

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

GRENADA

CLAIM NO. GDAHCV2023/0411

**IN THE MATTER OF THE PURPORTED TERMINATION OF LAREN KAY SIMON AS
A LEGAL OFFICER IN THE OFFICE OF THE ATTORNEY GENERAL**

and

IN THE MATTER OF SECTION 88 OF THE CONSTITUTION OF GRENADA

and

**IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 101 OF THE
CONSTITUTION OF GRENADA BY LAREN KAY SIMON THAT THE PROTECTION
AFFORDED TO HER AS A LEGAL OFFICER UNDER SECTION 88 OF THE
CONSTITUTION OF GRENADA HAS BEEN AND CONTINUES TO BE
CONTRAVENED**

BETWEEN:

LAREN KAY SIMON

Claimant

and

**[1] THE ATTORNEY GENERAL
[2] JUDICIAL AND LEGAL SERVICES COMMISSION**

Defendants

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Mr. Ruggles Ferguson KC for the Claimant

Mr. Adeybayo Olowu for the Defendants

2024: June 3rd;
July 30th

JUDGMENT

- [1] **ACTIE, J.:** The claimant seeks declaratory reliefs, aggravated and exemplary damages consequent upon the termination of the claimant's contract with the Government of Grenada in breach of Section 88 of the Constitution of Grenada.

Background facts

- [2] The claimant was first contracted by the Government of Grenada for the period 1st December 2019 to 30th November 2021 as a Legal Officer assigned to the Attorney General's Chambers. On the 18th February 2021, the claimant entered into a second contract for the period 1st December 2021 to 30th November 2023, in the same position. The contract was signed the Permanent Secretary, Ministry of Legal Affairs.
- [3] The contract defines the claimant as a "Contractor" and Clause 1 provides for the nature of the services to be provided by the claimant:

"Clause 1 – Nature of Services

Subject to the terms and conditions of this Agreement the Government shall engage the Contractor to provide the services set out in the 'Scope of Services' in Schedule 1 to this Agreement, and incorporated herein by this reference, which services may be referred to herein as the 'services' hereunder."

- [4] Clause 3 of the contract provides for the fees:
- "3.1...The Contractor agrees to be present to deliver the services at the agreed places and times set out in Schedule 1 except for a maximum total aggregate annual period of twenty-five (25) working days. Completeness of work product shall be determined by the Government in its sole discretion, and the Contractor agrees to make all revisions, additions, deletion or alterations as requested by the Government. No other fees and/or expenses will be paid to the Contractor, unless such fees and/or expenses have been approved in advance by the appropriate Government representative in writing, The Contractor shall be solely responsible for any and all taxes, National Insurance contributions or payments, disability insurance, unemployment taxes, and other payroll type taxes applicable

to such compensation. The Contractor hereby indemnifies and holds the Government harmless from, any claims, losses, costs, fees, liabilities, damages or injuries suffered by the Government arising out of the Contractor's failure with respect to its obligations in this Clause 3.

- [5] Clause 7 provides for termination of the contract, and reads:

"Termination

7.1 Without prejudice to any common law incidence of termination for breach of contractual terms and/or other available remedies, this agreement may be terminated by either party giving not less than one (1) month's prior written notice to the other. In addition, if the Contractor is convicted of any crime or offence, fails or refuses to comply with the written policies or reasonable directive of the Government, is guilty of serious misconduct in connection with performance hereunder, or materially breaches provisions of this Agreement, the Government at any time may terminate the engagement of the Contractor immediately and without prior written notice to the Contractor."

- [6] Clause 9 defines the claimant as an independent Contractor with no employer/employee relationship. It reads:

"No Employment Relationship

9.1 It is clearly understood by the parties to this agreement that nothing in this Agreement should be interpreted as creating a relationship of employer and employee between the parties.

9.2 The contractor agrees that she is an independent contractor of the Government and, except in cases where she is specifically so authorised in writing; she must not hold herself out as an agent of the Government.

