

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

GRENADA

CLAIM NO. GDAHCV2019/0035

**IN THE MATTER OF SECTIONS 6, 16, 76(2), 83, 84 AND 101
OF CONSTITUTION OF GRENADA**

AND

**IN THE MATTER OF SECTIONS 54, 74, 76, 77, 81, 85 AND 87
OF THE PUBLIC SERVICE COMMISSION REGULATIONS
S.R.O OF 1969**

BETWEEN:

DONNA MARCELLE LUSAN

Claimant

and

[1] THE CABINET OF MINISTERS
[2] THE MINISTER OF FINANCE
~~[3] THE PUBLIC SERVICE COMMISSION~~
[4] ATTORNEY GENERAL OF GRENADA

Defendants

Before:

The Hon. Mr. Justice Raulston L. A. Glasgow

High Court Judge

Appearances:

Mr. Benjamin Hood for the Claimant

Mr. Douglas Mendes, SC with him Ms. Karen Reid-Ballantyne for the Defendants

2022: February 14

May 9; (Further hearing)

August 2; (Further hearing)

September

October 11

JUDGMENT

- [1] **GLASGOW, J.:** The claimant has asked the court to examine whether the Government of Grenada (“the government”) is lawfully entitled to withhold remuneration from public officers who absented themselves from work as a result of industrial action.

Background

- [2] The claimant, Donna Marcelle Lusan (Ms. Lusan) is a teacher and a public officer who is assigned to the St. Joseph’s Convent, St. George. These proceedings arise from industrial action between the the Government and trade unions (“the unions”) which represent officers in the public service, including teachers. . The unions took industrial action to demand payment of pensions and gratuity to public officers.
- [3] During the month of November 2018, the unions issued a call to their membership to take industrial action and to absent themselves from work on 5th, 7th, 12th, 13th, 14th, 15th and 19th to 22nd November, 2018. Public officers, including teachers, heeded this call from the unions and remained absent from work on those days. St. Joseph’s Convent St. George’s Principal, Mrs. Jill Viechweg Philbert, in her evidence¹ on behalf of the defendants claims that Ms. Lusan was absent from work at the school on 5th, 7th, 12th, 13th and 14th November, 2018. Ms. Lusan in her evidence² in response asserts that she attended work on the above days, but left subsequently after she noticed that there were “no activities” at the school on those days.
- [4] On 13th November 2018, the Government through the Secretary to the Cabinet, Ms. Beryl Isaac, issued a circular to Permanent Secretaries and Heads of Department directing them “*to take such steps as are necessary to ensure that the*

¹ First Affidavit of Jill Viechweg Philbert filed 22nd May 2019 at para. 5

² Affidavit of Donna Marcelle Lusan filed 14th June 2019 at para. 5

appropriate deduction is made from the salary of those public service employees, including teachers who have withheld their labour on the day(s) mentioned or any other day for the aforementioned purpose". Ms. Lusan claims that the Government deducted the sum of \$1,238.70 from her salary for the month of November 2018.

[5] Being dissatisfied with the deductions made to her salary for the month of November 2018, Ms. Lusan filed these proceedings against the defendants claiming that the Government, that is the Cabinet, acted outside of its lawful authority when it directed the deductions to be made from her salary. Ms. Lusan in her claim seeks declarations and a return of property ("deducted salary"), in accordance with the provisions of the Constitution of Grenada, among other relief. The defendants in response to the claim assert that the Government is entitled to refuse to pay Ms. Lusan for days on which she remained absent from work based on the common law principle of "no work, no pay". During the case management of the proceedings, the court took the view that the outcome of this claim turns on the applicability of that common law principle to this case. The question is therefore to be considered as a preliminary issue.

