

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

GRENADA

GDAHCVAP2016/0040

BETWEEN:

RAJIV GUNNESS

Appellant

and

**[1] SAINT GEORGE'S UNIVERSITY LIMITED (OWNERS AND
OPERATORS ST. GEORGE'S UNIVERSITY)**

**[2] DR. C. V. RAO (SUED IN HIS CAPACITY AS DEAN OF
STUDENTS OF ST. GEORGE'S UNIVERSITY)**

Respondents

Before:

The Hon. Mde. Louise Esther Blenman

The Hon. Mr. Mario Michel

The Hon. Mde. Gertel Thom

Justice of Appeal

Justice of Appeal

Justice of Appeal

Appearances:

Dr. Francis Alexis, QC with him Ms. Olabisi Clouden for the Appellant

Mr. Dickon Mitchell with him Ms. Skeeta Chitan for the Respondent

2017: April 7;

2018: May 3.

Civil appeal – Saint George's University Limited Act – Whether the Government of Grenada is the visitor of Saint George's University – Whether the learned judge was correct to strike out the claim on the basis that the court had no jurisdiction to hear the claim – Jurisdiction of visitor

Disciplinary complaints were brought against the appellant, Mr. Rajiv Gunness, a medical student of the Saint George's University ("the University"). The complaints were heard by the University's Medical Faculty Judiciary Board (the "Judiciary Board"). The Judiciary Board found that the charges against Mr. Gunness were proved and recommended that Mr. Gunness be dismissed from the University. Mr. Gunness' appeal to the University

Executive Committee ("the Executive Committee") was unsuccessful. The Executive Committee agreed with the recommendation and dismissed Mr. Gunness from the University.

Having been dismissed from the University and having failed on an application for judicial review, Mr. Gunness instituted these proceedings against the Dean and the University for damages for negligence and breach of contract of studentship between himself and the University. The University applied to have the claim struck out on the basis that the court lacked jurisdiction to hear the claim. The University relied on Article 2 of the Saint George's University Limited Act ("the Act") and contended that the Government of Grenada as the "visitor" of the University had sole and exclusive jurisdiction to deal with the internal affairs of the University including dismissal of students. The learned judge agreed with this contention and granted the University's application.

Mr. Gunness appealed the decision of the learned judge arguing that the Government of Grenada was not the visitor on a proper construction of the statute of the University and in particular Article 2, as no provision was made for the appointment of a visitor of the University. Further, that (i) he was not informed there was a visitor of the University or that the government was the visitor of the University, (ii) the government cannot be the visitor of the University because of its relationship with the University, and (iii) Article 2 is ambiguous.

Held: dismissing the appeal and awarding costs to the respondent in the sum of two thirds of the costs awarded by the court below, that:

1. The office of visitor and its sole and exclusive jurisdiction over the internal affairs of a university has long been recognized. Having regard to the nature of the visitor's jurisdiction being sole, exclusive and final, and not concurrent with the court's jurisdiction, the appointment of a visitor must be expressed. The court will not imply a visitor. No particular form of words is necessary for the appointment of either a general or a special visitor, but the intention of the founder is to be collected from the statutes.

Philips v Bury (1694) 90 ER 1294 applied; **Hines v Birbeck** [1986] Ch 524 applied; **Thomas v University of Bradford** [1987] 1 All ER 834 applied.

2. It is a well-established principle that in interpreting legislative provisions the court would adopt a purposive interpretation so as to give effect to what is taken to have been intended by Parliament. The court will presume that Parliament does not intend to legislate so as to produce a result which is inconsistent with the statute's purpose or make no sense or is anomalous or illogical. However, the court has no power to improve upon the instrument which it is called upon to construe, whether it is a contract, a statute or articles of association. It cannot introduce terms to make it fairer or more reasonable. It is concerned only to discover what the instrument means.

Attorney General of Belize et al v Belize Telecom Limited et al [2009] UKPC 10 applied.

