant submitted his application to renew his port pass, the necessary background checks were conducted, and it was discovered that the Claimant, while in New York, was arrested and charged with the possession of cocaine with intent to supply.

[24] Further, the Defendant's evidence is that the checks disclosed that the Claimant spent time on house arrest in the USA. The Defendant produced no evidence of any documents to prove this alleged information. This, Mr. Cenac explained, was due to the documents being in the possession of the Crime Intelligence Unit (CIU). An email sent on 30 July 2024 by the Chief of Port Police to the CIU requesting the information, was exhibited.

[25] The timing and content of this email, and the email to which it was in response, are relevant. They are set out verbatim as follows:

“On Mon, 29 Jul 2024 at 4:37 PM, Kennedy Francis kennedy.francis@slaspa.com wrote:

Dear Sir,

Kadeem Taylor is a former employee at Hewanorra International Airport who previously held access to our Security Restricted Area. Mr. Taylor, to the best of our knowledge, was arrested for the supply of cocaine in the United States some time prior to 2022. He was subsequently deported back to Saint Lucia. The Saint Lucia Air and Seaports Authority hereby seeks your indulgence in providing information pertinent to the arrest and deportation as we seek to review Mr. Taylor’s request for further access under our ID badging system.

Best regards,

KENNEDY T. FRANCIS
Chief of Port Police”

[26] On Tuesday, 30 Jul 2024 at 3:33 PM, “intelunitslu” intelunitslu@gmail.com responded to the email in the following terms:

“Good Day Sir,

Please be informed that Kadeem TAYLOR is known to us criminally and is a Person of interest. During the year 2021, we were informed by United States authorities that TAYLOR was charged with illegal narcotics charges, to wit: possession of cocaine, and he was on bail awaiting his court proceedings in the US. Please find attached a document featuring the subject and his bio-data. If any further clarification or assistance is required, please feel free to contact the CIU.

Regards,
CIU”

[27] The document attached shows a passport-sized photograph of the Claimant and to the right of that photograph are his name, date of birth, address, NIC No., and nationality.

[28] On the basis of the information outlined above, Mr. Cenac's evidence is that the Claimant's application was denied. He also referred to and exhibited a letter dated 14 February 2022 from the Chief of Police, Mr. Kennedy Francis, to the Airport Manager, Mr. Edgar Stephen, which is also worth quoting verbatim:

"Please be advised that, consequent upon your request, the Port Police have carried out background investigations to determine the suitability of your employee: Mr. Kadeem Taylor, in respect of unescorted access to the restricted area of the Hewanorra International Airport.

We regret to inform you that Mr. Taylor does not meet the criteria required to be granted access to the ports; therefore, the Saint Lucia Air and Seaports Authority has denied Mr. Taylor's application for a port pass."

[29] In his further affidavit filed in these proceedings, Mr. Cenac deposed that the Chief of Port Police would have had sight and possession of the documents that stated the charges and details of the offences in relation to the Claimant at the time of the Claimant's application. He contended that after completing his review and consideration of an application, it is usual for the Chief of Port Police to destroy such documents. This, he deposed, is why the Chief of Port Police was not in possession of the documents when served with this claim, hence the request to the CIU.

CROSS EXAMINATION:

[30] The law on the test for permission to cross examine in administrative claims was set out in the decision Jamadar JA (as he then was) in (upheld by the Privy Council) in **Marcia Ayers – Caesar v Judicial and Legal Services Commission**¹ at paragraph 46 where it stated:

' [46] The trial judge's statement of the relevant legal principles was not altogether wrong, (See AG v Dumas [2017] UKPC 12, at para 15, citing with approval, Bobb v Manning [2006] UKPC 22, and State of Rajasthan v Union of India AIR [1977 SC 1361, per Bhagwati J) except that he seemed to consider that this was a pure judicial review matter. Clearly it is also a constitutional

¹ Civil Appeals Nos: 46 and 47 of 2019 (Trinidad and Tobago)

review matter. He was however right in the general opinion that in judicial review, cross-examination is exceptional, it may be permitted if there are disputes on central and crucial factual issues, and if it is necessary to assist in resolving them. This is indeed so for both administrative and constitutional review. It is ordinarily so because in public law matters the primary facts are often not in dispute, or only in dispute on peripheral aspects. In part this is also because, public authorities are frank, forthright and transparent in their decision-making processes (as they are always expected to be), and so the factual underpinnings which inform the bases for challenges are often not really in material dispute.'

