

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CIVIL CLAIM NO. 105 OF 2009

IN THE MATTER OF SECTIONS 5, 6(1), 13, 16 AND 83 OF THE CONSTITUTION OF SAINT VINCENT AND THE GRENADINES

AND

IN THE MATTER OF PROVISION 2.19 OF THE CIVIL SERVICE ORDERS FOR THE PUBLIC SERVICE OF SAINT VINCENT AND THE GRENADINES

AND

IN THE MATTER OF AN APPLICATION BY ANNELLA M. JAMES FOR LEAVE TO APPLY FOR JUDICIAL REVIEW OF THE DECISION OF THE 4TH MARCH 2009 OF CHIEF PERSONNEL OFFICER OF SAINT VINCENT AND THE GRENADINES PURPORTING TO TEMPORARILY ASSIGN THE APPLICANT TO THE MINISTRY OF HOUSING, INFORMAL HUMAN SETTLEMENTS, LANDS AND SURVEYS, PHYSICAL PLANNING AND LOCAL GOVERNMENT WITH EFFECT FROM THURSDAY MARCH 5TH 2009 TO FRIDAY SEPTEMBER 4, 2009 AND FOR ADMINISTRATIVE ORDERS

AND

IN THE MATTER OF AN APPLICATION BY ANNELLA M. JAMES FOR LEAVE TO MAKE A CLAIM FOR JUDICIAL REVIEW OF THE DECISION OF THE CHIEF PERSONNEL OFFICER MR. TYRONE BURKE CONTAINED IN LETTER DATED APRIL 2ND 2009 INSTRUCTING THE ACCOUNTANT GENERAL TO MAKE DEDUCTION FROM THE SALARY OF THE APPLICANT

BETWEEN:

ANNELLA JAMES

Applicant

v

THE CHIEF PERSONNEL OFFICER
OF SAINT VINCENT AND THE GRENADINES
MR. TYRONE BURKE

First Respondent

THE ATTORNEY GENERAL OF
SAINT VINCENT AND THE GRENADINES

Second Respondent



THE ACCOUNTANT GENERAL OF
SAINT VINCENT AND THE GRENADINES

Third Respondent

Appearances: Mr. K. Scotland and Mrs. S. Cummings for the Applicant
Mr. G. Bollers for the Respondents

2009: May 6
May 29

JUDGMENT

- [1] **THOM, J:** The Applicant holds the office of Crown Counsel I in the Attorney General's Chambers in the Ministry of Legal Affairs in the State of Saint Vincent and the Grenadines.
- [2] By letter dated March 4, 2009 under the hand of the First Respondent the Applicant was informed that she was temporarily assigned to the Ministry of Housing, Informal Human Settlements, Lands and Survey, Physical Planning and Local Government for the period March 5, 2009 to September 4, 2009. The letter reads as follows:

"Ms. Anella James
(u.f.s. Honourable Attorney General)

Dear Madam,

In accordance with the many demands on the Ministry of Legal Affairs for the provision of legal advice to the Ministries, you are temporarily assigned with effect from Thursday March 5, 2009 to Friday September 4, 2009 to the Ministry of Housing, Informal Human Settlements, Lands and Survey, Physical Planning and Local Government.

You will report to Mr. Kenrick Glynn, Permanent Secretary (Ag.) Ministry of Housing, Informal Human Settlements, Lands and Survey, Physical Planning and Local Government. This notwithstanding, you will continue to be responsible to the Honourable Attorney-General, or any person authorized to act on her behalf for the proper performance of your official duties.

This assignment does not affect your appointment to the post of Crown Counsel I, Ministry of Legal Affairs. Please refer to previous departmental letters dated January 8, 2007 and December 9, 2008 respectively for applicable terms and conditions. You will return to your substantive position at the end of the assignment.

Yours faithfully,
Tyrone Burke (Mr.)
Chief Personnel Officer (Ag.)"

