

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

SAINT LUCIA

SLUHCVAP2018/0018

BETWEEN:

DR. ABNER JAMES

Appellant

and

THE MEDICAL AND DENTAL COUNCIL

Respondent

Before:

The Hon. Dame Janice M. Pereira, DBE
The Hon. Mde. Gertel Thom
The Hon. Mr. Paul Webster

Chief Justice
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

Mr. Horace Fraser for the Appellant
Mrs. Wauneen Louis-Harris for the Respondent

2019: November 27;
2020: March 12.

Civil Appeal – Administrative claim – Entitlement to award of damages – Rule 62.4 of the Civil Procedure Rules 2000 – Section 28(2) of the Eastern Caribbean Supreme Court (Saint Lucia) Act – Whether the Court of Appeal can exercise its powers in absence of a challenge to the trial judge’s findings – Whether learned judge erred in refusing to award damages – Costs – Whether learned judge erred in refusing to award costs

The appellant, Dr. Abner James ("Dr. James") appeals against the learned judge's refusal to award him damages in respect of his asserted common law right to work and her refusal to award costs in his favour having had partial success in respect of a declaration sought, to the effect that the Medical and Dental Council's ("the Council") requirement that he undergoes anger management was in breach of natural justice and unfair.

Dr. James sought damages for loss of chance and for distress as well as for inconvenience allegedly suffered from the date of his application to the Council for renewal of his medical practising certificate to the date of delivery of judgment by the court below. His application for renewal of his practicing certificate was made some eighteen months after his certificate had expired. Dr. James had, prior to his renewal application, been dismissed from his employment as a Senior House Officer at the St. Jude's Hospital following a confrontation he had with a patient.

The Council indicated that it would be amenable to the issue of the renewal of the "licence", on certain conditions, one such being that Dr. James undergo an anger management programme for a period of three (3) months with a registered mental health practitioner. Dr. James and the Council exchanged correspondence concerning a hearing date before the Council. Communications eventually broke down between the parties. Dr. James did not undertake the anger management programme as directed by the Council. Dr. James brought a claim under Part 56 of the Civil Procedure Rules 2000 ("CPR") seeking a number of administrative orders including declarations that he had a common law right to work and to practise medicine and that the Council's decisions of suspending him from practising medicine and ordering him to undergo an anger management programme were contrary to the rules of natural justice and fairness. He also sought damages and costs. The learned judge dismissed the claim almost in its entirety, finding only that the imposition of the requirement to undergo an anger management programme was contrary to the rules of natural justice and fairness and was ultra vires sections 47 and 52 of the Health Practitioners Act. She made no order as to costs.

The main issue on the appeal is whether the learned trial judge erred in refusing to award damages and making no order as to costs in favour of Dr. James.

Held: dismissing the appeal and affirming the order of the court below, that:

1. Ordinarily, where an appellant, challenges the trial judge's finding as to the existence of a right on which his claim to an award of damages hinges, it would be improper for the appellate Court to consider an appeal solely against the refusal of an award for damages. However having regard to the Court's broad powers under section 28(2) of the Eastern Caribbean Supreme Court (Saint Lucia) Act and being satisfied that the Respondent will suffer no prejudice thereby, allows consideration of the issue as to whether the appellant had a common law right to work as asserted.

Section 28(2) of the **Eastern Caribbean Supreme Court (Saint Lucia) Act**, Cap. 2:01 of the Revised Laws of Saint Lucia, 2013 applied; Rule 62.4 of the **Civil Procedure Rules 2000** considered.

2. Neither the common law, nor the statutory provisions of the laws of Saint Lucia establishes an unequivocal or unqualified right to work or to practise medicine in Saint Lucia. The common law recognises an individual's right to be protected from losing his livelihood in an arbitrary or capricious manner. The court has a duty to ensure that associations or bodies which predominantly govern or regulate the entry into trades or professions do not abuse their power by excluding individuals, who have satisfied the existing requirements of those trades or professions. Dr. James was not suspended by the Council. He applied for renewal of his practising certificate after he had allowed his certificate to expire.

Nagle v Feilden [1966] 2 QB 633 considered; **Attorney General et al v E. Ann Henry Goodwin et al** ANUHCVP1997/0010 (delivered 25th October 1999, unreported) considered.

