

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA**

**IN THE HIGH COURT OF JUSTICE
(Civil)**

CLAIM NO.: SLUHCV2021/0479

BETWEEN:

THE WATER AND SEWERAGE COMPANY INC.

Applicant

and

ANDIE P. JN PANEL

Respondent

Before:

The Hon. Mde. Justice Kimberly Cenac-Phulgence

High Court Judge

Appearances:

Mr. Leslie Prospere for the Applicant

Mrs. Maureen John-Xavier for the Respondent

2022: April 14;
2023: April 3.

JUDGMENT

- [1] **CENAC-PHULGENCE, J:** By application filed on 30th November 2021, the applicant, The Water And Sewerage Company Inc (“WASCO”) seeks (i) an extension of time to serve the respondent, Mr. Andie Jn Panel (“Mr. Jn Panel”) with its Grounds of Appeal against the decision of the Labour Tribunal dated 6th May 2021 (“the Tribunal’s decision”); (ii) relief from sanctions; (iii) a stay of execution of the decision of the Labour Tribunal dated 6th May 2021 pending the conclusion of the intended appeal of the said decision; and (iv) no order as to costs.

- [2] The application seeks to invoke the Court's inherent jurisdiction to extend the time to appeal against the decision of the Labour Tribunal.
- [3] The grounds of the application are as follows:
- (i) WASCO sought and secured a legal opinion from the law firm of Gordon, Gordon & Co as to its prospects of successfully challenging the decision of the Labour Tribunal dated 6th May, 2021;
 - (ii) WASCO's board of directors was required to consider and ratify the legal opinion of the law firm of Gordon, Gordon & Co before determining whether it ought to proceed with its intended challenge of the decision of the Labour Tribunal dated 6th May, 2021; and
 - (iii) WASCO's board of directors only very recently ratified the legal opinion of the law firm of Gordon, Gordon & Co after being reconstituted in the aftermath of the 26th July, 2021 general elections in Saint Lucia that resulted in a change of government.
 - (iv) WASCO's failure to comply with the mandatory timeframe for filing and serving the respondent with its Grounds of Appeal against the decision of the Labour Tribunal dated 6th May, 2021 was unintentional.
 - (v) WASCO will suffer considerable financial prejudice if it is made to pay the Intended Respondent the award of the Labour Tribunal which stands at \$150,422.21.
 - (vi) There is a grave danger that a judgment in WASCO's favour on appeal would be rendered entirely nugatory unless the prevailing status quo is maintained.
- [4] The application is accompanied by an affidavit in support of Mr. Edmund Regis ("Mr. Regis"), General Manager of WASCO. In that affidavit, Mr. Regis sets out the facts as relates to Mr. Jn Panel's termination and the basis of this application for extension of time to appeal and for a stay of execution.

Background Facts

- [5] Mr. Jn Panel was employed as a Water Quality Technologist² under a two-year contract of employment dated 13th July 2017 and which commenced on 7th August 2017. By letter dated 10th November 2017, Mr. Jn Panel was terminated

by WASCO with immediate effect pursuant to clause 12 of the contract of employment. Clause 12 of the contract of employment stated: "During the first six (6) months of your commencement of duties in the position, either party, i.e. you or WASCO, without any cause or penalty may terminate this agreement."

- [6] On 10th October 2018, Mr. Jn Panel submitted a claim to the Labour Commissioner against WASCO alleging inter alia that he had been wrongfully and unfairly terminated. The Labour Commissioner subsequently referred Mr. Jn Panel's claim to the Labour Tribunal for determination.

- [7] On 6th May 2021 the Labour Tribunal delivered a written decision ("the decision") in which Mr. Jn Panel was awarded (i) remuneration from November, 2017 to July, 2019 and (ii) due gratuity. The Intended Respondent is thus entitled to emoluments totaling \$150,422.51.

- [8] By letter dated 19th July 2021, the then Chairman of WASCO retained the firm of Gordon, Gordon & Co. to provide a legal opinion as to its prospects of successfully challenging the decision. On 23rd August 2021, Gordon & Co issued its legal opinion to WASCO whose board of directors was required to consider and ratify the legal opinion but was unable to do so until it was duly reconstituted in the aftermath of the 26th July 2021 general elections in Saint Lucia that resulted in a change of government. WASCO's board of directors only very recently ratified the legal opinion of Gordon, Gordon & Co after being duly reconstituted on 9th November 2021.

- [9] Mr. Regis avers that the delay in filing the grounds of appeal were not intentional. He states further that WASCO will suffer considerable financial prejudice should it, upon an erroneous legal premise, be compelled to pay the Labour Tribunal's award of \$150,422.21 to Mr. Jn Panel.

