

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES**

HIGH COURT OF JUSTICE

SUIT NO.GDAHCV 2014/0082

BETWEEN:

**GEMMA BAIN-THOMAS
(Secretary to the Cabinet of Grenada)**

Claimant/Respondent

and

**THE ATTORNEY GENERAL OF GRENADA
THE PUBLIC SERVICE COMMISSION**

Defendants/Applicants

Appearances:

Mr. Rohan Phillip, Counsel for the Claimant

Mr. Dwight Horsford, Solicitor General, and Mr Adebayo Olowu, Senior Crown Counsel for
the Defendants

2014: December 10, 18;

2015: January 28.

RULING

- [1] **WALLBANK, J. (Ag.):** On 1st April 2014 the Defendants/Applicants filed a Notice of Application seeking an order to strike out a claim filed by the Claimant by which she contends that she was wrongfully and in breach of her constitutional rights removed from her post as Secretary to the Cabinet of Grenada. The Defendants/Applicants make their application on grounds that the Claim discloses no substantial constitutional complaint. Both

sides have filed affidavit evidence with respect to this application. The Claimant/Respondent had also filed an affidavit, together with an exhibit, on 24th February 2014 in support of her Fixed Date Claim Form.

- [2] The Claimant/Respondent alleges that she had been granted employment in or about September 2009 as Secretary to the Cabinet of Grenada, which position entailed, at a point during her tenure of her post, also being designated as the Head of Public Service.
- [3] The employment grade assigned to the Claimant/Respondent was Grade M scale.
- [4] A first letter of appointment dated 1st October 2009 did not state that the Claimant/Respondent was liable to be transferred to a post of equivalent grade within the Public Service of Grenada, but a subsequent appointment letter dated 30th January 2012 did so.
- [5] The Claimant/Respondent avers that in February 2013, following a change of Government pursuant to a General Election, the incoming Prime Minister indicated that he needed to be comfortable with his senior public officials and he and the Claimant discussed a possible transfer, with a suitable assignment to be developed to accommodate the Claimant/Respondent.
- [6] The Claimant/Respondent concurred, at least in principle.
- [7] Various discussions between the Claimant/Respondent and competent authorities ensued, with a view to the Claimant/Respondent filling a different post.
- [8] Such discussions are alleged by the Claimant/Respondent to have been marked with dilatoriness on the part of the said competent authorities. For her part, the Claimant/Respondent was reluctant to create her own job description, which she appears to have been encouraged to do by the said competent authorities.

- [9] On 6th February 2014 the Governor General informed the Claimant/Respondent in writing that she was going to be transferred with effect from 17th February 2014 to hold another post in the Public Service in Grade M, to be determined by the Public Service Commission.
- [10] By another letter also dated 6th February 2014, to the Claimant/Respondent from the Public Service Commission, the Claimant/Respondent was informed that she had been appointed to the post of Executive Director of Anti-Money Laundering and Counter Terrorism Financing Commission, Ministry of Legal Affairs.
- [11] That letter stated that the Claimant/Respondent would continue to receive her present rate of salary at Grade M scale, and that she would be liable to transfer to any post of equivalent grade within the Public Service.
- [12] The Claimant has commenced work in this post under protest.
- [13] The gravamen of the Claimant's complaint is that whatever may be the formal appearance conveyed by the actions of the Government, in reality the Prime Minister wanted to reorganize the Claimant/Respondent's Department to his liking and the Government was requiring the Claimant/Respondent to retire.
- [14] At paragraph 3 of the Fixed Date Claim Form the Claimant/Respondent seeks a declaration to this effect, and at paragraphs 4 and 5 she seeks a declaration that she is consequently entitled to receive a pension and retirement benefits pursuant to section 84(8) of the Constitution of Grenada.
- [15] The Claimant/Respondent also alleges that the new post to which she had been transferred does not have the same status as her previous post as Secretary to the Cabinet/Head of Public Service, even though she is being paid on the same scale.