3. Accordingly, Article 2 must be looked at in the context of the Agreement and the Act as a whole. When considered as a whole, the Agreement sets out the parameters for the operation of the University in Grenada. It outlines the various obligations and rights of the parties. The parties having agreed to the establishment of the University, its purposes, the facilities to be used and its managerial structure, the parties in Article 2 agreed for the government to be the visitor of the University with full visitation rights, meaning as general visitor, with the government determining the person or persons who will exercise the rights on behalf of the government. The fact that the parties did not use the word “visitor” in Article 2 is of no moment. The terms “visitor”, “visitation rights”, “visitatorial authority”, “visitatorial jurisdiction” are all used in relation to the visitor and the visitor’s jurisdiction.

Patel v University of Bradford Senate [1979] 1 WLR 1066 applied; **R v Bishop of Ely** 1794 5 Term Rep 475 applied; **Wadinambiaratchi v Hakeem Ahmad And Others** (1985) 35 WIR 325 applied.

4. Whether there is a visitor of an institution is dependent on the provisions of the legal instruments governing the institution. The appellant’s ignorance of the provisions of the Act cannot provide the appellant with a basis for relief from the court. The University had no obligation or duty to bring to his attention the provisions of Article 2 which is embodied in the University’s statute. It was the duty of the appellant to familiarise himself with the Rules and Regulations of the University of which he agreed to become a member.
5. The office of visitor is a unique one. While the visitor’s jurisdiction over the internal matters of the university is exclusive, in the exercise of this jurisdiction, the principles of natural justice do apply. The visitor is susceptible to the supervisory jurisdiction of the court. The role of the court is to confine itself to the demonstrated errors of law and it will not interfere with any exercise of the visitor’s discretion or judgment unless satisfied that it was wrong in law. A dispute as to the correct interpretation and fair administration of the domestic laws of the university, its statutes and its ordinances falls within the jurisdiction of the visitor, subject to the supervisory jurisdiction of the High Court and therefore the court usually lacks jurisdiction in the first instance to interfere. In this case, the dispute between Mr. Guinness and the University is a disciplinary matter. The dispute being a disciplinary matter was a matter which fell squarely within the internal management of the University and therefore was a matter within the sole and exclusive jurisdiction of the visitor.

R v Bishop of Ely 1794 5 Term Rep 475 applied; **Thomas v University of Bradford** [1987] 1 All ER 834 applied.

6. A founder of an institution has a wide discretion to appoint whomever it deems appropriate as visitor. A university being an eleemosynary charitable foundation, the founder of such a body is entitled to reserve to himself or to a visitor whom he appoints the exclusive right to adjudicate upon the domestic laws which the founder has established for the regulation of his bounty. As such, the fact that the government has a relationship with the University does not disqualify the government from being the visitor. Further, an interpretation of Article 2 as appointing the government as visitor of the University would not lead to unreasonableness or absurdity or great harshness or injustice. Should a visitor seek to abuse his power, the court can exercise its supervisory power.

Regina v Lord President of the Privy Council Ex Parte Page [1993] AC 682 applied; **Thomas v University of Bradford** [1987] 1 All ER 834 applied.

JUDGMENT

- [1] **THOM JA:** The issue in this appeal is whether pursuant to Article 2 of the Second Schedule of the **Saint George's University Limited Act**,¹ the Government of Grenada is the visitor of the Saint George's University ("the University").
- [2] The background to this appeal is that the appellant, Mr. Rajiv Gunness, was a medical student at the University. Disciplinary complaints were brought against Mr. Gunness for violations of the University's Code of Conduct. The complaints were heard by the University's Medical Faculty Judiciary Board (the "Judiciary Board"). The Judiciary Board, having heard the complaints, found that the charges against Mr. Gunness were proved and recommended that Mr. Gunness be dismissed from the University.
- [3] Mr. Gunness being dissatisfied with the decision of the Judiciary Board appealed to the University Executive Committee on Academic Progress and Professional Standards (the "Executive Committee"). The Executive Committee agreed with the recommendation and dismissed Mr. Gunness from the University.

¹ Cap. 294A, Laws of Grenada.