- [10] He further avers that he believes that there is a considerable risk that Mr. Jn Panel may dissipate the Labour Tribunal's large award in his favour with little or no prospect of WASCO being able to recover the same should it prevail upon its challenge to the decision, and that there is a grave danger that a judgment in

the WASCO's favour would be rendered entirely nugatory unless the prevailing status quo is maintained. Mr. Regis exhibits to his affidavit the draft Grounds of Appeal.

[11] Mr. Jn Panel opposes the application on the basis that WASCO has filed an application for an extension of time to file and serve grounds of appeal when the correct application ought to be an application for extension to file a claim for judicial review. He further argues that WASCO has not met the threshold for leave to apply for judicial review in that it does not have an arguable case with a reasonable prospect of success and further that there has been unreasonable delay in making the application it having been filed six (6) months after the decision was rendered. Mr. Jn Panel asks that the application be dismissed with costs.

[12] Germane to the determination of this application is a consideration of the nature of the proceedings contemplated by section 448 of the **Labour Act** ("the Act"). That section provides as follows:

"448. Decision not to be questioned

Any party to an application or matter before the Tribunal **shall be entitled to apply to the High Court for judicial review** in respect of any decision of the Tribunal on grounds including one or more of the following—

- (a) the Tribunal did not have jurisdiction in the proceeding;
- (b) the Tribunal exceeded its jurisdiction in the proceeding;
- (c) the decision was obtained by fraud;
- (d) the decision is *ultra vires*; or
- (e) the decision is erroneous in law."

[13] Also of critical importance is the treatment that ought to be accorded to the statements made by the learned Chief Justice in **The Labour Tribunal v St. Lucia Electricity Services Limited; The Labour Tribunal et al v St. Lucia Electricity Services Limited**.¹ The import of section 448 has been thrown into a state of confusion and uncertainty by varying opinions and interpretation of those statements and it is in dire need of clarification.

¹SLUHCVP2019/0002; SLUHCVP2019/0003 at paragraphs 62-65, delivered 8th April 2020 (unreported).

- [14] For the purposes of this application the following issues have been identified:
- (i) Whether the reasoning of the Honourable Chief Justice at paragraphs 63 and 64 of the Court of Appeal's decision in **Labour Tribunal v St. Lucia Electricity Services Limited** is obiter dicta;
 - (ii) Whether the term "Judicial Review" in section 448 of the **Labour Act** can attract another meaning taking into account the principles of statutory interpretation;
 - (iii) Whether an aggrieved party would have to apply for leave given the fact that section 448 of the **Labour Act** states that an aggrieved party is entitled to apply for Judicial Review;
 - (iv) Does this Court possess the jurisdiction to grant the applicant an extension of time to appeal against the Tribunal's decision; and
 - (v) Has the applicant satisfied the criteria for the grant of an extension of time to appeal against the decision of the decision?
- [15] The Court ordered the parties to file submissions in support of their respective positions in relation to the application and as well in response to some specific questions posed to the parties which they duly filed.

Issue (i)

Whether the reasoning of the Honourable Chief Justice at paragraphs 63 and 64 of the Court of Appeal's decision in Labour Tribunal v St. Lucia Electricity Services Limited is obiter dicta.

- [16] At paragraphs 63-65 of the judgment in the **Labour Tribunal Appeals**, the learned Chief Justice made the following comments:

“[63] It may well be that the confusion of proper parties to the claim arose because of the language used in section 448 of the **Labour Act** which states that, “any party to an application ... before the Tribunal shall be entitled to apply to the High Court for judicial review in respect of any decision of the Tribunal...” on various grounds therein set out and other grounds. The High Court is then empowered under section 449 of the **Labour Act** to make various orders in respect of such an application including quashing the decision of the Tribunal, directing a new hearing on any question by the Tribunal or dismissing the application.

[64] When sections 448 and 449 are construed in the context and scheme of the **Labour Act**, it becomes apparent that the term 'judicial review' is not intended in this context to engage the regime of public law proceedings which attracts judicial review of actions which may be said to be unlawful, unreasonable or procedurally improper. It is merely a venue for a rehearing or review of the decision arrived at by the Tribunal in the same way as, say the Court of Appeal may review a decision of a magistrate, a judge of the High Court or for example another court. The Industrial Court of the State of Antigua and Barbuda comes to mind. In nature, the process is more analogous to an appeal from a body such as the Tribunal tasked under the act with quasi-judicial functions or indeed any other body tasked with quasi-judicial functions where an enactment provides an avenue of appeal whether to the High Court or Court of Appeal in respect of decisions reached by them in deciding a dispute arising in matters regulated by a particular statutory regime such as labour relations.