3. The appellant failed to show that at the time of bringing his administrative claim he was seized of a cause of action in private law which would have entitled him to an award of damages. Furthermore, he failed to provide any evidence to support his claim for loss of chance and for distress and inconvenience. Accordingly there is no basis for disturbing the learned judge's conclusion refusing an award of damages.

Nagle v Feilden [1966] 2 QB 633 considered; **Attorney General et al v E. Ann Henry Goodwin et al** ANUHCVP1997/0010 (delivered 25th October 1999, unreported) considered.

4. It is well settled law that costs awards are in the discretion of the court. Appellate courts only interfere with the exercise of a trial judge's discretion in well-defined circumstances, and an appellate court will only interfere with the exercise of a trial judge's discretion if it is established that the judge took into account irrelevant factors or failed to take into account relevant factors or that the judge committed an error in principle or where it is shown that the conclusion reached was blatantly wrong. Dr. James sought declaratory relief concerning his right to practise medicine in Saint Lucia and damages incidental to the alleged breach of that right by the Council. The learned judge denied Dr. James the substantive relief sought. There is nothing which suggests that the learned judge considered irrelevant factors or committed an error in principle or that the decision to make no order as to costs was blatantly wrong. Therefore, there is no basis for this Court to interfere with the learned judge's decision to make no order as to costs.

Rule 64.6 of the **Civil Procedure Rules 2000** applied; **Rochamel Construction Limited v National Insurance Corporation** SLUHCVAP2003/0010 (delivered 24th November 2003, unreported) followed; **The Hon. Attorney General and another v D. Giselle Issac ANUHCVAP2015/0014** (delivered 11th March 2016, unreported) followed.

JUDGMENT

- [1] **PEREIRA CJ:** This appeal arises from the learned trial judge's (Cenac-Phulgence J) refusal to award damages to the appellant ("Dr. James"), for loss of chance and for distress and inconvenience suffered over the period beginning from the date of his application to the respondent, the Medical and Dental Council, (the "Council"), to 'renew' his medical practising certificate in July 2014, to the date when judgment was delivered on his administrative claim on 27th March 2018. Dr. James also complains against the judge's refusal to award costs in his favour in respect of his limited success on his claim.

The Background

- [2] The facts which give rise to the claim are fairly common ground and may be taken from the learned trial judge's summary set out in her judgment:
- (a) Dr. James was registered to practice medicine in Saint Lucia as a medical doctor in 2011 and was issued a practising certificate for two years. On 23rd March 2014, Dr. James was dismissed from his employment at St. Jude's Hospital as a Senior House Officer due to a confrontation he had with a patient. He made an application to the Council to renew his practising certificate in July 2014, some eighteen months after his practising certificate had expired.
 - (b) The Council acknowledged receipt of Dr. James' application and requested a comprehensive report of the events resulting in his dismissal from St. Jude's Hospital by letter dated 15th August 2014. Dr. James claimed that by the said letter he was suspended from practising medicine. By another letter dated

16th December 2014 the Council requested that Dr. James issue a written consent to St. Jude's Hospital to permit the disclosure of the record referencing the incident which led to his dismissal; a request with which Dr. James complied. By the same letter the Council indicated to Dr. James that the Council would be amenable to the issue of the renewal of the "licence" upon certain specified conditions. One was that he signs a consent and waiver confirming that he would forego any court action against the St. Jude's Hospital regarding the disclosure as per the Hospital's request. Another, was that he undergoes an anger management programme for a period of three (3) months with a registered mental health practitioner.

- (c) On 13th October 2015, Dr. James, through his legal representative, wrote to the Council seeking a hearing date before the Council. The Council responded indicating that a hearing in the matter would be conditional on his indication of whether he was insisting on a hearing before undergoing anger management. No further communication between the Council and Dr. James occurred and Dr. James did not attend the anger management programme as directed by the Council.
- (d) Dr. James thereafter brought a claim under Part 56 of the **Civil Procedure Rules 2000** (CPR) in which he sought a number of administrative orders, among which, and germane to this appeal, were declarations that:
 - (i) He had a common law right to work and to practise medicine and accordingly the provisions of the **Health Practitioners Act**¹ (the "Act") cannot be interpreted to curtail, impede or take away that right; and

¹ Cap. 11.06, Revised Laws of Saint Lucia 2013.