[6] However, before this court ruled on the preliminary issue, general elections were held in the State of Grenada on 23rd June 2022 and a new administration formed the Government. The new Government promised to return the deducted salaries to the teachers and public officers at the end of July 2022. On 2nd August 2022, the court held a further case management of the matter where the parties confirmed that the Government paid the teachers including Ms. Lusan, the moneys that were deducted from the salaries during the period in question. At the further case management, the parties indicated to the court that they briefly held talks with a view to settling the claim but those talks did not lead to a resolution. The issue of whether Ms. Lusan should be reimbursed her salary has therefore been addressed and does not form any part of this ruling. My sense at the further case management was that the parties have not resolved whether the state was right to deduct the sums in the first place. I say this because their posture at the further

case management was that they have not settled any other issue besides payment of the deducted salary.

Claimant's submissions

- [7] Counsel for Ms. Lusan, Mr. Benjamin Hood, submits that the only manner in which emoluments attached to a public office can be changed is –

(1) through Parliamentary action; or

(2) through disciplinary proceedings instituted by the Public Service Commission (PSC) or any other person or body who has been so designated by the PSC in accordance with sections 74 and 85 of the Public Service Commission's Regulations (PSC Regulations).

- [8] Mr. Hood further submits that section 74 of the PSC Regulations establishes a code which governs Ms. Lusan's conduct as a public officer. Counsel views the directives from the Government instructing that moneys should be deducted from Ms. Lusan's pay as disciplinary actions that ought to have formed the subject of proceedings initiated by the PSC. To the extent that there were no proceedings brought by the PSC before Ms. Lusan was paid a reduced salary, Counsel says that the actions of the Government were illegal and contrary to the Constitution.

- [9] With respect to the common law principle of "no work, no pay", Mr. Hood argues that this principle is not applicable in this case for the following reasons:

(1) The law as expounded in the case of **Sykes v Minister of National Security et al**³ and relied on by the defendants is founded in the common law and cannot supersede any statutory provisions in the state of Grenada. Further, Mr. Hood submits that even if the common law principle

³ (2000) 59 WIR 411

was incorporated into local legislation it has to conform to the Constitution. Counsel relies on the case of **Rosemond John v The Permanent Secretary Ministry of Education**⁴. In that case, the Court of Appeal held that the manner in which the “no work, no pay” principle was passed contravened the Constitution and was held to be unconstitutional.

- (2) The common law principle only applies to contracts of employment over which the common law has jurisdiction. Ms. Lusan has tenure in the public service and as such the payment of her emoluments is not governed by the common law principle.
- (3) The **Sykes** decision is distinguishable from this case since the common law principle has not been incorporated into the PSC Regulations or any statute in Grenada.
- (4) Section 54 of the PSC Regulations already makes provision for discipline in circumstances where public officers remain absent from work without excuse.
- (5) Additionally, the case of **Miles v Wakefield Metropolitan District Council**⁵ can also be distinguished from this case. In **Wakefield**, it was established that the salary paid to the respondent (Miles) had the character of remuneration for work done, in that the salary paid to him was specifically for 37 hours of work. Mr. Hood states that this is not the case with Ms. Lusan’s appointment within the public service.
- (6) Part IX of the PSC Regulations recognises the difference between tenured works such as Ms. Lusan and regular employees. In respect of regular employees the common law principle may be applicable.