[65] Here, there is no doubt that the proper parties to the dispute, as they were before the Labour Tribunal, were the St. Lucia Civil Service Association, representing the category of employees of LUCELEC who were challenging the retirement age under their PPS with their employer LUCELEC, on the one hand, and LUCELEC on the other. The Appeal SLUHCVAP2019/0002, brought by the Labour Tribunal, is in my view akin to a magistrate appealing to the Court of Appeal because a High Court judge reversed a decision of a magistrate in say a decision on bail; ... This is, in my view, is not the approach which is contemplated by the process of review envisaged under the **Labour Act** and is not one to be encouraged.... This is not the position in which such a Tribunal should find itself nor be seen to be so doing. It is hoped that in the future such applications to the High Court under section 448 of the **Labour Act** will not join the Labour Tribunal as a party to the proceedings."

[17] There were two issues addressed by the learned Chief Justice here: (i) the issue of the proper parties to an application brought pursuant to section 448 of the Act and (ii) the nature of the proceedings contemplated by section 448. It is noted and agreed that none of these were addressed in the appeal and were not part of the ratio of the Full Court.

[18] Both the applicant and respondent agree that the learned Chief Justice's statements at paragraphs 63 to 65 of the Labour Tribunal appeals were obiter dicta. Counsel for the applicant, Mr. Leslie Prospere ("Mr. Prospere") submits

however that such a characterisation does not, without more entitle a Court to completely disregard the obiter statements made by the Chief Justice and I totally agree. He refers to the learning in **Halsbury's Laws of England**² where the following observations were made regarding the nature and effect of obiter dicta statements:

"Statements which are not necessary to the decision, which go beyond the occasion and lay down a rule that is unnecessary for the purpose in hand are generally termed "dicta". They have no binding authority on another court, although they may have some persuasive efficacy."

- [19] Mr. Prospere relying on the above submits that the learned Chief Justice's comments ought to be accorded considerable persuasive efficacy by this Court in seeking to resolve the diametrically opposed views held by the parties in this matter as to the appropriate procedure to be employed for challenging the Tribunal's decision.
- [20] Counsel for the respondent, Mrs. Maureen John-Xavier ("Mrs. Xavier") points out in submissions that the comments of the learned Chief Justice in the postscript to the judgment concerned the issue of the correct procedure in seeking a review of the Tribunal's decision and whether the Labour Tribunal should have been a party to the proceedings. Counsel points out that these were not the issues to be decided in the appeal and therefore no view was expressed by the other members of the Court on the issues which the learned Chief Justice addressed. She submits that Pereira CJ simply made observations on the matters.
- [21] It is clear that the statements of the learned Chief Justice are obiter and not binding although highly valuable. No doubt the observations made are valuable in terms of outlining the more desirable approach. This leads us to a consideration of the second issue as outlined below.

² Fourth Edition Reissue, Vol 37 paragraph 1238.

Issue (ii)

Whether the term "Judicial Review" in section 448 of the Labour Act can attract another meaning taking into account the principles of statutory interpretation.

[22] It is not disputed that the term 'judicial review' only appears in section 448 of the Act and further that the term is not defined in any of the provisions of the Act. Mr. Prospere submits that it is a well-established principle in interpreting statutes that where words are clear and unambiguous, the words must be given their literal meaning unless to do so would lead to an absurd result. That certainly is a correct exposition of the legal principle of statutory interpretation.

[23] Mr. Prospere refers to the definition of the term 'judicial review' as stated in the text **Judicial Review**.³ I think there is merit in setting it out:

"The term 'judicial review' can be, and has been, used to describe many types of judicial decision-making. In this book it is used to refer to a specialist jurisdiction of the High Court in England and Wales. Under this jurisdiction a claim in the field of public law can be examined by the court. (One possible outcome is the quashing of something done by the defendant- that is, a formal order of the court destroying the validity of the thing in question.) Another possible outcome is a declaration as to the lawfulness of action or inaction by a defendant. Yet another possible outcome is the making of an order which obliges the defendant to behave in a particular way ..."

[24] Mr. Prospere submits that this definition confines the ambit of the term 'judicial review' to the field of public law but more fundamentally clothes the High Court with only the very limited prerogative remedies in judicial review proceedings.