[31] The Claimant did not seek permission to cross examine the Defendant's witness at the trial. The Defendant however sought leave to cross examine on six (6) paragraphs in the Claimant's affidavit in support and four (4) paragraphs in the Claimant's affidavit in reply.

[32] Applying the principles in **Ayres Caesar** above, I refused permission to the Defendant to cross examine the Claimant for the following reasons:

Affidavit in Support:

[33] Paragraph 11 – In this paragraph, the Claimant's evidence is that, as a result of the decision, he suffered financial ruin and is struggling to pay his bills. The Defendant's affidavit in response is drafted in a curious style in that it makes no reference to any paragraphs in the Claimant's affidavit. It simply provides the Defendant's version of the facts. In particular, the Defendant never denied the Claimant's evidence. The Claimant's financial loss was never put in issue. It was not a disputed fact, and it is not a crucial factual issue which would be necessary to assist in resolving the issue of his financial loss. The availability of damages to a Claimant in judicial review is, in any event, a legal issue as well as a factual one. The Defendant, having not denied the Claimant's evidence, is not entitled to challenge him on his evidence.

[34] Paragraph 20 – This is a statement by the Claimant that he has no alternative means of redress. This is a legal issue.

[35] Paragraph 21 (b), (c), and (e) are the remedies the Claimant seeks. Cross-examination on the remedies the Claimant seeks is of no assistance in resolving this matter.

Affidavit in Reply:

[36] Paragraph 2 – The Claimant contended that his application was denied on the basis of hearsay information and an unsubstantiated allegation. The fact of the Claimant's arrest, being on house arrest, and those facts being a disqualifying factor are not necessary to be resolved in this claim. This claim deals with the natural justice point of making a decision without notice of the allegation or the opportunity for the Claimant to be heard. Whether he was arrested or on house arrest is not a fact to be determined in this case. Additionally, these are facts asserted by the Defendant, not the Claimant.

[37] Paragraph 3 (i) – This is the Claimant indicating that he was informed by his Counsel that the rejection of his application on the alleged allegation was unreasonable, irrational, and unlawful. There is no fact to be resolved in that paragraph which is relevant to the claim.

[38] Paragraph 3 (iv) – This is the Claimant responding to Mr. Cenac's evidence and saying that an application for a Port Pass is not a matter of national security. This too is not a fact to be resolved in this claim and is not relevant to its determination.

ISSUES FOR DETERMINATION:

[39] Having heard the parties in their oral submissions at the trial and read their written submissions, I summarize the issues to be determined as follows:

- 1) Whether there was delay in making this application and if so, should the court refuse any remedy on account of delay?
- 2) Whether the Defendant properly followed the operational procedures set out in the SIBS?

- 3) Whether the Defendant's failure to give the Claimant an opportunity to respond before denying him a Port Pass was in breach of the rules of natural justice?
- 4) Whether national security considerations are sufficient grounds to dismiss the Claimant's claim, and if such considerations can override the need for procedural fairness in the decision-making process?
- 5) Whether compensation in the form of damages is appropriate?

ANALYSIS:

Whether there was delay in making this application and if so, should the court refuse any remedy on account of delay?

[40] It is now settled that delay is not considered in a vacuum. Delay is considered in the context of hardship and prejudice. The earlier authorities grappled with how the Respondent to judicial review proceedings could have properly mounted an argument of hardship and prejudice when leave was *ex parte*. We do not have that issue in this jurisdiction since the **Civil Procedure Rules (Revised Edition) 2023** has removed the requirement to obtain leave to apply for judicial review.

[41] The burden remains on the Defendant, in my view, to prove hardship and prejudice. While this may be obvious because of the issue or the delay itself, the obligation remains on the Defendant seeking to persuade the Court not to grant relief on the basis of delay to prove the attendant hardship and prejudice caused by the delay.

