

**EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF THE VIRGIN ISLANDS**

IN THE HIGH COURT OF JUSTICE

Claim No. BVIHCV 2019/0252

**IN THE MATTER OF SECTION 129 OF THE REGISTERED LAND ACT (CAP. 229) OF THE REVISED
EDITION OF THE LAWS OF THE VIRGIN ISLANDS**

AND

**IN THE MATTER OF AN APPLICATION TO REMOVE A CAUTION FILED BY JJS INVESTMENT
HOLDINGS LIMITED**

AND

**IN THE MATTER OF AN APPEAL AGAINST THE ORDER OF THE CHIEF REGISTRAR OF LANDS
(AG.)**

BETWEEN

DUFF’S VALLEY CORPORATION LTD.

Claimant

AND

[1] THE CHIEF REGISTRAR OF LANDS (AG.)

First Defendant

[2] JJS INVESTMENTS HOLDINGS LIMITED

Second Defendant

Appearances: Ms. Lorraine La Rose and I. Potter Law, Counsel for the Claimant
Ms. Maya Barry, Principal Crown Counsel (Ag.), Counsel for the First Defendant
Mrs. Hazelann Hannaway-Boreland and Mr. Richard Parchment, Counsel for the Second Defendant

2020: 22nd – 23rd June
17th July

JUDGMENT

Introduction

[1] **ELLIS J:** This Appeal is filed pursuant to section 147 of the Registered Land Ordinance (“RLO”) Cap 229 of the Laws of the Virgin Islands and Part 60 of the Civil Procedure Rules (“CPR”). The Claimant herein contends that it is aggrieved by a decision taken by the Acting Chief Registrar of

Lands on 16th August 2019 in which she ordered that the Caution registered against Block 2836B Parcel 127 (“**the Property**”) on 18th December 2017 at the instance of the Claimant be vacated from the register relating to the Property forthwith. The Acting Chief Registrar also ordered that the Claimant pay the costs of the Second Defendant in the matter and for the costs incurred on 11th July 2019.

- [2] By Fixed Date Claim Form filed on 19th September 2019, the Claimant seeks a reversal or setting aside of the Orders of the Chief Registrar. In this claim the Claimant advanced no less than 14 grounds of appeal. The Appeal is vigorously opposed by both the Chief Registrar and the Second Defendant Company.
- [3] At a case management hearing conducted on 30th April 2020, the Court agreed to hear grounds 7 – 12 as preliminary issues. These grounds essentially advanced that the Claimant was not afforded a fair hearing as it was not given a fair opportunity to be heard. The Parties agreed to treat with these issues prior to dealing with the substantive issues which arise in the Appeal. Counsel for the Claimant indicated that in the event that the Claimant is successful on these matters then the Claimant would seek leave to adduce fresh evidence in order to deal with the other substantive issues which arise.
- [4] The procedural history in the proceedings before the Acting Chief Registrar is critical to the determination of the matters in issue. For that reason, a summary of the background is set out below.

Factual Background

- [5] Following a dispute as to interpretation of the terms of an agreement for the sale and purchase of the Property, the Claimant sought to have a caution registered against the Land Register for the Property. That Application was dated 14th December 2017 and lodged on 18th December 2017 and it advanced *inter alia* that the Claimant had an equitable interest in the Property. Consequently, the Registrar registered Caution No. 1221/2017 on the Land Register which prohibited the registration of dealings and making of entries on the Land Register relating to the Property without

the Claimant's consent or until the caution is withdrawn or removed by order of the Court or the Registrar. Critically, the Caution had the following endorsement:

"Our address for the purposes of service in relation to this caution is c/o I. Potter Law, Road Town, Tortola, British Virgin Islands and mailing address at P.O. Box 529 East End Tortola, British Virgin Islands, unless and until notified otherwise in writing by either ourselves of Messrs I. Potter Law."

- [6] On 21st June 2018, the Second Defendant applied to have this Caution removed from the Land Register for the Property on the basis that there is no justification for its imposition. From the record, it appears that the Chief Registrar of Lands issued a Notice of the Application for Removal of the Caution dated on 25th June 2018 in which the Claimant was required to file at the office of the Chief Registrar of Lands, any objection they may have why the said caution should not be removed pursuant to s. 129 of the RLO, within 14 days of the date the Notice. Importantly, the Notice was addressed to: **Duff's Valley Corporation Ltd. c/o P.O. Box 3251, Road Town, Tortola, BVI and the Second Defendant at Harneys Westwood and Reigels**. Endorsed on a copy of this Notice is a record of service which indicates that it was served on Sheila Brathwaite on 25th June 2018. During the course of this Appeal, it was represented that Ms. Brathwaite is a director of the Claimant.
- [7] On a separate copy of the Notice, there is another record of service endorsed at the back of the Notice which indicates that the Notice was served on I. Potter Law and signed for by Counsel on 16th July 2018. However, following this, by emailed message of 16th July 2018, Ms. La Rose of I. Potter Law wrote to the Registrar, copied to Mr. Ishmael Brathwaite (the purported Chief Executive Officer of the Claimant Company) acknowledging receipt of the Notice and indicating that I. Potter Law had not been retained to act as counsel for the Claimant in the matter. There is a further emailed message of even date to Mr. Ishmael Brathwaite forwarding a copy of the Notice and confirming that I. Potter Law was not retained as counsel in the matter. However, it clarifies for his benefit that the address for I. Potter Law is the named address for service of notices and documents in relation to Caution No. 1221 of 2017. Although the email sought an acknowledgment of receipt, the record does not reveal that this was ever done.
- [8] The evidence reveals that the Notice must have come to the attention of the Claimant because on 11th July 2018, the Claimant filed an Objection to the Removal of the Caution. The Objection made a number of allegations, but ultimately, the Claimant contended that the Parties intended that the

Property would be used as security to guarantee the transfer of a reclaimed area of land to the Second Defendant once all the formalities had been finalized. The purchase price for Property would then operate as the prepaid purchase price for the reclaimed land.