[25] This is certainly what we know to be judicial review proceedings in the strict sense of the term. In **James v Ministry of Education**⁴ the court spoke of judicial review this way:

"The basis of judicial review rests on the free-standing principle that every action of a public body must be justified by law. Judicial review is concerned not with the decision, but with the decision-making process. This principle of law has been enunciated on myriad occasions. Thus the role of the Court in judicial review is merely supervisory and therefore the question is not whether the judge

³ Supperstone, Sir Michael, Goudie QC, James and Walker, Sir Paul, LexisNexis

⁴ Saint Lucia High Court Claim No. 862 of 2005, delivered 19th March 2006, unreported, para [17].

disagrees with what the public body has done but whether there is some recognizable public law wrong.”

- [26] Mr. Prospere submits further that it would be very curious and absurd for the framers of section 448 of the **Labour Act** to so substantially strait jacket or curtail the High Court's broad powers on such challenges to decisions of the Labour Tribunal having regard for the said court's crucial and overarching duty to do justice between the parties.
- [27] He contends that as determined by the Caribbean Court of Justice (CCJ) in **Katrina Smith v Albert Anthony Peter Selby**,⁵ a court in construing a piece of legislation to give effect to parliament's intention should also consider the socio historical context from which the legislation evolved as well as other parts of the legislation. Sir Dennis Byron P mentioned the principles that a judge should apply in interpreting legislation including respect for the language of Parliament, context of the legislation, the primacy of the obligation to give effect to the intention of Parliament, coupled with the judge's view of what is just and expedient. The intention of Parliament must be given effect to.
- [28] Mr. Prospere thought that it is important to consider section 449 in construing what 'judicial review' means in the context of section 448. He contends that from section 449 of the Act it is apparent that Parliament intended to provide the High Court with considerably broader powers than the narrowly confined prerogative remedies in ordinary judicial review claims. As such he says it is unlikely that Parliament intended for the term 'judicial review' in section 448 of the Act to have an ordinary usage definition.
- [29] Mr. Prospere also commends consideration of parallel/comparable legislation in seeking to interpret section 448 which I accept is a good approach. I will now look at similar provisions in the labour laws of some of the Caribbean States focusing on the complaints regime and process to challenge the decision of the Tribunal or similar institution.

⁵ CCJ Application No. BBCV2017/002, delivered 1st September 2017.

A look at the Labour Laws in some jurisdictions

ANTIGUA AND BARBUDA

Labour Code Cap 27, Laws of Antigua and Barbuda

This Act provides for the Labour Commissioner to receive complaints with respect to employer-employee relations and to attempt to achieve a voluntary settlement. If that cannot be achieved, then a report is made to the Minister who himself shall attempt to achieve a voluntary settlement. There is also provision made for an Arbitration Tribunal to hear and determine any major trade dispute.

Industrial Court Act Cap 214, Laws of Antigua and Barbuda

This Act establishes the Industrial Court which has the jurisdiction (a) to hear and determine trade disputes referred to it under the Act; (b) to hear and determine any complaints brought in accordance with this Act as well as such matters as may from time to time be referred to it under the Act (sections 4 and 7). Section 19 provides that where the existence of a trade dispute comes to the attention of the Minister or the Labour Commissioner under and by virtue of the Labour Code, the Minister may at any stage refer the dispute to the Court and once this is done, the Labour Commissioner shall cease to perform the duty conferred on him by the Labour Code to seek a voluntary settlement of the trade dispute. Where the Labour Commissioner fails to achieve a voluntary settlement within ten days, a party to the trade dispute can refer the dispute to the Court.

Section 17 of the Industrial Court Act deals with appeals and states:

“17. (1) Subject to this Act, any party to a matter before the Court **shall be entitled as of right to appeal to the Court of Appeal** on any of the following grounds, but no others-

- (a) that the Court had no jurisdiction in the matter, but so however, that it shall not be competent for the Court of Appeal to entertain such ground of appeal, unless objection to the jurisdiction of the Court has been formally taken at some time during the progress of the matter before the making of the order or award;
- (b) that the Court has exceeded its jurisdiction in the matter;
- (c) that the order or award has been obtained by fraud;
- (d) that any finding or decision of the Court in any matter is erroneous in point of law; or

(e) that some other specific illegality, not hereinbefore mentioned, and substantially affecting the merits of the matter, has been committed in the course of the proceedings.

(2) On hearing of an appeal in any matter brought before it under this Act, the Court of Appeal shall have power-

(a) if it appears to the Court of Appeal that a new hearing should be held, to set aside the order or award appealed against and order that a new hearing be held;

or

(b) to order a new hearing on any question without interfering with the finding or decision upon any other question, and the Court of Appeal may make such final or other order as the circumstances of the matter may require.