- (ii) The Council's decision of suspending him from practising medicine and ordering him to undergo an anger management programme were contrary to the rules of natural justice and fairness.
- (e) Dr. James also sought, by way of relief, damages for:
 - (i) Loss of chance to earn an income; and
 - (ii) Distress and inconvenience and costs.
- (f) The learned judge dismissed his claim for relief save to the extent that she found that the imposition of the requirement that Dr. James undergo an anger management programme for a period of three months by a mental health practitioner, was contrary to the rules of natural justice and fairness and that such a requirement was ultra vires sections 47 and 52 of the Act.

The appeal

- [3] Dr. James' complaint on appeal is that the learned judge erred in refusing to award him damages for loss of chance as well as for distress and inconvenience and that the judge erred in ordering that there be no order as to costs, instead of awarding him costs reflecting his success on the issue of the requirement imposed by the Council to undergo anger management. The main issues on appeal therefore surround whether the learned trial judge was wrong to have refused an order for damages and whether an order for costs in favour of Dr. James was appropriate.
- [4] Dr. James accepts that the Council did not suspend him from practicing medicine as at the time that he applied to 'renew' his practising certificate it was outside the time stipulated by section 49 of the Act for such renewal. His application was some 18 months after his practising certificate had already expired, either in December 2012 or January 2013. No issue is taken by Dr. James as to the construction of the provisions of the Act and the scope of the Act's operations and its purpose. The learned judge at

paragraphs 43 to 45 of her judgment recorded her observations as to the operation and purpose of the Act as follows:

[43] It is instructive to note that if one does not possess a valid practising certificate then one cannot practise medicine. The medical profession is an extremely important one and it is important that when they perform their functions, they are duly authorized and competent so to do. Section 50 of the Act which has been set out above makes provision so that where a medical practitioner applies for the renewal of his/her practising certificate within the stipulated time, the acts performed by the medical practitioner between the date of expiry of the certificate and the date of renewal or refusal to renew would not be illegal. If the application is considered prior to the expiration of the certificate, then there is no need for application of section 50. The section aims at protecting a medical practitioner who at the time of his application has a valid practising certificate but which expires in the period when the application for renewal is being considered. Section 50 does not apply where a practising certificate has been suspended pursuant to section 111.

[44] Section 50 is aimed at bridging the time gap between application for renewal, expiry and renewal or refusal to renew. This is necessary so that a medical practitioner is able to exercise his functions without fear of criminal sanction in circumstances where he has complied with section 49. Regulation of professions is important to promote public trust and confidence and also certainty. Mr. Fraser argued that section 50 should apply to all medical practitioners whether they apply within the stipulated time or not. I must disagree as that certainly could not have been the intention of Parliament. Mr. Fraser's arguments that this interpretation puts a fetter on the Council's discretion to deal with Dr. James application also cannot be accepted in light of section 47 of the Act which provides an avenue for dealing with the application in such circumstances.

[45] In this case, Dr. James knew of the requirement but he said that he could not find the time because of his schedule to put in his application in time. That cannot be a good excuse. Dr. James continued to work even in the face of the clear provisions of the Act. A professional must adhere to the legislative provisions which govern his profession. He is not without recourse. His application has received the attention of the Council and if the Council decides to exercise its discretion and issue Dr. James with a practising certificate it would have to be issued from the date of their decision and not from the date of the expiration of Dr. James' last certificate."

With those observations, I agree. Dr. James, however, premises his right to an award of damages on his common law right to work as asserted by him and relies heavily on the cases of **Nagle v Feilden**² and **Attorney General et al v E. Ann Henry Goodwin et al**.³ I propose therefore to consider his assertion to an entitlement to an award of damages in the context of this right and within the context of Dr. James' claim as framed.