- [3] By letter dated March 5, 2009 addressed to the First Respondent the Applicant enquired who had authorized her assignment to the Ministry of Housing. There being no response to her letter, on March 19, 2009 the Applicant's solicitor Mrs. S. Cummings wrote to the First Respondent requesting inter alia a response to the Applicant's letter of March 5, 2009.
- [4] By letter dated March 20, 2009 the First Respondent informed the Applicant's solicitor that if the Applicant failed to report for her assignment the necessary action would be taken against her.
- [5] On April 2, 2009, the Applicant sought leave to apply for Judicial Review of the decision of the First Respondent as contained in the letter of March 4, 2009. The Applicant also sought an interim order that the Respondent be restrained from giving affect to the decision until the matter was determined by the Court.
- [6] On April 2, 2009 the First Respondent wrote to the Applicant as follows:
- "Ms. Annella James
(u.f.s. PS/ Ministry of Housing, Informal Human Settlements, Lands and Survey,
Physical Planning and Local Government)
- Dear Madam,
- By memorandum dated March 26, 2009, the Permanent Secretary, Ministry of Housing, Informal Human Settlements, Lands and Survey, Physical Planning and Local Government informed the Service Commissions Department that you have not taken up your assignment to date.
- Please note that the Accountant General has been informed and instructed to make the relevant deduction from your salary.
- Yours faithfully,
Tyrone Burke (Mr.)
Chief Personnel Officer (Ag.)"
- [7] The Application for leave was amended to include an order for judicial review of the decision of the First Respondent as contained in the letter of April 2, 2009. The Applicant

also sought an interim order that the decision be stayed or suspended until further order of the Court.

- [8] No affidavits were filed by the Respondents. At the hearing of the application on May 6, 2009 Learned Counsel for the Respondents indicated to the court that the Respondents object to the grant of leave and that they did not wish to file any affidavits but would rely on legal submissions.

GROUND OF THE APPLICATION

- [9] The grounds of the application as alleged by the Applicant are:
- (1) The decision contained in the letter of March 4, 2009 is illegal, null and void, erroneous in law and in excess of the powers of the office of Chief Personnel Officer.
 - (2) That the decision was procedurally improper in that it was made without due consideration of the terms and conditions of service of the Applicant who was appointed Crown Counsel I by the Judicial and Legal Services Commission which appointment is governed by section 83 of the Constitution and without the procedure to be followed in respect of the assignment, transfer and or removal of such officer.
 - (3) The decision is in effect a purported usurpation of the role and function of the Judicial and Legal Services Commission and is in contravention of section 83 of the Constitution.
 - (4) The temporary assignment purported to be effected by the First Respondent is a sham, unreasonable, irrational, done in bad faith, at the behest or instance of the Second Respondent and is devised to transfer the Applicant out of the Ministry of Legal Affairs.
 - (5) The impugned decision is contrary to the provisions of Section 2.19 of the Civil Service Orders for the Public Service of Saint Vincent and the Grenadines which mandates the authorization of the relevant service commission in the event of secondment.

In relation to the April 2, 2009 letter that:

- (a) The decision is procedurally improper and substantively ultra vires the powers of the First Respondent.
- (b) The decision is unreasonable done in breach of the rules of natural justice, actuated by improper motive and in bad faith.
- (c) The decision is in contravention of section 6 of the Constitution of Saint Vincent and the Grenadines in relation to the Applicant and the right to due process and protection of the law.

SUBMISSIONS

Submissions on Behalf of the Applicant

[10] Learned Counsel for the Applicant submitted that on an application for leave the test to be applied by the Court was set out by the Privy Council in the case of **Satnarine Sharma v Browne-Antoine** P.C. Appeal No. 75 of 2006. Learned Counsel further submitted that there were arguable grounds for judicial review with a realistic prospect of success being that the First Respondent has no authority to assign or transfer the Applicant. The authority to assign or transfer the Applicant is vested in the Judicial and Legal Services Commission pursuant to Section 83 of the Constitution of St. Vincent and the Grenadines. There was no delegation of those powers to the First Respondent. Learned Counsel referred the Court to the case of **Smith et al v The Attorney-General of Belize**. Also the First Respondent did not have the authority to instruct that deduction be made from the salary of the Applicant. The process by which the deduction was made and the decision to deduct was in contravention of Section 6 of the Constitution. Salary is regarded as property within the meaning of Section 6 of the Constitution. A reduction in salary could not be authorized without disciplinary action being first taken against the Applicant. Only the Judicial and Legal Services Commission could interfere with the salary of the Applicant. Learned Counsel referred the Court to the cases of **Inland Revenue Commissioner v Lilleyman** 7 WIR p. 496; **Thomas v Attorney-General of Trinidad and**

Tobago 32 WIR p. 375; and Ramesh Lawrence Maharaj v Attorney-General of Trinidad and Tobago [1979] A.C. p. 385.

- [11] In relation to bad faith Learned Counsel submitted that the Applicant's letters of November 7 and 17, 2008 to the Second Respondent which refers to conversations between the Applicant and the Second Respondent show bad faith. There is nothing on record to refute the allegations contained in the said letters. The First Respondent knew that he did not have the authority to authorize reduction of the Applicant's salary but he purported to do so.