(3) The Court of Appeal may in any matter brought on appeal before it, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred although it is of the opinion that any point raised in the appeal might have been decided in favour of the appellant.

(4) Subject to subsection (1), the hearing and determination of any proceedings before the Court, and an order or award or any finding or decision of the Court in any matter (including an order or award)-

(a) shall not be challenged, appealed against, reviewed, quashed or called in question in any court on any account whatever; and

(b) shall not be subject to prohibition, mandamus or injunction in any court on any account whatever."

COMMONWEALTH OF DOMINICA

Protection of Employment Act Chap. 89.02

Section 26 of this Act provides for complaints about the failure of an employee or employer to comply with certain provisions of the Act to be made to the Minister. The Minister may then refer the matter to the Labour Commissioner for the purpose of attempting to settle the matter by way of conciliation. Where that is not possible, the parties or the Labour Commissioner report this to the Minister who then may refer the complaint to the Tribunal who shall proceed to hear it.

Industrial Relations Act Chapter 89.01

Section 15

"15 (1) Subject to subsection (2) -

(a) the hearing and determination of any application or matter by the Tribunal shall not be subject to prohibition, mandamus or injunction in any court; and

(b) any decision of the Tribunal shall not be questioned, challenged, appealed, reviewed or quashed in any court.

(2) Any party to an application or matter before the Tribunal **shall be entitled to appeal to the Court** in respect of any decision of the Tribunal on the ground that -

- (a) the Tribunal did not have jurisdiction in the proceeding;
- (b) the Tribunal exceeded its jurisdiction in the proceeding;
- (c) the decision was obtained by fraud; or
- (d) the decision is erroneous in law.

(3) On an appeal made to it pursuant to subsection (2), the Court may make such order as the circumstances of the case require including, without restricting the generality of the foregoing, an order-

- (a) quashing the decision of the Tribunal and remitting the matter to the Tribunal with such direction as the Court considers necessary;
- (b) directing a new hearing on any question without interfering with the decision of the Tribunal upon any other question; or
- (c) dismissing the appeal.

(4) On an appeal made to it pursuant to subsection (2), the Court may dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred although it is of the opinion that any question raised in the appeal might have been decided in favour of the person or organisation making the appeal.

(5) An appeal pursuant to subsection (2) by a party to a proceeding before the Tribunal shall not, unless the Court otherwise orders, operate as a stay of the decision of the Tribunal in respect of the proceeding.

(6) The Court shall make an award as to costs.”

ST. VINCENT AND THE GRENADINES

Protection of Employment Act No. 20 of 2003

Under this Act, complaints are made to the Labour Commissioner who is to attempt to bring about a settlement with the parties and if he does not achieve a settlement he is to refer the complaint to the Minister who will then refer the matter to a Hearing Officer (sections 35-37). The relevant sections as relates to challenge of the decision of the Hearing Officer are set out below.

Finality of decision

“39. Every decision of the Hearing Officer shall be final if no notice of appeal is filed within twenty-one days of his decision.”

Appeal

“40. Any party to the proceeding before the Hearing Officer may, within twenty one days of the decision by the Hearing Officer, appeal against the decision to the Tribunal.

“41. (7) Every order or decision of the Tribunal is final and shall not be questioned or reviewed in any court save and except where judicial review is applicable under any law.”

TRINIDAD AND TOBAGO

Industrial Relations Act Chap 88.01

This Act establishes the Industrial Court which is a superior Court of record and has the jurisdiction and powers conferred by the Act and in addition all the powers inherent in a Court. Among other things the Court has power to hear and determine trade disputes (sections 4 and 7). In Trinidad and Tobago, unresolved disputes which have been reported to the Minister shall be referred to the Court in certain specified circumstances.

Section 18 states

“18. (1) Subject to subsection (2), the hearing and determination of any proceedings before the Court, and an order or award or any finding or decision of the Court in any matter (including an order or award)—

(a) shall not be challenged, appealed against, reviewed, quashed or called in question in any Court on any account whatever; and

(b) shall not be subject to prohibition, *mandamus* or injunction in any Court on any account whatever.

(2) Subject to this Act, any party to a matter before the Court **is entitled as of right to appeal to the Court of Appeal** on any of the following grounds, but no other:

(a) that the Court had no jurisdiction in the matter, but it shall not be competent for the Court of Appeal to entertain such ground of appeal, unless objection to the jurisdiction of the Court has been formally taken at some time during the progress of the matter before the making of the order or award;

(b) that the Court has exceeded its jurisdiction in the matter;

(c) that the order or award has been obtained by fraud;

(d) that any finding or decision of the Court in any matter is erroneous in point of law; or

(e) that some other specific illegality not mentioned above, and substantially affecting the merits of the matter, has been committed in the course of the proceedings.