- [9] The Second Defendant filed supplemental evidence of its principal, Dr. Heskith Vanterpool on 27th September 2018, in response to the Objection. Thereafter, the matter went dormant for almost 1 year.
- [10] It appears that sometime in June 2019, officials from the Land Registry contacted the Parties with a view to scheduling a hearing date for the matter. By emailed message dated 18th June 2019 sent to Mr. Brathwaite and to Counsel for the Second Defendant, officials from the Land Registry informed the Parties of the Acting Chief Registrar's intention to convene a hearing on this matter on 5th July 2019. That date was approved by Counsel for the Second Defendant by return email on 18th June 2019. The Claimant did not acknowledge receipt of the same.
- [11] The emailed message of 20th June 2019 addressed to Mr. Brathwaite and to Counsel for the Second Defendant noted that Mr. Brathwaite had indicated that the matter had been referred to the High Court. The Acting Chief Registrar requested confirmation that the matter should be suspended pending the High Court determination. Counsel for the Second Defendant objected to this course. There followed a further emailed exchange between the officials at the Land Registry and Mr. Brathwaite and Counsel for the Second Defendant in which reference is made to a discussion with Mr. Brathwaite in which he indicated that he has no intention of attending a hearing of this matter until the High Court has issued a decision in the matter. That email indicated an intention for the matter to be set down for hearing on 5th July 2019 at 10:00 a.m. because the Land Registry was not "*made aware of the nexus between this matter and the matter which is before the High Court*". The email sought confirmation of availability.
- [12] By emailed message dated 20th July 2019, Counsel for the Second Defendant sought to have confirmation that the hearing date was 5th July 2019. A response from the officials of the Land Registry of 20th June 2019 confirmed that hearing would proceed as scheduled. Thereafter, the hearing of the matter was convened on 5th July 2019. A transcript of the proceedings forms part of the record of appeal and the following factors are revealing:

- (i) First, when he was asked in what capacity he was appearing, Mr. Brathwaite indicated that he was appearing as the CEO of the Claimant.
- (ii) In his preliminary statement, Mr. Brathwaite made it clear that he had only received notice of the hearing about 1 week prior at which point he expressed concerns about the short notice. He asserts that the matter is more complex than was thought and that he needs some time to give proper instructions to his attorney. He states that he had made it clear that he was not ready to deal with a full hearing of the matter because as he had explained. He states that he attended only to give general information with respect to the matter.
- (iii) Mr. Brathwaite also confirms that he had received nothing from the Registrar indicating what the proceedings were specifically about. He stated that he is familiar with the caution situation but he had no communication with respect to the filing of or the claim in relation to the request of the Second Defendant to have the caution removed. He indicated that he only responded because he was familiar with the situation.
- (iv) Mr. Braithwaite also indicates that he found it "*unusually informal*" that the Parties had not received anything from each other.

[13] The following exchange between Mr. Brathwaite and the Acting Chief Registrar is of note¹:

Acting Chief Registrar: "Very well."

So, Mr. Brathwaite, I heard what you said in relation to the shortness of time, but you will be aware that this matter has been going on since, at least June of 2018, at least.

Mr. I. Brathwaite: True.

Acting Chief Registrar: That's a year ago. You would have been made aware that the Registry had propose a number of dates for the hearing of this matter; am I correct?

Mr. I. Brathwaite: Just about a week ago.

Acting Chief Registrar: Mr. Brathwaite, there are several pieces of correspondence on the file, even before the Registry knew that Ms. La Rose no longer represented you, I know personally that we made several efforts to contact you and it is after we contacted you and proposed the date to you we finalised the date for today's hearing.

Mr. I. Brathwaite: I am not aware of those procedures.

¹ Page 11 line 22 – Page 13 line 6 of the Transcript

Acting Chief Registrar: You are not aware. But at least you are aware that a hearing is to be conducted today, and so unless you are prepared to pay wasted costs, I can only propose that we proceed at least to allow Dr. Vanterpool to give his evidence and if we have to adjourn we adjourn so that you can give yours. So on that basis I would order that we proceed with the hearing and that Dr. Vanterpool is allowed to give his evidence.

Depending on how the hearing unfolds, we might need to come back because I am aware that even our transcriber here is short on time. We had to retain her services because most of the Registry's staff is sick and so we've had to get her assistance at short notice.

Is that clear?

Mr. Braithwaite: "Yes."

[14] The matter continued thereafter with the examination of Mr. Vanterpool and the admission of his affidavits into evidence. At page 17 of the transcript a further complication presents itself. It is revealed that the Claimant was never served with a copy of the evidence filed in support of the Application to Remove the Caution - the affidavits of 21st June 2018 and 28th September 2018 ("the Affidavits").

[15] It was pellucidly clear to all present that the Claimant and its representative were not in receipt of the Affidavits prior to the hearing. What transpired thereafter was, in the Court's view, remarkable. The Acting Chief Registrar permitted Counsel for the Second Defendant to hand over copies of the Affidavits to Mr. Braithwaite and afforded him 5 minutes to review the same. The matter was then adjourned for 18 minutes to facilitate this.

[16] When the matter resumed, Mr. Braithwaite was asked to confirm his email address. When this was done, the Acting Chief Registrar expressed concerns about the fact that email communications were not being received at that email address. Mr. Braithwaite echoed those concerns. In the Court's view this exchange confirmed that this method of communicating with the Claimant was at the very least precarious.

[17] Thereafter the matter proceeded, with the Acting Chief Registrar directing Mr. Vanterpool to read the Affidavits into the record. Mr. Brathwaite was then invited to cross-examine Mr. Vanterpool and again, he reiterated his concerns about the proceedings. The following excerpts are referenced:

Mr. I. Brathwaite: "Listen, I stated at the beginning I did not come here for a full-fledge hearing to this extent. And although I have quite a few questions on some of the things that Dr. Vanterpool presented, I would hate to go on the record, you know, with the case on this basis because I did not come today for that purpose, given the explanation I gave at the beginning.

But, anyhow, I will ask him a few questions just for the record, but I think this entire procedure should be redone because of the way the whole thing was handled in terms of timing and not receiving proper service of documents and what have you. It's kind of difficult to effectively respond the way I normally would have."²

[18] Following a rather curious cross-examination, Mr. Brathwaite indicated that he wished to bring an end to the proceedings and return later to deal with Mr. Vanterpool's second affidavit in support of the application. The exchange which follows between Mr. Brathwaite and the Acting Chief Registrar at page 61 of the transcript is again worthy of note.

Mr. I. Brathwaite: "Yes. The last response I made to Ms. Stevens, is that I will not be prepared for a hearing on this date. Only after I had a conversation with you at the office, you more or less convinced me to show up. But I did not show up for the purpose of this in depth situation here, and Ms. Stevens did not respond, she went ahead and – first of all, she asked that we mutually confirm that we would be available or not be available for this date and I mutually confirmed that I will not be available. There was no further communication after that. So you cannot put a blame on me. I only came out of the respect.

Acting Chief Registrar: All right.