⁴ Dominica Civil Appeal No. 7 of 1997

⁵ [1987] 1 All ER 1089

Defendants' submissions

- [10] Counsel for the defendants, Mr. Douglas Mendes, SC disputes the accuracy of Ms. Lusan's arguments as to the nature of her terms and conditions of employment as a public officer. Mr Mendes SC submits that what happened in this case is that Ms. Lusan was not paid for the days she did not work. Counsel argues that Ms. Lusan's reliance on the Privy Council decision in **Gladwyn King v Attorney General of Barbados**⁶ is misplaced. Counsel states that there is nothing in sections 76 or 77 of the Constitution which creates an entitlement for public officers to be paid their salaries. Those obligations to pay salaries are based on contract or by law requiring the Government to prepare annual estimates to authorise withdrawals from the consolidated fund to make those payments.
- [11] Mr. Mendes SC explains that the opinion expressed by Redhead JA in **Rosemond John v Permanent Secretary** no longer represents the law on whether the Government can withhold pay for persons who are on strike and do not show up for work. Counsel observes that Redhead JA referenced the Court of Appeal's judgment in **Wakefield**⁷, however, counsel points out that the Court of Appeal's decision in **Wakefield** was overturned by the House of Lords. Further, the **Rosemond** decision was rendered before the Privy Council delivered its judgment in **Sykes v Minister of National Security and Justice**. Therefore, counsel submits that this court is obliged to follow the dicta of the Privy Council in **Sykes**.
- [12] Counsel, Mr. Mendes rejects Mr. Hood's proposition that the **Sykes** decision can be distinguished because the "no work, no pay" principle was not incorporated into the laws of Grenada. Counsel counters this view by pointing out that the court in **Sykes** expressly stated at page 416 f-h of the judgment that the staff orders on the issue of "no work, no pay" was merely a codification of the common law.

⁶ [1994] 1 WLR 1560

⁷ [1985] 1 All ER 905

- [13] With respect to Ms. Lusan's arguments that the **Wakefield**⁸ decision is distinguishable, learned Senior Counsel submits that there is nothing in that case which suggests that the principle of law "no work, no pay" was applied based on the specific stipulation that the work week was 37 hours. Counsel relies on passages from Lord Brightman at pages 1092-1093; Lord Templeman at page 1098 and Lord Oliver at pages 1105-1106.
- [14] Moreover, Mr. Mendes SC rejects Ms. Lusan's arguments that the "no work, no pay" principle is not applicable to her since she is a "tenured worker" and not a "regular employee". Counsel submits that the decision in **Wakefield** already determined that the common law principle applied to employees appointed to an office or on ordinary contract and relies on Lord Templeman's dictum at page 1095 of the judgment, that "*...there is no logical distinction between a superintendent registrar who is paid a weekly salary for a 37-hour week and a municipal dustman who is paid a weekly wage for a 37-hour week if both are on strike, both are supported by their unions and both claim from the council payment in full of their salary and wages for the duration of the strike.*"

Discussion and Analysis

- [15] It seems to me that the fact that the Government has paid Ms. Lusan the sums withheld from her salary renders any debate in this case rather academic. Nonetheless, as I have stated above, at the further case management I was left with the impression that the parties are still at loggerheads on whether the Government had the right to deduct the money in the first place. Having regard to the history of this matter and what I think is by now the trite law applicable, I fear that the remaining issue ought to be shortly disposed of.
- [16] My view is that the entire case for Ms. Lusan is based on what I have concluded are erroneous assumptions made by Ms. Lusan about the basis on which the

⁸ [1987] 1 All ER 1089

Government deducted sums from her salary. In this context, Ms. Lusan has frontally charged that the Government could only deduct sums from her salary –

- (1) if Parliament approved an adjustment to the salaries of civil servants generally or specifically in her case; or
- (2) after the PSC heard charges of misconduct against her and made a finding of misconduct coupled with a sanction that she should be paid a reduced salary.

[17] I fear that Ms. Lusan is wrong in all these assumptions. I start with the basic law as stated in **Thomas v AG**⁹ about the relationship of the public servants with the Government and the relationship of the public servant with the PSC. The dicta in **Thomas**¹⁰ makes it plain that the PSC is an autonomous body set up by the constitution and is tasked with the exclusive constitutional power to appoint, discipline, transfer, promote and remove public servants from public office. The Privy Council in **Thomas**¹¹ explained further that the PSC's powers do not extend to the determination of terms and conditions of service of the public servant. Those matters remain the subject of a contract of employment between employer (the Government) and the employee (in this case Ms. Lusan).

