

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE
CIVIL DIVISION

SAINT LUCIA

Case Number: SLUHCV2024/0007

BETWEEN:

CHERYL MC CLAUREN

Claimant

-and-

THE PUBLIC SERVICE COMMISSION

Defendant/Applicant

Before the Honourable Mr. Justice Alvin Pariagsingh

Appearances: Mr. Alvin St. Clair for the Claimant

Mrs. Grace Ward-Glasgow and Mr. Vilan Edward for the Defendant

2024: July 24
October 21

JUDGMENT

Defendant's application to strike out

Judicial Review – Section 86(1) of the Constitution of Saint Lucia – Powers of appointment and authority to determine date of appointment – Sufficiency of evidence – Court's caution regarding applications to strike out in administrative claims – Requirement for a 'knock-out' point before considering strike-out.

[1] **PARIAGSINGH, J:** Before the Court is the Defendant's application filed on 6 June 2024, seeking an order to strike out this claim. The essence of the application is that the Claimant's case discloses no reasonable grounds for initiating judicial review proceedings against the Defendant. The Defendant argues that the Claimant has failed to plead any facts demonstrating that the decision-making process leading to the Claimant's appointment, pursuant to a recommendation from the Executive, was irrational, illegal, or procedurally improper.

- [2] In support of the application is the affidavit of Ms Lindy Baptiste–Daniel. Ms Daniel states that by a memorandum dated 14 April 2023, the Commission received a recommendation from the Executive, through the Department of Public Service, for an appointment to the reclassified post of Information and Communication Technology Manager. This recommendation included the proposed appointment date of 19 December 2022. The Commission contends that although it made the appointment, it was the Executive that was responsible for the terms and conditions of the Claimant's employment, including the start date. The Defendant asserts that no facts have been pleaded to show how the Commission's decision is amenable to judicial review.
- [3] The Claimant opposes the application. In an affidavit filed on 19 June 2024, the Claimant argues that Section 86 of the Constitution clearly establishes that the Commission is the body responsible for the appointment or dismissal of persons. The Claimant contends that it was reasonable for the Commission, upon receiving the Executive's recommendation, to seek clarification or conduct due diligence before acting on it. The Claimant's case is that the Commission, knowing she had been appointed as Information Technology Manager II on 6 July 2009, had the authority to reject any recommendation that it deemed unacceptable, unfair, or prejudicial. She further claims that the Commission, as the decision-maker, took irrelevant information into account while failing to consider relevant information.
- [4] In reply, the Defendant, through another affidavit by Mrs Baptiste–Daniel, contends that the Claimant's grievance does not fall within the Commission's legal remit. The Commission argues that the Claimant misunderstands its constitutional role in making appointments recommended by the Executive. The Commission's role, it contends, is to ensure that individuals recommended by the Executive meet the qualifications and criteria set out by the Executive for the post. Moreover, the Commission claims it had no knowledge of the Claimant's personal situation and no information to alter its understanding of her position. Even if a conflict had arisen between the Executive's recommendation and the Commission, the Defendant argues that the Claimant has failed to demonstrate how this conflict falls within the Commission's constitutional role to investigate or address the issue as claimed.

ANALYSIS:

[5] The starting point for resolving this application is **Section 86(1) of the Constitution of Saint Lucia**, which outlines the power to appoint and discipline public officers. It states:

86. Appointment, etc., of public officers

(1) The power to appoint persons to hold or act in offices in the public service (including the power to confirm appointments), and, subject to the provisions of section 96, the power to exercise disciplinary control over persons holding or acting in such offices and the power to remove such persons from office shall vest in the Public Service Commission.

[6] The Defendant contends that although the Commission appoints public officers, their employer remains the Crown. It further argues that the terms of employment for public officers are determined by the employer—the Crown—not the Commission. These are well-established principles (see **Thomas v Attorney General of Trinidad and Tobago**¹ and **Jhagroo v Teaching Service Commission of Trinidad and Tobago**²).

[7] The Board in **Thomas** also confirmed that the "terms of service," broadly referred to as a "code of conduct," are determined by the employer, not the Commission. The Commission is meant to be independent of both the executive and the legislature. The purpose of this arrangement is to insulate civil servants from the political influence of the government of the day. The Commission is responsible for regulating its own procedure and (save to a limited extent in the case of the court) must not be subject to direction or control by any other person or authority (see sections 85(12), 85(13) and 124(11) of the Constitution). The Commission must, however, only act for reasonable cause, not act whimsically or arbitrarily, apply the constitutional provisions and its own rules and act fairly and in accordance with the principles of natural justice (see: **Duncan v Attorney General**³).

¹ [1981] 32 WIR 375

² [2002] UKPC 63)

³ [1998] 3 LRC 414 at 423

[8] Where I diverge from the Defendant's submission is on the issue of the date of appointment. The date of appointment, being a fundamental term of public employment, is within the purview of the Commission, not the Executive in my view.