[42] In **Maharaj v National Energy Corporation**², the Board gave the following guidance on how delay ought to be treated:

“41. ...**Nowadays the pre-action letter of response allows a respondent or interested party to draw attention to the possibility of any prejudice or detriment. Compliance with pre-action protocols and the Civil Procedure Rules should ensure that, in most cases, issues of**

² [2019] UKPC 5

prejudice or detriment to good administration are identified at the outset. Where such issues are raised by a defendant in the context of delay, it will be open to the judge to adjourn the question of leave to an inter partes hearing or to order a 'rolled-up hearing', at which leave will be considered, followed immediately by the substantive application, if leave is granted. (Greenpeace II, for example, was a rolled-up hearing.) **In either case, full consideration can be given to issues of extension of time, prejudice and detriment, on the basis of evidence filed by the parties.** In any event, even if leave is granted without full consideration of issues of prejudice and detriment resulting from delay, these may still be a bar to relief at the substantive hearing."

[43] From the above guidance, it is clear that delay, hardship, and prejudice must be considered in the context of the evidence of the parties. The Claimant's evidence, containing his explanation for the delay, can be summarised as follows:

- 1) Two months after he was denied the Port Pass, he sought an audience with the Airport Manager.
- 2) A meeting was facilitated, and the Claimant was informed by the Airport Manager that the Port Police made a recommendation, and on that basis, his application was denied.
- 3) Around that same time, the Claimant sought the assistance of the Red Cap Association to intervene on his behalf.
- 4) The Red Cap Association expressed reservation because of a fear that such an intervention might affect their relationship with the Defendant.
- 5) The Claimant then sought the service of an Attorney at Law, who, after two months, informed him that there was a potential conflict of interest.

- 6) The Claimant then sought the services of a second Attorney at Law, who also indicated that he was conflicted, as he had previously represented the Defendant.
- 7) The Claimant sought the assistance of a third attorney in February 2024, who, by letter dated 5 April 2024 (exhibited as K.T.4 to the affidavit in support), confirmed to the Claimant's now Counsel, Mr Fraser, that she too was conflicted. I note that the letter of this attorney says that she first met with the Claimant on 15 December 2023 and not in February 2024. The fact is, however, that she passed his documents to his new Attorney, Mr Fraser, in April 2024.
- 8) In March 2024, the Claimant approached his current attorney, and gauging from the content of the letter of 5 April 2024, Mr Fraser would have received the Claimant's documents from his previous Attorney in April 2024 and filed the Claimant's claim in June 2024, approximately two months after receiving these documents.

[44] The Defendant, who now raises the issue of delay, never responded to the above evidence in its own evidence. It was neither denied nor admitted, nor was an alternative version asserted. Furthermore, no mention of hardship and prejudice was made. In his further affidavit, Mr Cenac gives an explanation about why the Chief of Ports Police destroyed the documents he says he had, but again, he never raised any issue of hardship or prejudice.

[45] In my view, the Defendant has fallen woefully short of what is required to mount a challenge on the issue of delay being a bar to the grant of relief. Notwithstanding, I will consider its submission in the context of the Claimant's evidence above.

[46] Delay is a bar to the grant of relief in judicial review. But in assessing delay, the Court must also consider the administration of justice and detriment and prejudice. Delay is also contextual and must not be seen as inordinate. In this case, the impugned decision

was made in March 2022, and the claim was filed in June 2024. The Claimant's evidence, which is unchallenged, is that during this period of time, he sought legal counsel; in particular, he went to three separate attorneys before retaining the services of his present attorney, who filed the claim shortly after being retained.

[47] Again, this evidence is uncontroverted. There is no evidence of how the delay would affect the administration of justice or lead to hardship or prejudice. While the Claimant has a duty to act with promptitude, having regard to the reliefs sought and the actions of the Claimant being proactive since the decision was made to prosecute his claim, the Court does not find that the delay ought to operate as a bar to granting him relief in this case.

[48] The Court accepts that the issue of delay is specific to each case, and in this case, the Court is satisfied that the Claimant did not act in a nonchalant or dismissive way but rather acted prudently and expediently, given his circumstances, to bring the claim. The Defendant's complaint that material documents germane to the decision made are lacking merit. At all times, the Defendant knew that the decision made was under challenge and ought to have used any mechanism to preserve material evidence, including the issue of witness summons, as it is there in evidence that the documents are in the possession of the police. This is notwithstanding that the documents themselves are of no moment to this case. As in this case, the Court is only concerned with the process by which the decision was made and not the merits of the decision itself.