Counsel and Mr. I. Brathwaite: Can we then adjourn here and set a date for the continuation of this matter? I would like to propose Tuesday 16th July.

Mrs. Hannaway-Boreland: Just a moment, I have to clarify from my journal.

Acting Chief Registrar: Mr. Brathwaite, can you confirm?

² Page 37 line 2 – 16 of the Transcript

Mr. I. Brathwaite:	I would like at least two weeks.
Acting Chief Registrar:	Mr. Brathwaite, the Registrar's calendar is extremely full, especially with the summer vacation approaching, so two weeks is out of the question because our calendar is already packed. We do not have a date in two weeks; I am giving the date that's most convenient to the Registrar's calendar.
Mr. I. Brathwaite:	What date are you giving?
Acting Chief Registrar:	I am giving the 16 th of July.
The Witness:	I have to travel on the 16 th , could it be done any earlier? I don't think that Mr. Brathwaite needs this long length of time to prepare for something. He clearly doesn't have a counsel, I cannot continue to be denied justice and I believe that it is unfair to keep prolonging this matter.
Acting Chief Registrar:	What about the 11 th July?
Mrs. Hannaway-Boreland:	Next Thursday?
Acting Chief Registrar:	Yes.
The Witness:	I can do that.
Acting Chief Registrar:	Is the 11 th July okay, Mr. Brathwaite?
Mr. I. Brathwaite:	I cannot answer that on the spot.
Acting Chief Registrar:	All right. Well, we will propose the 11 th July.

[19] The Claimant's representative clearly struggled with that time frame. The following exchange is recorded.

Mr. I Brathwaite:	So right now the date is not fixed? It's tentative..."
Acting Chief Registrar:	No. Right now the date, for us it's 11 th July. We are bringing it forward because any time after the 16 th July is out of the question for the --- as far as the Registrar's calendar is concerned.
Mr. I. Brathwaite:	So the date is tentatively fixed for July 11?
Acting Chief Registrar:	Yes, sir.

Mr. I. Brathwaite:	Tentatively?
Acting Chief Registrar:	Well, it's fixed for us and it's fixed for Counsel and for Dr. Vanterpool, am I correct?
Mr. I. Brathwaite:	You're confusing me. So why do I have to call then, it's July 11.
Acting Chief Registrar:	So we are fixing the date of 11 th July or July 11 th , whichever way you want to ---
Mr. I. Brathwaite:	Sixteen was almost inconvenient to me and you are pulling it back to the 11 th at his convenience.
Acting Chief Registrar:	Well, it's not at his convenience. I explained to you that the Registrar's calendar is already packed.
Mr. I. Braithwaite:	I heard that. The last case --
Acting Chief Registrar:	So we could not give you the two-week allowance that you are seeking.

[20] This exchange clearly indicated Mr. Brathwaite's confusion about whether the adjournment date of 11th July was fixed or tentative. What is clear is that at the conclusion of the day's proceedings, the matter was set to continue on 11th July 2019, 4 clear days after the first hearing and Mr. Braithwaite was invited to contact the Registry to confirm that the date set, 11th July 2019, was convenient.

[21] On 10th July 2019, however, Mr. Brathwaite wrote to the Registrar making several allegations against the Second Defendant and the Permanent Secretary of Natural Resources and Labour. At paragraph 7 – 12 of that correspondence he stated:

"The Land Registry is a department of the Government of the Virgin Islands and being the Chief Registrar of Lands is an employee of the Government of the Virgin Islands, the Registrar of Lands cannot be the proper jurisdiction to try this case since the litigation has envelops several other government departments viz: Town and Country Planning, former NDP cabinet and the Premier's Office and the Government of the Virgin Islands and therefore trial by the Chief Registrar of Lands would present a conflict of interest.

Duff's Valley Corporation intends to carry out the terms of this contract, and it must be allowed to properly carry out the terms of the contract without the illegal and irresponsible obstruction by government officials.

Retention of Parcel 127 is important to Duff's Valley Corporation Ltd. and therefore due process in the proper jurisdiction must be allowed to take place.

Duff's Valley Corporation has already formulated litigation and is about to file lawsuits against the Permanent Secretary of Natural Resources and Labour of the Government of the Virgin Islands and the various above mentioned government entities involved, not later than by mid-August, 2019, in an attempt to remedy the situation.

In the event that the Registrar of Lands proceed to make a decision not in favor of Duffs Valley Corporation Ltd., that decision will be automatically appealed to the High Court of the British Virgin Islands for lack of proper jurisdiction.

Therefore on the basis of the above representations, Duff's Valley Corporation Ltd. enjoins the Registrar of Lands from continuing to exercise jurisdiction over this case, as the case is being filed in the High Court of the Virgin Islands, which is a more appropriate jurisdiction to try this case."

[22] When the hearing reconvened on 11th July 2019, the transcript reflects that the Acting Chief Registrar telephoned Mr. Brathwaite in the presence of all present in order to verify whether he will be attending the hearing. She noted that Mr. Brathwaite had responded that he would not attend the hearing on the basis of the correspondence which was served on 10th July 2019. The Acting Chief Registrar then indicated that she was minded to adjourn the matter *sine die* because in her words "...he was to have given evidence."

[23] Counsel for the Second Defendant however objected to this course and at page 8 line 8 – page 9 line 3 of the transcript the Acting Chief Registrar stated her proposed course;

Acting Chief Registrar: Very well.
Now I would prefer to be given the opportunity to consider this position, this situation instead of proceeding because as I understand it you've rested your case, basically.

Mrs. Hannaway-Boreland: Yes.

Acting Chief Registrar: You are to cross-examination Mr. Braithwaite – well, you have to accept his evidence and then cross-examine him, because he has already cross-examined Dr. Vanterpool. So we convened this morning to accept his evidence and for him to be cross-examined. He has opted to abandon his case.

Mrs. Hannaway-Boreland: Yes.

Acting Chief Registrar: So I ask for a day or two to conduct my independent research and determine whether I can give a decision based on the evidence that has already been put in.

Mrs. Hannaway-Boreland: Yes.

Acting Chief Registrar: So I will give that decision, but I will communicate with you and with Mr. Brathwaite as what position I would prefer to take.

[24] The proceedings were thereafter brought to an end, but not before the Acting Chief Registrar made an order awarding the Second Defendant its costs.