Submissions on Behalf of the Respondents

- [12] Learned Counsel for the Respondents agreed that the test to be applied by the Court on an application for leave is the test stated by the Privy Council in Sharma's case. Learned Counsel submitted that the grounds advanced by the Applicant have no realistic prospect of success, and further the Applicant has failed to satisfy the Court that she has no alternative remedy.

No Realistic Prospect of Success

Section 83

- [13] Learned Counsel submitted that there was no contravention of Section 83 of the Constitution. The powers of the Judicial and Legal Services Commission are limited to three acts being the power to appoint, discipline and removal. The Commission has no power to dictate to the Applicant what her duties are or to assign work to her. Those lie with the Attorney-General. Learned Counsel referred the Court to the case of Horace Fraser v Judicial and Legal Services Commission and The Attorney-General of St. Lucia [2008] UKPC 25.

[14] Learned Counsel also submitted that the effect of the letter of March 4, 2009 is that the Attorney-General requested the Applicant to deal with legal matters at the Ministry of Housing. The Attorney-General has the authority to do so. Learned Counsel referred to the Applicant's letter of appointment of January 8, 2007, paragraph 3, which reads:

"You will be responsible to the Honourable Attorney-General, or any person authorized to act on her behalf, for the proper performance of your official duties."

Section 2.19 of the Civil Service Orders.

[15] Learned Counsel submitted that Section 2.19 of the Civil Service Order has no application to this case since the letter of March 4, 2009 does not amount to a secondment or assignment to any post in the Ministry of Housing, nor does the letter amount to a transfer of the Applicant to the Ministry of Housing. **Smith's** case is distinguishable from the present case. In **Smith's** case there was a transfer from one post to another post. Learned Counsel also submitted that the Applicant had an alternative remedy under Sections 2.11 and 2.17 of the Civil Service Orders.

Section 13(3)

[16] Learned Counsel submitted that the Affidavit evidence of the Applicant contains no evidence in support of any infringement of Section 13 of the Constitution. Allegations of breaches of provisions of the Constitution must be particularized; where they are not particularized they ought to be struck out.

Section 6

[17] Learned Counsel conceded that salary is property within the meaning of section 6 of the Constitution and there could only be a deduction, or a person's salary could only be stopped if there were disciplinary proceedings and there were no disciplinary proceedings in this case. However, the Applicant has an alternative remedy in private law. She could bring an action for breach of contract. Also there is no evidence that the Applicant has not been paid. Learned Counsel referred the Court to the case of **Harrikisson v The Attorney-General of Trinidad and Tobago** (1980) A.C. p. 265.

LAW AND ANALYSIS

[18] Counsel on both sides agree that the test to be applied by the Court on an application for leave is the test as stated by the Privy Council in Sharma's case. The Court stated the test in the following terms:

"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 alternative remedy: R v Legal Aid Board, Exp Hughes (1992) 5 Admin LR 623, 628; Fordham Judicial Review Handbook 4th Ed. (2004) p. 426. But arguability cannot be judged without reference to the nature and gravity of the issue to be argued. It is a test which is flexible in its application. As the English Court of Appeal recently said with reference to the criminal standard of proof in R (N) v Mental Health Review Tribunal (Northern Region) [2005] EWCA Civ 1605, [2006] Q.B. 468 paragraph 62 in a passage applicable mutatis mutandis to arguability:

"...the more serious the allegation or the more serious the consequences if the allegation is proved, the stronger must be the evidence before a Court will find the allegation proved on the balance of probabilities. Thus, the flexibility of the standard lies not in any adjustment to the degree of probability required for an allegation to be proved (such that a more serious allegation has to be proved to a higher degree of probability) but in the strength or quality of the evidence that will in practice be required for an allegation to be proved on the balance of probabilities."

It is not enough that a case is potentially arguable. An Applicant cannot plead potential arguability to justify the grant of leave to issue proceedings upon a speculative basis which it is hoped the interlocutory process of the Court may strengthen. Matalulu v Director of Public Prosecutions (2003) 4 LRC p. 712 at 733."

[19] I will deal first with the allegations of infringement of the Constitution.

Section 5

[20] Learned Counsel for the Applicant informed the Court that the Applicant was no longer pursuing the allegations of breach of Section 5 of the Constitution.