9.3 As such the Contractor is fully and personally responsible for all duties and obligations of workers pursuant to the National Insurance Act as amended.

9.4 It is further understood that this agreement does not give rise to any rights or obligations in keeping with a contract of employment, whether according to statute or the common law.

9.5 The Government shall not be responsible for withholding taxes with respect to the Contractor's compensation hereunder. The Contractor

shall have no claim against the Government hereunder or otherwise for vacation pay, sick leave, retirement benefits, national Insurance, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind."

- [7] By letter dated 22nd February 2022, the claimant's appointment was formalized by the Governor General of Grenada acting in accordance with the advice of the second defendant, the Judicial and Legal Services Commission (hereafter referred to as "JLSC") for a period of two years with effect from 1st December 2021.
- [8] By letter dated 24th October 2022, Ms. Anna Brizan, the Permanent Secretary of the Ministry of Legal Affairs purported to terminate the services of the claimant with immediate effect on the ground that her services were no longer needed. The claimant was paid one month service fee in lieu of notice, as well as her service fee for the month of October 2022. The claimant was instructed to deliver all property relating to the business of and belonging to the Government of Grenada.
- [9] The claimant through letters from her Attorney-at-Law challenged the letter issued by the Permanent Secretary, Anna Brizan. The claimant continued to receive her monthly fee although she was out of office and not performing the duties under the contract.
- [10] By letter dated 20th February 2023, the Permanent Secretary, Ms. Anna Brizan, informed the claimant that the letter of 24th October 2022 was cancelled and withdrawn. By a second letter of even date, issued under the hand of the Governor General, the claimant was informed that her contract was terminated with immediate effect on the recommendation of the JLSC. The claimant was informed that she would be paid the service fee under her contract up to and including the month of March 2023.
- [11] On 21st August 2023, the claimant filed a constitutional motion seeking declarations that the purported termination as Legal Officer with immediate effect by the first defendant, through the Permanent Secretary Ministry of Legal Affairs and further by the Governor General, by letters dated 24th October 2022 and 20th

February 2023 contravened Section 88(2) of the Constitution of Grenada and accordingly is null, void and of no effect.

- [12] The claimant also seeks payment for the unexpired term of her contract for the period April to November 2023, damages for distress and inconvenience arising out of the arbitrary, unlawful, improper and unconstitutional dismissal together with aggravated and exemplary damages and costs.

The Defendants' case

- [13] The defendants contend that the claimant pursuant to the Contract was an independent contractor. The defendants contend that the terms of the independent employment contract entered by the claimant provides for the termination of employment by a month's prior notice by either party to the contract. The defendants state that termination of employment for cause is not required.
- [14] The defendants aver that upon recognizing that the claimant's letter of termination ought not to have been signed by the Permanent Secretary, Anna Brizan, it was cancelled and withdrawn, and the contract was subsequently properly terminated by the Governor General.
- [15] The matter came on for case management conference on 29th February 2024. The parties were directed to file a statement of agreed/disputed facts together with skeleton arguments on the issue of alternative remedies.

Legal Analysis

Whether the claimant was unlawfully terminated by the Permanent Secretary to the Ministry of Legal Affairs

- [16] Mr. Ferguson K.C argues that the claimant held a public office and performed a public function by virtue of her assignment to the Attorney General's Chambers as Legal Officer, and so falls within the ambit of **Section 88(2) of the Constitution Act of Grenada**.

[17] **Section 88** provides that:

“(1) This section applies to the offices of magistrate, registrar of the High Court and any public office in the department of the Attorney General (including the public office of Attorney-General) or the department of the Director of Public Prosecutions (other than the office of Director) for appointment to which persons are required to be qualified to practice as a barrister or a solicitor in Grenada.