[49] The Court is of the view that the Defendant's argument that delay should bar the claim is not persuasive, as the Claimant actively sought legal assistance but was repeatedly unable to retain counsel due to conflicts of interest. Additionally, from the evidence, the Defendant suffered no prejudice.

[50] Accordingly, on the issue of delay, I hold that in this case, it does not operate as a bar to the Claimant being granted relief.

Whether the Defendant properly followed the operational procedures set out in the SIBS?

[51] SLASPA Security ID Badge Systems (SIBS) a system of new measures relating to the application and several other related processes. It followed from an audit of SLASPA's I.D. Badge System in June of 2011. Part 1 of SIBS contains a description of the system and the standards by which it will operated and administered. Part 2 provides guidance/instruction for various procedures, including administration and upkeep of the system.

[52] **Section 21 and 22 of Part 1 of SIBS** provides that:

“21. Security Vetting of ID Pass Applicants

- (1) ID Badge applications requiring a full background check shall be forwarded to the Senior Port Police Officer in charge who will check to ensure that all required documentation has been received and that references listed meet the criteria outlined in SIBRA.
- (2) Where there are no disqualifying factors/offences recorded, the application is referred to the Vetting Team for vetting.
- (3) A Background Check shall include a criminal history check, an employment and school history check, activities engaged in during periods of unemployment, verification of identity, place of residence and if resided abroad, proof of travel and addresses in foreign country. Community checks are conducted by interviewing residents using an interview questionnaire.
- (4) In addition to a copy of a valid work permit, a foreign national must submit a recent police certificate of character from country of origin as well as evidence of previous employment for past five years.
- (5) A background check on a foreign national may include consultation with any International law Enforcement Agency or an agency from any country that she/he may have resided that it is believed may provide information regarding the applicant' character and therefore suitability for a SLASPA ID Pass.

- (6) The granting or denial of a pass to any applicant in accordance with these requirements shall apply to both foreign nationals and nationals who have resided abroad in the last six months prior to applying.

22. Applications with Disqualifying Offences

- (1) Where disqualifying offences are identified, the application must be referred to the Chief of Port Police, who, after consultation with an authorizing officer (General Manager or an officer authorized by the General Manager), will either refer the application to the vetting team for vetting or issue a notice of disqualification to the applicant. (Refer to Section 24 Part 2 of SIBRA for guidance on receipt of Police Certificate of Character (PCOC).
- (2) The applicant will be advised directly or through the Sponsoring Company within 30 days of submission of the application that his or her criminal history shows he or she is disqualified from being issued an ID badge. An applicant who believes that any information is inaccurate, may directly contact the Criminal Records Office (CRO) or other agency that reported the disqualifying conviction to correct his or her record.
- (3) The findings of all background checks conducted shall be documented in the form of a confidential report and forwarded to the Chief of Port Police for perusal and onward submission for approval by an authorizing officer. All such reports and copies shall be stored in a secure location.
- (4) All applications approved by an authorizing officer are returned to the ID Section for processing.
- (5) Where any application has not been approved, the authorizing officer will notify the applicant in writing, either directly or through the Sponsoring Company within 30 days of submission of the application. A copy of such notification shall be forwarded to Officer in Charge of the ID Section, who will instruct the ID Section Clerk accordingly.
- (6) In addition to the above, the issuance of a pass to an individual with a previous criminal conviction that has not been expunged shall be in accordance with the issuance of passes to convicted persons. (See Part Two, Section 5 of this manual)."

[53] The operative parts of Section 21 of Part 1 of SIBS, as it relates to the Claimant, required the Defendant to:

- 1) Determine if the Claimant's application required a full background check and, if so, forward it to the Senior Port Police.
- 2) The Senior Port Police are required to check to ensure that all required documents have been received and meet the criteria.
- 3) Determine if there are any disqualifying factors. If not, then refer the application to the Vetting Team for further review.

