

SAINT LUCIA

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

Claim No. SLUHCv 2005/0862

BETWEEN:

GIOVANNI JAMES
acting herein and represented by his duly appointed
Attorney, Vernatius James

Claimant

AND

MINISTRY OF EDUCATION, HUMAN RESOURCE DEVELOPMENT,
YOUTH & SPORTS
ATTORNEY GENERAL OF SAINT LUCIA

Defendants

Appearances:

Mr. Horace Fraser and with him Mr. Vernantius James for the Claimant.
Mrs. Georgis Taylor-Alexander for the Defendants

2010: February 8th;
December 21st;

JUDGMENT

- [1] WILKINSON J.: The Claimant was a former police officer who with the assistance of a scholarship of the Government went on to pursue a Bachelor of Laws degree. A dispute arose as to the tenure of the scholarship while the Claimant was pursuing his Bachelor of Laws degree.
- [2] The Claimant by his claim filed 27th January 2006, sought the following relief:
- (i) an order of certiorari quashing the decision of the First Defendant refusing to provide the Claimant with approved reasonable financial resources in respect of his studies for the academic year 2005 – 2006 under the Special Police Scholarship award.
 - (ii) an order of mandamus compelling the Defendants to secure that approved reasonable financial requirements are available to the Claimant in respect of his studies for academic years 2005 - 06 and 2006 – 07.

- (iii) an order of mandamus compelling the Defendants to make an immediate interim payment of six thousand three hundred and ninety pounds sterling [£6,390] being equivalent to one half of approved reasonable financial requirements of the Claimant in respect of his studies for the academic year 2005-06.
- (iv) an order of mandamus compelling the Defendants to secure that adequate refunds are made to the Claimant for educational and related expenses incurred by him for the academic year 2005 - 06 as a result of the decision against which complaint is made.
- (v) an order of prohibition restraining the Defendants from implementing further unlawful decisions or engage in further acts to terminate, stop, or frustrate the continuation of the Claimant's scholarship until its expiry.

[3] At 14th July 2006, Her Ladyship, Justice Sandra Mason Q.C made an order that the Claimant's application for judicial review be dismissed with costs to the Defendants to be assessed. The Claimant filed Civil Appeal No:10/2007 and therein the Court of Appeal ordered that the matter be remitted to the High Court for trial. The Claimant filed an application at 6th March 2009, wherein he sought leave to amend his claim form. One of the grounds was that the Claimant had completed his studies therefore much of the relief sought were no longer relevant. His Lordship, Justice Brian Cottle did not grant leave to amend the claim form but rather made a single order fixing the matter for trial at 12th January 2010. At 8th January 2010, and 29th January 2010, the Claimant filed further affidavits, and on 5th February 2010, the Second Defendant also filed a further affidavit. These affidavits were filed without the leave of the Court. This Court has in the past stated its very strong opposition to counsel and parties seeking to wrestle from the Court control which belongs to the Court by filing documents which require leave, without leave. The thrust of the Civil Procedure Rules 2000 is Court control. The three affidavits are therefore struck out.

[4] When the matter came on for trial, there were no witnesses called as Counsel for both sides said to the Court that they were prepared to proceed on the affidavits filed as the facts were not in dispute. The affidavits for the Claimant were deposed to by his father, Mr. Vernantius James, that for the Ministry of Education, Human Resource Development Youth & Sports (Ministry of Education) by the Hon. Mr. Mario Michel, Minister of Education, and for the Attorney General, by the Hon. Attorney-General, Dr. Nicholas Frederick.

The facts

[5] The facts are indeed not in dispute and are revealed in a series of correspondence exhibited by the Parties. At 6th March 2002, the Attorney General and Minister for Justice sent a memo to the

Commissioner of Police informing that the Government would award one police officer a scholarship to pursue studies in law at a recognized university or other recognized institution with maximum period of study being five years. Funded under the scholarship were a return travel ticket to country of study, tuition and related university fees, books and school supplies, reasonable costs of accommodation and subsistence. A three person committee was to make recommendations to Cabinet on a suitable candidate for the scholarship. Applications were to be submitted by 12th April 2001(2). The scholarship was available only to police officers who had applied to, or had been accepted by an institution for the academic year 2002-2003.

- [6] The primary correspondence being short in content they are cited in full. At or about March 2002, the Claimant was in receipt of a letter from Holborn College at the England dated 15th March 2002. That letter stated:

“15 March 2002

Mr. Giovanni G. James

...

Dear Mr. James.

RE: COURSE OF STUDY

LLB Intermediate F/T

Univ. of London External

COURSE COMMENCEMENT

23rd September 2002

EXAMINATION DATE

June 2003

I thank you for your completed form for admission to the college for the forthcoming academic year and I am pleased to confirm that a place will be reserved for you on receipt of the course fees deposit. You will also need to register with the University of London.

This is a full time course of study and requires classroom attendance of at least 15 hours per week as well as additional private study.

This is the first year of study of a three-year course due for completion in June 2004... (Emphasis mine)

Yours sincerely...”.