- [4] Having been dismissed from the University, Mr. Gunness instituted public law proceedings against the University seeking judicial review of its decision to dismiss him. He sought several reliefs including a declaration that the recommendation of the Judiciary Board was ultra vires null and void, the hearing having been vitiated by breach of the rules of natural justice, due process errors, demonstrated prejudice and the sanction being disproportionate, and a declaration that the decision of the Executive Committee was ultra vires it having been made without Mr. Gunness being given an opportunity to be heard.
- [5] On the application of the University, Mr. Gunness' claim was struck out on the basis that the University was a limited liability company and not a public body, therefore the proceedings in public law could not be maintained.
- [6] Mr. Gunness then instituted these proceedings against the University and the Dean of the University for damages for negligence and breach of contract of studentship between himself and the University. He also sought injunctive relief for reinstatement as a student pending the hearing and determination of the claim.
- [7] The University applied to have the claim struck out on the basis that the court lacked jurisdiction to hear the claim. The University relied on Article 2 and contended that the Government of Grenada as the "visitor" of the University had sole and exclusive jurisdiction to deal with the internal affairs of the University, including dismissal of students.
- [8] Mr. Gunness in response contended that the University was precluded from raising the issue of visitor by operation of the doctrine of res judicata and/or issue estoppel. He further argued that the Government of Grenada was not the visitor

on a proper construction of the statute of the University and in particular Article 2 as no provision was made for the appointment of a visitor of the University.

[9] The learned judge granted the application and dismissed the claim on the basis that pursuant to Article 2, the government was the visitor of the University and therefore the court had no jurisdiction in the matter.

[10] Mr. Gunness appealed the decision of the learned judge. The grounds outlined in his notice of appeal raised two issues being, the interpretation of Article 2 and res judicata and issue estoppel. However, at the hearing of the appeal, learned Queen's Counsel Dr. Alexis on behalf of Mr. Gunness did not seek to advance any arguments on the issue of res judicata or issue estoppel. In my view, that was the correct approach since there was no merit in the submissions on those issues. The appeal therefore proceeded on the sole issue whether on a proper interpretation of Article 2, the Government of Grenada was appointed the visitor of the University.

[11] Article 2 reads as follows:

"VISITATION RIGHTS"

The University hereby agrees that the Government shall have full visitation rights of the University by such person or persons as may be determined by the Government from time to time."

[12] Learned Queen's Counsel Dr. Alexis submitted that Article 2 should not be interpreted as appointing the Government of Grenada to be the visitor of the University. His reasons for so contending are:

- (a) there was no express provision for the appointment of a visitor;
- (b) Mr. Gunness was not informed there was a visitor of the University or that the government was the visitor of the University;

(c) The government cannot be the visitor of the University because of its relationship with the University;

(d) Article 2 is ambiguous.

Express Provision

[13] Dr. Alexis, QC submitted that in all of the legal authorities where it was determined that a visitor existed, there was express provision in the legislation for the appointment of a visitor or the legislation used a similar expression referring to a visitorial jurisdiction. He contends there is no such express provision in Article 2. Dr. Alexis, QC referred the Court to various Charters and Statutes of Universities which contained provisions for the appointment of a visitor including the 1948 Royal Charter of the University of the West Indies, clause 6 of which reads:

“We, Our Heirs ad Successors, shall be and remain the Visitor and Visitors of the University and in the exercise of the Visitorial Authority from time to time and in such manner as We or They shall think fit may inspect the University College, its buildings, laboratories and general work, equipment, and also the examination, teaching and other activities of the University College by such person or persons as may be appointed in that behalf.”

[14] The appointment of the visitor of Dunsheath University is worded in the following terms in section 6 of the University Act, “His Majesty in Council shall be the Visitor of the University.”²

[15] Similarly, the Charter of Incorporation of Hull University provides at paragraph 20 for the appointment of the visitor in the following terms:

“We, Our Heirs Successors, Kings and Queens of the Kingdom, Realms and Territories aforesaid shall be and remain the Visitor and Visitors of the University through the Lord President of Our Council for the time being and in exercise of the Visitorial Authority We, Our Heirs and Successors shall have the right from time to time and in such manner as We or They shall think fit to direct an inspection of the University, it's building, laboratories and general equipment and also an enquiry into the teaching, research, assessments and other work done by the University.”

² As stated by Lord Goddard in *Rex v Dunsheath Ex parte Meredith*, [1951] 1 KB 127, p. 131.

[16] Dr. Alexis, QC further submitted that the correct interpretation of Article 2 is that it provides for the right of the government through its agents to visit and inspect the property of the University and to collect rent pursuant to Article 10 of the Agreement between the University and the Government of Grenada which reads:

“1. The Government agrees to lease to the University parcels of available Crown lands that may be required by the University from time to time, on such terms and conditions as may be mutually agreed.