The right to work - entitlement to damages

- [5] As stated, Dr. James' premises his entitlement to damages on his common law right to work. Paragraph one of his amended claim form ⁴ sought "[a] declaration that the Claimant has a Common law right to work and to practice medicine [and] accordingly the provisions of the Health Practitioners Act cannot be interpreted to curtail, impede or take away that right". The learned judge refused the declaration sought and stated at paragraph 25 of her judgment thus:

"I find that there is no established common law right to work or to practice medicine and therefore the declaration sought at paragraph 1 of the claim is refused. What I am prepared to say is that the Act should not be interpreted or administered in a manner which deprives a person of the opportunity to properly earn a livelihood once all the necessary conditions have been met especially in circumstances where the body doing the administering is the only one charged with such responsibility and it is not open to an applicant to go elsewhere." **(My emphasis)**

- [6] It is noteworthy that Dr. James did not seek to challenge, in his notice of appeal, the learned judge's finding that there is no established common law right to work or to practise medicine in Saint Lucia. In the absence of a ground of appeal which challenges that finding, it would usually be improper for this Court to consider whether an award for damages would have been appropriate. Indeed, rule 62.4 of the CPR makes it clear that the Court may not make its decision on any ground that is not set out in the notice of appeal unless the respondent has had sufficient opportunity to contest such ground. The

² [1966] 2 QB 633.

³ ANUHCVP1997/0010 (delivered 25th October 1999, unreported).

⁴ See p. 63 of the Record of Appeal filed on 13th June 2018.

Court is however mindful of its broad powers under section 28 of the **Eastern Caribbean Supreme Court (Saint Lucia) Act**⁵ (the “Supreme Court Act”) which provides as follows:

“28. (1) On the hearing of an appeal from any order the High Court in any civil cause or matter, the Court of Appeal shall have power to—

- (a) confirm, vary, amend or set aside the order or make such order as the High Court might have made, or to make any order which ought to have been made, and to make such further or other order as the nature of the case may require;
- (b) draw inferences of fact;
- (c) direct the High Court to enquire into and certify its findings on any question which the Court of Appeal thinks fit to be determined before final judgment in the appeal.

(2) The powers of the Court of Appeal under this section may be exercised although no notice of appeal or respondent’s notice has been given in respect of any particular part of the decision of the High Court by any particular party to the proceedings in court or that any ground for allowing the appeal or for affirming or varying the decision of the High Court is not specified in such notice; and the Court of Appeal may make an order in such terms as the Court of Appeal thinks just to ensure the determination on the merits of the real question in controversy between the parties.” (My emphasis)

[7] Having regard to section 28(2) of the Supreme Court Act, in my view, a consideration of the learned judge’s findings on the right to work is essential to a determination of the first nub of Dr. James’ complaint, as he premises his entitlement to damages on the Council’s infringement of his common law right to work and on nothing else. I am also satisfied that in so doing no prejudice will be occasioned to the Council.

[8] Mr. Fraser’s main contention is that Dr. James has made out a clear case for an award of damages under recognised heads of damages known at common law, i.e. loss of chance and distress and inconvenience. However, in Mr. Fraser’s view, the learned judge not only erroneously focused her attention on breach of duty, but restricted herself by considering solely whether Dr. James’ claim was for breach of contract or tort, thereby ignoring the interference with his common law right to work as an enforceable right. He submitted further that the common law right to work granted

⁵ Cap. 2.01, Revised Laws of Saint Lucia 2013.

Dr. James chose in action which was infringed by the Council as a result of its failure to deal with his application for renewal of his practising certificate in accordance with the Act. Mr. Fraser contended that it was this failure by the Council which led to Dr. James' loss of potential income since he was unable to earn a living as a medical doctor without a licence, and which caused him distress and inconvenience.

- [9] Mr. Fraser submitted that the common law right to work has long been a recognised, protected and enforced right by the courts of England and its dominions. He cited the case of **Nagle** in support of his submission, asserting that the common law right to work was recognised by Lord Denning MR where he stated at page 644 that:

“The common law of England has for centuries recognised that a man has a right to work at his trade or profession without being **unjustly excluded** from it. He is not to be shut out from it **at the whim** of those having the governance of it. If they make a rule which enables them to reject his application **arbitrarily or capriciously, not reasonably**, that rule is bad. It is against public policy. The courts will not give effect to it.” **(My emphasis)**

- [10] Mr. Fraser submitted further that the court should intervene to protect Dr. James' right to work. Again, he cited Lord Denning MR in **Nagle** where his Lordship stated that: “a man's right to work at his trade or profession is just as important to him as, perhaps more important than, his rights of property. Just as the courts will intervene to protect his rights of property, they will also intervene to protect his right to work.”⁶ Relying on the decision of this Court in **Goodwin**, which he contended, also recognised the common law right to work, Mr. Fraser asserted that the common law right to work was received under article 917A of the **Civil Code of Saint Lucia**.⁷

- [11] In my view, the cases of **Nagle** and **Goodwin** do not assist Dr. James in his appeal. In **Nagle**, Mrs. Nagle brought a claim against the stewards of the Jockey Club because of their refusal to issue her a license as a racehorse trainer on the basis that she was a woman. In those circumstances, the court in **Nagle** recognised its jurisdiction to intervene where the Jockey Club had a duty not to exercise its discretion to grant

⁶ Supra, n. 2 at p.646.