[18] I think that Ms. Lusan agrees with my analysis of the law up to this point. But then we part ways here. Ms. Lusan says that the terms and conditions of her contract do not incorporate the principle that the employer can deduct sums for the days that she did not work. That rule, she posits, is a common law rule. And the terms of the PSC Regulations are a matter of law which override that rule. Indeed for that rule to apply, it must be specifically incorporated into the laws of Grenada as it was incorporated into the Staff Orders of Jamaica. The fact that the common law rule is

⁹ (1981) 32 WIR 375

¹⁰ (1981) 32 WIR 375 at pages 381 - 382

¹¹ Thomas v AG (1981)32 WIR 375 at page 386

not encoded in the laws of Grenada or more specifically, the PSC Regulations means that it is excluded. Or to the extent that it can be said to be impliedly inserted into the PSC Regulations, it does not apply to the category of workers into which she falls. The only regime for deducting salary would be if Parliament approves the same or if the PSC institutes disciplinary charges resulting in a finding of misconduct on her part.

[19] I disagree. As I have stated above it is now beyond trite that the common law rule of no work, no pay applies to the terms and conditions of the contract of employment of public servants. In fact the Privy Council has said so in **Sykes**. The Privy Council is our final court of appeal. Therefore it does not need restating that I am constrained to follow the pronouncements made on the law from that court in **Sykes** unless Ms. Lusan can show this court how the ruling is distinguishable and should not be applied in this case .

[20] So what is the state of the law as stated by the Privy Council? In **Sykes**, as in this case, civil servants took industrial actions against their employer, the Government of Jamaica, due to disagreements about emoluments. The Government of Jamaica, like the Government in this case, directed that the salary for the days that the public officers in that case did not work should be deducted from the salary that would be normally due. As, in this case, the affected employee(s) brought a claim against the Government of Jamaica wherein they contended, as Ms. Lusan in this claim, that the State could not properly deduct moneys from their salaries except where the PSC in Jamaica initiated disciplinary proceedings against them. The arguments were rejected by the Privy Council. Specifically and of particular binding relevance to this case, the Privy Council ruled at page 416 of the judgment that

“...the withholding of a part of salary attributable to a period in which, in breach of contract, no work has been done is in accordance with common

law and in accordance with the contract of employment between the parties.”

[21] It seems to me then that the foregoing binding dictum alone ought to have ended the debate in this case about whether the common law rule of “no work no pay” applies to the public servant’s contract of employment. Additionally, it ought to have been clear that, as the defendants correctly point out, Ms. Lusan’s reliance on the **Rosemond John** decision is misplaced. The defendants rightly state that the **Rosemond John** case was decided before the Privy Council’s pronouncement on the law in **Sykes** and as such this court is bound to follow the learning stated in **Sykes**.

[22] Ms. Lusan however states that **Sykes** decision is further distinguishable because there was a specific provision in the Staff Orders in Jamaica which incorporated the common law principle of “no work, no pay”. In Grenada, Ms. Lusan, claims there is no such provision in the PSC Regulations in Grenada. Firstly, I cannot see how the absence of the written rule means that it is excluded from the contract of employment. There is no suggestion in the PSC Regulations or anywhere else that the PSC Regulations form the entirety of the terms and conditions governing the relationship between the public servants and the Government as employers. Secondly, the Privy Council noted that the inclusion of the rule in the Jamaica Staff Orders was, in essence, a mere codification of the common law rule. Their Lordships observed that the rule in the Staff Order in that case “... *expresses the common law.*”

[23] I think that Ms. Lusan’s arguments, with respect, seek to elevate the relationship between the PSC and the public servants above that of the relationship between the public servants and the Government. The correlation between the two has been adequately elucidated in **Thomas** and needs no pedantic repetition here. The PSC’s powers do not supplant or replace the terms and conditions of employment that exist between the Government and public servant except in so far as the Constitution dictates. **Thomas** explains that, outside the constitutional

construct regarding the PSC, there are obligations arising from employer to employee and vice versa. These are the terms and conditions of employments. Basic among them I would think and as explained in **Wakefield** is the employee's obligation to turn up to work on the contracted days for service and to execute their contracted duties. Basic to this relationship or the terms and conditions thereof is the employer's obligation to pay the employee for the days worked. Lord Templeman in **Wakefield** states the law more than adequately when he expounded that –