2. The University shall have, in addition to the foregoing, the right to purchase or otherwise acquire, take or receive by deed of gift, bequest, or devise, and to hold and enjoy any estate or interest in property whatsoever, and the right to sell, grant, convey, mortgage, lease or otherwise dispose of the same or any part thereof from time to time.

3. The Government agrees that in the event that any property held by the University is required for public purposes, the Government shall use its best endeavours to provide or assist in providing alternative property.”

[17] In response, Mr. Mitchell contends that the following words in Article 2 “the Government shall have full visitation rights of the University” are capable of and do constitute the appointment of the government as the visitor of the University. He argues that no particular form of words is necessary for the appointment of a visitor and that “visitation rights” is synonymous to “visitatorial rights” and they are often used interchangeably. He relied on the following extract at page 473 of **The Statutes Relating to the Ecclesiastical and Eleemosynary Institutions of England, Wales, Ireland, India and The Colonies**³ which reads:

“No particular form of words is necessary for the appointment of either a general or a special visitor, but the intention of the founder is to be collected from the statutes. The founder can delegate the power of visitation either generally or specially; by prescribing in the *latter* case a mode for the exercise of any *part* of it; but if a mode be prescribed in any particular case, that will not take away the general power incidental to the office of visitor. Thus the visitation of the corporation or institution at large may be in one person, and that of one of the members, as of the head, may be in another; and if the founder of a college appoints a visitor of the

³ Volume 1, Archibald John Stephens, London: John W. Parker, West Strand 1845.

head specially, the general power of visitation remains in the founder and his heirs.”

- [18] Mr. Mitchell also adopted the observation of the learned judge at the hearing below that the fact that the visitation rights are referred to in a stand-alone article being Article 2 and not in Article 10 which deals with renting and leasing of property, is indicative that it was not intended to relate to the lease of property as contended by Dr. Alexis, QC.

Discussion

- [19] The office of visitor and its sole and exclusive jurisdiction over the internal affairs of a university has been recognized by a long line of cases dating back to the sixteenth century as illustrated in cases such as **Philips v Bury**,⁴ to **Hines v Birbeck**⁵ and **Thomas v University of Bradford**.⁶ In **Phillips v Bury** it was held that:

“A visitor being then of necessity created by law, as ... every hospital is visitable; what is the visitor to do? He is to judge according to the statutes and rules of the college; he may expel; and ... he may deprive. If he is a visitor as Ordinary, there lieth an appeal from his deprivation; but if as a patron, then there was none. But you'll say, this man hath no Court. It is not material whether he hath a Court or no; all the matter is, whether he hath a jurisdiction; if he hath conusance of the matter and person, and he gives a sentence, it must have some effect to make a vacancy, be it never so wrong. But there is no appeal, if the founder hath not thought fit to direct an appeal; that an appeal lieth in the Common Law Courts, is certainly not so. This is according to the government settled by the founder; if he hath directed all to be under the absolute power of the visitor, it must be so. He is a Judge not only in particular, by the founder's appointment, but he has a general authority by law, as visitor. Who shall judge him? Shall we summon the heads of the colleges in the university, to judge whether he has done right or wrong? That is not to be done; it would bring great confusion and mischief to the university.”⁷

⁴ (1694) 90 ER 1294.

⁵ [1986] Ch 524.

⁶ [1987] 1 All ER 834.

⁷ At p. 1300.

[20] In **Halsbury's Law of England**⁸ the learned authors stated the jurisdiction of the visitor as follows:

“...the visitor has untrammelled power to investigate and right wrongs done in the administration of the internal laws of the foundation. A dispute as to the correct interpretation and fair administration of the domestic laws of the university, its statutes and its ordinances falls within the jurisdiction of the visitor, subject to the supervisory jurisdiction of the High Court, and therefore the Court usually lacks jurisdiction in the first instance to interfere. However a decision of the university visitor may be amenable to judicial review.”⁹