[25] By emailed message dated 12th July 2019, officials from the Registry wrote to Mr. Brathwaite and to Counsel for the Second Defendant requesting that all parties lodge submissions based on the evidence tendered to date within 10 days of that date. The email indicated that the Registrar intended to issue a decision shortly thereafter. The message concludes that the rules make provision for the absent party to appeal the decision after it has been served on the parties. The email required an acknowledgment of receipt which was provided by Counsel for the Second Defendant but not by Mr. Brathwaite. Mr. Braithwaite contends that this emailed correspondence was never received by the Claimant. No submissions were filed on behalf of the Claimant.

[26] There was no further communication between the Claimant and the Acting Chief Registrar until 16th August 2019 when the Decision in the matter was rendered.

Legislative Context

[27] The appropriate starting point is the relevant legislative context. In this case, this is section 129 of the Registered Land Ordinance ("RLO") which provides as follows:

129. (1) A caution may be withdrawn by the cautioner or removed by order of the court or, subject to the provisions of subsection (2) of this section, by order of the Chief Registrar.

(2) (a) The Chief Registrar may, on the application of any person interested, serve notice on the cautioner warning him that his caution will be removed at the expiration of the time stated in the notice.

(b) If at the expiration of the time stated the cautioner has not objected, the Registrar may remove the caution.

(c) **If the cautioner objects to the removal of the caution, he shall notify the Chief Registrar in writing of his objection within the time specified in**

the notice, and the Chief Registrar, after giving the parties an opportunity of being heard, shall make such order as he thinks fit, and may in the order make provision for the payment of costs.

- (3) On registration of a transfer by a chargee in exercise of his power of sale under section 75, the Registrar shall remove any caution which purports to prohibit any dealing by the chargor and which was registered after the charge by virtue of which the transfer has been affected.
- (4) On the withdrawal or removal of a caution, its registration shall be cancelled, but any liability of the cautioner previously incurred under section 131 of this Act shall not be affected by the cancellation.

[28] In the context of this present case, dealing as it does with the statutory provisions regarding the removal of a caution and the expressed requirements of fairness, the court is guided by the six principles identified by Lord Mustill in **Doody v Secretary of State for the Home Department**³ when he stated at page 96:

“(1) Where an Act of Parliament confers an administrative power there is a presumption that it will be exercised in a manner which is fair in all the circumstances. (2) The standards of fairness are not immutable. They may change with the passage of time, both in the general and in their application to decisions of a particular type. (3) The principles of fairness are not to be applied by rote identically in every situation. What fairness demands is dependent on the context of the decision, and this is to be taken into account in all its aspects. (4) An essential feature of the context is the statute which creates the discretion, as regards both its language and the shape of the legal and administrative system within which the decision is taken. (5) Fairness will very often require that a person who may be adversely affected by the decision will have an opportunity to make representations on his own behalf either before the decision is taken with a view to producing a favourable result; or after it is taken, with a view to procuring its modifications; or both. (6) Since the person affected usually cannot make worthwhile representations without knowing what factors may weigh against his interests fairness will very often require that he is informed of the gist of the case which he has to answer.”

[29] The Court has also considered section 161 of the RLO which provides as follows:

“Any matter not provided for in this Ordinance or in any other written law in relation to land, leases and charges registered under this Ordinance and interest therein shall be decided in accordance with the principles of natural justice, equity and good conscience.”

[30] The term “natural justice” is often described as a general concept and in recent times it has largely been replaced and extended by the general “duty to act fairly”. In the Court’s judgment, section 161 of the RLO recognises that natural justice and fairness are indispensable to good public

³ [1993] UKHL 8, [1994] 1 AC 531

administration. It recognises that the mere fact that a decision affects rights or interests is sufficient to subject the decision to the procedures required by natural justice.

[31] In English law, natural justice is technical terminology for the rule against bias (*nemo iudex in causa sua*) and the right to a fair hearing (*audi alteram partem*). In this legislative context, the right to a fair hearing requires that individuals should not be penalized by decisions affecting their rights or legitimate expectations unless they have been given prior notice of the case, a fair opportunity to answer it, and the opportunity to present their own case. In the Virgin Islands, the right to a fair hearing is guaranteed by the Virgin Islands Constitution which incorporates and mandates strict adherence to the principles of natural justice and fairness.

[32] In this context, the Court is satisfied that the right to a fair hearing would necessitate (1) that prior notice of application, the hearing, the reconvened hearing and any order made therein be given to interested parties (2) they should also have been given an opportunity to be heard or to make written representations. When deciding how the hearing should be conducted, a chief registrar has to ask himself whether the relevant parties had a proper opportunity to consider, challenge or contradict any evidence or orders made in the proceedings, and whether they were also fully aware of all relevant matters so as to have a proper opportunity to present their case.

[33] In this regard, the Court is satisfied that the Acting Chief Registrar ought to have had regard to section 129 of the RLO which clearly mandates that a cautioner be given notice of any application which would have the potential to affect the maintenance of the caution. Section 129 also mandates where a cautioner notifies the Registrar in writing of his objection within the time specified in the notice, the Registrar must give the parties an opportunity of being heard.

[34] These provisions are to be considered within the context of section 150 of the RLO which provides that:

150. Any person who under this Ordinance submits a caution or any instrument for registration, or is the proprietor of any land, lease or charge, shall furnish to the Chief Registrar in writing a postal address within Virgin Islands for service, and shall notify him in writing of any change in that address:

Provided that the Chief Registrar may in his discretion dispense with this requirement in regard to any particular registration or kind of registration.

[35] Where the cautioner has provided his address for service then that is the appropriate address for service of any notices or applications for the removal and any related process. Where the address for service fails for whatever reason, the Chief Register would need to fall back on the provisions of section 151 of the RLO which prescribes how notices under the Ordinance are generally to be served. It provides:

151. A notice under this Ordinance shall be deemed to have been served on or given to any person–

- (a) if served on him personally; or
- (b) if served on an attorney holding a power of attorney where under such attorney is authorised to accept such service; or
- (c) if sent by registered post addressed to him at his last known postal address in this territory or elsewhere and a receipt purporting to have been signed by him has been received in return; or
- (d) if service cannot be effected in one of the above-mentioned ways, by displaying it in a prominent place on the land affected and by publishing in three consecutive issues of the Gazette.

[36] In cases where the relevant party is a corporate entity, the RLO does not specifically address how service is to be effected. However, section 25 (3) of the Virgin Islands Interpretation Act⁴ provides that:

In the case of a corporate body or of any association of persons (whether incorporated or not) service of a document may be effected by delivering it to the secretary or clerk of the body or association at the registered or principal office of the body or association or serving it by post on the secretary or clerk at the office.