- [7] The Claimant applied for and was the successful applicant of the scholarship for the year 2002. This information was communicated to him in a letter dated 13th September 2002, and issued by the Permanent Secretary in the Ministry of Education. It said:

“ September 13th, 2002

Mr. Giovanni G. James.

...

Dear Mr. James,

The Ministry of Education, Human Resource Development, Youth and Sports wishes to congratulate you on the receipt of a scholarship award to read for a Bachelor of Law(s) Degree at Holborn College, London.

Your award is for a period of five (5) years, commencing September 2002.

You will be bonded to the Government of St. Lucia for a period of five (5) years upon completion of your studies. (Emphasis mine)

Please contact the Department of Human Resource Development of the Ministry of Education to complete your bonding agreement. You are advised that your bonding agreement must be completed prior to your departure date.

Please note also that examination results should be forwarded to this department at the end of every academic year prior to the processing of fees for the next academic year, and that you should report for duty at the end of every academic year in order to ensure payment of salary during the summer.

We wish you success in your studies

Yours sincerely,

DR.DIDACUS JULES

Permanent Secretary

Education and Human Resource Development”

[8] At 13th September 2002, a bond between the Claimant, his sureties and the Government was executed. The bond stated:

“... GIOVANNI JAMES of ...; and Nadia Stephani Jn Baptiste of ...; and Stewart Benson Amedee... are JOINTLY AND SEVERALLY BONDED unto the Government of Saint Lucia ...in the sum of Two hundred and twenty two thousand, seven hundred and ninety-five Dollars (\$222,795.00)

Signed and dated 13th day of September two thousand and two

WHEREAS the government has granted a scholarship to the Grantee to pursue a Five-year course in Law at the Holborn College, London, leading to Bachelors Degree.

AND WHEREAS it is mutually agreed that acceptance of this scholarship shall be conditional upon –

- (a) the obligation on the part of the Grantee to serve the Government for a period of Five (5) years in the Public Service (Teaching Service) (Sir Arthur Lewis Community College) or to serve the Private Sector in the said state
- (b) a penalty for withdrawal from the course without reasonable cause arising from neglect by or the fault of the Grantee without the approval of the Government. (Emphasis mine)

HEREBY FURTHER MUTUALLY AGREED between the Parties:

- (a) that in consideration of the grant of the scholarship, the Grantee shall, on completion of the course of study in Law return forthwith to Saint Lucia and therewith accept appointment to any post offered to him/~~her~~ by the Government suitably to the course of study undertaken such suitability to be determined solely by the Government, and shall faithfully and diligently serve in such appointment for a consecutive period of not less than Five (5) years, to be computed as commencing from the date of such appointment;
- (b) that the Grantee shall be liable to pay the sum of the actual expenditure incurred at the item of the discontinuing... to the Government should he/~~she~~ fail to complete the course through neglect of his/~~her~~ studies, misconduct or any other unreasonable cause.

NOW THE ABOVE WRITTEN OBLIGATION is conditioned to be void in case the Grantee shall return to Saint Lucia and serve the Government or the Private Sector as aforesaid or in the case the Grantee and/or Sureties shall pay into the Government Treasury the sum of Two hundred and twenty two thousand, seven hundred and ninety five Dollars (\$222,795.00)”

[9] By memo of 18th October 2002, issued by a Permanent Secretary (Ministry not stated) to the Permanent Secretary in the Ministry of Justice and copied to several persons, it was stated that the Claimant would receive sixty percent of his salary for two years which would end at 31(30) June 2004. By a subsequent memo of 20th August 2004, issued by the Permanent Secretary of the Ministry of Labour, Public Service and Cooperatives, it was stated that the Claimant was awarded study leave with pay for three years commencing 23rd September 2002 and ending 30th June 2005 and not 31st (30th) June 2004, as mentioned in previous memo, and further he was eligible to receive sixty percent of his salary for the period 1st September 2004 to 30th June 2005.

[10] At 31st July 2003, the University wrote to the Permanent Secretary in the Ministry of Education a letter which stated the following:

“ Dear Sir,

Re: Mr. Giovanni James
Date of Birth: 9th May 1980.

Mr. Giovanni Guilan James is currently registered as an external student of the LLB of the University of London. (Emphasis mine)

Mr. James has satisfactorily completed Year 1 Scheme B examination of the LLB and is now registered for Year 2 of Scheme B. He is eligible to write the Year 2 examination in May 2004. (Emphasis mine)

Should you require any further information, please do not hesitate to contact me....”

- [11] At 6th August 2003, the University of London wrote to the Claimant informing him of the following:

“ ...

Dear Mr. James,

In the recent LLB Intermediate examination you passed three papers but had a bad fail in the fourth subject. Unfortunately, according to the Regulations you have failed the year and must re-sit all four subjects to progress.