(2) The power to appoint persons to hold or act in offices to which this section applies (including the power to confirm appointments) and subject to the provisions of section 70(4) of this Constitution, 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 Governor-General, acting in accordance with the advice of the Judicial and Legal Services Commission.”

[18] Under **Section 88(2) of the Constitution**, the Governor General, acting in accordance with the advice of the second defendant is vested with the power to appoint, discipline, and remove persons who hold or act in the offices of magistrate, registrar and in any public office in the department of the Attorney General including the Attorney General and the department of the Director of Public Prosecutions. It has been held, in cases such as **Endell Thomas v Attorney General of Trinidad and Tobago**¹, that the rationale for same is to insulate these office holders from political influence that can be exercised upon them by the government of the day.

[19] The defendants dispute that the claimant was a public officer, although they admit that she was performing the duties of a legal officer in the Attorney General Chambers. After issuing the letter of termination under the hand of the Permanent Secretary to the Ministry of Legal Affairs in accordance with the employment contract between the claimant and Government of Grenada, the termination thereby was cancelled and withdrawn, and another termination letter under the hand of the Governor General, issued.

[20] By doing so, the defendants demonstrated an acknowledgement that the incorrect procedure was adopted by them in their first attempted termination of the claimant.

¹ [1982] AC 113

- [21] The claimant's initial termination under the direction of the Permanent Secretary of the Ministry of Legal Affairs by letter dated 24th October 2022 was therefore unlawful, and the issue becomes whether the proper procedure was followed for the claimant's removal from office by the Governor General by letter dated 24th October 2022, acting in accordance with the advice of the JLSC falls within the constitutional protection of **Section 88(2)**.

Whether the defendants breached Section 88(2) of the Constitution

- [22] The creation of the contract of employment between the claimant and the Government of Grenada was executed on 18th February 2021. Following the execution of the contract, the claimant received a letter of appointment under the hand of the Governor General of Grenada dated 22nd February 2022 for a period of two (2) years commencing on the 1st day of December 2021.

- [23] On the date of the trial, Mr. Ferguson K.C for the claimant belatedly presented the letter of appointment by the Governor General. The letter reads:

"Dear Ms Simon,

By virtue of Section 88(2) of the Grenada Constitution Order 1973, and in pursuance of all other powers thereunto enabling me, I, acting in accordance with the advice of the Judicial and Legal services Commission (JLSC), am pleased to appoint you as Legal Officer, Attorney General's Chambers, Ministry of Legal Affairs, on contract, for a period of two (2) years with effect from 1st December 2021.

This appointment will be on terms and conditions set out in the attached Contract.

SGD
Dame Cecile La Grenade
Governor General"

- [24] The defendants contend that **Section 88 of the Constitution** is only applicable to appointed public officers. The defendants contend that the contract specifically provided that an employer/employee relationship did not exist. The defendants state further that the issuance of the letter of appointment to the claimant by the Governor General subsequent to the signing of the contract did not abrogate from the claimant's contract, thereby creating an employer/employee relationship.

- [25] Although the defendants contend that the claimant was not a public officer, after issuing the letter of termination under the hand of the Permanent Secretary to the Ministry of Legal Affairs, another termination letter under the hand of the Governor General was issued.
- [26] It is well established that the power to remove persons from office in the Attorney General vests in the Governor-General, acting in accordance with the advice of the JLSC .
- [27] Mr. Ferguson K.C for the claimant argues that the subsequent attempt by the Governor General to remove the claimant from office was ineffectual and in any event a case was not put to the claimant to answer before the JLSC's recommendation to the Governor General for the claimant's removal from office.
- [28] Mr. Ferguson K.C relies on the Privy Council decision of **Horace Fraser v The Judicial and Legal Services Commission and The Attorney General**². In that case, the Board had to determine whether the JLSC and the Government had taken steps to 'remove' the appellant from his office as a magistrate, when a recommendation and notice to determine his term of office was made prior to the natural expiry date of his contract. The Privy Council concluded that to bring an officer's engagement to an end prior to its natural expiry involved a 'removal' from office.
- [29] It is the defendants' argument that the claimant was a service provider/independent contractor under a contract and that the contract governed her termination, which is contrary to the principle enunciated in **Fraser**³.
- [30] However, although the defendants state that the claimant's employment is purely guided by the terms of the contract, the defendants clearly accepted the applicability of **Section 88** of the **Constitution** by the acknowledgement that removal, whether outright or under a contractual provision, is only permissible if