[37] Moreover, section 101 of the Business Companies Act 2004 as amended reinforces that;

101. (1) Service of a document may be effected on a company by addressing the document to the company and leaving it at, or sending it by a prescribed method to,

- (a) the company's registered office; or
- (b) the office of the company's registered agent.

⁴ Cap 136 of the Laws of the Virgin Islands

- [38] Applying these provisions to the facts of this case, it follows that the appropriate address for service of the) Notice would be the address endorsed on the caution which in this case would have been **c/o I. Potter Law, Road Town, Tortola, British Virgin Islands at P.O. Box 529 East End Tortola, British Virgin Islands**. In the event that this proved problematic then service ought to have been effected on the registered or principal office of the Claimant company.
- [39] The Court has no doubt that the communication sent by I. Potter Law on 16th July 2018 would have created significant and unnecessary confusion such that it became unclear that this law firm would still serve as the effective address for service. In the event that there was any confusion however, it is clear to the Court that the provisions of section 101 of the Business Companies Act and section 25 (3) of the Interpretation Act would have been the default position.
- [40] Although it is not entirely clear how the Notice came to the knowledge of the Claimant, it does not appear that there is any doubt that the Claimant did become aware of the Second Defendant's application to remove the caution and filed an objection in respect of the same. Once the objection was lodged and the Chief Registrar determined that it has been properly received, she was obliged to give the parties an opportunity of being heard.
- [41] The scope of this obligation has now been well established at common law. In **Kanda v Government of Malaya**⁵ Lord Denning prescribed what is now the classic and authoritative statement in that regard, where he stated that:
- "If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statement have been made affecting him; and then he must be given a fair opportunity to correct or contradict them."*
- [42] In so doing, the Acting Chief Registrar would need to have regard to the provisions of section 152 of the RLO which provides as follows:
- s. 152 (1) Where by this Ordinance a thing is to be or may be done after giving a person an opportunity of being heard that person shall be deemed to have been given such an opportunity –

⁵ [1962] AC 322; See also: Chief Constable of North Wales v Evans [1982] 1 WLR 1115; Murungaru v Secretary of State for the Home Department [2006] EWHC 2416 (Admin)

- (a) if he attends before the Chief Registrar personally or by a legal practitioner or other agent and is given such an opportunity; or
 - (b) if he intimates, personally or by a legal practitioner or other agent, that he does not wish to be heard; or
 - (c) if he fails to attend pursuant to a notice in writing indicating the nature of the thing to be done and appointing a day and time **not less than ninety days after service of the notice at which he will, if he attends before the Chief Registrar be heard.**
- (2) Where a person or a legal practitioner or other agent on his behalf attends before the Chief Registrar concerning a matter on which he is entitled to an opportunity of being heard, or fails to attend pursuant to such a notice as aforesaid, the Chief Registrar may, if he thinks fit, adjourn the hearing from time to time, and, notwithstanding failure to attend, may, if he thinks fit, hear such person at any time.
- (3) Where by this Ordinance all persons interested are to be given an opportunity of being heard, it shall be sufficient if all persons who, according to any subsisting entry in the register, appear to be so interested or affected are given such opportunity.

[43] It is now well settled that a concomitant of the right to be heard, is the right to receive sufficient notice of a hearing. Failure to give such a notice is a denial of natural justice.⁶ Moreover, where, as in the case at bar, a party has a right to be heard before a decision is taken, he will almost inevitably also have the right to disclosure of the case to be met or the basis upon which the decision maker proposes to act.

[44] Turning first to the sufficiency of the notice of the hearing. The evidence in this case reveals that after a period of almost 1 year when the proceedings would have gone dormant, the Acting Chief Registrar would have given notice of her intention to convene the hearing roughly 2 weeks before the hearing date (between 20th June 2019 and 5th July 2019). This came in the form of a telephone communication and an emailed message from registry officials which referenced a “**Removal of Caution – JJS Investment Holdings Limited**” and which simply indicates an intention on the part of the Registrar of Lands to “*convene a hearing on this matter on 5th July 2019*” and inviting the parties to confirm their availability.

⁶ Per Fox LJ in *Aris v Chin* [1972] 19 WIR 459

[45] The record reveals that the Claimant's representative expressed concern about the informality of this procedure, as well as what he termed, "the short notice". While there is no invariable standard or rule to determine the adequacy of the notice of hearing, it is clear that it must be clear, specific and unambiguous. A notice which merely mentions a date of hearing without providing details of the intent and purpose of the same and without highlighting the legal authority and jurisdiction under which the hearing is to be held may be said to be inadequate. In the Court's judgment, given the form of notice in the case at bar, it is not surprising that the Claimant's representative would have expressed the following concerns which demonstrated his confusion:

"...she sent me another email to say or to ask me to confirm and all I confirmed was the fact that I was not ready for a hearing today. I have not received any subsequent communications since then so I did not expect a full hearing on the case today."

[46] The evidence further reveals that the Claimant would not have received the evidence lodged by the Second Defendant in support of its Application to Remove the Caution until the morning of the hearing on 5th July 2019 after the hearing had in fact commenced and minutes into the oral examination of the Second Defendant's affiant. The transcript of the proceedings reveals that when this failure came to light, the Acting Chief Registrar elected to permit the Claimant's representative 5 minutes to read the documents, resumed the hearing 18 minutes later and then ordered that the evidence (save the exhibits) be read out in the presence of the Claimant's representative. These measures were presumably taken in an effort to ensure that the Claimant could not assert that it did not know the case it had to meet. The question for this Court is whether in all the circumstances these measures would have been effective?

[47] Clearly, no person should be subject to administrative action unless that person is given an opportunity to consider and comment on all of the materials on which the decision is made. Where it becomes clear that there has not been prior disclosure, the tribunal must consider whether fairness dictates that the proceedings be adjourned. An adjournment may ensure that a hearing is fair, in the sense that it allows time for the preparation of the case. The general rule is that except where a party is using an adjournment as a device to defeat the objectives of a fair trial, a request for an adjournment should be allowed and a reasonable time should be granted. The authorities even suggest that depending on the circumstances the tribunal should not await an application but should volunteer an adjournment where serious consequences may attend the outcome of the matter.

