

**EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF ANTIGUA AND BARBUDA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV 2020/0217

In the matter of Sections 105 (1) and Section 119 of the Constitution of Antigua and Barbuda

and

In the matter of an Application for Administrative Orders pursuant to Rule 56.7 of the Civil Procedure Rules

BETWEEN:

WENDEL GLENROY ROBINSON

Applicant/Claimant

and

THE POLICE SERVICE COMMISSION

Respondent/Defendant

Appearances:

Mr. Lawrence Daniels Counsel for the Applicant/Claimant

Dr. David Dorsett, Counsel for the Respondent/Defendant

2021: February 16th
March 24th

JUDGMENT

[1] **SMITH, J.:** The Applicant filed a Fixed Date Claim Form on 29th June, 2020. The claim sought a number of remedies namely:

1. A declaration that the removal and or termination of the Applicant as Commissioner of Police infringes his constitutional rights under section 105 (1) and section 119 of the constitution of Antigua and Barbuda,
2. A declaration that the decision made by the Respondent on 28th November, 2019 to terminate the Applicant's services as Commissioner of Police was unlawful null and void,

3. A declaration that the unlawful termination of the Applicant's services as Commissioner of Police Commissioner on 25th November, 2019 absent pension rights and gratuity was unlawful and unconstitutional,
4. A declaration that to terminate the Applicant and to remove him as Commissioner of Police was motivated by bad faith or improper purposes,
5. A declaration that to terminate the Applicant as a police officer and remove him as Commissioner of Police was in breach of the rules of natural justice,
6. A declaration that to deprive the Applicant of the right to have the appeal heard is unconstitutional and or unlawful null and void,
7. A declaration that to terminate the Applicant as a police officer and to remove him Commissioner of Police was unreasonable,
8. A declaration that in light of all that has happened the appointment and or confirmation of Mr. Atlee Rodney as Commissioner of Police was unconstitutional or unlawful, ultra vires, null and void,
9. Damages, inclusive of accumulative vacation leave, aggravated and exemplary damages,
10. Assessed costs in accordance with Part 65 of the Civil Procedure Rules,
11. Such further and or other orders as the Court may deem just.

The Claimant/Applicant also sought Constitutional relief under Sections 105 and 119 of the Constitution of Antigua and Barbuda

[2] Section 105 clearly states:-

APPOINTMENT ETC. OF POLICE OFFICERS

105.-

1. Subject to the provision of this section, the power to appoint persons to hold or act in offices in the Police Force (including appointments on promotion and transfer and the confirmation of appointments) and to remove and exercise disciplinary control over persons holding or acting in such offices shall vest in the Police Service Commission: Provided that the Commission may, with the approval of the Prime Minister and subject to such conditions as it may think fit, delegate any of its powers under this section to any one or more of its members or to the Commissioner of Police.
2. Before the Police Service Commission, or any person or authority to whom powers have been delegated under this section, appoints to an office in the Police Force any person who is holding or acting in an office power to make appointments to which is vested by this Constitution in the Public Service Commission, the Police Service Commission or that person or authority shall consult with the Public Service Commission.
3. Before the Police Service Commission makes an appointment to the office of Commissioner or Deputy Commissioner or a like post however designated it shall consult the Prime Minister, and a person shall not be appointed to such an office if the Prime Minister, and a person shall not be appointed to such an office if the Prime Minister signifies to the Police Service Commission his objection to the appointment of that person to the office in question.

4. Before the Police Service Commission makes an appointment to the office of Superintendent or a like post however designated it shall consult the Prime Minister.
5. The power to appoint persons to hold or act in offices in the Police Force below the rank of Sergeant (including the power to confirm appointments) and, subject to the provisions of section 107 of this Constitution, the power to exercise disciplinary control over persons holding or acting in such offices and the power to remove such person from office shall vest in the Commissioner of Police.
6. The Commissioner of Police may, by directions given in such manner as he thinks fit and subject to such conditions as he thinks fit, delegate any of his powers under subsection (5) of this section, other than the power to remove from office or reduce in rank, to any other member of the Police Force.
7. A police officer shall not be removed from office or subjected to any other punishment under this section on the grounds of any act done or omitted by him in the exercise of any judicial function conferred on him unless the Judicial and Legal Services Commission concurs therein.
8. In this section references to the rank of Sergeant shall, if the ranks within the Police Force are altered (whether in consequence of the re-organisation or replacement of an existing part of the Force or the creation of an additional part), be construed as references to such rank or ranks as may be specified by the Police Service Commission by Order published in the Official Gazette, being a rank or ranks that in the opinion of the Commissioner most nearly correspond to the rank of Sergeant as it existed before the alteration.