“It cannot be right that an employer should be compelled to pay something for nothing whether he dismisses or retains a worker. In a contract of employment wages and work go together. The employer pays for work and the worker works for his wages. If the employer declines to pay, the worker need not work. If the worker declines to work, the employer need not pay. In an action by a worker to recover his pay he must allege and be ready to prove that he worked or was willing to work. Different considerations apply to a failure to work by sickness or other circumstances which may be governed by express or implied terms or by custom. In the present case the plaintiff disentitled himself for his salary for Saturday morning because he declined to work on Saturday morning in accordance with his duty”¹².

[24] There is no obligation anywhere in law or in Ms. Lusan's terms and conditions of employment stated before this court that obligates the Government, her employer, to pay her, the employee, for the days that she did not work. Or no such law or term of her terms and conditions of service has been shown to me that stipulates or requires that where the Government, the employer, wishes to deduct salary for Ms. Lusan's failure to work, that the employer must engage disciplinary proceedings before doing so deducting sums from her salary.

[25] Now I agree that it would have been a wholly separate matter if the Government had taken the view that it desired to discipline Ms. Lusan for her failure to show up and perform her duties. The Government would then have been obliged to forward its complaint to the PSC with a request that the PSC take the necessary

¹² [1987] 1 All ER 1089 at page 1098

disciplinary action. Indeed the PSC Regulations (SRO 27 of 1969) state that absence from work without leave or reasonable excuse is an act of misconduct (section 53 of the PSC Regulations).

[26] These are all assessments that fall within the rightful purview of the employer. An employer may choose to ignore the absence of an employee and pay the full salary including sums for the days that the employee stayed away from work. An employer may choose, as in this case, not to pay for the days that the employee did not work. Additionally, the employer may take disciplinary action that end in sanctions for the employee's contractual infraction. The law dictates that these are all matters within the powers of the employer. Indeed one can see that it is exactly what transpired in this case. The employer at the time, the previous Government to this present one, made the choice to deduct sums for the days that no work was produced by the employee. When the Government was changed, the Government, the employer, decided to repay those moneys to the employees notwithstanding the fact that the employees did not work for a number of days. These are all matters within the rights of the employers. The court in **Wakefield**¹³ offers some insight into this sort of situation that may confront an employer and employee where it was explained that –

“If an employee offers partial performance, as he does in some types of industrial conflict falling short of a strike, the employer has a choice. He may decline to accept the partial performance that is offered, in which case the employee is entitled to no remuneration for his unwanted services, even if they are performed. That is the instant case. Or the employer may accept the partial performance. If he accepts the partial performance as if it were performance which satisfied the terms of the contract, the employer must pay the full wage for the period of the partial performance because he will have precluded or estopped himself from asserting that the performance was not that which the contract required. But what is the position if the employee offers partial performance and the employer, usually of necessity, accepts such partial performance, the deficient work being understood by the employer and intended by the employee to fall short of the contractual requirements and being accepted by the employer as such? There are, as it seems to me, two possible answers. One possible answer is that the employer must pay the full wage