[54] A background check, as defined in Section 21(3), includes:

“...a criminal history check, an employment and school history check, activities engaged in during periods of unemployment, verification of identity, place of residence, and, if residing abroad, proof of travel and addresses in a foreign country. Community checks are conducted by interviewing residents using an interview questionnaire.”

[55] It is noteworthy that the matters included in the definition of a background check do indeed encompass a criminal history check.

[56] The evidence before the Court, as contained in the letter dated 14 February 2022 from Mr. Kennedy Francis, Chief of Port Police, to Mr. Edgar Stephen, Airport Manager, indicates that the Port Police carried out background investigations and determined that:

“We regret to inform you that Mr. Taylor does not meet the criteria required to be granted access to the Ports. **Therefore, the Saint Lucia Air and Seaports Authority has denied Mr. Taylor's application for a Port Pass.**”

[57] This communication to the Airport Manager is not only the report of an investigation but also the decision made by Mr. Francis, indicating that the Defendant had denied the

application. No document is attached to this letter, and in this context, there is no explanation for the conclusion that the Claimant did not meet the required criteria. Specifically, there is no mention of the Claimant being arrested and/or charged in the USA with the offence of possession of cocaine for trafficking, that he was on house arrest, or that he was deported. There is no explanation whatsoever as to why Mr. Francis concluded that the Claimant did not meet the criteria.

[58] Again, assuming that the national security reasons advanced by the Defendant had any merit, which I find they do not (as discussed below), there is not even a brief mention of national security concerns being the reason for refusing the Port Pass.

[59] The above demonstrates to me, and I hold, that Mr. Kennedy Francis acted *ultra vires* in relation to the Defendant's own procedure. He arrogated to himself the power to determine the Claimant's application and did so in a summary manner. The power to delay or refuse the issuance of an ID Badge or Temporary Pass, or to withdraw an ID Badge that has already been issued, without stating any reason for doing so, is vested in the General Manager, not the Chief of Port Police, as outlined in Section 19 of Part 1 of SIBS. I note that neither party raised this issue of Mr. Francis having authority to determine the application.

[60] Whilst the Defendant's own SIBS procedure is inconsistent in so much as Section 23 of Part 1 defines an authorizing officer as including the Chief of Port Police, interpreting Section 21 to mean that the Chief of Port Police has to consult himself is absurd. The scheme of Section 21 is that the Chief of Port Police had to consult an authorizing officer and then decide if to refer the application for vetting. This was not done. What happened is that the Chief of Port Police acted in excess of the procedure and without consulting any authorizing officer determined the application himself.

[61] In any event, in acting in this matter, Mr. Francis not only failed to communicate the reason for his decision to the Claimant or provide him with an opportunity to be heard,

but he also failed to communicate any particulars of his reasoning to the Airport Manager.

[62] In my view, Mr. Kennedy Francis' actions were illegal, as he had no authority to determine the Claimant's application for a Port Pass. Only the General Manager has the power to refuse an ID badge under SIBS. He also did not follow the Defendant's procedure regarding what is to happen in the event of a disqualifying offence.

[63] Section 22 of Part 1 of SIBS outlines the procedure when a disqualifying offence is identified. Disqualifying offences are set out in Section 2 of Part 2 of SIBS. It is evident that all the offences listed in Section 2(a) - Table 1 refer to offences under the laws of Saint Lucia. None of the offences specified in Section 2 (Table 1) refer to offences committed abroad. The table of disqualifying offences in No. 7 refers to controlled or illegal drug offences, as contained in Schedule 3 of the Drug (Prevention of Misuse) Act, Chap. 3.02 of the Revised Laws of Saint Lucia 2008, including: importation or exportation of a controlled drug; production or involvement in the production of a controlled drug; possession of a controlled drug; and cultivation of cannabis plants.

[64] The Defendant's case is that there was evidence of the Claimant having committed a disqualifying offence. I must disagree. There is not a shred of evidence produced by the Defendant that the Claimant has a criminal record, either in Saint Lucia or abroad.

[65] I do not accept the evidence of Mr. Cenac, that Mr. Francis had, at the time of his decision, the documents evidencing that the Claimant had some type of criminal history in the USA. I attach no weight to that evidence, as it was open to the Defendant to bring Mr. Francis as a witness in this case, but they chose not to. Furthermore, I do not accept the explanation that once the decision was made, the documents were destroyed. In addition to the explanation being illogical, it contradicts the Defendant's own SIBS procedure.