⁷ Cap. 4.01, Revised Laws of Saint Lucia 2013.

licenses to racehorse trainers in an arbitrary manner. Lord Denning MR in his judgment stated:

“When an association, who have the governance of a trade, take it upon themselves to licence persons to take part in it, then it is at least arguable that they are not at liberty to withdraw a man’s licence – and thus put him out of business – without hearing him. Nor can they refuse a man a licence – and thus prevent him from carrying on his business – in their uncontrolled discretion. If they reject him arbitrarily or capriciously, there is ground for thinking that the courts can intervene... When those authorities exercise a predominant power over the exercise of a trade or profession, the courts may have jurisdiction to see that this power is not abused.”

[12] What I consider the court in **Nagle** to be expressing is that the common law recognises an individual’s right to be protected from losing his livelihood in an arbitrary or capricious manner. Further, that the function of the court is to ensure that associations or bodies which predominantly govern or regulate the entry into trades or professions do not abuse their power by excluding individuals, who have satisfied whatever existing requirements for work, from those trades or professions. It follows that Lord Denning’s dictum in **Nagle** should not be read as establishing or recognising, without more, an unequivocal or unqualified right to work. I can find no defect in the learned judge’s interpretation of **Nagle** recorded at paragraphs 23 and 24 of her judgment:

“[23] There is no case in our jurisdiction which speaks to a common law right to work. What **Nagle** establishes is how the common law seeks to protect a man’s right to work at his chosen profession ...The Court in **Nagle** found that where those who have the control of a trade or profession make a rule which enables them to exclude a person from his work arbitrarily or capriciously, not reasonably, that rule is bad as against public policy. The locus standi of [Nagle] was therefore derived from the infringement of public policy by a body which completely controlled a particular trade.

[24] What I understood Lord Denning to be saying in **Nagle** is that in the absence of any legislative provisions or even a contractual relationship, the common law would recognize a man’s right to work; in other words, his right to be protected from losing his livelihood. **Therefore, if there is a pre-requisite to work, e.g. obtaining a licence or a practising certificate in this case, a certification requirement, this should be treated seriously and cannot be denied or taken away arbitrarily or lightly without due process. This however does not in any way mean that the person is entitled as of right without more to the licence or certificate as the case may be nor does it create a right which is enforceable by way of a declaration.** The Court in **Nagle** was very clear that what Mrs. Nagle was

entitled to was a declaration that her rejection and ouster was invalid and an injunction requiring the association to rectify their error. The Court went on to say that in such cases such an individual may not be entitled to damages unless he can show a contract or a tort. But he can get a declaration and injunction.” **(My emphasis)**

- [13] Similarly, in **Goodwin**, Matthew JA [Ag.], in considering whether a right to work or to earn a livelihood existed in Antigua and Barbuda, stated thus:

“I do not think any one can deny the importance of a man or woman’s right to practise his or her profession. As *Lord Denning* then M.R. said in **Nagle v Feilden**:

‘The common law of England has for centuries recognised that a man has a right to work at his trade or business without being unjustly excluded from it. He is not to be shut out from it at the whims of those having the governance of it.’

And the Courts will protect any person who is **unlawfully affected**. Indeed right here in Antigua, unlike many other territories, there is a well developed system of industrial relations and an Industrial Court. Nevertheless, I cannot say that there is embedded within the language of sections 3 and 4 or any other section of the Constitution of Antigua a right to work or earn a livelihood.” **(My emphasis)**

Contrary to Mr. Fraser’s submission, I do not consider the above statement in **Goodwin** to be in any way recognising an enforceable right at common law to work. Again, like **Nagle**, **Goodwin** recognises that the common law will protect a person from being unjustly excluded from his or her profession, which is distinct from a claim to be licensed in the profession, without more. In my view, it would be passing strange if **Nagle** and **Goodwin** could be interpreted as having established an enforceable right to work in the sense that such a right exists even in circumstances where the discretion to bar someone from a trade or profession is reasonably exercised.