[9] The Constitution of Saint Lucia specifically reserves the power to appoint officers to the Commission under Section 86. In my view, the power to appoint inherently includes the authority to set a start date. This responsibility is vested in the Commission by the Constitution, not the Executive.

[10] Even if the Executive recommends a date, it is, in my view, ultimately the Commission's decision to appoint. Since the Executive does not have the power to appoint public officers, it follows that it cannot set a start date. As Lord Diplock observed in **Thomas**, the effective date of appointment is not part of the "code of conduct" which the public officer must adhere to.

[11] I find no merit in the Defendant's argument.

[12] The Defendant's second submission, which I will refer to as the "pleading point," also lacks merit in my view. The Claimant's case is that the Commission appointed her to a similar post in 2009. She asserts that when the position was created in 2022, the Commission knew or ought to have known that she had been performing certain functions and failed to take this into account. This brings the claim within the realm of procedural impropriety (unfairness), one of the grounds for judicial review.

[13] Whether the Claimant is entitled to the relief she seeks in judicial review is a matter for a later stage. The Claimant would need to demonstrate that she is entitled to retroactive appointment to 2009, even though the position was only created in 2022. However, we are not at that stage yet.

[14] The Defendant also argued that certain paragraphs of the Claimant's affidavit should be struck out because she has failed to identify what irrelevant and relevant information the Commission was required to consider. This assertion is factually incorrect. The Claimant's evidence is clear and concise. She contends that the Commission should

have considered that she had been appointed to a similar post in 2009 and had been performing the functions of that role until the position was reclassified in 2022.

[15] The Defendant has made extensive submissions regarding the Commission's constitutional functions and whether it had the authority to deviate from the Executive's terms. These are issues to be determined in the substantive claim, in my view.

[16] Similarly, the Defendant's discussion of the law regarding legitimate expectation is not relevant at this stage. The Claimant has not sought relief based on legitimate expectation. In any event, this issue will be addressed in the substantive claim, not in an interlocutory application.

[17] In my view, the claim raises serious triable issues for the Court's determination, including:

1. Whether the Executive or the Commission sets the date of appointment for a public officer;
2. Whether the Commission, when making an appointment, is obliged to consider and bring to the Executive's attention any relevant facts or matters;
3. Whether, as a matter of law, the Claimant can be retroactively appointed to a position that did not exist in the public service at the relevant time.

[18] The Defendant has not raised any decisive arguments warranting that this claim be dismissed on the merits.

[19] Before concluding, the Court wishes to emphasise that greater caution should be exercised before launching applications such as this one. With the abolition of the leave requirement, there is no equivalent right to bring applications to strike out, which previously would have been applications to set aside leave. The caution expressed by the Court of Appeal in **Prest v Magistrate District "C" & Anor**⁴, per Thom JA at paragraph 59, remains applicable to strike-out applications in administrative claims:

⁴ [2024] ECSCJ No. 93

As Lord Bingham explained in *R v Secretary of State for the Home Department*, ex p. **Chinoy** [1991] 4 Admin LR 457 at 462:

"The procedure to set aside should be invoked sparingly. It would be an entirely unfortunate development if the grant of leave ex parte were to be followed by an application to set aside inter partes, which would then be followed, if leave were not set aside, by a full hearing. The only outcome would be increased costs and delays, both of which would be regrettable. I stress, therefore, that the procedure should be invoked sparingly and only granted in clear cases."

[20] For the reasons set out above, the Defendant's application is dismissed.

COSTS:

[21] There is no reason to depart from the general rule that costs follow the event. The Defendant must therefore pay the Claimant's costs for this application, to be assessed by the Court in default of agreement, within 14 days of the delivery of this judgment.

ORDERS:

[22] **IT IS HEREBY ORDERED THAT:**

1. The Defendant's application to strike out filed on 6 June 2024 is dismissed
2. The Defendant shall pay the Claimant's costs of the application to be assessed by this Court in default of agreement.

[23] **AND IT IS FURTHER ORDERED** that:

1. The Defendant shall file any affidavit(s) in opposition to the claim on or before **28 October 2024**.

2. The Claimant shall file any affidavit in reply, if necessary, on or before **4 November 2024**.
3. The parties shall file and exchange any notice to cross-examine, specifying the paragraphs and issues, on or before **11 November 2024**.
4. A decision on any application for permission to cross-examine will be given at the start of the trial.
5. All deponents of affidavits filed in the substantive claim are to attend the trial.
6. The parties shall file and exchange submissions on the substantive claim on or before **30 November 2024**
7. The trial is fixed for **11 December 2024** at **11:00am** in **Courtroom 02** in person.

**Alvin Shiva Pariagsingh
Judge**

By the Court,

Registrar