You have, however, the right to transfer to Year 2 of Scheme B, taking the three subjects that you have passed as equivalent to passing year 1 of Scheme B.
(Emphasis mine)

I would recommend that you take this option. You should remember that you can not, however, transfer back to the Scheme A route in the future....” (Emphasis mine)

- [12] At 27th October 2004, the University wrote the Claimant at his London address the following:

“27 October 2004
Student Number U020292317

Mr. Giovanni Guilan JAMES
182 A Shooters Hill Road
Blackheath
London
SE3 8RP

To Whom it May Concern

University of London External Programme

I confirm that Giovanni Guilan James is a registered student of the External LLB degree. Mr. James has completed the Scheme B Year 2 examinations and has registered to sit the Year 3 examinations in 2005. He is able and has registered to sit the Year 3 examinations in 2005. He is able to sit them at any of our registered Overseas Examination Centres worldwide. (Emphasis mine)

If you have any queries on this or any other matter please do not hesitate to contact me.

Yours sincerely....”

- [13] At 20th May 2005, the Permanent Secretary (Ag) in the Ministry of Education wrote to the Claimant the following:

“20/0/05

Mr. Giovanni James
Cemetery Road
Desruisseaux

Dear Sir,

Please be informed that the Government of Saint Lucia awarded you a scholarship to pursue the Bachelor of Law(s) degree LLB at Holborn College as a full-time student.

According to the information reaching the department of Human Resource Development, you are registered as a full-time LLB student of the Holborn College and should therefore complete your program in three (3) years, which would be June 2005.

However, according to a letter dated January 31st 2005 from Holborn College, you are currently registered in your 3rd year of a 4 year LLB (Hons) Law Degree Graduate entry program. Consequently, the Government of Saint Lucia will not be responsible for the payment of the final year of your program.

Please be guided accordingly.

Yours sincerely,

Ms. Esther Brathwaite (Ag)

Ministry of Education & HRD”

- [14] The Claimant in turn wrote a letter to the Government on 8th August 2005. He said:

"August 8, 2005

The Permanent Secretary
Ministry of Education, Human Resource Development etc.
Waterfront
Castries.

Dear Madam,

Following recent discussions with the Director, Human Resource Development, I wish to present my case for continuation of sponsorship for my course of studies.

1. From inception, it was the original intention that my award would be of 5 years duration, at the end of which I would have qualified as an Attorney-at-Law. As such, studies at both the academic and professional stages were envisaged. These facts were borne out of discussions with the Director, Human Resource Development and were either implied or expressed in the following relevant documents, viz
 - (a) memo dated 6/3/02 captioned "Special Police Scholarship" from Attorney General to Commission of Police, Royal St. Lucia Police Force. (copy attached)
 - (b) letter of offer of award dated 13/09/02 from Ministry of Education, Human Resource etc. (copy attached)
 - (c) bond agreement between the government and myself.(copy attached)

It is to be noted that (b) and (c) above were later in time to letter of acceptance dated 15/03/02 from Holborn College, a copy of which is held by the Ministry.

2. At the undergraduate level, the University of London LLB for external students can be pursued full time via Scheme A (4 papers per year over 3 years) or Scheme B (3 papers over 4 years). I should also point out that my heavy work schedule involving long and irregular hours during the summer vacation left me with little or no time to undertake required and essential preparatory and consolidated work relevant to the academic aspect of my studies.

3. It was with due regard to the facts mentioned in the above paragraphs that I proceeded to accept the recommendation of the University of London (copy attached). In doing so, I formed the honest view and concluded that my acceptance of the said recommendation did not involve a significant deviation capable of defeating or affecting in a material way the original intention referred to above and the mutual obligations associated with it.

4. The decision to discontinue sponsorship of my studies was reached before and without affording me an opportunity to be heard in a case which I was unaware that the Ministry of Education held against me. As it turned out, the outcome of the said case is injurious to my legitimate expectation and adverse to my interests.

5. Perhaps I should point out that on the basis of my performance on the course thus far, there is a realistic prospect of graduating in 2006 with a high upper second class honours

LLB and still be on course to qualify as an Attorney at Law within the originally intended and agreed 5 year period of study.

Finally, I wish to confirm my commitment to the noble objectives of the original intention and to honour all my obligations arising from the bond agreement with government.

Yours faithfully

Giovanni James

cc. Honourable Prime Minister"

[15] At 21st September 2005, the Permanent Secretary (Ag) informed the Claimant as follows:

" September 21, 2005

Mr. Giovanni James
c/o Special Branch
Police Headquarters
Castries

Dear Mr. James,

I refer to your letter dated August 8, 2005 regards the continuation of your scholarship.

We regret to inform you that your request for funding of an additional year of study at Holborn College was not approved. You failed the first year of your law degree programme and as a result your programme of study has changed from a three year to a four year programme.

According to existing policy, a student under a Government funded scholarship programme who repeats a year due to failure is required to fund that year.

Sincerely,

Esther Brathwaite

Permanent Secretary (Ag)"

[16] At 30th September 2005, the University wrote as follows:

“The Permanent Secretary
Ministry of Education
Human Resource Development

...

Dear Sir / Madam

University of London External Programme
LLB
Giovanni G. James Student Number 020292317

The above student has requested that I write to you to confirm his record on the LLB degree.