- [14] Additionally, the learned judge aptly pointed out that the provisions of the Act are undeniably clear in expressing that applicants have no unquestionable entitlement to a practising certificate, but rather that the Council is given a discretion to exercise in the grant or refusal of such a practising certificate, subject to certain considerations contained in that Act. I adopt the remarks made by the judge at paragraphs 27 and 28 of her judgment, where she stated:

[27] The provisions of section 47 illustrate very clearly that there is no right to the issuance of a practising certificate. **The issuance of a practising certificate is subject to the medical practitioner satisfying specific conditions including (a) having adequate professional indemnity insurance or exemption from the requirement to have professional indemnity insurance; (b) satisfying recency of practicing requirements; (c) payment of the prescribed fee. Subsection (11) details the grounds upon which an application for a practising certificate can be refused.**

[28] Sections 49-53 of the Act deals with renewal of a practising certificate and set out the procedure to be followed and the matters to which regard must be [had] by the Council in considering an application for renewal. Counsel, Mr. Fraser submitted that Dr. James had a legitimate expectation in an automatic renewal of his practising certificate barring any adverse reason standing in the way of its grant. **The grant or refusal of an application for renewal of a practising certificate is subject to the satisfying or not of the conditions specified in sections 49-53 of the Act. It cannot be said that there is an automatic right to renewal in circumstances where the Council has a discretion to grant or refuse the renewal of a practising certificate.” (My emphasis)**

The foregoing provisions of the Act are undoubtedly inconsistent with the existence of a common law right to work as framed by Mr. Fraser. In the premises, I therefore find that neither the common law nor the Act establishes an unqualified right to work or to practise medicine in Saint Lucia.

[15] I now propose to consider Dr. James’ assertion to an entitlement to an award of damages in the context of his claim as framed.

Dr. James’ claim – entitlement to damages

[16] As stated above, Dr. James’ claim was made pursuant to Part 56 of the CPR and principally sought declaratory relief as well as damages for loss of chance to earn an income and for distress and inconvenience. Dr. James’ claim for damages is based on the conduct of the Council, in dealing with his application for a practising certificate, which he alleged prevented him from obtaining other employment and caused him mental anguish. The crux of this point however is Mr. Fraser’s submission that rule 56.8 of the CPR allows the court to award damages on a claim for judicial review and the learned judge ought to have awarded Dr. James damages in the circumstances. Learned counsel for the Council, Mrs. Louis-Harris, contended that the learned judge was correct in

concluding that Dr. James was not entitled to damages, he having failed to establish any cause of action on which he could hinge a claim for loss of chance and having failed to adduce any evidence to support an award of damages for distress or inconvenience.

[17] Indeed, in claims seeking administrative orders, the court may award damages if it is satisfied of the matters set out in rule 56.8 of the CPR. Rule 56.8 of the CPR provides, in full, as follows:

“56.8 (1) The general rule is that, where permitted by substantive law, an applicant may include in an application for an administrative order a claim for any other relief or remedy that –

- (a) arises out of; or
- (b) is related or connected to; the subject matter of an application for an administrative order.

(2) In particular the court may, on a claim for judicial review or for relief under the Constitution award –

- (a) damages;
- (b) restitution; or
- (c) an order for return of property to the claimant;

if the–

- (i) Claimant has included in the claim form a claim for any such remedy arising out of any matter to which the claim for an administrative order relates; or**
- (ii) Facts set out in the claimant’s affidavit or statement of case justify the granting of such remedy or relief; and**
- (iii) Court is satisfied that, at the time when the application was made the claimant could have issued a claim for such remedy.”**
(My emphasis)

What is pertinent here is that it is not sufficient for a claimant in an administrative claim to merely claim damages. The court must be satisfied on the pleadings that at the time when the administrative claim was filed, the claimant could have issued a claim for damages against the defendant for a recognised cause of action, such as in tort or contract.⁸ Put another way, in order for Dr. James to be entitled to damages, he has to

⁸ Hyman Joseph v Saint. Lucia Air and Seaports Authority, SLUHCv2006/0110 (delivered 9th May 2007, unreported), per Edwards J at para.120.

clearly demonstrate in his pleaded case that his administrative claim was one which could have been made in private law.