² (2008) UKPC 25

³ (2008) UKPC 25

made pursuant to a decision reached by the JLSC at the time of removal. The withdrawal of the purported termination by the Permanent Secretary, Anna Brizan, which was superseded by the letter of the Governor General acting on the advice of the JLSC demonstrates an acknowledgement that the incorrect procedure had been adopted by Permanent Secretary.

- [31] In a letter dated 27th January 2023, after the claimant was unlawfully terminated by the Permanent Secretary correspondence was sent to the JLSC by the said Permanent Secretary. Therein, it is stated:

“I write relative to your email sent on 20th January 2023, wherein you requested more information regarding the termination of Ms. Laren Kay Simon and on what grounds it is being done.

“Ms. Simon was by letter dated 24th October 2022 advised that her services were being terminated in accordance with clause 7 of the aforesaid contract because they are no longer required as an independent contractor.

...

“I hope that the above explanation has provided the clarity needed to facilitate the request as set out in our letter dated 18th January 2023...”

- [32] Fergusson K.C. argues that the termination letter issued by the Governor General failed to show the existence of a reasonable cause for the claimant’s removal.

- [33] Lord Diplock in **Endell Thomas v Attorney General of Trinidad and Tobago**⁴ stated that an autonomous commission’s power to remove an individual from a public office must be interpreted as meaning “remove for reasonable cause” and not the embracing of a power to remove at its own whim and fancies, as any other meaning would frustrate the whole reason behind the creation of these autonomous commissions in the public service.

- [34] Essentially, the letter issued by the Governor General referencing the claimant’s appointment pursuant to Section 88 of the Constitution on the advice of the JLSC superseded the contractual terms made on the 18th February 2021.

⁴[1982] AC 113

[35] Both **Horace Frazer** and **Endel Thomas** cases dealt with the removal of officers appointed to work in public offices. It was held that such a decision can only be valid if the Commission at that time determines, in accordance with a proper procedure, that reasonable cause exists for the officer's removal.

[36] As it stands, based on the documents before the court, no reasonable cause for the removal of the claimant has been demonstrated by the defendants, in breach of **Section 88(2)** of the **Constitution**. The unilateral termination of the claimant's contract without cause, or if there was cause without giving reasons and a proper hearing, is a breach of an enshrined constitutional right.

[37] Lord Diplock in **Thomas**, state that the reason for the plethora of service commissions, including the JLSC, was to insulate public officers from being dismissed at will. The proper constitutional procedures are required to be followed to terminate or remove from office.

[38] In addition, as indicated by the Privy Council in **Fraser**, any notice to determine the engagement under a contract prior to its natural expiry constitutes a removal which can only be justified by the Commission upon reasonable cause. Clause 7 of the claimant's contract, having regard to the letter of appointment by Governor General, must be read in conjunction with the Constitution for any purported removal other than effluxion of time or resignation.

[39] Lord Mance in **Fraser**⁵ stated the following:

“Thus a purported contractual termination under cl 5 clearly constitutes a removal and cannot be effective unless the commission has beforehand determined, in accordance with a proper procedure, that reasonable cause exists under one of the stated heads. As to cl 6, the Board has expressed its view that a notice to determine the engagement prior to its natural expiry constitutes a removal; and on that footing such a notice can once again only be justified in the event, determined by the commission, that reasonable cause for such removal exists. **The constitutional protection therefore operates over and above any contractual provisions for termination against the officer's will of the engagement prior to its natural expiry date.**” [emphasis added]

⁵ (2008) UKPC 25

[40] The claimant's contract although executed prior to the letter of appointment, is subject to that constitutional requirement for removal from office. Clause 7 of the claimant's contract by itself makes dismissal of the claimant subject to a condition in the contract. The defendants by their conduct did not observe those limitations or conditions set out in the contract neither or section 88 (2) of the Constitution were observed by the defendants.

