

**THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA**

IN THE HIGH COURT OF JUSTICE

IN THE MATTER OF Sections 3(b), 12(1) and Section 18 of The Antigua and Barbuda Constitution Order, Cap. 23

-and-

IN THE MATTER OF SECTIONS 7 and 18 of the Industrial Court Act, Cap.124, and the Industrial Court (Procedure) Rules No. 61 of 2015 and in particular THE Attorney General powers under Rule 23 thereof

-and-

IN THE MATTER of an Application for recusal of Mr. Charlesworth O.M. Brown, President of the Industrial Court from all cases in respect of the Applicant appearing before the said President in all matters as a Trade Unionist

-and-

IN THE MATTER of an Application for Administrative Orders, pursuant to Rules 56 (7) of the Civil Procedure Rules (2023) Edition

-and-

IN THE MATTER OF AN APPLICATION FOR AN INTERIM INJUNCTION pursuant to Rule 17 of the Civil Procedure Rules (Revised Edition 2023) TO PREVENT THE INDUSTRIAL PROCEEDING TO HOLD CONTEMPT HEARINGS AGAINST THE APPLICANT

CLAIM NO. ANUHCv2023/0379

BETWEEN

ANDERSON CARTY

Claimant/Respondent

-AND-

THE ATTORNEY GENERAL

Defendant/Applicant

Appearances:

Wendell Alexander of counsel for the Claimant/Respondent

Joy Dublin, Zachary Phillips and Deshawn Browne of counsel for the Defendant/Applicant

2024: February 6th
February 22nd

DECISION

[1] **DRYSDALE, J.:** The matter before the Court is an application to strike out the Fixed Date Claim wherein the claimant/respondent seeks the following reliefs:

'1. A declaration that the 1st respondent acted unconstitutionally and or unlawfully, and therefore the action to issue a summons of contempt of court against the applicant is null and void.

2. A declaration that the first name respondent breached and or threatened to breach the applicant's right to freedom of expression pursuant to sections 3[b] and 12[1] of the Antigua and Barbuda, Constitutional Order, Chapter 23 of the Laws of Antigua and Barbuda.

3. A declaration that the Industrial Court's reluctance to determine issues of contempt against employers within its powers under the Industrial Court Act, Cap 214 of the Laws of Antigua and Barbuda is unlawful and amounts to a denial of justice and due process.

4. A declaration that a failure to determine a plethora of cases waiting decisions for periods between 4 to 8 years amounts to a denial of justice, breach of natural justice, and breach of the constitutional rights of those persons the Applicant represents before the court or, alternatively, a fundamental breach of good Industrial Relations practices by not delivering its decision within a reasonable time.

5. An order that in light of all that has happened, the 1st named Respondent be compelled to recuse himself from all proceedings in which the Applicant is involved as an advocate or representative before the Industrial Court.

6. An order compelling the 2nd named Respondent, Attorney General, be compelled to intervene in matters which are the subject of the issues raised in these proceedings and which are subject of the issues before the Industrial Court, pursuant to section 18 of the Industrial Court Act, Chapter 214 of the Industrial Court, [Procedure] Rules No. 61 of 2015.

7. Damages inclusive of aggravated and exemplary damages.

8. Costs.

9. Interest pursuant to statute; and such other relief as the Court deems fit.'

[2] The respondent filed an affidavit and exhibits in support of the Fixed Date Claim.

[3] Subsequently on 28th November 2023 the applicants filed two applications, one to strike out the statement of case and the other to remove the first applicant as party to these proceedings. In relation to the latter application, it is contented that the first applicant as a member of the Industrial Court is clothed with immunity in the performance of his duties and therefore is an inappropriate party to these proceedings. The applicants also relied on section 31 of the Industrial Court Act that stipulates that no member of the Court could be compelled to appear as a witness or a party in any proceedings in support of that application. On the day of the hearing of the application the respondent conceded that the first applicant was an inappropriate party to the proceedings and therefore an order reflecting this concession was made. The respondent also conceded that the first relief claimed could not be sustained in the circumstances.

