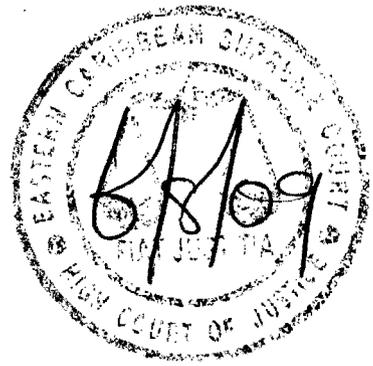


THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
HIGH COURT CIVIL CLAIM NO. 117 OF 2008



BETWEEN:

JEANELL JAMES

Claimant

V

ST. VINCENT AND THE GRENADINES COMMUNITY COLLEGE

Defendant

Appearances:

Mr. Jomo Thomas for the Claimant

Mr. P.R. Campbell Q.C., and Ms. Ramano Frederick and Ms. Frederick holding for Mr. S. Williams
for the Defendant

2009: June 10th
August 6th

JUDGMENT

BACKGROUND

- [1] Claimant Jeanell James was a student of the St. Vincent Teachers College (Teachers College), which is an educational institution under the St. Vincent and the Grenadines Community College (the Community College) pursuant to the provisions of the Saint Vincent and the Grenadines Community College Act 2005 (No. 28 of 2005).
- [2] The Health and Family Life Education (HFLE) course was a part of the curriculum of the Associate Degree in Education (Primary) programme at the Teachers College, and the claimant was a student in that programme.
- [3] The relevant staff at the Community College are Dr. Alson Jack the Dean (Dean), Ms. Rhona Sardine Vice Dean of the Teachers College, and Ms. Beverley Neptune Lecturer of the Community College, (Instructor).

- [4] On 22nd January 2008 during a HFLE class taught by the Instructor, a discussion took place regarding what entities should have the responsibility of instruction for Health and Family Life Education. Comments were made by the Claimant to which the Instructor took exception. The claimant was excluded from the class. The claimant filed suit seeking reliefs against the Community College, claiming that that exclusion was a violation of her constitutional rights of freedom of conscience, freedom of expression and freedom of religion. Also, that she had a right not to be treated in a discriminatory manner by the Community College Authority.
- [5] Mr. Campbell made a number of submissions in limine with which Mr. Thomas did not agree. One, that the matter does not reach the threshold of contraventions of the Constitution so as to attract a full hearing of the allegations. Two, that there was no discriminatory treatment of the claimant. Three, that the matter is purely academic and ought to be dismissed. To answer the questions that arise in the submissions made by both counsel, I need to look at facts sufficient to enable me to make findings on the points raised and then to apply principles to the facts as found.
- [6] As the deponents have not been cross-examined on the affidavits to test their credibility, I will confine myself to recounting and considering the version given by the claimant, of what transpired at class that day.

VIOLATION OF FREEDOM OF CONSCIENCE, EXPRESSION, RELIGION

- [7] Was the expulsion from the course a violation of the claimant's constitutional right of freedom of conscience, freedom of expression and freedom of religion (as submitted by Mr. Thomas) or was it insubordination and so a disciplinary matter (as submitted by Mr. Campbell)?
- [8] The Community College claims that the claimant was excluded from the course for alleged insubordination as is seen from the Dean's affidavit filed on 5th May 2008, admitting that he informed the claimant that she would be debarred from the HFLE course indefinitely as a consequence of her insubordination to a faculty member. The Dean's letter to the claimant dated 1st February 2008 reads:

"You are hereby advised that as a consequence of your being found to be insubordinate to faculty member – Miss Beverley Neptune – during classes held on Tuesday 22nd January 2008: your attendance at this course has been terminated with immediate effect."

[9] The claimant claims she was excluded from the course because her viewpoint differed from that of the Instructor. Her account in an affidavit filed on 17th April 2008 paragraph 6:

"...I was being punished because I had dared to express a view which did not accord with the views of my instructor. It shocked me that it did not appear to have occurred either to Mrs. Sardine or to Miss Neptune that what they proposed was a flagrant violation of my freedom of expression, my freedom of religion, my freedom of conscience and my right not to be treated in a discriminatory manner."