[66] Section 6(4) of Part 1 of SIBS states:

“In addition to the above, all records of an employee in respect to the application and/or issuance of a SLASPA ID pass, including background checks, periodic reviews, and security awareness training, shall be kept until one year after the end of the employee’s tenure with the organization.”

[67] For these reasons, I attach no weight to Mr. Cenac’s evidence on the issue of having documents to support the alleged investigation. I prefer the evidence of the Claimant and find, on a balance of probabilities, that at the time the decision was made, Mr. Francis had only an unsubstantiated allegation and no documents to substantiate any of the claims he relied on to illegally refuse the Claimant’s application.

[68] In any event, even if the Claimant had committed a disqualifying offence (which I find there is no evidence of), it was still not open to Mr. Francis to deny the application. Under Section 22 of Part 1 of SIBS, he was required to consult with the General Manager or an officer authorised by the General Manager and either refer the application to the Vetting Team or issue a notice of disqualification to the Claimant.

[69] The Claimant is entitled under Section 22(2) to be informed that his criminal history shows he is disqualified from being issued an ID badge. If the Claimant believes any information is inaccurate, he may directly contact the Criminal Records Office (CRO) or another agency that reported the disqualifying conviction to correct his record.

[70] In my view, the Defendant’s own procedure (SIBS) incorporates the principles of natural justice. The applicant, who is subject to a disqualifying offence, is given the opportunity to dispute the accuracy of his criminal record. The Claimant was not given such an opportunity in this case.

[71] Accordingly, I find that the Defendant has not complied with the procedures in their own SIBS procedure. The Claimant was entitled to expect that the Defendant’s own procedures would be followed in coming to its decision.

Whether the Defendant's failure to give the Claimant an opportunity to respond before denying him a Port Pass was in breach of the rules of natural justice, was reasonable, rational, and lawful, especially considering the Claimant's previous six years of service?

[72] The simple answer to this issue is – yes. The Defendant's actions and procedure adopted in arriving at the decision to deny the Claimant's application is in breach of the rules of natural justice. The most fundamental flaw in the Defendant's decision-making process is the failure to provide the Claimant with notice of the allegations against him before making a decision that directly affected his livelihood.

[73] The Defendant's 15 March 2022 letter merely stated:

"SLASPA regrets to inform you that pursuant to these investigations, it has been determined that you do not meet the criteria to be granted access to the Ports, therefore your application for a Port Pass has been denied."

[74] At no point prior to this decision was the Claimant:

- 1) Informed of the nature of the investigation against him.
- 2) Given the specific reasons for his disqualification.
- 3) Provided with an opportunity to challenge the allegations or submit representations.
- 4) This lack of due process is a direct violation of the *audi alteram partem* rule, which guarantees a person the right to be heard before an adverse decision is taken against them. The principles of natural justice are deeply embedded in administrative law and have been reaffirmed in multiple decision including:

- i **Kanda v Government of The Federation of Malaya**³– A decision made without informing the affected party of the allegations against them is void for breach of natural justice.
- i **Ridge v Baldwin**⁴– Natural justice applies to administrative decisions affecting employment or professional status, requiring a fair hearing before dismissal or exclusion.
- i **Re Pergamon Press Ltd**⁵– Even where there is no statutory obligation, fairness demands that a person affected by an adverse finding be given an opportunity to respond before conclusions are drawn.

[75] The Claimant had a clear right to be heard before his application was denied. The Defendant's failure to adhere to basic procedural fairness renders its decision unlawful and subject to judicial review.

[76] The facts of this case bear stark resemblance to the decision of the Privy Council in **Permanent Secretary, Ministry of Foreign Affairs & Prime Minister Patrick Manning v Feroza Ramjohn and Ganga Persad Kissoon**⁶.