(3) On the hearing of an appeal in any matter brought before it under this Act, the Court of Appeal shall have power—

(a) if it appears to the Court of Appeal that a new hearing should be held, to set aside the order or award appealed against and order that a new hearing be held; or

(b) to order a new hearing on any question without interfering with the finding or decision upon any other question, and the Court of Appeal may make such final or other order as the circumstances of the matter may require.

(4) The Court of Appeal may in any matter brought on appeal before it, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred although it is of the opinion that any point raised in the appeal might have been decided in favour of the appellant.”

[30] A perusal of the legislative provisions from Antigua and Barbuda and Trinidad and Tobago will reveal that they are in substance the same. They both provide for appeals on essentially the same grounds set out in our section 448 of the **Labour Act**. It is also the case that none of the provisions examined speak to a challenge to a decision of a Tribunal being by way of ‘judicial review’. The only legislation which comes remotely close to this is the St. Vincent Protection of Employment Act which states that every order or decision of the Tribunal is final and shall not be questioned or reviewed in any court save and except where judicial review is applicable under any law.

[31] After reviewing the Trinidad and Tobago and Antigua and Barbuda legislation, Mr. Prospere submits that a close comparison of the statutory powers conferred on the High Court under our **Labour Act** and the Court of Appeal under the Trinidad and Tobago and Antigua and Barbuda legislation reveals that they are strikingly similar. This Mr. Prospere submits, is strongly suggestive of an intention by the Parliament of Saint Lucia to achieve homogeneity in the appeal regimes. The legislation in the Commonwealth of Dominica also contains similar provisions.

[32] Mr. Prospere submits that the ordinary meaning of the term ‘judicial review’ under section 448 of the **Labour Act** does not accord with the substantially broader and strikingly similar powers conferred on the High Court and the Court of Appeal under the respective sections. He posits that the ordinary meaning is also incompatible with the broader powers conferred on the High Court under section 449 of the **Labour Act**. It is his contention that this Court should select

the interpretation of 'judicial review' that provides the High Court with substantially broader powers than the narrowly confined prerogative remedies which would substantially curtail its ability to do justice between the parties.

[33] Mrs. Xavier on the other hand submits that the reference to 'judicial review' is plain and offers no ambiguity and therefore there is no need to offer an alternative meaning to the term. It is Mrs. Xavier's contention that similarly the language of the Antigua Industrial Court Act with which the learned Chief Justice made an analogy is plain and offers no ambiguity. Mrs. Xavier submits respectfully that the two pieces of legislation offer two different procedures for review and as such the views of the learned Chief Justice being obiter statements and not binding ought not to be followed.

[34] She further posits that if Parliament intended for the process of review to be similar to that in Antigua and Barbuda or indeed to any of the other jurisdictions that provide for an appeal, it would have expressly stated this. Counsel refers to sections 180, 236, 345, 350 and 372 of our **Labour Act** and argues that when one looks at these provisions it is clear that the process of appeal intended was an appeal to the Tribunal and not to the Court. All of the instances where appeal is used in the **Labour Act** refer to appeals to the Labour Tribunal and not to the Court.

[35] Mrs. Xavier refers to the very Tribunal appeals where the court in looking at the principles of statutory interpretation would have referred to what is the fundamental principle of statutory interpretation namely 'that where the words, in their natural and conventional sense, are clear then they must prevail and that it is not for the judiciary to ignore the language of the legislature, attach and accept a meaning that the words simply do not have'.

[36] Mrs. Xavier refers to the CCJ case of **Selby v Smith** which Mr. Prosperé had relied on, but she has set out the entirety of paragraphs 9-11 which I believe are useful to this discussion:

“[9] The principles which the judges must apply include respect for the language of Parliament, the context of the legislation, the

primacy of the obligation to give effect to the intention of Parliament, coupled with the restraint to avoid imposing changes to conform with the judges view of what is just and expedient. The court must give effect to the intention of Parliament.

[10] The social and historical context can be decisive in ensuring that the words are interpreted to give effect to the meaning and purpose of the Act. But that does not extend to distorting the language used by Parliament. It must be remembered that the court's responsibility is to give effect to the intention of Parliament not to correct legislation to ensure that it is just and expedient. If the court considers that there is a variance between the language used and its understanding of the special purpose of the Act it should be left to parliament to amend the legislation. Where the words of the statute are not ambiguous there could be no justification for interpreting them in a manner that would alter their meaning, unless it may be necessary to resolve an inconsistency within the statute itself. So, the conjecture that Parliament may have intended a meaning that is different to the words used is not a sufficient reason for departing from their ordinary and natural meaning.