- [48] The Jamaica Court of Appeal case of **Aris v Chin**⁷ is illustrative. This case concerned an appeal against an order made against an attorney in respect of a complaint against him for professional misconduct. The facts of that case reveal that on the first scheduled hearing date the attorney was granted an adjournment for medical reasons (supported by a medical certificate). On the adjourned date, the attorney was granted a further continuance for medical reasons. At the next date, the attorney was notified that the hearing would proceed in order to take the evidence of the complainant who was due to permanently leave the country. The attorney attended in person, asserted that he was still unwell and requested a further adjournment which was refused. The attorney declined to partake in the proceedings which were concluded and a decision reserved. Immediately thereafter, a second complaint was due to commence. The attorney renewed his request for an adjournment on the basis that he was unwell, which was again refused. The complainant in that second matter testified and the attorney declined to partake and left the hearing. The hearing concluded and the attorney was found guilty of professional misconduct and his name removed from the rolls. The attorney appealed on the ground *inter alia*, that he had been denied a fair hearing by virtue of being refused the adjournment which he requested for medical reasons.
- [49] The Jamaica Court of Appeal by majority decision found that by its refusal of the appellant's application for a postponement of the hearing of the respondent's complaint, the Committee had denied the appellant a full and fair opportunity of being heard in answer to that complaint, and that its order removing his name from the roll of solicitors could not be allowed to stand.
- [50] Lord Justice Fox although delivering the dissenting judgment, stressed that natural justice is nothing more than fair play.
- “Admittedly, the function of the Solicitors Committee at the hearing of a complaint against a solicitor is judicial in character. It follows, therefore, that in the conduct of such proceedings, the committee must adhere to the code of natural justice. In other words, the Committee was required to observe that principle in the maxim *audi alteram partem*; “hear both sides.” But the doctrine of that maxim does not imply that there must always be a hearing, or a hearing of both sides, but only that each party must be afforded an adequate opportunity of advancing his case. In short, natural justice is nothing more than fair play.”

⁷ (1972) 19 WIR 459

- [51] With reference to the specific issue therein, (i.e., the denial of an adjournment), the judgment outlined a number of relevant considerations that the Committee therein would have been obliged to take into account. There was first the question of the sufficiency of the notice of the hearing of the particular complaint which gave rise to the appeal.
- [52] In the case at bar, the question of the sufficiency of the notice of the hearing was canvassed by the Claimant's representative even when Registry officials first sought to schedule the hearing and reiterated when the actual hearing commenced. Importantly, he made clear that he wished to have more time to seek legal advice on the matter. The record reveals that rather than address these concerns, the Acting Chief Registrar gave short shrift to the same, attaching greater weight to the inordinate delays which preceded the hearing, for which the Parties could not be blamed.
- [53] The next question to be considered would be the legitimacy of the reasons advanced for the adjournment. In the case at bar, the Acting Chief Registrar would have been well aware that prior to the commencement of the hearing, the Claimant would not have been aware of the case which it had to meet. In this Court's judgment, there can be no more legitimate reason to warrant an adjournment of a hearing than to ensure fair play for all the parties concerned.
- [54] Finally, it was open to the tribunal to consider the request for an adjournment in the context of the overall conduct of the Claimant in order to determine whether there was malingering or delaying tactics. Where, as in this case, the Claimant's previous conduct could not be faulted and there had in fact been no previous adjournments in the proceedings at the instance of either party, it seems to the Court that the proceedings should have been adjourned to afford the Claimant a reasonable time to consider and to prepare his response to the Application.
- [55] In **R v Thames Magistrate's Court ex parte Polemis**⁸, the English court conclusively determined that the opportunity to present a case to the court is not confined to being given an opportunity to stand up and say what you want to say; it necessarily extends to a reasonable opportunity to prepare your case before you are called on to present it. A mere allocation of court time is of no value if the party in question is deprived of the opportunity of getting his tackle in order and being able to present his case in the fullest sense.

⁸ (1974) 2 ALL ER 1219

- [56] The Court in that case had to visualize the situation of the applicant, who knew nothing of the complaint until 10:30 a.m. and who found himself summoned to appear and defend himself at 2:00 p.m. that same afternoon. On the peculiar facts and circumstances of that case, it was held by their Lordships that there had been a denial of reasonable opportunity to defend.
- [57] On the facts of that case (which are eerily similar to the case at bar), there could be no doubt that the accused had been denied the opportunity to defend himself. The Acting Chief Registrar, however, reached a different conclusion.
- [58] In her written reasons, the Acting Chief Registrar noted that:
- “...Mr. Brathwaite was adequately notified of the continuation of the hearing, at which point he could have advanced his case. Mr. Brathwaite attended before the Tribunal and was duly accorded an opportunity to argue his case, notwithstanding the fact that he forfeited his chance to be fully heard.”
- [59] The facts upon which these conclusions would have been drawn are set out by the Acting Chief Registrar in her decision. She found that Mr. Brathwaite;
- (1) “was present at the hearing of 5th July 2019.
 - (2) had fully participated in the hearing of 5th July 2019;
 - (3) had utilized the opportunity to peruse the Applicant’s written evidence;
 - (4) had cross-examined the Applicant: though he did not take up the opportunity to rebut the Applicant’s claim;
 - (5) had indicated his intention to serve another document on the other side before the continuation of the hearing: which document was never served;
 - (6) announced at that hearing of 5th July 2019: My response would be to end this session now and let me come back with this other document (referring to his cross examination of Dr. Vanterpool’s second affidavit); and
 - (7) had concurred with the date for continuation of the hearing set for 11 July 2019.”
- [60] The Claimant was clearly entitled to a fair hearing before the adverse decision was taken in regard to the removal of the caution. In affording the Claimant 18 minutes to review the Second Defendant’s extensive evidence before proceeding with the hearing rather than adjourning the proceedings, the Court finds that on the face of it, the Claimant was not treated fairly. The transcript clearly discloses that the Claimant was not prepared to engage what he termed “a full-

fledged hearing to this extent". He reiterated several times that he was reluctant to proceed with the hearing on that basis. The following statement at page 37 of the transcript makes that position plain:

"....I will ask him a few questions just for the record, but I think this entire procedure should be redone because of the way the whole thing was handled in terms of timing and not receiving proper service of documents and what have you. It's kind of difficult to effectively respond the way I normally would have."

[61] In the wake of this declaration, the Court is at a loss to discern how it can logically be concluded that the Claimant fully participated in the hearing of 5th July 2019 or effectively advanced his case. The Court finds that the Claimant was unable to make effective representations.