[21] It is usual for the appointment of a visitor of a university to be included in the University Charter or the Act of Parliament establishing the university. Having regard to the nature of the visitor's jurisdiction being sole, exclusive and final, and not concurrent with the court's jurisdiction, the appointment of a visitor must be expressed. The court will not imply a visitor. In fact, Mr. Mitchell did not dispute that the appointment of the visitor must be expressed; rather, he argued that the appointment of the visitor was expressly made in Article 2. In some modern universities such as the University of Lincolnshire and Humberside there is no visitor.¹⁰

[22] While the appointment of the visitor must be expressed and not implied, the above mentioned Charters and Statutes show that no particular set of words are necessary for the appointment of a visitor. This was recognized from as early as the sixteenth century as illustrated in the passage quoted above from **The Statutes Relating To The Ecclesiastical And Eleemosynary Institutions of England, Wales, Ireland, India and The Colonies**.

[23] The legal instrument governing the University is the **Saint George's University Act** in which the Charter of the University is included in the First Schedule to the

⁸ 4th edn. Reissue Volume 15(1), LexisNexis Butterworths, at para. 495.

⁹ As quoted in *Dr. Matt Myrie v The University of the West Indies et al*, Jamaica, Claim No. 2007 HCV 04736 (delivered 4th January 2008, unreported) at p. 3.

¹⁰ *Clark v University of Lincolnshire and Humberside* [2000] 3 All ER 752.

Act and the Agreement between the Government of Grenada and the University is set out in the Second Schedule of the Act.

[24] The Charter of the University is very brief. It consists of two Articles. The first article deals with the objects of the University and the second deals with the administrative structure of the University. It must be noted that no express provision is made for a visitor of the University in the Charter. Article 2 on which the University relies as appointing the visitor is contained in the Agreement.

[25] It is a well-established principle that in interpreting legislative provisions the court would adopt a purposive interpretation so as to give effect to what is taken to have been intended by Parliament. The court will presume that Parliament does not intend to legislate so as to produce a result which is inconsistent with the statute's purpose or make no sense or is anomalous or illogical.

[26] In **Attorney General of Belize et al v Belize Telecom Limited e al**,¹¹ Lord Hoffman at paragraph 16 described the meaning of the phrase "intention of Parliament" as follows:

"...the Board will make some general observations about the process of implication. The court has no power to improve upon the instrument which it is called upon to construe, whether it is a contract, a statute or articles of association. It cannot introduce terms to make it fairer or more reasonable. It is concerned only to discover what the instrument means. However, that meaning is not necessarily or always what the authors or parties to the documents would have intended. It is the meaning which the instrument would convey to a reasonable person having all the background knowledge which would reasonably be available to the audience to whom the instrument is addressed: see *Investors Corporation Scheme Ltd v West Bromwich Building Society* [1998] 1 WLR 896, 912-913. It is this objective meaning which is conventionally called the intention of the parties, or the intention of Parliament, or the intention of whatever person or body was or is deemed to have been the author of the instrument."

¹¹ [2009] UKPC 10.

- [27] What then is the intention of the parties in this case? Article 2 must be looked at in the context of the Agreement and the Act as a whole. When considered as a whole, the Agreement sets out the parameters for the operation of the University in Grenada. It outlines the various obligations and rights of the parties. The University is permitted to operate various schools and confer degrees on its students which degrees are to be recognized by the government, they have the exclusive right to operate a Medical School, use the facilities of the Government's General Hospital, visiting stations, health centres and other health related facilities for teaching purposes and clinical programmes. The government also agreed to lease to the University such parcels of Crown lands that are available and are required by the University on such terms and conditions as may be agreed and for the University to acquire such property as it deems fit.
- [28] In return, the University agreed for the government to nominate one member of the Academic Board of the School of Arts and Science, and such numbers of persons on the Monitoring Committee as agreed by the government and the University, pay certain annual sums to the government and granted the government full visitation rights.
- [29] When the Agreement is considered as a whole the visitation rights referred to in Article 2 do not relate to rights of a landlord to inspect the property and collect rent as contended by Learned Queen's Counsel Dr. Alexis. Article 10 to which Queen's Counsel referred is an agreement by the parties to enter into a lease of such lands to be agreed and on terms and conditions to be agreed, and the acquisition of property by the University in Grenada generally. The parties therefore could not have intended for Article 2 to relate to rights of a landlord as contended by Queens' Counsel. In my view, the parties having agreed to the establishment of the University, its' purposes, the facilities to be used and its' managerial structure, the parties in Article 2 agreed for the government to be the visitor of the University with full visitation rights, meaning as general visitor, with