Section 119

119.-

1. Subject to the provisions of sections 25(2), 47(8) (b), 56(4), 65(5), 124(7) (b) and 124 of this Constitution, any person who alleges that any provision of this Constitution (other than a provision of Chapter II) has been or is being contravened may, if he has a relevant interest, apply to the High Court for a declaration and for relief under this section.
2. **The High Court shall have jurisdiction on an application made under this section to determine whether any provision of this Constitution (other than a provision of Chapter II) has been or is being contravened and to make a declaration accordingly.**
3. **Where the High Court makes a declaration under this section that a provision of this Constitution has been or is being contravened and the person on whose application the declaration is made has also applied for relief, the High Court may grant to that person such remedy as it considers appropriate, being a remedy available generally under any law in proceedings in the High Court.**
4. The Chief Justice may make provision, or authorise the making of provision, with respect to the practice and procedure of the High Court in relation to the jurisdiction and powers conferred on the court by or under this section, including provision with respect to the time within which any application under this section may be made.

5. A person shall be regarded as having a relevant interest for the purpose of an application under this section only if the contravention of this Constitution alleged by him is such as to affect his interests.
6. The rights conferred on a person by this section to apply for a declaration and relief in respect of an alleged contravention of this Constitution shall be in addition to any other action in respect of the same matter that may be available to that person under any other law or any rule of law.
7. Nothing in this section shall confer jurisdiction on the High Court to hear or determine any such question as is referred to in section 44 of this Constitution.

The Evidence Supporting the Applicant's/Claimant's Case

- [3] The Applicant's claim for relief is supported with an affidavit and exhibits. In his claim for Administrative Orders and Constitutional relief he sets out that he was appointed as Commissioner of Police on 18th March, 2016 and had served as an officer for some 33 years. On 8th April, 2018 the Applicant stated that he was suspended from official duties amidst allegations of misconduct. Subsequent to that suspension a team of special constables was sworn in by the Police Services Commission to commence an investigation of the Applicant. In May 2018 my brother judge Godfrey Smith SC as he then was, ruled that the Police Disciplinary Regulations 1967 did not apply to the Applicant as Commissioner of Police. The Court ordered that the suspension be quashed and that the Applicant be reinstated and costs awarded against the Respondent. I understand that the Respondent has appealed this decision. After the pronouncement by Justice Godfrey Smith, the Appellant was served with a further suspension notice. There was never any hearing to which the Applicant could be heard and answer any perceived allegations. In February 2020 a new Commissioner of Police was appointed and confirmed. On 26th March, 2020 the Applicant was served with notification from the Chief Establishment Office stating that his services as Commissioner of Police were being terminated effective 25th November, 2019. Finally, the Applicant urged the Court to deal with the claim as the trial of the claim (if it is not defended or it considers that the claim can be dealt with summarily) as provided by **CPR 27.2(3)** in other words dealing with it as a first hearing.

Respondent's Submission

- [4] Counsel for the Respondent asserted that the Applicant's Fixed Date Claim should be struck out as it disclosed no cause of action. Counsel indicated that Section 105 (1) of the Constitution of Antigua and Barbuda does not vest or endow him with any rights in which to ground a constitutional claim. The submissions pointed the Court to the test for striking out as found in the case of **Didier vs. Royal Caribbean Cruises Ltd (2016) 89 WIR 277** and says that the statement of case relating to constitutional relief should be struck out. They also submit that the striking out application is first time and should be heard first.

Court's Findings

- [5] First and foremost the Court is duty bound to deal with this case with the overriding objective being foremost in the mind of the Court. This means that the Court must seek to give effect to the

overriding objective when it – (a) exercises any discretion given to it by the Rules; or (b) interprets any rule. The Court also notes that ‘it must be kept in mind that discretionary powers are not to be exercised in order to punish a party for incompetence—they must be exercised in order to further the overriding objective’¹

- [6] The Court finds that the Applicant’s request for Constitutional redress must fail. Section 5.7 (4) mandates that the Affidavit in Support of a Constitutional Claim **MUST** (my emphasis) state which provision of the Constitution has been, is being or is likely to be breached. Matters must be properly pleaded so that the Defendant knows the case that he has to answer. Several cases in this jurisdiction have made this abundantly clear. If the Claimant wishes to challenge the constitutionality of a legislative provision he has to indicate in his pleadings the section of the constitution which he alleges is being contravened². The Applicant has cited the case of **Ausbert Regis vs. The Attorney General of St Lucia**³. Wilkinson J as she then was found that the applicant, Mr. Regis could be transferred but that he had a right to be heard and that the Respondent had failed to show that the transfer was due to “national security”.
- [7] This case has to be distinguished from the case at bar in that although Section 105 of the Constitution in St. Lucia is identical to the Antigua Section 119 this only assists the Appellant to say that he has a right to bring his matter to the attention of the High Court if **CPR Part 56** is satisfied. As already stated Wilkinson J acknowledged that Mr. Regis could be transferred but that “this brings us to the second issue of whether the Claimant ought to have been given a hearing before a decision was made to transfer him to the post of Director of Special Initiatives. In this regard the Defendant has up the defence of shield of national security. As the authorities have shown, when the defence of national security is put up, it cannot be a mere bald statement without more, there must be evidence before the Court to support it. In this case the Applicant was not given a hearing and this is a breach of natural justice and therefore entitles him to administrative orders.
- [8] But this is not the end for the Applicant/Claimant. It is the Court’s considered view that the Police Services Commission has behaved badly. There can be no other way to put it. A litany of procedural errors coupled with apparent bias has brought us to this position today. While the judgment of Justice Godfrey Smith SC is still yet to be complied with, no stay of that decision has been applied for while the appeal is pending.
- [9] Further the oral application by the Applicant/Claimant before the Court to treat the first hearing as the trial of the claim if it is not defended or if the Court considers that the claim can be dealt with summarily as provided by **CPR 27.2(3)**. **CPR 27.2** sets this out in the following terms:-