[18] I now turn to examine whether Dr. James' claim, as framed, discloses any cause of action in private law which may provide a basis for an entitlement to an award of damages.

[19] Having perused Dr. James' amended claim form and affidavit in support, I am unable to discern any cause of action which could have arisen in the circumstances of this case. Further this Court, during the hearing of this appeal, invited Mr. Fraser to identify the cause of action on which Dr. James grounds his entitlement to damages. However, he was unable to identify a cause of action known to law which arose on Dr. James' pleadings. Does it follow that one is entitled to damages as of right without demonstrating whether the enforceable right arose in some recognised cause of action? I think not. I consider the learned judge's remarks, reproduced below, at paragraph 91 of the judgment to be apposite and I endorse them:

"I have considered whether there is any cause of action which could have arisen in a case such as Dr. James' and have not been able to find any. There existed no contractual relationship between the Council and Dr. James. Having reviewed the Health Practitioners Act, I cannot see that it intended to create any private right of action for breaches by the Council of any of the statutory duties contained therein. It would certainly have been different if Dr. James were in employment and had been prevented from continuing to work because of the unlawful actions of the Council. In such a case, one might consider tortious interference as a cause of action."

[20] Additionally, it has now been accepted by Dr. James that he was not suspended by the Council and as the learned judge concluded, Dr. James has simply not provided any evidence to support his claim for loss of chance and for distress and inconvenience. There is therefore no basis to disturb the learned judge's conclusion that Dr. James is not entitled to any award of damages for either loss of chance or for distress and inconvenience.

[21] With that said, it is useful to point out that the courts are able to protect and give effect to a person's right without necessarily compensating that person with an award of damages. In her oral submissions, Mrs. Louis-Harris asserted, and I agree, that even **Nagle** supports the court's ability to give recognition to a right via a declaration or an injunction without awarding damages. To my mind, the following utterance by Lord Denning aligns well with this position:

"When a man is wrongly rejected or ousted by one of these associations, has he no remedy? I think he may well have, even though he can show no contract. **The courts have power to grant him a declaration that his rejection and ouster was invalid and an injunction requiring the association to rectify their error. He may not be able to get damages unless he can show a contract or a tort.**" (My emphasis)

Costs

[22] This brings me to the second nub of Dr. James' complaint which concerns the learned judge's refusal to make an award of costs in his favour. Of the six declarations sought by Dr. James, the learned judge granted only one, in part, to the extent that the Council's decision to order him to undergo an anger management programme was contrary to the rules of natural justice. The learned judge exercised her discretion in those circumstances to make no order as to costs and premised her decision on the conduct of Dr. James before the proceedings and his limited success on his claim. At paragraph 95 of the judgment, the learned judge explained her reasoning thus:

"As relates to costs, Dr. James has only succeeded on one of the six declarations he sought. Having regard to the matters in rule 64.6 of CPR, I have considered the manner in which the claimant has generally conducted its case. In considering the issue of costs, I think it useful to point out that Dr. James had filed two other claims based on the same facts as set in the instant case prior to this one: SLUHCV2016/0044 filed on 15th April 2016 in which he had sought an interim order directing that Dr. James be entitled to practice medicine until the matter of the application for renewal of his practising certificate can be resolved and also for an interim declaration that the claimant's practising certificate is in force pursuant to section 50 of the Act. That claim was struck out. On 15th April 2016, Dr. James filed a second claim, SLUHCV2016/0337 for damages and consequential loss for interference with common law right to work, breach of his statutory right, breach of statutory duty and acting in bad faith. That claim was withdrawn in the face of there being the instant claim which had been filed on

30th December 2016. In all, the claimant has filed 3 claims in relation to this matter as well as an application for a mandatory injunction which was denied. I mention these simply to illustrate that there have been several claims filed by Dr. James claiming substantially the same relief in various forms which the Council has had to defend. This must factor into any assessment of costs which may be awarded.”

[23] On this point, Mr. Fraser argued that in light of Dr. James’ limited success, the learned judge ought to have made a discounted award of costs in his favour. He also contended that the learned judge failed to state in her judgment that Claim No. SLUHCV2016/0044 was struck out with costs in the sum of \$1,000.00. Mr. Fraser added further that Claim No. SLUHCV2016/0337 was withdrawn with the understanding that the claim to which the instant appeal relates would be amended to claim damages. This resulted in costs again being awarded against Dr. James in the sum of \$1,500.00. In response, Mrs. Louis-Harris contended that the learned judge took all the relevant matters into account in making no award for costs and her costs order ought not to be disturbed.