[11] In giving effect to these principles the court, when interpreting any part of a statute, should review other parts of the Act which throw light upon the intention of the legislature and may show how the provision ought to be construed. The underlying principle is that the courts must use the available material to discover and give effect to the intention of Parliament. There can be no doubt that consideration of the purpose of an enactment is always a legitimate part of the process of interpretation."

[37] Relying on the above principles espoused by Sir Dennis Byron P, Mrs. Xavier argues that no other meaning can be ascribed to the process to be followed under our Labour Act. The process of review of the Tribunal's decision is by way of judicial review and if Parliament intended that it should be way of appeal, Mrs. Xavier submits respectfully that it should have stated this expressly. She further submits that if as Mr. Prospere suggested there is need to harmonize the process of review from the Labour Tribunal's decision to make it consistent with other jurisdictions and/or make the process easier, this can only be achieved by an Act of Parliament. Mrs. Xavier argues that until then the process is that a review of the Tribunal's decision is by way of judicial review.

[38] What is very important in the definition of ‘judicial review’ which was referred to by Mr. Prospere as set out in the text **Judicial Review** is the opening sentence on which I focus. It says: ‘The term ‘judicial review’ can be, and has been, used to describe many types of judicial decision-making.’ It then goes on to define judicial review in the context of the text. From this opening statement it appears to me that it is possible that the term judicial review used in the **Labour Act** does not refer to ‘judicial review’ as we know it in the public law arena so as to attract the prerogative remedies but attracts a specific regime set out under the Act. It does seem to me however that the intent seems to have created a regime similar to judicial review where the Court is not empowered to substitute its decision for that of the Tribunal.

[39] I refer to the recent sentiments expressed by my brother Innocent J in **Danis Caesar v St. Lucia Representative Services Limited**⁶ with which I fully agree:

“[33] Therefore, it is the court’s view that the word “judicial review” used in section 448 of the Labour Act ought not to attract the same treatment as administrative proceedings brought under CPR 56 notwithstanding that the powers exercisable by a court hearing a claim for judicial review may appear similar. What the court reviewing the decision of the Tribunal must observe are the strict parameters for review set out at section 448 (a) to (e) of the Labour Act.

[34] In the premises, the court in this instance is inclined to adopt fully the views expressed by the learned Chief Justice. However, having adopted this view does not mean that the court should stray away from the dictates of section 448 of the Labour Act which the court has accepted is of very narrow compass in limiting the powers that the reviewing court can exercise. Therefore, the court cannot in the absence of legislative authority extend its powers in such a way that makes those powers akin to the powers exercised by an appellate court.”

[40] Given the above, firstly, it is my view that Part 56 of the CPR cannot apply as section 448 and 449 define the parameters of judicial review of a Tribunal’s decision. Secondly, the section does not provide for an appeal and therefore neither does Part 60 of the CPR apply. Sections 448 and 449 of the **Labour**

⁶ SLUHCv2021/0247 delivered 1st December 2022 at paragraphs 33-34, unreported.

Act create their own framework in relation to challenges to decisions of the Labour Tribunal by way of judicial review. The outcome is similar to that of judicial review but within the legislative framework outlined in the **Labour Act**.

[41] It is clear that even in face of the striking similarity between the various pieces of legislation, the framers of our **Labour Act** chose to provide for challenge to a decision of the Tribunal by way of judicial review rather than by appeal. That is significant and smacks of a deliberate attempt to carve out a different approach. Could it be that the dispute resolution regime is different in Saint Lucia such that the framers of the legislation wanted to ensure that the Tribunal's decisions could only be challenged and reviewed in a limited sense rather than the wide powers which Mr. Prospere speaks of? There must have been a reason for the deliberate use of the 'judicial review' as opposed to 'appeal'. On reviewing the various pieces of legislation, I observed that in all of them the Labour Commissioner or equivalent officer has merely a conciliatory role whilst the Labour Commissioner under our **Labour Act** has very wide powers when a complaint is made to him. Our **Labour Act** appears to have attempted to create a very closed dispute resolution procedure.

[42] I do agree that there is a need to bring some measure of clarity to the legislative intent of sections 448 and 449 of our **Labour Act** given what I see is the deliberate change of the manner of review in other jurisdictions, that is by way of appeal to the Court of Appeal to by way of judicial review to the High Court.