(1) “When a fixed date claim is issued the court must fix a date for the first hearing of the claim,

¹ *Salfray Hussain v Birmingham City Council and Others* [2005] EWCA Civ 1570 at para. 36.

² *Abner James vs The Medical and Dental Council*, SLUHCv2016/0820

³ Claim No SLUHCv 2010/0497

- (2) On that hearing, in addition to any other powers that the court may have, the Court shall have all the powers of a case management conference,
- (3) the court may however, treat the first hearing as the trial of the claim if it is not defended or it considers that the claim can be dealt with summarily,
- (4) the general rule is that the court must give at least 14 days' notice of any first hearing,
- (5) the general rule is subject to any rule or statutory provision which specifies a different period,
- (6) the court may on or without an application direct that shorter notice be given- a) if the parties agree; or b) in urgent cases,
- 7) Unless the defendant files an acknowledgement of service the claimant must file evidence on affidavit of service of the claim form and the relevant documents specified in rule 5 (2) (3) at least 7 days before the first hearing".

On the Striking Out Issue

- [10] On the morning of 10th November, 2020 which was the date fixed for hearing, the application to strike out was filed. The Respondent state vehemently that their application was first in time and to be heard first. The Court takes issue with this.
- [11] No defence to the Fixed Date Claim was filed. When the Court inquired of the Respondent as to why no defence had been filed the response was that this was due "to tardiness on the part of the Police Services Commission".
- [12] In relation to the application to strike out the claim, no Affidavit in Support of Application to have matter struck out was filed. The Notice of Application to strike out must be served on the other side in accordance with **Rule 11.11 (1) (a) and (b)**. However this was not done. In fact the Application was filed on the portal at 8:30 am on the morning of 10th November, 2020. No notice was served on the Applicant/Claimant. Therefore the significant date was 13th October, 2020 as this was the date fixed by the Court office for the first date to be 10th November, 2020. This was obviously long before the Application to Strike Out had been filed.
- [13] It is the Court's view that 1) the application to strike out claim form application is first in time fails as this application is not properly before the Court and is dismissed 2) as already indicated in paragraph 3 of this ruling, the Applicant/Claimant's request for constitutional relief is also struck out **only for the constitutional reliefs sought** (my emphasis). The Court finds that these claims cannot be supported due to the reasons as set out in paragraph 3 as his affidavit is deficient.

Conclusion

- [14] The Court finds that the Applicant/Claimant through his affidavit and exhibits has brought himself under the ambit of **Part 56 (2) of the CPR**. He has shown that he has locus standi, that he has a good and arguable case and that he has been adversely affected by the actions of The Police Services Commission.
- [15] The Court makes the following Administrative Orders in light of the claim being undefended:-

1. A declaration that the decision made by the Respondent on 28th November, 2019 to terminate the Applicant's services as Commissioner of Police was unlawful null and void,
2. A declaration that the unlawful termination of the Applicant's services as Commissioner of Police on 25th November, 2019 absent pension rights and gratuity was unlawful and unreasonable,
3. A declaration that to terminate the Applicant and to remove him as Commissioner of Police was motivated by bad faith and bias,
4. A declaration that to terminate the Applicant as a police officer and remove him as Commissioner of Police was in breach of the rules of natural justice, irrational and unreasonable,
5. A declaration that to deprive the Applicant of the right to have the appeal heard is unconstitutional and or unlawful null and void,
6. A declaration that to terminate the Applicant as a police officer and to remove him as Commissioner of Police was unreasonable,
7. A declaration that the appointment and or confirmation of Mr. Atlee Rodney as Commissioner of Police was unlawful, ultra vires, null and void as the situation with Mr. Wendel Robinson was still pending and unresolved,
8. A declaration that to deprive the Applicant of his pension emoluments was unreasonable, irrational and unfair,
9. Damages, inclusive of accumulative vacation leave, aggravated and exemplary damages; and
10. Assessed costs in accordance with **Part 65** of the **Civil Procedure Rules**.
11. Claimant is to draft, file and serve this order no later than 7 days from today's date.

Ann-Marie Smith
High Court Judge

By the Court

Registrar