Section 13

[21] This section deals with prohibition against discrimination. Having examined the pleadings of the Applicant, I agree with the submissions of Learned Counsel for the Respondents that the Applicant is incapable of establishing that she was discriminated against as prohibited by section 13 (3) of the Constitution. An Applicant must plead and particularize the alleged violation of the Constitution. See the case of **Baldwin Spencer v Attorney General of Antigua and Barbuda** Civ. Appeal No. 20A of 1997. Having examined the pleadings, I find no allegation of discrimination in the sense in which discrimination is described in the Constitution, see **Baldwin Spencer's** case referred to above and **Nielson v Barker** [1982] 32 WIR p. 254 at p. 280.

Section 6

[22] Learned Counsel for the Respondents conceded that salary was property within the meaning of Section 6 of the Constitution and that there were no disciplinary proceedings in relation to the Applicant prior to the instruction to make deductions from the Applicant's salary. However, there was an alternative remedy. I will deal with the issue of alternative remedy later in this judgment.

Section 83

[23] The main thrust of the Applicant's argument is that by virtue of the provisions of section 83, the Judicial and Legal Services Commission is the body vested with authority to transfer, assign or second the Applicant from the Attorney-General's chambers to the Ministry of Housing.

[24] Section 83 of the Constitution reads as follows:

"83. (1) This section applies to the offices of magistrate, registrar of the High Court and assistant registrar to the High Court and to any public office in the department of the Attorney-General (other than the public office of Attorney-General) or the department of the Director of Public Prosecutions

(other than the office of Director) for appointment to which persons are required to hold one or other of the specified qualifications.

(2) The power to appoint persons to hold or act in offices to which this section applies (including the power to confirm appointments) and subject to the provisions of section 87 of this Constitution, the power to exercise disciplinary control over persons holding or acting in such offices and the power to remove such persons from office shall vest in the Governor-General, acting in accordance with the advice of the Judicial and Legal Services Commission."

[25] There are three other provisions dealing with the issue of transfer and secondment of a public officer who holds an office specified in section 83(1). These are sections 2.17 and 2.19 of the Civil Service Orders and section 78 (6) of the Constitution.

[26] Section 2.17 reads as follows:

"2.17(1) Subject to the provisions of paragraph (2) of this Order a transfer not involving a change in emoluments of an officer, or the nomenclature of his post may, where the transfer –

(a) is within a Ministry or between a Ministry and any Department of the Ministry be made by the Permanent Secretary;

(b) is within a Department, be made by the Head of that Department or the Permanent Secretary of the Ministry responsible for that Department;

(c) is between Ministries or between Departments of different Ministries be made by the Chief Personnel Officer after consultation with the Permanent Secretaries concerned;

Provided that all transfers ordered under (a) and (b) above shall be reported forthwith to the Chief Personnel Officer.

(2) Where an officer is, or is to be, transferred under any of the foregoing provisions of this Order a Permanent Secretary, or Head of Department, or the Officer concerned (through the Permanent Secretary or Head of Department) may lodge a written objection with the Chief Personnel Officer; and if the objection is lodged by an Officer it shall be transmitted to the Service Commission."

[27] Section 2.19 reads as follows:

"2.19 Where an officer is required temporarily for duty in another post, other than in an acting capacity with the intention of reverting to his substantive post at a later date he will be seconded for temporary duty. All secondments must be authorized by the appropriate Service Commission.

[28] While Section 78 (6) of the Constitution reads:

"78 (6) Before the Public Service Commission or any other person exercise any power under this section to appoint to, or to act in, any public office any person who holds or is acting in any office the power to make appointments to which is vested by this Constitution in the Governor-General acting in accordance with the advice of the Judicial and Legal Services Commission, the Public Service Commission or that person shall consult with the Judicial and Legal Services Commission."

[29] The effect of the above provisions is that a person who is appointed to an office specified in section 83 (1) can only be seconded to perform the duties of another office with the approval of the Judicial and Legal Services Commission and such officer can only be transferred to another office other than an office specified in section 83(1) after consultation with the Judicial and Legal Services Commission. A transfer of an officer from one of the offices specified in section 83(1) to another office specified in section 83(1) must be approved by the Judicial and Legal Services Commission.

[30] The question to be considered is whether there was a transfer or secondment of the Applicant to the Ministry of Housing.

[31] A transfer is a removal from one post to another post whether within the same Department or Ministry or to another Ministry, or department within another Ministry, while a secondment is the assignment of an officer to perform the duties of an office temporarily.