The student first registered in September 2002 for Scheme A Intermediate and sat examinations in four subjects in May 2003. He was successful in three of the papers and failed the other, he was however allowed to transfer to the three paper Scheme B and progressed directly to Year 2. He sat the Scheme B Year 2 examinations in May 2004 and passed all three and progressed to Scheme B Year 3, these examinations he sat in May 2005 and was again successful. He is now registered on Scheme B Year 4 and is due to sit those examinations in May/June 2006; if he is successful in those he will be awarded a degree.

I can additionally confirm that this student has not had to repeat any year of the degree and his progress to Scheme B Year 4 has taken the minimum possible time.

If you have any queries on this or any other matter please do not hesitate to contact me.

Yours sincerely,
....”

- [17] Additional facts abstracted from the affidavits were that there were two Schemes by which a student could pursue a Bachelor of Laws degree at the University. There were firstly, Scheme A for full-time students, and secondly, Scheme B for external part-time students. Under Scheme A the student was required to write four papers each year, attend fifteen hours of classes per week, and complete the programme in three years. A student was deemed in Year 1 to have failed Scheme A by virtue of failing one of his four papers if he had a “bad fail” but he could save himself from having to repeat his three passed Scheme A Year 1 papers by transferring to Scheme B where in effect he would have completed Year 1 of Scheme B. Under Scheme B the student was classified as external part-time and was required to write three papers a year and complete the programme in four years (there was also provision for completion over a longer period). Once a student was in

Scheme B he could not transfer to Scheme A. Scheme B was described as being intended for students who wished or needed, to study at a slower pace.

[18] Dr. Frederick in his affidavit filed 13th February 2007, stated that the Cabinet Conclusion made at September 2002, only approved study leave for the period 23rd September 2002 to 31(30) June 2004 and with sixty percent pay for two years and there was a subsequent amendment so that the study leave with pay was extended to end at 30th June 2005. He also said that it was public service policy that when a person who had five to ten years service went on study leave he received one hundred percent salary the first year of study leave and sixty percent salary the succeeding years. At 2002 the Claimant had less than five years service. This he says supports the Defendants' position that the scholarship was to be for only three years.

[19] Mr. Michel in his affidavit said that the Claimant having submitted a letter indicating that he was pursuing full-time studies over a course of three years ought to have known that the scholarship could only have been for three years. He also said the Permanent Secretary's letter which set up the scholarship as being for five years could not extend Cabinet's decision to grant a three year scholarship. The suit he said ought not to have been filed against the First Defendant but against the decision maker, that is the Minister or the Permanent Secretary.

[20] By an affidavit filed 6th March 2009, the Claimant informed the Court that the mandatory and prohibition orders were otiose and no longer available to him as he had completed his Bachelor of Laws degree.

[21] Issues:

1. Whether the Claimant was entitled to hold a legitimate expectation of funding for five years.
2. Whether the Claimant having set himself up before the Government as pursuing full-time studies pursuant to the Holborn University letter did negative his legitimate expectation, if the Court should find any, when without notice to the Government he changed his status from a full-time student under Scheme A to an external part-time student under Scheme B.
3. If the Court should find that the legitimate expectation survived the transfer from Scheme A to Scheme B, whether the Claimant had a right to be given a hearing before the decision was made to terminate his scholarship.

4. Whether the Ministry of Education was the proper party to make the decision to terminate the scholarship.
5. What relief is available to the Claimant since he has completed his Bachelor of Laws degree.

Submissions

For the Claimant

[22] The Counsel for the Claimant set out his contentions very succinctly. The first contention was that the decision to terminate the scholarship was made on a misconceived factual basis, an error of law which therefore entitled the Court to interfere. His second contention was that the Government had represented to the Claimant that he had a scholarship of five years and therefore created a legitimate expectation that funding would be available for the duration of five years. The third contention was that the wrong body terminated the scholarship as Cabinet granted the scholarship but it was terminated by the Ministry of Education and was thus an ultra vires act. He said that the administration of the scholarship fund by the Ministry of Education was a power impliedly delegated to the Ministry by Cabinet. The termination of the scholarship by the Ministry of Education was in excess of its power to administer only, substantive ultra vires. The fourth contention was that the Claimant had a right to be heard before termination of the scholarship regardless of who was terminating it. The fifth contention was that the Claimant had a legitimate expectation to be heard on the issue of whether he had a five year or three year scholarship. The sixth contention was that even if the scholarship was a privilege extended to the Claimant, and therefore he had no right that the law could protect, he was in any event entitled to have the matter fairly decided, and to have it fairly decided, he ought to have been given an opportunity to be heard. The Claimant's seventh contention was that as a result of the Ministry of Education's action he suffered losses which entitled him to damages both consequential and compensatory for distress and inconvenience.

For the Defendants

[23] Counsel for the Defendants first submission was against the change of relief being sought. She said that notwithstanding that the Court had not acceded to the Claimant's application to amend his Claim form so as to abandon his request for relief items 2 – 5, he had set out in his closing submissions his intention to abandon them and instead seek damages. She submitted that it was

clear that at present, as the Claimant had completed his studies, the only relief remaining was an order of certiorari quashing the decision to terminate the scholarship.