[4] The substantive application therefore concerns the application to strike out the statement of case. The applicant advances that for the following reasons the statement of case should be struck out:

i. It discloses no reasonable cause of action under the law the Industrial Court Act or in relation to any specific breach of the Constitution of Antigua and Barbuda and/or

ii. Is frivolous and vexatious and an abuse of the process of the Court.

iii. There are no absolute rights under the Constitution. Most, if not all rights, including those of the claimant as a person in Antigua and Barbuda, are expressly made subject to the rights and freedom of others and public interest.

iv. There is no pleaded or viable cause of action of breach or threatened freedom of expression under Section 3 [b] and 12 [1] of the Constitution.

v. The constitution of Antigua and Barbuda does not recognize representative action. Reflected in this claim, namely paragraphs 3 and 4 of the relief sought in the claim and paragraph 19, bullet point 6 of his affidavit.

vi. There is no basis in law and, in fact, for the Attorney General to intervene pursuant to section 18 of the Industrial Court Act and the Industrial Court (Procedure) Rules.

vii. The matters complained of by the claimant do not give rise to a question of public importance or matter affecting public interest and for which the public interest should be represented.

Alternatively

3. The claimant has adequate redress and or alternative remedy regarding this claim:

- i. That the first respondent acted unconstitutionally and unlawfully in issuing a summons of contempt, as provided for under section 17 of the Industrial Court Act;
- ii. To determine issues of contempt against employers is unlawful and or amounts to a denial of justice and due process as provided for under section 103 of the Constitution and the Supreme Court Order, cap 422A of the Laws of Antigua and Barbuda.

4. The constitution of Antigua and Barbuda provides that where there is adequate means of redress available to the claimant under any law, then the court may decline to exercise its powers.

5. The claimant did not seek to avail himself of any of the alternative remedies before he filed his constitutional motion.'

- [5] The applicant filed an affidavit in support of the application wherein he asserted that the Constitution does not recognize representative actions aligning with the respondent's claim. He also contends that there is no legal basis for the second applicant to intervene in the proceedings citing section 18 of the Industrial Court Act.
- [6] The applicant further argues that the issues raised in the claim do not constitute a question of public importance, impacting public interest and thus do not warrant representation based on public interest.
- [7] Finally, the applicant contends that the respondent has alternative remedies available, suggesting that resorting to the Constitutional Court for issues like contempt of court summons might not be the appropriate course. The applicant proposed that the respondent should seek redress through the Court of Appeal or by filing a complaint with the Judicial and Legal Services Commission.
- [8] It is noted that the respondent filed an amended fixed date claim and affidavit after the notice of application to strike out was filed. Pursuant to the legal authority of **The Attorney General v Darrel Montrope**¹ the respondent is precluded from relying on the amended application in advancing his claim or responding to the Notice of application to strike out, the proceedings having been stayed.
- [9] Before articulating the decision of the court, I feel it necessary to address an issue that appears to be occurring with more frequency particularly regarding administrative matters being the indiscriminate use of administrative terms often creating uncertainty as to the precise ambit of the claim being advanced. The respondent's claim is a combination of constitutional relief, judicial review, and declaratory relief for alleged breaches. In relation to the constitutional claim, the respondent has asserted violations of Section 3 and 12 of the Constitution, specifically related to

¹ SLUHAP2019/0021

freedom of expression, in connection with the constitutional claim against the President of the Industrial Court. The pleaded case of the respondent also suggests that the failure to provide prompt decisions amounts to a breach of constitutional rights of the aggrieved persons that he represents. However, the respondent has not identified any specific provision in the Constitution that he relies on to found his case. This absence is violative of CPR 56.3. 4B which provides that an affidavit in support must state “in the case of a claim under the relevant Constitution - the provision of the Constitution which the claimant alleges has been, is being likely to be breached.”

- [10] Specifying the relevant constitutional provisions is crucial for maintaining a claim of constitutional breach thereby making it essential for the respondent to clearly articulate the constitutional basis for the alleged breach. The absence of clear identification in pleadings act as a hindrance to understanding the case that must be determined and goes contrary to the pith and substance of the CPR which obligates parties to clearly set out their case for determination. This helps avoid confusion and ensures a more efficient process. Although the respondent at the insistence of the court for clarification on this issue advised that a constitutional claim was not being pursued in relation to the issue of the absence of timely decisions, I think it important to reiterate that the adherence to proper pleading is essential. The respondent in this case but also any user of the court should be discouraged from loosely using constitutional and or administrative terms which does not align with their intended case and without adherence to the rules. Parties play a crucial role in promoting the court’s overriding objective and clearly defining and presenting issues enhances the efficiency and fairness of the legal system. Therefore, parties are encouraged to use precise language to avoid ambiguity and ensure a more accurate interpretation of legal proceedings.