¹³ [1987] A.C. 539 at page 553

but may recover by action or counterclaim or set off damages for breach of contract. The other possible answer is that the employee is only entitled to so much remuneration as represents the value of the work he has done, i.e. quantum meruit. My noble and learned friend Lord Templeman prefers the latter solution, and so do I. My reason is this. One has to start with the assumption that the employee sues for his pay; the employer is only bound to pay the employee that which the employee can recover by action. The employee cannot recover his contractual wages because he cannot prove that he has performed or ever intended to perform his contractual obligations. If wages and work are interdependent, it is difficult to suppose that an employee who has voluntarily declined to perform his contractual work can claim his contractual wages. The employee offers partial performance with the object of inflicting the maximum damage on the employer at the minimum inconvenience to himself. If, in breach of his contract, an employee works with the object of harming his employer, he can hardly claim that he is working under his contract and is therefore entitled to his contractual wages. But nevertheless in the case supposed the employee has provided *some* services, albeit less than the contract required, and the employer has received those (non-contractual) services; therefore the employer must clearly pay something - not the contractual wages because the contractual work has deliberately not been performed. What can he recover? Surely the value of the services which he gave and which the employer received, i.e. quantum meruit."

- [27] With respect to discipline for misconduct, the Government, as most employers, may make a calculation as to whether the employee should be disciplined for a contractual infraction. As I have stated above, if the Government wishes to discipline the employee for failure to work as contracted, section 76(1) of the PSC Regulations requires the Permanent Secretary or Head of Department to present a report to the PSC asking that body to engage its disciplinary process. However, again, there is nothing in the PSC Regulations that says that the employer must engage a process of discipline, penalty or punishment whenever the employer says that you (employee) did not work for a certain number of days, thus you did not earn your salary for those days and therefore I do not have a contractual obligation to pay you a salary for those days. This is precisely what the Privy Council was saying in **Sykes**¹⁴. Their Lordships opined at page 416 of the judgment that-

¹⁴ (2000) 59 WIR 411

“Disciplinary proceedings may or may not be a sensible response to misconduct. If misconduct is found established, penalties as set out in reg 37(1) may be imposed, but these do not include an order for the whole or a part of salary that has been earned to be forfeited. **A deduction to take account of salary that, by reason of unauthorised absences from work has not been earned, is not a penalty at all. It is a deduction necessary to be made in order to calculate the officer’s contractual entitlement to salary. This is a process unaffected by disciplinary proceeding or penalties.**” (bold emphasis mine)

[28] So the foregoing in my view ought to put to rest the question of whether the Government had the right to refuse to pay Ms. Lusan for the days that she did not work. However, before departing from this discourse I must address shortly Ms. Lusan’s almost whispered allusion to (3) other matters. Firstly, Ms. Lusan says that she is a tenured worker. Counsel for Ms. Lusan makes the point that the PSC regulations in Part IX thereof makes a distinction between what Counsel terms the “regular employees” and Ms. Lusan, “tenured workers”. Counsel contends that it is only with respect to the former class of workers that a “regular employment contract” applies. By the description “regular employment contract”, Counsel explains that those are cases to which the “no work, no pay rule” may apply. With respect, I do not agree. For one thing, there is no explanation of the differences between the categories of workers identified by Counsel and how the common law ought to be applied in either case. I am fairly certain that my reading of the referenced provisions of the PSC Regulations and in fact the entirety of the PSC Regulations does not disclose a distinction between categories of workers for the purposes of the application of the common law rule in question. This ground of the claim is without substance and is accordingly dismissed.

[29] Secondly, counsel contends that in any event the dispute between the parties must move beyond this preliminary discourse. The court will have to conduct a factual hearing to determine whether Ms. Lusan was in fact at work on the days in question. I would have thought that this issue was now moot having regard to the fact that the Government paid Ms. Lusan for the days that she allegedly did not

work. More significantly, in her own evidence Ms. Lusan averred that she turned up for work on the morning of the days in question, but she left her place of employment when she saw “no activities” at the school. I think Ms. Lusan by that statement puts to rest any factual dispute as to whether she worked on the days in question.

- [30] Finally, counsel for Ms. Lusan argues that the deduction of the sums from her salary amount to a deprivation of property in violation of the terms of section 6 of the Grenada Constitution. I will say quite frankly this view is beyond misplaced. Section 6 of the Constitution reads –

“6. Protection from deprivation of property

(1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where provision is made by a law applicable to that taking of possession or acquisition for the prompt payment of full compensation.

