

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CLAIM NO. SLUHCV2013/0372

LAMBERT NELSON

Applicant

V

**THE CASTRIES CONSITUTENCY COUNCIL
THE MAYOR & CITIZENS OF CASTRIES**

Respondents

**Appearances: Lydia Faisal for the Applicant
Peter Foster Q.C. and Renee' St Rose with him for the Respondents**

**2013: July 22nd
October 16th**

DECISION

- [1] **Belle J.** The Applicant filed an application on April 26, 2006 for Leave to Apply for Judicial Review and or an Administrative Order pursuant to CPR Part 56.3 and CPR Part 56.7
- [2] The Application stated that it was contingent upon a decision wrongfully arrived at by the Respondent, by virtue of a process which does not accord to law and or Natural Justice.
- [3] The application referred to an alleged promise that the Castries Constituency Council would pay him a pension bridged with that of his tenure in the public service. Secondly, the Applicant relies on the allegation that he was never given the option of paying social security during the period of service as a public servant nor as Town Clerk of the Castries Constituency Council.

- [4] The Applicant relies on the legal assertion that he had been promised the bridging of the pension entitlements and that the Council's response that the Cabinet of Ministers would have to make the decision on his request could not be a relevant consideration and breached his legitimate expectation since the Council is an autonomous self-governing body.
- [5] Counsel also argued that the factual basis of the request followed by the approval by a previous Council was supported by affidavit evidence and this evidence could not be disregarded without cross examination. The affidavit itself was challenged on technical grounds which were not pursued in argument before the court.
- [6] In response the Respondent argued that the Application should be refused because the Applicant had adduced no factual evidence to support the averment that there was a meeting of the previous Constituency Council was not supported by the documentary evidence adduced by the Applicant.
- [7] These matters of evidence are to be settled at a trial of the matter if such trial occurs. While there are good grounds to dispute the assertions of the Applicant based on the minutes of the Council, the Council has not argued that there are no minutes which can be disclosed to support the factual assertions made. Indeed the assertions that such a meeting took place and that a decision was taken are not refuted by arguing that the minutes adduced are not properly put before the court.
- [8] In any event, the Applicant also produced a letter from the Chairman of the City Council dated June 29, 2010 which confirms the decision made by the Council.

Other Bars to the Granting of Leave

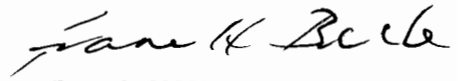
- [9] The Respondent's counsel also argued that there was nothing submitted which brought the matter within the ambit of Public Law and it was at best a matter of contract which was a matter of private law.

- [10] Counsel for the Applicant argued that the nature of the matter where the body making the decision was a statutory body supported by public funds rendered it a public law matter
- [11] It is counsel for the Applicant's view that the Council can make the necessary provision for a pension to be paid to the Applicant without any reference to the central government.
- [12] I note that the Respondent has argued that the Council's decision, if taken, to approve a bridged pension for the Applicant would be unlawful since it would impact central government. However, this is an interpretation of the law which is not clearly supported by legal authority in relation to the relevant laws of Saint Lucia. The argument is also based on a presumption of fact namely impacting central government which would have to be based on some kind of evidence adduced by the Council in relation to its finances.
- [13] Counsel for the Respondent argued that Section 101 of the Corporation Act which governed the operation of the Constituency Council required that the budget of the Council be approved by the Minister. However there is no evidence that the Minister rejected any budget in this instance which affected the payment of a bridged pension to the Applicant.
- [14] I have therefore, concluded that based on the provisions of Part 56.3 of the CPR 2000 the Applicant has performed the necessary steps under the CPR 2000 to be granted leave to file a Claim for Judicial Review.
- [15] As far as the law is concerned I adopt the position of the Privy Council in *Antoine v Sharma* [2006] UKPC 57 at [14] (4) where the court states:

"The ordinary rule now is that the court will refuse leave to claim judicial review unless satisfied that there is an arguable ground for judicial review having a realistic prospect of success and not subject to a discretionary bar such as delay or an alternative remedy. See Rv Legal Aid Board, Exp p. Hughes (1992) 5 Admin LR 623 and Fordham, Judicial Review Handbook 4th ed (2004), p.426. But

arguability cannot be judged without reference to the nature and of the issue to be argued. It is a test which is flexible in its application."

- [16] Based on the evidence I rule that the Applicant has satisfied the legal requirements for leave to be granted to file claim for judicial review.
- [17] Of the matters outlined in Part 56.3 (3) the only matter which was in doubt was that of Part 56.3 (3) (e), being whether an alternative form of redress exists. But it is clear from the evidence in support of the application that no contract was signed by the parties promising a pension and what the Applicant depended upon was a stated matter of policy in relation to his terms of employment which in turn affected the planning of his financial affairs.
- [18] In that regard then the matter is more properly argued as a matter of Public Law in which the reversal of a stated policy comes under scrutiny rather than a matter of private law in which the terms of a contract are to be established.
- [19] With regard to the matter of delay I do not think that there is any undue delay based on the applicant's taking almost 3 months to file the application. Since this would be a purely discretionary bar I will not apply it to refuse leave for judicial review.
- [20] I therefore grant leave for the Applicant to file a Claim for Judicial Review in the following terms:
- i Order of Certiorari etc. (in accordance with the Application made).
 - ii Claimant is to file the Claim in 14 days.
- [21] The First Hearing is scheduled for 9 a.m. on 21st November 2013 for case management.


Francis H V Belle
High Court Judge