[77] Feroza Ramjohn was a Foreign Service Executive Officer II in Trinidad and Tobago's Ministry of Foreign Affairs (MFA). In May 2004, she was appointed by the Prime Minister to be transferred to the High Commission in London. She was informed of her posting, began preparations, sold her belongings, and resigned from her accommodation. However, on 4 June 2004, before she assumed the post, the Prime Minister revoked her appointment, citing a security intelligence report that allegedly implicated her in a missing diplomatic pouch containing 200 blank passports. The report was three years

³[1962] AC 322

⁴[1964] AC 40

⁵[1970] 3 All ER 535

⁶[2011] UKPC 20

old, and no official disciplinary action had ever been taken against her. She was not informed of the allegations against her nor given an opportunity to respond.

[78] In dismissing the appeal, the Board held that, even where there is no absolute right to a hearing, fairness requires that an affected person be given notice and an opportunity to respond in certain cases. Ramjohn was denied this right, making the revocation unlawful.

[79] Additionally, it was noted that national security cannot justify unfairness without proper justification. The government cannot use vague national security claims to bypass natural justice unless it demonstrates an actual risk. An important feature of this case is that there is no evidence of the alleged threat to national security; only a blanket statement is made, which, as the Board pointed out in Ramjohn, would not suffice.

[80] The failure to give notice had severe practical consequences for the Claimant:

- 1) He was unable to challenge or clarify the background check findings;
- 2) He was denied the chance to provide evidence of his good character or address any misconceptions;
- 3) His source of income was abruptly cut off, leading to financial ruin.

[81] If he had been given notice of these allegations and had been informed of the specific allegations, he could have:

- 1) Contested their accuracy (particularly given the lack of supporting evidence).
- 2) Provided mitigating factors (if any criminal matter existed).

- 3) Requested reconsideration or a conditional pass based on his prior six-year work history.

[82] By denying him this basic procedural right, the Defendant's decision is legally unsound and must be set aside.

[83] The second major flaw in the Defendant's decision-making process is that it relied on unverified, secondhand information rather than concrete evidence. The Defendant claims that a background check conducted by the Crime Intelligence Unit (CIU) and the Port Police revealed that the Claimant; (1) was arrested in New York for possession of cocaine with intent to supply and (2) was placed on house arrest while awaiting trial in the United States.

[84] However, as detailed above, the Defendant failed to provide any supporting documentation to substantiate these allegations. No official records, court documents, or arrest reports were submitted into evidence. Instead, the Defendant admitted that the original documents were destroyed as part of its "standard procedure". More so, the Defendant has provided no evidence from its Chief of Ports Police.

[85] From the email attached to Mr. Cenac's evidence the Defendant's own Chief of Ports Police only requested information from CIU in July 2024—two years after the decision. Up to the date of the trial no evidence as put or sought to be put before the Court of the alleged criminal record or the Claimant. The CIU's response did not include any arrest records, only stating that the Claimant was "known to them criminally."

[86] Given this lack of documentary proof, I agree with the Claimant that the decision to deny the port pass was based on hearsay, speculation, or incomplete information.

[87] The burden of proof in administrative decisions rests on the decision-maker to justify its actions. The courts have repeatedly held that; **Chief Constable of North Wales Police**

v Evans⁷– Any administrative decision affecting a person's rights must be based on clear and convincing evidence; and **R v Secretary of State for the Home Department, ex p. Khawaja**⁸– A finding of criminality must be supported by properly sourced evidence, not assumptions.

[88] Since no proper verification of the Claimant's alleged criminal record was conducted, the Defendant's reliance on the background check is flawed and legally inadequate.

[89] The Claimant's six-year history of working at the airport with full clearance created a legitimate expectation that his application would be fairly considered. A person may have a legitimate expectation when a public authority has a consistent past practice (i.e., repeated renewals of the port pass) see; **McInnes v Onslow-Fane**⁹.

[90] An individual relies on that practice to their detriment (i.e., the Claimant structured his livelihood around it). In **Marks v Minister of Home Affairs**¹⁰ it was held that a legitimate expectation cannot be arbitrarily frustrated without due process.

[91] Since the Claimant met all prior eligibility requirements, he was entitled to at least an explanation and hearing before being disqualified.

Whether national security considerations are sufficient grounds to dismiss the Claimant's claim, and if such considerations can override the need for procedural fairness in the decision-making process?

[92] The Defendant argues that national security considerations justified not providing the Claimant with details of the decision. However, the Claimant had access to restricted areas for six years with no issue. There is no evidence of any security risk assessment showing that his presence posed a specific threat.