- [24] Counsel submitted that the main issues raised by the Claimant were firstly, he who was the appropriate the decision maker, secondly, procedural fairness this being a failure to observe the audi alteram partem rule, and thirdly, a legitimate expectation. She also submitted that the Claimant appeared to be asking the Court to exercise an appellate jurisdiction and look at whether there was a breach of a contractual relationship. However, in judicial review proceedings the Court had no appellate jurisdiction and further the proceedings as filed were judicial review proceedings and not a claim in contract.
- [25] She further submitted that a most important rule of judicial restraint is that the actions of a public authority are presumptively valid. It follows therefore that the burden of proof was on the Claimant when an application was made to the court for judicial review of an administrative decision. The decision ought not be quashed unless it was determined by the court that the decision was wrong on the grounds of illegality, irrationality or procedural impropriety.
- [26] Elements of procedural impropriety she said are the principles of legitimate expectation and breach of natural justice. In regards to legitimate expectation, the legitimate expectation is curtailed in this instance by the overriding policy of Government to grant scholarships as is highlighted in the Education Act Cap. 18.01 and the bond agreement. The bond agreement executed between the parties provided for any change to the course of study to firstly be brought to the attention of Government, and secondly, to be approved by Government and so a failure to achieve the Government's consent to a change was fatal.
- [27] Also submitted was that it was recognized that a legitimate expectation could be defeated by some overriding reason of public policy. Where the legitimate expectation arose out of an administrative policy, it could only be the policy for the time being and that it would be fairly applied. A legitimate expectation could not be invoked to prevent a change of policy fairly carried out.
- [28] On the issue of natural justice, she said that the common law had laid down some basic principles which public authorities must follow and if there was a substantial departure then the decision could be challenged through judicial review. However, this right was not absolute. It depended on

whether the Claimant had some right, or interest or some legitimate expectation of which it would not be fair to deprive him of without a hearing.

- [29] She added that since there was no legitimate expectation because of the Claimant's own conduct, namely his failure to inform the Government that he had changed from Scheme A to Scheme B and obtain the Government's approval to do so, there was no right to a hearing. In any event she said, given the various exchange of communication between the Claimant, his counsel, and the Ministry, he had now been given ample opportunity to be heard. A fair hearing did not mean a hearing according to a court of law, it simply meant an opportunity to put one's case and make representation before a decision is reached. There was no right to an oral hearing.
- [30] On the issue of who was the proper party to take the decision that is whether it was to be Cabinet or the Ministry, this she said was a non issue. The decision whether taken by Cabinet or the Ministry, the Ministry was the body under the general authority of the executive empowered to take such a decision as an agent of the State. The decision was taken by a singular constitutionally mandate authority, acting through its agents. The Ministry of Education is the agent of the Government used to execute the executive's policies in relation to educational advancement, and it does so through the implementation and execution of policies and under the Education Act.
- [31] On the issue of whether the Claimant could claim damages, she said that it was accepted that he could make such a claim based on CPR 2000 Part 56 (1)(4). However, such damages were not to be measured as damages for breach of contract as submitted by the Claimant. In instances of substantive ultra vires, and violations of statutory obligations the power of the court to grant relief in the form of damages is easier to assess as invariably the statutory instrument provides for the types of damages that may be awarded for a violation. The same however was not true for procedural ultra vires. In particular as this is a case requesting certiorari, the court's traditional powers were, if the case is substantiated, is to quash and have the decision returned for reconsideration. Awarding damages tantamount to damages for breach of contract would have the effect of having the court importing its discretion for that of the public authority. This is a practice advocated against.

Law

[32] The Civil Procedure Rules 2000 Part 56.1 provides:

(3) The term “judicial review” includes the remedies (whether by way of writ or order) of –

(a) certiorari, for quashing unlawful acts;

(b) mandamus, for requiring performance of a public duty, including a duty to make a decision or determination or to hear and determine any case; and

(c) prohibition, for prohibiting unlawful acts.

(4) In addition to or instead of an administrative order the court may, without requiring the issue of any further proceedings, grant –

(a) an injunction;

(b) an order for the return of any property, real or personal: or

(c) restitution or damages.”

[33] In *R (Beeson) v. Dorset County Council*¹ it was said that the basis for judicial review was:

“The basis of judicial review rests in the free-standing principle that every action of a public body must be justified by law, and at common law the High Court is the arbiter of all claimed justifications.”

And in *Sheffield City Council v. Smart*² it was said that judicial review was:

“the means by which the exercise of power by any public authority is strictly limited to the scope and purposes of the power’s grant, and subjected also to the common law’s insistence on rationality and fairness..”