[62] Indeed, during the course of this hearing, Counsel for the Acting Chief Registrar quite correctly conceded that this was the case. However, Counsel pointed to the fact that the matter was adjourned on a part-heard basis which would have afforded the Claimant a reasonable opportunity to present its case on the adjourned date. Instead of doing so, the Claimant's representative submitted correspondence which sought to raise concerns about the propriety of the Acting Chief Registrar hearing the matter. In summary, the challenge contends that the Acting Chief Registrar of Lands was conflicted as she is an employee of the Government of the Virgin Islands, against which the Claimant would be engaged in litigation which touches and concerns the very matters which would be raised in the Application. The Claimant's representative also makes it clear that in the event that the Acting Chief Registrar proceeded to deal with the matter any decision would be appealed to the High Court. On the basis of these representations, the Claimant's representative declined to participate any further in the proceedings.

[63] What then is the impact of the Claimant's representative's refusal to engage in the proceedings after 5th July? In approaching a consideration of this question, the Court accepts that as a matter of general principle that where an individual would have stood by with full knowledge of the nature of the proceedings which were afoot, and of his own volition, have ignored the opportunity to participate in those proceedings, he could not subsequently complain of a denial of natural justice. However, the Court must have regard to all of the circumstances of this case.

[64] Having reviewed the record in this matter, this Court is satisfied that the Claimant expressed clear concerns about the length of this recess and sought an adjournment period of two weeks.

Unfortunately, the Acting Chief Registrar dismissed this request out of hand, weighing instead the packed hearing schedule, the impending summer vacation and the convenience of the Second Defendant. Rather than agreeing to the adjourned date of 11th July 2019, the Claimant's representative capitulated or was coerced when it became clear that his concerns were again being ignored.⁹

- [65] In this case, the Claimant's representative may have failed to attend the hearing, however, given the previous concerns already expressed, this Court is not satisfied that convening the adjourned hearing 4 clear days later and in the circumstances of this case would have been fair in any event. Further, there was nothing that occurred following the hearing of 5th July 2019 up to the time that the Claimant's representative left the meeting which can amount to acceptance of the Acting Chief Registrar's rejection of its concerns. The Claimant would clearly have felt coerced and given the course that the previous hearing had taken, this is not surprising.
- [66] In the Court's judgment, even if the Claimant's representative had presented at the hearing of 11th July 2019, and attempted to continue with the matter, this Court is not satisfied this would ameliorated the unfairness which would have exemplified those proceedings. The Claimant's representative would have made it clear that he would have been intimidated by the complexity of the Application and the evidence in support, at page 6 of the transcript he would have made it clear that it would take some time for him to give proper instructions to his lawyer. Given the circumstances of this case, the Court is satisfied that an adjournment of 2 weeks would have been far more reasonable than the 5 day interval which was forced on the Claimant. In the Court's judgment, any suggestion that the Claimant had a reasonable chance to present its case is not maintainable.
- [67] Moreover, the challenge raised to impartiality of the tribunal, (the Acting Chief Registrar) would have had good and sufficient reason for adjourning the proceedings in order to consider the Claimant's jurisdictional challenge and make a determination in respect of the same. Such a determination should then have been communicated to the Claimant and a clear indication given that the Acting Chief Registrar would proceed to determine the application to remove the caution whether the Claimant chose to participate in the proceedings or not.

⁹ Aris v Chin at page 472

Litigants in person

- [68] Counsel for the Claimant was at pains to point out that the Acting Chief Registrar failed to recognise and appreciate that the Claimant was acting as a litigant in person throughout the proceedings. Counsel for the Claimant relied significantly on guidance produced for the judiciary of England and Wales and found in the 2013 **Equal Treatment Bench Book**. She submitted that:

“A tribunal should always take care where a litigant, particularly one who was self-represented or had a lay representative, sought to concede or abandon a point. It could be a matter of great significance. Though it was always for parties to shape their cases and for a tribunal to rule on the cases before it, the tribunal had to take the greatest of care to ensure that, if a party sought to abandon a central and important point, that was precisely what the party wished to do, that they understood the significance of what was being said, that there was clarity and, if unrepresented, that they understood some of the potential consequences. As a matter of principle, a concession or withdrawal could not properly be accepted as such unless it was clear, unequivocal and unambiguous: **Segor v Goodrich Actuation Systems Ltd** [2012] WL 609238; Appeal No. UKEAT/0145/11/DM February 10, 2012 (Employment Appeal Tribunal) (UK).

- [69] Counsel also relied on paragraph 29 of the judgment in **St. Clair v King**¹⁰:

“However, I have difficulty accepting this in circumstances where no application was made to the Master to treat the strike out application before him as one seeking summary judgment and the Master did not in his judgment expressly consider the fairness to the Claimant of allowing a strike out application to be treated as a summary judgment application at the hearing itself and dispensing with the procedural requirements contained in CPR Part 24. It was not suggested by Ms. Hargreaves that the distinction between a strike out application and a summary judgment application was explained to the Claimant at the hearing or that she was given an opportunity to seek an adjournment as a result of the application being made on a different basis. **It seems that what the Master did was to apply a test on the basis of an application not before him in circumstances where he had neither explicitly exercised his discretion to treat the application before him as including an application for summary judgment nor explained to the Claimant the consequences of the course he proposed to take. The fact that the Claimant was a litigant in person cannot be ignored.** She was in my view entitled to have proper notice of the fact that the Defendants were applying for summary judgment.” Emphasis mine

- [70] Counsel for the Claimant further submitted:

Need for the Registrar to explain consequences of non-attendance to the Claimant

Though the transcript records that the Registrar's call was made during the course of the proceedings - the transcript does not record what was said by the Registrar or the

¹⁰ [2018] EWHC 682

Claimant's representative - which was a material matter that should have formed part of the record of the proceedings.

The statements by the Claimant's representative could not be taken to be clear, equivocal or unambiguous since there was an obligation on the Registrar to explain the procedural and substantive consequences connected with the interlocutory application.

Again, the Claimant was a litigant in person and when he said that "he would not be attending on the basis of the document he served yesterday" and after that "he enjoins the Registrar of Lands from continuing to exercise jurisdiction over the case...", it behoved the Registrar to explain to the Claimant's representative the consequences of not appearing, which she failed to do especially when the Registrar's Tribunal does not have written rules of practice. In the CPR the consequences of non-appearance is a key feature - however it is not so for the Registrar's Tribunal - not even in the initial Notice of June 2018 that the Second Application's was filed was the Claimant put on notice or high alert that non-appearance may result in an order being made against him."