the government determining the person or persons who will exercise the rights on behalf of the government. This is similar to the situation in the case of **Patel v University of Bradford Senate**,¹² where the court recognised the Crown as the visitor and the Lord Chancellor as the appropriate person to exercise the visitatorial powers on behalf of the Crown. The fact that the parties did not use the word “visitor” in Article 2 in my view is of no moment. The terms “visitor”, “visitation rights”, “visitatorial authority”, “visitatorial jurisdiction” are all used in relation to the visitor and the visitor’s jurisdiction. This is illustrated in the cases of **R v Bishop of Ely**,¹³ **Wadinambiaratchi v Hakeem Ahmad And Others**,¹⁴ **Patel v University of Bradford Senate** and in **The Statutes Relating to the Ecclesiastical And Eleemosynary Institutions of England, Wales, Ireland, India and The Colonies**, where the terms are used interchangeably.

No Notice Of Visitor

- [30] Dr. Alexis, QC next submitted that at no time did the University inform Mr. Gunness that there was a visitor to whom he could appeal. This omission contended Dr. Alexis, QC shows that there was indeed no visitor of the University. Dr Alexis, QC exhibited a copy of the student manual which makes reference to the disciplinary process of the University and in particular to the procedures and policies of the Judicial Disciplinary Process which are outlined in the document entitled the St. George’s University Judicial Disciplinary Process, but no mention is made of a visitor.
- [31] Mr. Mitchell in response submitted that the University’s failure or omission to inform Mr. Gunness that there was a visitor of the University and or of his right to appeal to the visitor is irrelevant in determining the issue whether there is a visitor of the University and whether the Government is the visitor pursuant to Article 2. I agree. Whether there is a visitor of an institution is dependent on the provisions of

¹² [1979] 1 WLR 1066.

¹³ 1794 5 Term Rep 475.

¹⁴ (1985) 35 WIR 325.

the legal instruments governing the institution. Further, there was no such obligation on the University and Dr. Alexis, QC did not allude to any basis on which such an obligation could arise. All members of a university including students and lecturers are subject to the domestic laws of the university including the Charter, Statutes, Regulations and the procedures relating to discipline. The appellant as a student of the University was bound by the domestic laws of the University. The statutes of the University are all public documents. It was the duty of the appellant to familiarise himself with the Rules and Regulations of the University of which he agreed to become a member. The University had no duty to bring to his attention the provisions of Article 2 which is embodied in the University's statute. Ignorance of the provisions of the University Act cannot provide the appellant with a basis for relief from the court.

Relationship Between the Government and the University

[32] Dr Alexis, QC next submitted that the government cannot be the visitor for the University, because the government is intimately involved in the University in the following ways:

- (a) Article 3 of the Second Schedule of the Act provides for the government to nominate a member of the University Academic Board of the School of Arts and Science.
- (b) Pursuant to Article 10, the government agreed to lease such lands to the University as the University may require.
- (c) Article 5 enables the government to nominate members of the University's Monitoring Committee.
- (d) The government agreed to give the University the option of using the Government Public Hospital and health centres for teaching purposes and also to collaborate with the TA Marryshow Community College.

- (e) The government receives payment of a significant sum of money from the University annually.

[33] Dr Alexis, QC contended that having regard to this relationship between the government and the University in the administration of the University, if the government performed the function of visitor then the government would be a judge in its own cause contrary to the rules of natural justice. Learned Queen's Counsel relied on the case of **R v Bishop of Ely**.

[34] Dr Alexis, QC also submitted that Article 2 was ambiguous and having regard to the intimate relationship between the government and the University, to interpret Article 2 as appointing the government as visitor will lead to repugnance, inconsistency, unreasonableness and harshness. He relied on the following dictum of Byron CJ (as he then was) in **Universal Caribbean Establishment v James Harrison**:¹⁵

"If the language of a Statute is ambiguous so as to admit of two constructions, a Court is also entitled to consider the consequences of the alternative construction, and to rule against adopting a construction which leads to manifest public mischief, or great inconvenience, or repugnance, inconsistency, unreasonableness or absurdity, or to great harshness or injustice."¹⁶

[35] Mr. Mitchell submitted that the affiliation of the government with the University is not a legal bar to the government being appointed and performing the function of visitor of the University. A founder of an institution has a wide discretion to appoint whomever it deems appropriate as visitor. He relied on the following statement in the case of **Regina v Lord President of the Privy Council Ex Parte Page**¹⁷ at page 695:

"It is established that, a university being an eleemosynary charitable foundation, the visitor of the University has exclusive jurisdiction to decide

¹⁵ ANUHCVP1993/0021 (delivered 24th November 1997, unreported).