As to the supervisory role of the court in *Reid v. Secretary of State for Scotland*³ Lord Clyde had this to say:

“Judicial review involves the challenge to the legal validity of the decision. It does not allow the court of review to examine the evidence with a view to forming its own view about the substantial merits of the case. It may be that the tribunal whose decision is being challenged has done something which it had no lawful authority to do. It may have abused or misused the authority which it had. It may have departed from the procedures which either by statute or at common law as a matter of fairness it ought to have observed. As regards the decision itself it may be found to be perverse, or irrational, or grossly disproportionate to what was required. Or the decision may be found to be erroneous in

¹ Michael Fordham QC, *Judicial Review Handbook*, 5th ed, p.7; [2002] ECWA Civ 1812

² *Ibid.*; [2002]ECWA Civ 4

³ [1999] 2 AC 512, 541&-542A

respect of a legal deficiency, as for example, through the absence of evidence, or of sufficient evidence to support it, or through account being taken of irrelevant matter, or through a failure for any reason to take account of a relevant matter, or through some misconstruction of the terms of the statutory provision which the decision-maker is required to apply. But while the evidence may have to be explored in order to see if the decision is vitiated by such legal deficiencies it is perfectly clear that in a case of review, as distinct from an ordinary appeal, the court may not set about forming its own preferred view of the evidence."(Emphasis is mine.)

[34] As to the purpose of judicial review in *R v. Chief Constable of North Wales, ex p Evans*⁴ Lord Bridge had this to say:

"Judicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made... In his printed case counsel for the appellant made this submission: "Where Parliament had entrusted to an administrative authority the duty of making a decision which affects the right of an individual, the court's supervisory function on a judicial review of that decision is limited. The court cannot be expected to possess knowledge of the reasons of policy which lie behind the administrative decision nor is it desirable that evidence should be called before the court of the implications of such policy. It follows that the court ought not to attempt to weigh the merits of the particular decision but should confine its function to a consideration of the manner in which the decision was reached." When the sole issue raised on an application for judicial review is whether the rules of natural justice have been observed, these propositions are unexceptionable. Other considerations arise when an administrative decision is attacked on the ground that it is vitiated by self misdirection, by taking account of irrelevant or neglecting to take account of relevant factors, or is so manifestly unreasonable that no reasonable authority, entrusted with the power in question, could reasonably have made such a decision."

[35] On the duty to grant a hearing before the decision maker makes his decision it was said:

"Every administrative act is either *intra vires* or *ultra vires*: and the court can condemn it only if it is *ultra vires*.... In *Ridge v. Baldwin*⁵ a leading case on natural justice, the House held that the dismissal of a chief constable, being vitiated by failure to give him a fair hearing, was void, and from that it follows inexorably that it was outside jurisdiction, i.e. *ultra vires*. In *Anisminic* case⁶, one of the high-water marks of judicial control, the House similarly held that a tribunal's decision was a nullity if it misunderstood the law and so took account of wrong factors."⁷

⁴ [1982] UKHL 10 p.14

⁵ [1964] AC 40

⁶ [1969] 2 AC 147

⁷ Wade and Forsyth, *Administrative Law*, 7th ed. p. 38

[36] I have also found useful the illustration of a legitimate expectation in *Behluli v. Secretary of State for the Home Department*⁸ where Beldam LJ said:

“Although legitimate expectation may in the past have been categorized as a catchphrase not to be elevated into a principle, or as an easy cover for a general complaint about unfairness, it has nevertheless achieved an important place in developing the law of administrative fairness. It is an expectation which, although not amounting to an enforceable legal right, is founded on a reasonable assumption which is capable of being protected in public law. It enables a citizen to challenge a decision which deprives him of an expectation founded on a reasonable basis that his claim would be dealt with in a particular way.” (Emphasis mine)

[37] On the issue of non-compliance with a regulation or rule (in the present case, a term within the bond), in *R v. Constable of North Wales, ex. P Evans*⁹ Lord Hailsham had this to say:

“There is room for greater controversy regarding the other matter supposedly clinching. There was a finding by the deputy who conducted the enquiry that the respondent had “deliberately flouted” the conditions of tenancy at his council house by keeping dogs in excess of the number permitted by the council and this exhibited an attitude to authority improper for a member of the police force. This matter had indeed been put to the respondent in some form, but there is conflict of evidence relating to the interview, or which only the respondent’s version is on oath. Without seeking to resolve this conflict, I am of the opinion that natural justice required that it should have been put precisely to the respondent that exact compliance with the conditions of tenancy within the extended time permitted by the council, which at the time of the interview had not expired, would probably be a condition of his continuance in office as a probationary constable.” (Emphasis mine)

[38] Cases time and again have emphasized the right to be heard. In *R v. Secretary of State for the Home Department, ex p Doody*¹⁰ Lord Mustill had this to say:

“Fairness will very often require that a person who may be adversely affected by the decision will have an opportunity to make representations on his own behalf either before the decision is taken with a view to producing a favourable result; or after it is taken, with a view to procuring its modification; or both.”

[39] As to how the opportunity for hearing must be provided, in *Board of Education v. Rice*¹¹ it was said that the decision making body was not :

⁸ [1998] Imm AR 405,407

⁹ [1982] UKHL 10 p.3

¹⁰ [1994] 1 AC 531,560 D-G.

¹¹ [1911] AC 179, at 182

“bound to treat such a question as though it were a trial. They have no power to administer an oath, and need not examine witnesses. They can obtain information in any way they think best, always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting any relevant statement prejudicial to their view.”