ANALYSIS

- [11] CPR 26.3(1)(b) provides that the court may strike out a statement of case or part of a statement of case if it appears to the court that the statement of case or the part to be struck out does not disclose any reasonable ground for bringing or defending a claim.
- [12] Although the court is possessed with the power to strike out, it is the settled legal position that such applications are severe and should be used sparingly only in clear and obvious cases considering the potential severity of such actions. Pereira CJ in the case of **Didier and others v Royal Caribbean**

Cruises Ltd.; Royal Caribbean Cruises Ltd v Medical Associates Ltd and others² endorsed this view and stated further:

‘A party's statement of case should not be struck out where the argument between the parties involves a substantial point of law which does not admit of a plain and obvious answer, or the law is in a state of development, or where the strength of the case may not be clear because it has not been fully investigated. The jurisdiction to strike out should be used sparingly since the exercise of the jurisdiction deprives a party of its right to a fair trial and its ability to strengthen its case through the process of disclosure and other court procedures such as requests for information. It should also be taken into account that the examination and cross-examination of witnesses often change the complexion of a case.’

- [13] The court will bear the above in mind in examining whether the application should be granted. The court is tasked with the determining the validity of the respondent's claim against the applicant, assessing whether the statement of claim *inter alia* discloses a cause of action. This examination is critical in deciding the merit of the allegations put forth by the respondent.

Freedom of Expression

- [14] The respondent is seeking a declaration asserting the violation or imminent violation of his right of freedom of expression pursuant to sections 3[b] and 12[1] of the Antigua and Barbuda, Constitutional Order. This the respondent asserts is consequent upon the contempt charges being laid against him for making comments about the Industrial Court. The respondent's assertion requires further scrutiny to determine whether the alleged charge is a legitimate restriction on freedom of expression or an unjustifiable infringement on his fundamental right.
- [15] Whilst the applicants have urged the court to find that the respondent has not discharged the burden of proof that the restriction is not reasonably justifiable in a democratic society, this presents an evidential argument. At this juncture during a strike out application, delving into the merits of evidence is inappropriate. In the case of **Wenlock v Moloney**³ it was held that so long as the statement of claim or the particulars disclose some cause of action or raise some question fit to be decided by the

² [2016] ECSCJ No. 105

³ (1965) 2 All E.R.871

court, the mere fact that the case is weak, and not likely to succeed, is no ground for striking it out. This reflects the principles that summary processes like striking out a claim are not intended to substitute for a full trial neither are they meant to prejudge the merits of a case but rather to determine whether there is a legitimate cause of action for determination. The primary focus should be whether the respondent has presented a valid cause of action, which seems evident through the plea that the contempt charges infringe upon his freedom of expression.

- [16] However, constitutional claims require a more stringent standard and the absence of an alternative adequate means of redress is the pivotal consideration in evaluating the strike out application. Indeed the case **Harrikisoorn v The Attorney General [1979] 3 WLR 62** reminds that a constitutional motion cannot be used as a substitute for invoking the legal process established for challenging an unlawful administrative action. Lord Diplock's carefully reasoned judgment offers valuable insights into the parameters of proviso and provided guidance on how the court should exercise its discretion. In a much often quoted dicta he stated:

'The notion that whenever there is a failure by an organ of government or a public authority or public officer to comply with the law this necessarily entails the contravention of some human right or fundamental freedom guaranteed to individuals by Chapter Page 13 of the Constitution is fallacious. The right to apply to the High Court under section 6 of the Constitution for redress when any human right or fundamental freedom is or is likely to be contravened, is an important safeguard of those rights and freedoms; but its value will be diminished if it is allowed to be misused as a general substitute for the normal procedures for invoking judicial control of administrative action. In an originating application to the High Court under section 6 (1), the mere allegation that a human right or fundamental freedom of the applicant has been or is likely to be contravened is not of itself sufficient to entitle the applicant to invoke the jurisdiction of the court under the subsection if it is apparent that the allegation is frivolous or vexatious or an abuse of the process of the court as being made solely for the purpose of avoiding the necessity of applying in the normal way for the appropriate judicial remedy for unlawful administrative action which involves no contravention of any human right or fundamental freedom.'