[41] There was a serious failure by the defendants both under the contract and the constitution to afford to the claimant the protection of the law to which she was were entitled. Applying the jurisprudence to the facts, the claimant having been unlawfully removed from office without cause and in breach of Section 88 of the constitution is entitled to the payment of her actual pecuniary loss which is to be measured by the sum she would have received if she had continued her employment until the effluxion of time under the contract. Accordingly, the claimant is entitled to her fee from the month of April 2023 to the 30th November 2023.

Whether alternative remedies are available to the Claimant

[42] By order dated 29th February 2024, the court directed the parties to file submissions including authorities on the issue of alternative remedies.

[43] The defendants state that the extant claim is not suitable as a constitutional claim, based on the allegation that the employment status of the claimant was that of an independent contractor. The defendants' view therefore is that the claim is primarily suited for breach of employment contract, and reliance is placed on Clause 7 of the claimant's contract.

[44] The cases of **Jaroo v Attorney General of Trinidad and Tobago**⁶ and **Attorney General of Trinidad and Tobago v Ramanoop**⁷ state that where there is a parallel remedy at common law or under statute, constitutional relief should not

⁶ [2002] UKPC 5

⁷ [2005] UKPC 15

be sought, as it is considered a misuse of the court's process. This is unless the circumstances complained of include some feature which makes it appropriate to take the course of constitutional relief.

[45] The letter of appointment belatedly provided by Mr. Ferguson K.C at the trial has effectively made the issue of alternative remedies redundant, as the claimant's removal from office could only have been in keeping with the principles espoused above.

[46] The material issue of whether the nature of the claimant's employment relationship subjects her to the constitutional protection of **Section 88(2) of the Constitution** is a legal issue which makes the claimant suited to invoke the constitutional jurisdiction of this court. As indicated above, the constitutional protection therefore operates over and above any contractual provisions for termination of the public officer against the officer's will prior to its natural expiry date. Therefore, it was appropriate for the claimant to commence action before the High Court through an originating motion.

Whether the Claimant is entitled to vindicatory damages

[47] It is trite that parties to a case are bound by their pleadings⁸. The claimant in her claim seeks exemplary and aggravated damages. However, Mr. Ferguson K.C at the trial argued at length that an award for vindicatory damages should be made despite a vindicatory award not being pleaded.

[48] In relation to vindicatory awards, Lord Nicholls of Birkenhead in **Ramanoop Attorney General of Trinidad and Tobago v Ramanoop**⁹ said:

"19. An award of compensation will go some distance towards vindicating the infringed constitutional right. How far it goes will depend on the circumstances, but in principle it may well not suffice. The fact that the right violated was a constitutional right adds an extra dimension to the wrong. An additional award, not necessarily of substantial size, may be needed to reflect the sense of public outrage, emphasise the importance of the

⁸ George W. Bennett Bryson's Co. Ltd. v George Purcell [2018] ECSCJ No. 39

⁹ [2005] UKPC 15; [2006] 1 AC 328

constitutional right and the gravity of the breach, and deter further breaches. All these elements have a place in this additional award. 'Redress' in section 14 is apt to encompass such an award if the court considers it is required having regard to all the circumstances. Although such an award, where called for, is likely in most cases to cover much the same ground in financial terms as would an award by way of punishment in the strict sense of retribution, punishment in the latter sense is not its object. **Accordingly, the expressions 'punitive damages' or 'exemplary damages' are better avoided as descriptions of this type of additional award.**" [emphasis added]