¹⁶ At p. 4.

¹⁷ [1993] AC 682.

disputes arising under the domestic law of the university. This is because the founder of such a body is entitled to reserve to himself or to a visitor whom he appoints the exclusive right to adjudicate upon the domestic laws which the founder has established for the regulation of his bounty.”

Discussion

- [36] The office of visitor is a unique one. While the visitor’s jurisdiction over the internal matters of the university is exclusive, in the exercise of this jurisdiction, the principles of natural justice do apply as illustrated in **R v Bishop of Ely**. The visitor is susceptible to the supervisory jurisdiction of the court. This was very clearly stated by the House of Lords in **Thomas v University of Bradford** where Lord Griffith stated:

“It has long been held that the writs of mandamus and prohibition will go either to compel the visitor to act if he refused to deal with a matter within his jurisdiction or to prohibit him from dealing with a matter that lies without his jurisdiction. On mandamus see *Rex v. Bishop of Ely* (1794) 5 Durn. & E. 475 and *Rex v. Dunsheath, Ex parte Meredith* [1951] 1 KB 127 and on prohibition, see *Reg. v. Bishop of Chester* (1791) 1 W. Bl. 22, and *Bishop of Chichester v. Harward and Webber* (1787) 1 Durn. & E. 650. Although doubts have been expressed in the past as to the availability of certiorari, I have myself no doubt that in the light of the modern development of administrative law, the High Court would have power, upon an application for judicial review, to quash a decision of the visitor which amounted to an abuse of his powers.”

- [37] In this case, the dispute between Mr. Guinness and the University is a disciplinary matter. It has no relation to the government. Nothing in the several affidavits of Mr. Guinness suggests the contrary. Indeed, Dr. Alexis, QC in his written and oral submissions did not seek to persuade the Court that in this case the government as visitor would be a judge in his own cause. In my view rightly so, since there was not a scintilla of evidence to support such a contention.
- [38] The fact that the government has a relationship with the University as outlined by Dr. Alexis, QC does not disqualify the government from being the visitor. I agree with the submission of Mr. Mitchell that a founder has a wide discretion in appointing whomever he wishes to be visitor and indeed the founder himself may

be the visitor as illustrated in the cases of **Regina v Hull University Visitor Ex parte Page**¹⁸ and **Thomas v University of Bradford**. An interpretation of Article 2 as appointing the government as visitor of the University would not lead to unreasonableness or absurdity or great harshness or injustice as contended by Dr. Alexis, QC. The office of visitor has been the sole arbiter of all internal matters of universities for over three centuries. Pursuant to Article 2, the visitation rights reposed in the government is to be exercised by such person or persons as may be determined by the government from time to time. Should a visitor seek to abuse his power, the court can exercise its supervisory power.

[39] In conclusion, Article 2 is unambiguous. It appointed the Government of Grenada as the visitor of the University with the powers to be exercised by such persons as is determined by the government from time to time. The appellant's dispute with the University being a disciplinary matter was a matter which fell squarely within the internal management of the University and therefore was a matter within the sole and exclusive jurisdiction of the visitor. The appellant's action was wholly misconceived and the decision of the learned judge to strike out the claim on the basis that the court had no jurisdiction to hear the claim and grant the relief sought by the appellant was clearly correct. The appellant's claim being grounded in the domestic laws of the University, he must seek relief by engaging the relevant process applicable to the visitor.

¹⁸ [1993] AC 682.

[40] For the reasons stated above the appeal is dismissed. The appellant shall pay the respondent's costs in the sum of two thirds of the costs awarded by the court below.

I concur
Louise Esther Blenman
Justice of Appeal

I concur
Mario Michel
Justice of Appeal

By the Court

Chief Registrar