- [17] The approach to be taken in making such a determination is outlined in the case of **The Attorney General v Ramnaroop**.⁴ In that case Lord Nicholls of Birkenhead expressed the need to demonstrate exceptional circumstances that warrant the need to bypass alternative remedies in constitutional matters. Lord Birkenhead stipulated that the case under consideration should contain some additional feature which 'at least arguably, indicates that the means of legal redress otherwise available would not be adequate. He continued by saying that 'to seek constitutional relief in the absence of such a feature would be a misuse, or abuse, of the court's process. A typical, but by no means exclusive, example of a special feature would be a case where there has been an arbitrary use of State power.'
- [18] Further in the regional case of **Brandt v The Commissioner of Police**⁵, which was ultimately determined by the Privy Council, the Court reiterated that position expressed by Lord Diplock in **Hunter v Chief Constable of the West Midlands Police**⁶ and stated "to seek constitutional relief where there is a parallel legal remedy will be an abuse of the court's process in the absence of some feature "which, at least arguably, indicates that the means of legal redress otherwise available would not be adequate." Extrapolated from these legal authorities is that the Courts will frown on a party seeking constitutional redress as a means of collateral attack on a judgment where there are no exceptional circumstances and where adequate alternative remedies existed which an aggrieved party had to option to pursue.
- [19] Given the nature of this claim, there are effective alternative remedies accessible to the respondent, including an appeal of the contempt charge and proceedings for judicial review for breach of natural justice. The respondent has filed an appeal of the contempt charge which by its nature would not only address the legality of that charge, the right to any freedom of expression and any other resultant effects but would also provide a remedy for any breach of this fundamental right. The proviso as contained in section 18 of the Constitution which requires the exhaustion of adequate alternative remedies therefore applies in this case and the respondent has failed to meet the threshold to institute proceedings for breach of this fundamental right. Therefore, a direct approach to the constitutional court is not justifiable.

⁴ [2005] 4 LRD 301

⁵ [2021] UKPC at para 35

⁶ [1982] AC 529

Locus Standi

[20] The respondent is pursuing relief in the form of declarations asserting that the failure to determine issues of contempt and certain cases constitutes a breach of natural justice. The respondent has framed the reliefs as follows:

‘3. A declaration that the Industrial Court’s reluctance to determine issues of contempt against employers within its powers under the Industrial Court Act, Cap 214 of the Laws of Antigua and Barbuda is unlawful and amounts to a denial of justice and due process.

4. A declaration that a failure to determine a plethora of cases waiting decisions for periods between 4 to 8 years amounts to a denial of justice, breach of natural justice, and breach of the constitutional rights of those persons the Applicant represents before the court or, alternatively, a fundamental breach of good Industrial Relations practices by not delivering its decision within a reasonable time.’

[21] Clearly the respondent is seeking to mount a case on behalf of unnamed persons, experiencing grievances related to the Industrial Court’s handling of contempt issues and whom he suggests have been aggrieved by the failure to render prompt judicial decisions. The fact that the respondent is not a party to any of those matters raises the issue of locus standi of the respondent in these circumstances. Although the respondent clarified the nature of this claim and confirmed that it did not relate to a constitutional breach, his claim and submissions on this issue are replete with allegations of constitutional breaches. Thus for the purposes of clarity reference is made of the authority of **Goodwin Friday et al v The Attorney General of St Vincent et al Claim Number 2007/0179** wherein Thom J (as she then was) highlights limitations on representative claims for fundamental rights, especially outside matters of detention stating ‘ [s]ection 16(1) of the Constitution is very clear on an application to enforce the fundamental rights provisions has to be made by the person alleging the contravention except where the person is detained.’ Moreover section 18(1) of the Constitution emphasizes the necessity for every constitutional complaint to be made personally thereby impacting the respondent’s ability to bring such actions on behalf of others.