Issue (iii)

Whether an aggrieved party would have to apply for leave given the fact that section 448 of the Labour Act states that an aggrieved party is entitled to apply for Judicial Review.

[43] Mr. Prospere submits that section 448 of the Act creates an automatic statutory right to apply for judicial review which has the effect of displacing the otherwise indispensable procedural leave requirements set out in CPR 56.3(1).

[44] Mrs. Xavier submits that the process of judicial review is a two stage process where the aggrieved person must first seek leave and only if leave is granted

can a claim for judicial review be filed and there is no contrary process stipulated in the **Labour Act**.

[45] I wish to point out that there are jurisdictions where the requirement to apply for leave to file a claim for judicial review has been removed from the judicial review process. Indeed, there is nothing which would preclude the legislature from as they have done giving a right to review the Tribunal's decisions by way of judicial review without the need for leave.

[46] I have already found that CPR 56 does not apply in the context of section 448. Therefore, I am of the view that the leave requirement captured therein cannot apply. I agree with the applicant's submissions. The wording in section 448 that any person who is aggrieved by the Tribunal's decision 'shall be entitled to apply to the High Court for judicial review' does not suggest that permission is required.

Issue (iv)

Does this Court possess the jurisdiction to grant the Applicant an extension of time to appeal against the decision?

[47] Mr. Prosperé in written submissions indicates WASCO's intention to challenge the Tribunal's decision, hence this application for an extension of time of the 28-day statutory time limit within which to file and serve its appeal against the decision, and for a stay of execution of the said decision. That statutory limit to which counsel refers is not contained in the **Labour Act** but in CPR 60.4 which provides for a claim form and grounds of appeal to be served within 28 days of the date on which the decision was given to the applicant. In the case of **Patrick Morille v Hermina Roseline Morille**⁷ our Court of appeal addressed the question of whether the 28-day time limit to bring an appeal provided in CPR 60 could be extended in the absence of any express provision in the CPR or in the Domestic Violence Act for granting an extension of time to appeal. Baptiste JA held that even in the absence of express provisions, the High Court must have

⁷ SLUHCv2010/0035, delivered 26th February 2016, unreported.

a discretion to decide whether the time limit should be extended in the absence of the Court's inherent jurisdiction.

[48] CPR 60 is headed "Appeals to the High Court" and deals with appeals to the High Court from any tribunal or person under any enactment other than an appeal by way of case stated. The particular enactment must expressly provide for appeals. It cannot be inferred or left to interpretation. I am of the opinion that section 448 does not provide for an appeal to the High Court and by dint of that CPR 60 cannot be applicable.

[49] In addition, I do not think that the statements of the Honourable Chief Justice should be construed as meaning that the application to the Court is an appeal but rather when section 448 is engaged and a challenge by way of judicial review filed, the manner in which such a claim is dealt with is more in-keeping with how the court deals with an appeal.

Issue (v)

Has the Applicant satisfied the criteria for the grant of an extension of time to appeal against the decision of the decision?

[50] Based on the foregoing discussion and the conclusions reached above, it is not necessary to deal with this final issue as there is no place for an application for an extension of time to appeal in the context of section 448 and 449 of the **Labour Act**.

Conclusion

[51] I note that section 448 does not set a time limit for the filing of a challenge to the Tribunal's decision by way of judicial review so that it must be that any claim filed must be filed within a reasonable time. This may be one matter which is lacking from the current regime since the review by way of judicial review is as of right.

[52] It is quite curious that Mr. Prospere has used the terms 'judicial review' and 'appeal' to refer to his intended challenge to the Tribunal's decision illustrating the obvious confusion which is not desirous.

[53] Based on the foregoing discussion, the application for an extension of time to appeal and to serve grounds of appeal is dismissed. The application for extension of time to appeal having been dismissed means that there is no basis to consider a stay of execution. The entire application therefore fails.

Order

[54] The application for an extension of time to appeal and to serve grounds of appeal is dismissed with costs to the respondent in the sum of \$1,000.00.

[55] Again, I express the view that the aspect of review of the Tribunal's decision is in need of some serious attention by the legislature and I would hope that it is a matter which will find its way on the legislative agenda as a matter of urgency in order to create certainty in the area.

[56] I wish to thank Counsel for their helpful submissions and discussion of the issues. I also take this opportunity to sincerely thank Counsel and the parties for their patience in awaiting the delivery of this decision. I do apologise for the delay which I can only say was due to a myriad of factors, for the most part outside of my immediate control.

**Kimberly Cenac-Phulgence
High Court Judge**

By The Court



Dp. Registrar