(2) Every person having an interest in or right over property which is compulsorily taken possession of or whose interest in or right over any property is compulsorily acquired shall have a right of direct access to the High Court for—

(a) the determination of his or her interests or right, the legality of the taking of possession or acquisition of the property, interest or right and the amount of any compensation to which he or she is entitled; and

(b) the purpose of obtaining prompt payment of that compensation:

Provided that if Parliament so provides in relation to any matter referred to in paragraph (a) of this subsection the right of access shall be by way of appeal (exercisable as of right at the instance of the person having the interest in or right over the property) from a tribunal or authority, other than the High Court, having jurisdiction under any law to determine that matter...”

- [31] At a basic level, for a section 6 application to be successful, the claimant would have to show that there was property in existence which was taken by the Government in a manner that violates the Constitution. There could be no

argument that property exists in this case. Ms. Lusan did not work for the days in question and as such did not accrue income for those days which could be said to be her property. Indeed the rulings and reasoning in **Sykes** and **Wakefield** discussed above in this discourse could not make the position any clearer. Particularly, in **Wakefield**¹⁵ it was said that in order for the claimant to be successful in an action for wages in this context, he or she must show that at the material time he or she was ready and willing to work. An employee who is absent from work would undoubtedly be unable to prove the same. This ground of the claim cannot succeed as well and is dismissed.

- [32] The long and short of it therefore is that this claim must fail. For the purposes of the laws of Grenada and in particular the relationship of employer and employee subsisting between the Government and public servants in Grenada, the common law rule of “no work, no pay” is quite alive. Accordingly the Government was not acting illegally or in violation of Ms. Lusan’s constitutional rights when it refused to pay her salary for the days that she did not work.

Costs

- [33] CPR 56.13(6) dictates that no order for costs should be made against an applicant for an administrative order unless the applicant acted unreasonably in bringing the claim or in the conduct of the same. I will, with some hesitation, order Ms. Lusan to pay costs to the Government. This is not a course upon which I embark lightly. The wisdom of CPR 56.13(6) is unassailable. The rule in CPR 56.13(6) that applicants for administrative relief should not be ordered to pay costs encourages litigants who are aggrieved by the exercise of powers by the Government or public officials to approach the courts for redress without fear of being “penalised” in costs. That is provided they act reasonably in filing a complaint or if they conduct the litigation in a reasonable fashion. I think that Ms. Lusan fails in the latter category. There is no dispute that Ms. Lusan was genuinely upset that the

¹⁵ [1987] 1 All ER 1089

Government had not paid her for the days in question. Ms. Lusan did not act unreasonably when she approached the court for relief for her complaints.

[34] It is the manner in which this case was prosecuted that I have some issues. Litigants are always encouraged to engage the court's process with vigour and passion in the pursuit of the vindication of their rights. But passion must be tempered by reason. It is in this context that CPR 56.13(6) prohibits the award of costs against a litigant except where that litigant acted unreasonably "... in the conduct of the application". From the outset, it was more than apparent to this court and was so stated to counsel that the law was against Ms. Lusan except if the binding precedent in **Sykes** could be distinguished. At every hearing it was intimated to counsel for Ms. Lusan that notwithstanding his valiant efforts to distinguish the Privy Council ruling in **Sykes** there was no basis for the arguments raised. Even after the hearing, at the further case management, counsel for Ms. Lusan maintained a more than patently unsustainable posture regarding Ms. Lusan's chances of succeeding on this claim. This is by no means an easy position for me to take but the point must be made that litigants must conduct their litigation with reason. In the circumstances, I order Ms. Lusan to pay the defendants the sum of \$900.00, that is, \$300.00 each in costs.

Conclusion

[35] For all these reasons, the claim is dismissed and Ms. Lusan is to pay costs to the defendants in the sum of \$900.00 being \$300.00 each.

Raulston L.A. Glasgow
High Court Judge

By the Court

Registrar