- [71] A key aspect where a fair hearing comes into play is when dealing with unrepresented parties or litigants in person. In **Gee v Shell UK Limited**¹¹, Lord Justice Sedley explained a tribunal's general remit in this case: "*The tribunal's job, precisely because it cannot guarantee equality of arms, is to ensure equality of access to its processes for sometimes disparately powerful parties. This involves making a careful appraisal, case by case of the parties and their respective capabilities.*"
- [72] English tribunals have had the benefit of 2013 Practice Guidance on dealing with litigants in person. This is important guidance which local tribunals in the Territory would do well to consider. This guidance informed the approach taken by the English Court of Appeal in **Drysdale v Department of Transport (The Maritime and Coastguard Agency)**¹². In that case the claimant had been represented at his claim before the employment tribunal by his wife, acting as a lay representative. When she asked to be allowed to withdraw the complaint, without further enquiry, the complaint was dismissed, and costs awarded against the claimant. He then appealed alleging that the tribunal knew he was not represented by a lawyer and should have ensured a well considered decision.
- [73] The issue before the court was whether having regard to the fact that neither the employee nor his representative had been legally qualified, the employment tribunal had erred in law in failing to take adequate steps to ensure that the employee had taken a properly considered decision to withdraw

¹¹ [2002] EWCA Civ 1479 at paragraph 35

¹² [2014] EWCA Civ 1083

the claim. On the facts of that case, the Court found there were no grounds for holding that the tribunal had failed to take adequate steps to ensure that the employee had taken a properly considered decision to withdrawn his claim. It was clear that the tribunal had been satisfied on reasonable grounds that the employee had understood and asserted to what his representative had done.

[74] The Court of Appeal set out the following general principles:

- (1) It is a long-established and obviously desirable practice of courts generally, and employment tribunals in particular, that they will provide such assistance to litigants as may be appropriate in the formulation and presentation of their case.
- (2) What level of assistance or intervention is "appropriate" depends upon the circumstances of each particular case.
- (3) Such circumstances are too numerous to list exhaustively, but are likely to include: whether the litigant is representing himself or is represented; if represented, whether the representative is legally qualified or not; and in any case, the apparent level of competence and understanding of the litigant and/or his representative.
- (4) The appropriate level of assistance or intervention is constrained by the overriding requirement that the tribunal must at all times be, and be seen to be, impartial as between the parties, and that injustice to either side must be avoided.

[75] There is significant guidance which this Court can draw from the learning in that case. In the case at bar, the Claimant is a corporate entity who was represented in these proceedings by Mr. Ishmael Brathwaite, a lay representative. The Court recognised that in such circumstances where a chosen lay litigant acts hastily in withdrawing a claim under the force of some emotion such as disappointment, irritation or even a fit of anger this would entitle the tribunal to make such enquiries as appear fit to it, to check whether the self-representing litigant or chosen lay representative understands or means what he says. **Ako v Rothschild Asset Management**¹³

[76] Moreover, the Court has considered the judgment in **U v Butler and Wilson**¹⁴, where the English Employment Appeals Tribunal ("the EAT") considered a tribunal's approach to an adjournment. The EAT noted that a fair hearing may require a tribunal to adjourn a hearing even without an application from a party. The EAT held that the employment judge had failed to properly exercise

¹³ [2002] 1 RLR 348

¹⁴ [2014] UKEAT 0354 – 13 – 0209; Priddle v Fisher & Sons [1968] 3 ALL ER 506

her case management powers to adjourn in order to permit the claimant an opportunity to reflect on what course he wished to pursue.

[77] Applying all of these authorities, in the court's judgment, the Acting Chief Registrar applied an overly robust case management approach which effectively deprived the Claimant of its fair hearing. This would not have been ameliorated when the matter was adjourned to 11th July 2019 or when the Registrar solicited written submissions in a follow up email of 12th July 2019. In the former case, the Court is not satisfied that a 5 day adjournment would have been reasonable in the circumstances. The Court is also concerned that the consequences of the Claimant's representative's election to absent himself from the adjourned proceedings would not have been made clear to the Claimant, because from all accounts, it would appear the Acting Chief Registrar would have herself been equally in the dark as to the appropriate course to be adopted. Further, where the Claimant's representative would have represented that there was difficulty in receiving emails, it is surprising that this method of service was still employed to solicit written submissions. It could come as no surprise to the Respondents that the Claimant would deny receipt of the same.

[78] In light of the considerations herein, the Court is obliged to consider the appropriate course. Should the Court then proceed to consider the merits of the case against the Claimant and his chances of success had he been heard? The Jamaica Court of Appeal in **Aris v Chin** had to treat with this issue. After concluding that the appellant in that case was denied a full and fair opportunity to be heard, the Court had this to say;

"Are the merits of the case against the appellant and his chances of success had he been heard relevant matters for consideration? The authorities say they are not. I was tempted, having regard to the nature of the complaint against him, to say that the appellant was not prejudiced in the circumstances. But in Annamunthodo v Oilfield's Workers' Trade Union ([1961] 3 ALL ER 621, [1961] AC 945, [1961] 3 WLR 650), in delivering the advice of the Board of the Privy Council, LORD DENNING said ([1961] AC at p 956):

'Mr Lazarus did suggest that a man could not complain of a failure of natural justice unless he could show that he had been prejudiced by it. Their Lordships cannot accept this suggestion. If a domestic tribunal fails to act in accordance with natural justice, the person affected by their decision can always seek redress in the Courts. It is a prejudice to any man to be denied justice.'

(See also *Kanda v Government of Malaya* ([1962] AC 322, [1962] 2 WLR 1153).)

In my judgment, the appellant was denied a full and fair opportunity of being heard in answer to the respondent's complaint. The consequence is that the Committee's order cannot stand. I would allow the appeal and quash the order of the Committee."

[79] As stated by Lord Reid in the case of **Ridge v Baldwin**¹⁵; “*The body with the power to decide cannot lawfully proceed to make a decision until it has afforded to the person affected, a proper opportunity to state his case*”. In the Court’s judgment, the Claimant was denied a full and fair opportunity of being heard in answer to the Second Respondent’s Application to remove the caution. The consequence is that the Acting Chief Registrar’s decision cannot stand. The Court will therefore allow the appeal and remit the matter to Chief Registrar in accordance with CPR Part 60.8 (4) (c).

[80] **The Court’s order is therefore as follows:**

- i. **The Claimant’s appeal is allowed.**
- ii. **The decision of the Chief Registrar is set aside.**
- iii. **The matter is remitted to the Chief Registrar for her to consider the matter in accordance with the findings of this Court.**
- iv. **The Parties are to provide their written submissions on costs within 21 days of the date of this judgment.**

**Vicki Ann Ellis
High Court Judge**

By the Court

Registrar

¹⁵ [1964] AC 40