[22] As it relates to the claims of breach of natural justice, CPR 56.2 outlines the categories of persons with a legal interest capable of bringing an administrative claim. CPR 56.2 reads as follows:

(1) An application for judicial review may be made by any person, group, or body which has sufficient interest in the subject matter of the application.

(2) This includes –

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

[23] As indicated previously, the respondent is not a party to any of the referenced cases before the industrial court which he utilizes to complain of the actions or inaction of the industrial court but rather an a non-legal advocate. The respondent asserts that notwithstanding he will suffer reputationally and financially as a result of the inaction of the Industrial Court. Potential financial distress in these circumstances resulting from a delayed court decision is not a basis for acting in a representative capacity. Representation usually requires a legal relationship or authorization from the party involved none of which factor in these proceedings. The respondent has also not made any application to act in a representative capacity pursuant to CPR 21. The respondent has therefore failed to establish a proper locus standi reflecting a lack of a valid legal interest or right to bring this case which is fatal to the proceedings.

Recusal

[24] The respondent contends that, due to the history between himself and the President of the Industrial Court, that the President should be compelled to recuse himself from all proceedings involving him as an advocate or representative before the court. Although the respondent had previously raised concerns a formal application for recusal was only recently filed and thus is pending determination.

For an order of mandamus to be granted, it is necessary to demonstrate that the defaulting party deliberately refused to exercise discretion. This typically requires evidence of delay. In this case the respondent delayed filing the recusal application. The respondent's delay in the filing of the application does not render it suitable for this court to intervene and bypass the ongoing judicial process. Without evidence demonstrating delay or refusal in the decision-making process, an application for mandamus to compel the President is premature as there is no basis for the court to exercise its discretion in such circumstances. This claim therefore lacks viability and cannot be sustained through an amendment.

Intervention of the Attorney General in matters before the Industrial Court

[25] Section 18(1) of the Industrial court Act provides the basis for the Attorney General to intervene in matters within the Industrial Court when deemed appropriate. It reads as follows:

18. (1) Where any dispute is before the Court, the Attorney-General may, for the purpose of giving such assistance to the Court as he may be able to provide with the consent of the Court, intervene, where it appears to him that some question of public importance or affecting the public interest or both has arisen and that it is fit and proper that the public interest should be represented therein.

(2) No intervention by the Attorney-General shall be taken to cause the Attorney-General to become a party to the dispute before the Court, and accordingly no order or award may be made against the Attorney-General either in the matter or, subject to section 10 (2), as to costs.

(3) Where the Attorney-General intervenes in a dispute he may instruct such persons as he thinks fit to appear on his, behalf.'

[26] Pursuant to section 18 above the Attorney General has a discretion whether to intervene in matters of public importance. The respondent is correct when he argues that the role of the Attorney General is not to take over the conduct of a case but to provide assistance on matters of public importance. However, based on the pleaded case it is evident that the respondent is attempting to compel the Attorney General's interference not for the purpose of providing assistance on certain legal issues

but rather as an effort to supervise the proceedings which would constitute an interference in the judicial process.

- [27] The respondent's assertion that the request for the Attorney General's intervention in matters before the Industrial Court is unprecedented in this jurisdiction and therefore requires a ruling on the application of section 18 of the Act to guide the Attorney General's intervention does not provide a basis to allow this claim to continue. Lord Slynn of Hadley in the case of **R v Secretary of State for the Home Department ex parte Salem**⁷ cautioned that:

'The discretion to hear disputes, even in the area of public law, must be exercised with caution and appeals which are academic between the parties should not be heard unless there is a good reason in the public interest for doing so as for example (but only by way of example) where a discrete point of statutory construction which does not involve detailed consideration of the facts, and where large number of similar cases exist or are anticipated so that the issue will most likely need to be resolved in the near future.'

- [28] Given the court's finding that the purpose and intention of the respondent's claim to compel the Attorney General's intervention was driven by a supervisory intent rather than a genuine need for legal assistance, coupled with the absence of a discernable legal issue it is wholly inappropriate for the court to persist in an academic exercise.
- [29] I find therefore that there is no discrete point of law or other basis which could be saved by an amendment to allow this claim to proceed.

ORDER

1. The application to strike out is granted.
2. Costs in the sum of \$2,500.00.

⁷ [1999] 1 AC 450

Jan Drysdale
High Court Judge

By The Court

Registrar