[32] A careful reading of the March 4, 2009 letter shows that there was no transfer of the Applicant from her post as Crown Counsel I to another post in the Ministry of Housing. There is nothing on record to show that there is any post in the Ministry of Housing the duties of which the Applicant was required to perform. This case can be distinguished from the Smith case. In the Smith case four public officers who held the post of Assistant Lecturer at the Belize Teachers' College received letters under the hand of the Acting Chief Education Officer that they would be posted at the Belize Junior Secondary School. His Lordship Chief Justice Moe found that the effect of the letters was to transfer the officers from one post being Assistant Lecturer Belize Teachers' College, to another post that of Teacher Belize Junior Secondary School. In the present case the Applicant was required to provide legal advice to the Ministry of Housing for a specified period.

- [33] Similarly, the Applicant was not seconded to the Ministry of Housing. The Applicant was not required to perform the duties of any post in the Ministry of Housing.
- [34] For the reasons mentioned above, I find that the Applicant's argument that the letter of March 4, 2009 is in breach of section 83 of the Constitution and Section 2.19 of the Civil Service Orders has no reasonable prospect of success.
- [35] The letter of March 4, 2009 requires the Applicant to provide Legal advice to the Ministry of Housing. I agree with the submission of Learned Counsel for the Applicant that the letter was issued under the hand of the First Respondent and not the Second Respondent. I do not agree with the submissions of Learned Counsel for the Respondents that the effect of the March 4, 2009 letter is that the Second Respondent requested one of her employees, the Applicant, to go down to the Ministry of Housing to deal with legal opinions.
- [36] I have not been referred to any provisions in the Constitution, the Public Service Commission Regulations, the Civil Service Orders or any law in force in Saint Vincent and the Grenadines which vest authority in the First Respondent to assign duties to an officer who holds an office specified in Section 83(1). Nor is there anything on record to show his authority to so do. I therefore find that the Applicant's submission that the decision in March 4, 2009 letter is illegal, null and void, erroneous in law and in excess of the powers of the office of the First Respondent to be an arguable ground with a realistic prospect of success.

BAD FAITH

- [37] Learned Counsel for the Applicant submitted that the decision of the First Respondent in the March 4, 2009 letter was effected in bad faith at the behest or instance of the Attorney-General. In relation to the April 2, 2009 letter the First Respondent knew he did not have the authority to deal with the Applicant's salary in the manner in which he did. The Applicant relies on the letters dated 7th and 17th November 2009 and addressed to the

Second Respondent. The letter seeks to relate conversations with the Second Respondent and the Applicant in relation to inter alia non-assignment of duties to the Applicant, the Second Respondent did not wish for the Applicant to work in the Attorney-General's Chambers and impoliteness on the part of the Applicant towards the Second Respondent. Having examined the pleadings I find that there is no evidence of bad faith on the part of the First Respondent who issued both the March 4, 2009 and the April 2, 2009 letters.

ALTERNATIVE REMEDY

[38] Learned Counsel for the Respondents submitted that the Applicant has an alternative remedy under sections 11.1 and 2.17 (2) of the Civil Service Orders.

[39] Section 11.1 of the Civil Service Order reads as follows:

"11.(1) An officer who wishes to make representations relating to his conditions of service or any other matter of a public nature must first address his Head of Department or Permanent Secretary. If he is not satisfied by the reply he receives he may then write to the Chief Personnel Officer through his Head of Department and Permanent Secretary who must forward the communication without undue delay and advise the Officer that this has been done. In every such case the Head of Department and Permanent Secretary should embody in a separate memorandum his own view on the representations made and forward this with the communication."

[40] Part 11.1 applies to matters relating to conditions of service and a matter of a public nature. Assignment of an Officer to perform duties does not fall within either of the two categories referred to in Section 11.1. I therefore find that section 11.1 does not provide an alternative remedy to the Applicant.

Section 2.17(2) Civil Service Orders

[41] Section 2.17(2) referred to earlier makes provision for an Officer who is transferred or who is to be transferred to object to such transfer by writing to the First Respondent who is required to submit the objection to the relevant Service Commission. In view of my

findings earlier that the effect of the letter of March 4, 2009 is not a transfer of the Applicant to the Ministry of Housing it is not necessary for me to consider whether this Section provides an alternative remedy to the Applicant.

Section 6 of the Constitution

[42] Learned Counsel for the Respondents main argument is that there is no evidence that the Applicant has not been paid and the Applicant could have brought an action for breach of contract. I do not agree. The letter of April 2, 2009 clearly stated that instructions were given for deduction to be made from the Applicant's salary.