- [16] The Claimant/Respondent proffers some comparisons with the entailments in terms of challenges and pay scales in other posts, the upshot of which is that the Claimant/Respondent implies that she was removed to a sinecure position of inferior status in order to allow the Prime Minister to replace her with a preferred candidate.
- [17] The Claimant/Respondent claims damages at paragraph 6 of the Fixed Date Claim Form, as well as a declaration at paragraph 2 of the same that the alleged transfer contravenes section 85(2) of the Constitution.
- [18] The Defendants/Applicants argue that the terms of the Claimant/Respondent's employment clearly provided that she was liable to being transferred to another post of equivalent grade in the Public Service, that is what happened and thus that she has no basis for a claim. Hence they move the Court to strike it out.
- [19] The Defendants/Applicants rely upon the following dicta in **GDAHCV2001/0521 Brian Francis vs The Attorney General**, per Denys Barrow, SC, J. on page 10: "*The meaning that I ascribe to status, as used in the [Regulation 46 of the Public Service Commission Regulations 1969] is not prestige but rank or grade. Were it otherwise it would mean that any transfer at any, and especially at a senior, level would be in almost every case a promotion or a demotion, or a change in status...*"
- [20] The Claimant/Respondent relies upon dicta in **Ian Peters vs Robert George Spencer, HCVAP 2009/016, Antigua & Barbuda, paragraph [19]**, per Pereira, C.J. (Ag)., citing **Bridgeman vs McAlpine-Brown [2000] L.T. L Jan 19, 2000, CA** for the proposition that "*A statement of case is not suitable for striking out if it raises a serious live issue of fact which can only be properly determined by hearing oral evidence*".
- [21] The Claimant/Respondent also relies upon dicta in **Richard Duncan vs Attorney General, Civ. App. 13 of 1997, Grenada**, page 5, per Byron, C.J. (Ag) that "*The crucial issue to be determined is whether the court can determine that the conduct of the PSC was something different to what it said it was, and if so what was the essential character of*

what transpired” and “The duty of the Court is clear. There are abundant authorities that establish that the Court must determine the true nature of the event or transaction whatever term is used to describe it” (Ditto, page 6) and “The payment of salary would be only one factor to be considered in deciding whether the officer in receipt has been removed from office. It is not conclusive. An officer who is prevented from discharging the duties of his office, or is excluded from his workplace, against his will and without lawful authority has been removed from office even if he is in receipt of salary” (Ditto, page 13).

- [22] The evidence of the Government’s desire to replace the Claimant/Respondent promptly, taken together with its subsequent possible prevarication or apparent lack of impulsion in placing the Claimant/Respondent in a definitive post, raises the possibility (without putting it any higher than that for present purposes) that in reality the Government were intent upon excluding the Claimant/Respondent from her post, and thus in effect requiring her retirement.
- [23] Such a possibility can only be determined by further evidence, including oral evidence at trial.
- [24] The issue whether the conduct of the Public Service Commission was something different to what the Defendants say it was is also a matter that can only be determined by oral evidence at trial.
- [25] The Defendants/Applicants also cited procedural defects as an additional ground for the claim to be struck out. Such defects can be rectified pursuant to CPR 26.9 if required. However, the gist of the claim is sufficiently clear and no palpable procedural unfairness arises by reason of the alleged defects.

[26] Accordingly the Court's Order is as follows:

1. The Application to strike out is denied;
2. The Defendants shall pay the Claimant's costs of this application in the sum of \$1,000 by 28th February 2015.

[27] Whilst the Claimant succeeded in defeating the application, it was not a hopeless application. The Court is cognizant that the Claimant/Respondent's costs will have been greater than the sum awarded, and possibly significantly so. The sum awarded is intended to reflect, as far as possible, an appropriate balance between the parties in the overall context of the matter, whilst recognizing the principle that costs follow the event.

[28] Upon the handing down of this Ruling the parties' Learned Counsel sought consequential case management directions from the Court. These are as follows:

- a. The Defendants shall be permitted to file an Affidavit in Response to the Claim within 14 days of today's date;
- b. The Claimant shall be entitled to file an Affidavit in Reply within 14 days of service of such an Affidavit in Response by the Defendants;
- c. There shall be standard disclosure and inspection by 15 April 2015;
- d. The parties shall file and exchange witness statements no later than 7 calendar days before the trial date;
- e. The trial date shall be set down as a high priority by the Registrar, with an estimated length of 1 day, as it raises serious issues of constitutional law and fact.

[29] I thank both sides' Learned Counsel for their written and oral submissions and for their assistance in relation to this application.

Gerhard Wallbank
High Court Judge (Ag.)