- [49] The authorities clearly provide that when exercising this constitutional jurisdiction, the court is concerned to uphold, or vindicate, the constitutional right which has been contravened. In the case of **Angela Inniss v AG**¹⁰, a vindicatory award was made although the claimant claimed exemplary damages.
- [50] The purpose of a vindicatory award is not to punish the Executive. It is to vindicate the constitutional right of the claimant. The removal from public office without cause can result in significant distress and embarrassment and can also have an adverse effect on the claimant's future employment.
- [51] The jurisprudence in relation to constitutional breaches allows a claimant who suffers a denial of a constitutional right to be compensated for that wrong, which might include distress and injured feelings.
- [52] It has been held that the sum appropriate to be awarded to achieve this purpose will depend upon the nature of the particular infringement and the circumstances relating to that infringement. It will be a sum at the discretion of the trial judge. In some cases, a suitable declaration may suffice to vindicate the right; in other cases an award of damages, including substantial damages, may seem to be necessary¹¹.
- [53] The claimant said that she had just returned from attending a conference when she received the first letter from the Permanent Secretary purporting to dismiss her with immediate effect on the ground that her services under the contract as an independent contractor were no longer required.

¹⁰ [2008] UKPC 42

¹¹ *Merson v Cartwright and the Attorney General of The Bahamas* [2005] UKPC 38

- [54] Both purported terminations, first by the Permanent Secretary and then Governor General on the advice of the JLSC without any further communication with the claimant were procedurally unfair and an infringement on the claimant's constitutional right. As indicated above, the defendants' purported removal of the claimant did not comply with the procedures under clause 7 of the contract, nor with the legal requirements for removal relating to specific officers under Section 88 of the Constitution.
- [55] Mr. Ferguson K.C relies on the decision in **Fraser** where an award of \$10,000.00 was made in 2005 for distress and inconvenience but is of the view that that an increased award should be made having regard to date since that award.
- [56] Applying those principles to this case, this court is of the view that the claimant is entitled to an award to vindicate her right having regard to the two purported unlawful attempts to remove her from office. The second purported removal was made even after the claimant challenged the manner she was purportedly removed from office without cause or a fair hearing in breach of the constitution.
- [57] The claimant in the first attempt must have suffered some distress although not financially inconvenienced as she was in receipt of her monthly fee even not actually performing any duties under the contract. However, the court is of the view that the second purported removal made, even with the objections raised by legal counsel, would have caused further inconvenience and distress as the claimant's fees would have been discontinued. The claimant did not provide any evidence of the potential or significant effect on her future employment prospects. The court applying the principles in the **Fraser**, is of the view that a vindicatory award in the sum of \$20,000.00 is an appropriate award having regard to the two purported wrongful terminations.

ORDER

- [58] In summary and for the foregoing reasons, it is hereby ordered and declared as follows:

1. It is declared that the purported termination with immediate effect of the claimant by the first defendant, through Anna Brizan, the Permanent Secretary Ministry of Legal Affairs, by letter dated 24th October 2022, contravenes Section 88(2) of the Constitution of Grenada and is null, void and of no effect.
2. It is also declared that the purported termination of the claimant as Legal Officer within the Office of the Attorney General by the Governor General and acting in accordance with the advice of JLSC, by letter dated 20th February 2023, contravenes Section 88(2) of the Constitution of Grenada is null, void and of no effect.
3. The defendants shall pay the claimant the fees for the unexpired term of her contract with the Government of Grenada, for the period April to November 2023, inclusive with interest at the rate of 3% from the date of filing the claim until judgment and at the rate of 6% from the date of judgment until payment in full.
4. The defendants shall pay the claimant vindictory damages in the sum of \$20,000.00 for distress and inconvenience.
5. The claimant is awarded costs to be assessed if not agreed pursuant to CPR 56.11(5).

Agnes Actie
High Court Judge

By the Court

Registrar