[24] It is settled that an award of costs is a matter for the discretion of the court. The aim is to make an order which reflects the overall justice of the case. In considering the issue of costs, the court should have regard to all the circumstances, including the general principles governing the award of costs set out in rule 64.6 of the CPR. In **Rochamel Construction Limited v National Insurance Corporation**,⁹ Byron CJ elucidated the general principles stated in rule 64.6 of the CPR in the following way¹⁰:

“CPR part 64.6 prescribes that where the Court decides to make an order about the costs of any proceedings, the general rule is that, it must order the unsuccessful party to pay the costs of the successful party. The Court is, however, given very wide discretionary powers to vary the application of the general rule. These include the power to order a successful party to pay all or part of the costs of an unsuccessful party or make no order as to costs or to pay only certain portions of another person’s cost. In exercising these discretions as to costs the Court is required to have regard to all the circumstances. **Particular consideration must be given to the conduct of the parties both before and**

⁹ SLUHCVAP2003/0010 (delivered 24th November 2003, unreported).

¹⁰ Ibid at para 8.

during the proceedings and the manner in which a party has pursued the case in general and particular issues within the case. Thus the order can be affected by whether a party has succeeded on particular issues, even if the party has not been successful in the whole of the proceedings. The Court is also required to consider whether it was reasonable for a party to pursue a particular allegation or raise a particular issue and whether the claimant gave reasonable notice of intention to pursue a claim.” **(My emphasis)**

[25] Further, as an award of costs is a matter for the discretion of the trial judge, an appellate court will only interfere with the exercise of a trial judge’s discretion in well-defined circumstances.¹¹ In **The Hon. Attorney General and another v D. Giselle Isaac**,¹² this Court explained that the appellate court will only interfere with the exercise of a trial judge’s discretion as to costs if it is established that the judge took into account irrelevant factors or failed to take into account relevant factors or that the judge committed an error in principle.

[26] In my view, Dr. James’ success on his claim can aptly be described as de minimis, when viewed in the context of the substantive relief sought in his claim. What Dr. James really sought in his claim was declaratory relief concerning his right to practise medicine in Saint Lucia and damages incidental to the alleged breach of that right by the Council. The learned judge denied Dr. James the substantive relief sought but made a declaration that the action of the Council in ordering him to undergo an anger management programme was contrary to the rules of natural justice. There is, to me, no doubt that the declaration made by the learned judge in no way assisted Dr. James in obtaining the real relief sought in his claim. I would go further to say that the declaration made by the learned judge is more useful to the Council which now has the benefit of guidance on the appropriate procedure to follow when dealing with complaints made under the Act as well as guidance on its role and functions in accordance with the mandate of that Act.

¹¹ See: *Dufour and Others v Helen Air Corporation Ltd. and Others* (1996) 52 WIR 188, per Sir Vincent Floissac CJ.

¹² ANUHCVP2015/0014 (delivered 11th March 2016, unreported).

[27] I also find no merit in Mr. Fraser's contention that the learned judge, in deciding the issue of costs, did not consider that the previous claims filed by Dr. James were struck out or withdrawn with costs against Dr. James. I am fortified in my view that the learned judge was entitled by rule 64.6(6) of the CPR to consider Dr. James' conduct before the filing of the claim to which the instant appeal relates. In any event, in order for this Court to interfere, it must be established that the exercise of the learned judge's discretion exceeded the generous ambit within which reasonable disagreement is possible or is blatantly wrong. In the case at bar, there is nothing which suggests that the learned judge considered irrelevant factors or committed an error in principle nor has it been shown that her decision is blatantly wrong. Accordingly, there is no basis for this Court to interfere with the learned judge's decision to make no order as to costs.

Conclusion

[28] For all the above reasons, I would make the following orders:

- (1) The appeal against the judgment of the learned judge is dismissed and the judgment is affirmed.
- (2) Each party shall bear their own costs on this appeal.

I concur.
Gertel Thom
Justice of Appeal

I concur
Paul Webster
Justice of Appeal [Ag.]

By the Court

Chief Registrar