[40] On the issue of a claim for damages in judicial review proceedings I find guidance in the following statement:

“ In order for a claim for damages to be sustainable in judicial review, proceedings not merely must meet the procedural requirements specified by Part 54 but there must also have been a viable cause of action at the time of the application for judicial review was made. Assuming there to be a viable claim, the award of damages is discretionary.... Further, the process by which judicial review is sought is not suited to findings of fact, which may be necessary for claim for damages. Thus, a claim for damages may, after a substantive hearing for judicial review, be adjourned with directions to be sought as to the conduct of the claim for damages....¹²

Further in *R (Quark Fishing Ltd.) v. Secretary of State for Foreign and Commonwealth Affairs*¹³ Baroness Hale said:

“Our law does not recognize a right to claim damages for losses caused by unlawful administrative action... There has to be a distinct cause of action in tort or under the Human Rights Act 1998”

And in *R (Nurse Prescribers Ltd.) v. Secretary of State for Health*¹⁴ [2004] EWHC 403 (Admin) at [82] about compensation it was said”

“not available directly in judicial review proceedings arising out of a claim for disappointment of a legitimate expectation.”

Findings

[41] The decisions of the Courts are consistently clear as to this Court’s role on an application for judicial review, it is to put it simply, to review the manner in which the decision to terminate the scholarship was made. The Court has no right to act as an appellate court and or impose its own view as to what it thinks the decision ought to have been.

[42] To start, the Claimant’s seventh contention for damages is not allowed because firstly, he was not allowed to amend his claim to plead any matters in relation to this contention, secondly, his affidavits which were filed without leave to support the claim for special and general damages are

¹² The Civil Court Practice 2005 Vol. 1. CPR54.3(1) p.1124

¹³ [2205] UKHL 57;[2006]1 AC 529 AT [96]

¹⁴ [2004]EWHC 403 (Admin at [82]

struck out, and thirdly, being guided by the learning cited from the Civil Court Practice 2005, and the cases of R (Quark Fishing Ltd)¹⁵ and R (Nurse Prescribers Ltd)¹⁶ where as here there is no viable cause of action in the matters described before the Court, there can be no award of damages, special or general.

- [43] It is clear that the University had 2 schemes of study for the Bachelor of Laws degree, Scheme A for a full-time student, and a student in this Scheme had to complete his programme within 3 years, and Scheme B for students studying externally and part-time, a student registered in this programme could take 4 years or more to complete their studies. A student registered in Scheme B could not transfer to Scheme A even if he were originally registered in Scheme A as the Claimant was at Year 1.
- [44] It is also clear that based on the letter of 15th March 2002, issued by Holborn College, the Claimant was to enter the Bachelor of Laws programme as a full-time student, with completion fixed at the end of 3 years – a Scheme A full-time student. The advertisement called for the applicant for the scholarship to have either applied for entry into or been accepted by a university or institution of higher learning for the academic year 2002. I have seen no other letter from the Claimant, and so deduce that the letter of 15th March 2002, is the letter he presented with his application for the scholarship.
- [45] The Court was not given sight by any of the parties of the Claimant's application for the scholarship award, and therefore it is unclear whether the application was for a 3 years scholarship or a 5 years scholarship.
- [46] Now what of the letter of 13th September 2002 informing the Claimant that he had been granted a five year scholarship and which statement was supported by an executed bond repeating the same statement? There was no mention in the letter of whether studies were full-time or part-time. The statement that the Claimant had a five scholarship remained on the record for a period of almost three years. The Government never sought to correct what they now say was an error. Correction of the statement in the letter was certainly the burden of the Government long before seeking to terminate the scholarship. There is always a greater burden on the drafter of the document in

¹⁵ Ibid.

¹⁶ Ibid

conflict. It is therefore unsatisfactory to say to the Court, the Claimant should or ought to have known that the scholarship was only for three years when he held in his hand a letter stating five years and an executed bond also prepared by the Government stating five years. There was no statement that he had disagreed to serve in the public service for anything other than five years on acceptance of the letter and bond setting up that the scholarship was for five years.

[47] In regard to the Permanent Secretary's statement that the Government does not fund repetition of a failed year, such a statement is not set out in either the bond or letter granting the scholarship. Indeed while the bond speaks of penalty, there is no description of any type of penalty which could befall a student. Surely a description of the penalty of such magnitude as termination ought to be set out in writing.

[48] Also clear is that the Permanent Secretary from perhaps as early as August 2003, giving the exigencies of the postal service both sides of the Atlantic, failed to note upon receipt of the letter from the University dated 31st July 2003, that the Claimant was stated to be registered as both an external student and registered in Scheme B. There was a further letter of 27th October 2004, again informing of the external programme status and that the Claimant was able to sit his examinations at any overseas centre. A full-time student does not to the best of the Court's knowledge, unless special circumstances apply, get an option to write exams at any centre worldwide. While the Permanent Secretary may not have observed or known the significance of Scheme A and Scheme B, it was clear however that he or she, as the case may be, was being informed that the Claimant was registered as an "external" student.