⁷[1982] 3 All ER 141

⁸[1984] AC 74

⁹[1978] 3 AER 211

¹⁰(1984) 35 WIR 106

[93] The authorities confirm that national security must be substantiated, not used as a vague justification (**Council of Civil Service Unions v Minister for the Civil Service**¹¹).

[94] In my view, the Defendant has not established any national security issue that justified not providing the Claimant with notice of the information following **Ramjohn**. As such this argument has no merit.

Whether compensation in the form of damages is appropriate?

[95] The Claimant seeks an order for damages. He contends that he has lost the chance to earn an income and has suffered financial loss.

[96] **Part 56.6** of the **CPR** permits the Court to inter alia make an order for damages where the Court is satisfied that, at the time when the application was made, the Claimant could have issued a claim for such remedy.

[97] Put another way, there must be a cause of action which attracts an order for damages subsisting at the time at the time the judicial review was commenced. Whilst loss of employment will necessarily translate into loss of income, I part company with the Claimant in his submission that loss of opportunity in itself is a cause of action which would have entitled him to damages.

[98] The Claimant did not bring a mixed claim for relief under the Constitution and for judicial review. His claim is only in judicial review. In this regard, this issue was dealt with by the Privy Council in **Ramjohn** at paragraph 50 when the Board stated:

“50. ...The claim for damages against the Prime Minister failed below on the ground that “there is no claim for damages as is required by section 8(4) of the Judicial Review Act” (para 56 of Mendonca JA’s judgment). Section 8(4) of the 2000 Act does indeed provide that: “On an application for judicial review, the Court may award damages to the applicant if (a) the applicant

¹¹ [1984] UKHL 9

has included in the application a claim for damages arising from any matter to which the application relates; and (b) the Court is satisfied that, if the claim had been made in an action begun by the applicant at the time of making the application, the applicant could have been awarded damages.” **Mr Kissoon’s insurmountable difficulty in this regard is that his claim for damages was (and could only have been) based solely on his allegation that he was unequally treated – a claim pursuant to sections 4(d) and 14 of the Constitution.** This allegation, however, was struck out by the unappealed order of the trial judge on 9 May 2005 (see para 23 above). No damages claim thereafter survived.”

[99] The Claimant’s submission that the Court can make an award of nominal damages in my view cannot be sustained. There is no cause of action on which the Court can award damages. Accordingly, nominal damages do not arise.

[100] I am hopeful that giving the findings above, the parties can enter into discussions and avoid another claim being brought under the Constitution for damages consequent upon a breach of a fundamental right. In this claim however, the Claimant is not entitled to damages.

COSTS:

[101] The general rule is that costs follow the event. There is no reason to depart from the general rule. The Claimant is entitled to his costs. These costs are to be assessed by the Court. The Claimant is liberty to commence detail assessment proceedings pursuant to Rule 65.13 CPR within 21 of the parties do not agree the quantum of costs by filing his Form 24A and his Bill of Costs.

ORDERS

[102] For the reasons in this judgment I make the following orders:

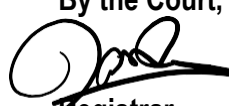
- 1) Judgment is entered for the Claimant against the Defendant on his claim.
- 2) It is declared that the Defendant’s decision made on 14 February 2022 and communicated to the Claimant by letter dated 5 March 2022 was ultra vires to

the Defendant's SIBS Procedure, illegal, in breach of the rules of natural justice and procedurally flawed;

- 3) An order of certiorari is granted to quash the decision of the Defendant made on 14 February 2022 and communicated to the Claimant by letter dated 5 March 2022 on the grounds that the decision was ultra vires to the Defendant's SIBS Procedure, illegal, in breach of the rules of natural justice and procedurally flawed;
- 4) An order of mandamus is granted directing that the Defendant must reconsider the Claimant's application for a Port Pass in accordance with its SIBS Procedure and inform him of its decision within 21 days from today; and
- 5) The Defendant shall pay the Claimant's costs of this claim to be assessed by this Court (to be commenced by the detailed cost procedure) in default of agreement between the parties within 21 days from today.



Alvin S. Pariagsingh
Judge

By the Court,

Registrar