[43] Section 16 (1) provides:

"If any person alleges that any of the provisions of sections 2 to 15 inclusive of this Constitution has been, is being or is likely to be contravened in relation to him (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter that is lawfully available, that person (or that other person) may apply to the High Court for redress."

[44] The letter is dated April 2, 2009 and the Applicant amended her application for leave on April 9, 2009 to include leave to apply for judicial review of the decision contained in the said letter. The Applicant was entitled to seek redress under Section 16(1) as soon thereafter as the letter was delivered to her. She was not required to wait and see if the deduction would be made from her salary. This case can be distinguished from the case of **Swann v The Attorney-General of the Turks and Caicos Islands**, P.C. Appeal No. 43 of 2008 (May 21, 2009). In **Swann's** case the Appellant who was Chairman of the Public Service Commission received an allowance for his services. On 6th September 2005 he was reappointed Chairman for two years. The post remained a part-time post. The Appellant alleged that after the New Constitution came into force in 2006 the post became full time and he was entitled to remuneration at a salary of \$90,000 per annum. He was paid remuneration at the rate of \$90,000 per annum for three months, then the Cabinet decided to reduce his remuneration to \$30,000 per annum. Thereafter he was paid at the rate of \$30,000 per annum. The Appellant sought leave to apply for judicial review of the

Cabinet's decision. The Privy Council in upholding the decision of the Lower Courts to refuse leave held that the Appellant's entitlement to be paid remuneration at the rate of \$90,000 per annum was based solely on conversations he had with the Governor and Chief Secretary, this the Court found was a classic case for a claim to be brought in contract. In the present case the instruction to make deduction from the Applicant's salary is a sanction for her failure to comply with the letter of March 4, 2009 as alleged by the First Respondent in his letter of April 2, 2009. Further as stated earlier Learned Counsel for the Respondents conceded that there were no disciplinary proceedings.

[45] In view of the above I find that the Applicant has an arguable case with a realistic prospect of success and I therefore grant leave to the Applicant to seek judicial review as outlined hereunder.

[46] It is ordered:

- (1) That leave is hereby granted to the Applicant to file and serve a claim for judicial review within fourteen (14) days hereof on the following grounds:
 - (a) Judicial Review of the decision of the Chief Personnel Officer of Saint Vincent and the Grenadines, Mr. Tyrone Burke as contained in letter dated 4th March 2009, by which he purported to temporarily assign the Applicant to the Ministry of Housing, Informal Human Settlements, Lands and Surveys, Physical Planning and Local Government with effect from Thursday March 5th, 2009 to Friday September 4th, 2009 ("the impugned decision") on the ground that such decision is illegal, null and void, erroneous in law and in excess of the powers of the Office of the Chief Personnel Officer.
 - (b) Judicial Review of the impugned decision on the ground that the making of the said decision was procedurally improper in that it was arrived at without due consideration of the nature of the tenure and terms and conditions of service of the Applicant who was appointed Crown Counsel I by the Judicial and Legal Services Commission which appointment is

governed by section 83 of the Constitution of Saint Vincent and the Grenadines and without consideration of the procedure to be followed in respect of the assignment, of such officer.

- (c) Judicial Review of the decision of the First Respondent contained in the letter dated April 2, 2009 instructing the Third Respondent to make deduction from the salary of the Applicant on the grounds that such decision is procedurally improper and substantively ultra vires the powers of the First Respondent.
 - (d) Judicial Review of the decision of the First Respondent contained in the letter dated April 2, 2009 instructing the Third Respondent to make deduction from the salary of the Applicant on the grounds that such decision is unreasonable, and done in breach of the rules of natural justice.
 - (e) Judicial Review of the decision of the First Respondent contained in the letter dated April 2, 2009 instructing the Third Respondent to make deduction from the salary of the Applicant on the ground that the decision is in contravention of section 6 of the Constitution of Saint Vincent and the Grenadines in relation to the Applicant and the right to due process and protection of the law.
- (2) The first hearing shall take place on the 24th day of June 2009.
 - (3) That the Respondents shall take no further steps to give effect to the decision of the 4th March, 2009 to assign the Applicant to the Ministry of Housing until the determination of this matter or until further order of the Court.
 - (4) That the decision of the First Respondent contained in letter dated April 2, 2009 instructing the Third Respondent to make deduction from the salary of the

Applicant be stayed until the determination of these proceedings or until further order of the Court.

- (5) The First Respondent shall pay the Applicant costs in the sum of \$1,500.



Gertel Thom
HIGH COURT JUDGE