[49] There is also the matter of the memos dated 18th October 2002, and 20th August 2004, they seek to give instructions to amend the period for which the Claimant would receive his salary. The Defendants say that the period of pay signifies the period of leave and this in turn signifies the length of the scholarship. It is a fact that the Claimant could not take up the scholarship without leave however it is not unheard of for study leave to be with or without salary. Looking at the memos I am not convinced that they clearly link the duration of pay with the length of the scholarship. No written policy along these lines was laid before the Court in evidence.

[50] In answer to the first issue, after considering all of the above, I find that the Claimant could have held a legitimate expectation of scholarship funding for five years.

[51] Having found that the Claimant could have held an expectation of five years funding, the second issue arises. With the scholarship came responsibilities and according to the Defendants they are stipulated in the bond. As stated before, the bond fails to specify what penalty/ies could be imposed and further stated only two alternative situations when a penalty would be applied, the first being when there was a withdrawal from a course, and second, when through a fault of the student he was no longer pursuing his course. It is clear that the Claimant continued in the Bachelor of Laws programme and indeed his three first year passes were used under Scheme B. He therefore had not withdrawn from the Bachelor of Laws programme although he did change his programme of study. So if he was in the Bachelor of Laws programme and using his Year 1 passes, could he be classified as having withdrawn from the “course”? Matters not clear to the Court on the bond is say for example had the Claimant continued in Scheme A but had failed his third year and therefore did not qualify with his Bachelor of Laws, would he be required to repay the sum under the bond ? What if a student failed his exam without fault, or negligence, or misconduct? What were the ingredients of fault? Or what if he failed his second year, would he be required to pay the sum under the bond ? or pay a pro rata share? The bond clearly falls short on these kinds of details. Curiously although the scholarship was terminated, the letters delivered by the Permanent Secretary make no mention of any adjustments to the bond. Is Mr. James still bonded to five years of service? There was no demand for repayment of any sums expended either.

[52] While the Government has laid allegations against the Claimant, the Government was lax in two regards, firstly, as stated prior, it never amended the letter, and the bond granting the scholarship from five years to three years for over two and one-half years, and so it was not unreasonable for the Claimant to believe that he had a five year scholarship, and secondly, the Government could have at an earlier date, say 2003, if it was paying attention have noted that the letter from the University stated that the Claimant was registered as an external student. The registration as an external student was therefore never hidden from the Government as early as 2003, although the Claimant himself did not report the transfer from Scheme A full-time student status to Scheme B external part-time student status as he continued to pursue his Bachelor of Laws degree. I therefore hold that in the circumstances the Claimant did not negative his legitimate expectation by failing to inform the Defendants of his transfer from Scheme A to Scheme B.

- [53] Having found that the Claimant did not by his action negative his legitimate expectation, I adopt Lord Hailsham's position in *ex P. Evans*¹⁷ and that is, that the Claimant should have been offered an opportunity to be heard where it appeared that he had deliberately in the opinion of the Government flouted a term of the bond. Further as stated in *ex p. Doody*¹⁸, where it appears that a person will be adversely affected by a decision, he ought to be given an opportunity to make representations. The scholarship was the vehicle being used by the Claimant to pursue a change of career. I therefore hold that the Claimant ought to have been given an opportunity in the circumstances to be heard and make representations before the decision was made to terminate the scholarship. The termination without the hearing was therefore unlawful.
- [54] In relation to the issue of whether the Ministry of Education could issue the letter of termination, Mr. Michel in his affidavit said that the suit ought to have been filed against the Minister or the Permanent Secretary, as the decision maker. I accept the submissions of the Defendants' counsel. Indeed the authority of *Leonard Ogilvy v. The Ministry of Legal Affairs*¹⁹ on which the Claimant relies is not at all on all fours. In that case the Constitution of Saint Lucia mandated that the appointment of a magistrate was to be made by a body identified as the Judicial and Legal Services Commission. A similar observation is made as to the procedure mandated by the Constitution of Malaya in *B. Surinder Singh Kanda v. Government of the Federation of Malaya*.²⁰ I therefore hold applying the *Caltona*²¹ principle that the Ministry of Education acted as the conduit through which Cabinet implemented its education policy as per the Education Act and other education policy such as that of the annual police scholarship and was therefore able to issue the letter terminating the scholarship.
- [55] On the issue of relief, at this juncture the Claimant has completed his Bachelor of Laws degree therefore further funding of the degree is unnecessary. On the authorities cited damages ought not to be awarded for a claim of disappointment of a legitimate expectation. The only viable order that the Court can therefore make is an order for certiorari quashing the decision of the First Defendant.

¹⁷ [1982] UKHL10

¹⁸ [1994] 1 A.C 531.

¹⁹ House of Lords 13th February 2002.

²⁰ [1962] AC 322.

²¹ *Caltona Ltd. v. Works Commissioners* [1943] 2 All ER 560.

[56] It is therefore ordered that the decision to terminate the scholarship must be quashed and is to be retaken in a manner which is fair.

Rosalyn E. Wilkinson
High Court Judge