[10] The view point expressed by the Claimant appears in paragraph 3 of the affidavit:

3. ... "I expressed the view that the church is an ideal agent for teaching Health and Family Life Education. I argued that the church would not inevitably impose its beliefs on students if it were to teach Health and Family Life Education. I further argued that people need to be educated on the issue of choice. Miss Neptune responded to my arguments by stating that she did not belong to any religion. When she made this statement I commented, "Then you will be lost". Miss Neptune became peeved. She told me that she did not need me to tell her that. I said, "Then take it as a reminder". The ensuing discussion was lively and intense. Miss Neptune commented that not even Jesus Christ could have saved everybody. She said that the church preached abstinence, but that the reality was that people did not abstain and in response to the reality, condoms should be distributed. I commented that the church should never conform to the world and that it should preach the pure gospel. .."

[11] In paragraphs 3 and 4 of her affidavit filed on 6th May 2008, she deposed:

"3. Miss Neptune introduced a tone of hostility to the discussion of January 22, 2008 when she took umbrage at my comment that she would be lost. Miss Neptune, in responding that she did not need me to tell her that, was clearly peeved. My intention in commenting that she would be lost; even if she had initially misconstrued it, should, in my view, have been clarified when I commented that she should take my comment as a reminder. My faith teaches that a person who, in Miss Neptune's words, "nah belong to no religion", will be lost. My faith also teaches that it is my duty to warn persons against conduct which will lead to them becoming lost. That is all I sought to do when I responded to Miss Neptune's comment.

4. Miss Neptune insists that I told her "you going to hell". I do not recall having used those specific words....While I agree that "you will be lost"

and "you will go to hell" mean the same thing, I do not recall using those particular words...."

- [12] The context in which the words "Then you will be lost" were used is quite clear, coming from the claimant herself. The claimant stated it was when the Instructor made the statement that she did not belong to any religion that she (claimant) commented: "Then you will be lost." The topic being discussed was the role of the church in health and family life education, not about religion generally or about the consequences that may or may not befall a person who does not belong to any religion.
- [13] From the claimant's account the words were not made following her expression of a viewpoint on the topic being discussed, but following the Instructor's comment that she (instructor) did not belong to any religion. A question: Was it open to the Community College Authority to consider that by saying to the Instructor "you would be lost" and following up with "Take it as a reminder," the claimant was rude and insubordinate to the Instructor? I think it was open to the Community College authority to so consider.
- [14] I do not think that the expulsion was a consequence of the view point she held on the topic being discussed. The expulsion related to what the Community College regarded as insubordination towards the Instructor - a matter of discipline. However, I shall deal with Mr. Thomas' submission: the discussion dealt with the role of the church in the teaching of health and family life education course. It was in that context, he submitted, where the teacher commented that she (teacher) does not think that Jesus Christ could help everyone: that the devoutly religious claimant heard what amounts to an assault on her understanding of the Bible and responded with the comment that if that is her view 'you would be lost'.
- [15] The sequence of comments given by Mr. Thomas differs from the sequence of comments given by the Claimant. According to the account in the claimant's affidavit (paragraph 3), the Instructor's comment that Jesus Christ could not help everyone, was made during "lively and intense" discussion that ensued subsequent to the claimant's comment to the Instructor "You would be lost". The premise given by Mr. Thomas for the use of those words is absent and therefore could not be the foundation for the use of those words.

However, I follow Mr. Thomas down that path to ascertain if that account shows a different picture.

- [16] The Instructor (following that version) comments that Jesus Christ could not help everyone. The claimant (according to Mr. Thomas) was responding to what amounts to an assault on **her understanding of the Bible** (highlighting is mine). Did the Instructor know what the claimant's **understanding of the Bible** was? There was no submission that the Instructor was aware of what was that understanding.
- [17] Acting on what she considered to be what amounts to **an assault on her understanding of the Bible**, the claimant informs the Instructor "you would be lost". When the Instructor informs her that she did not need her (the claimant) to say that to her, the claimant responded: "Then take it as a reminder".
- [18] That, said Mr. Thomas, is part of a discussion on the role of the church in health and family life education. I accept that the words were used during a discussion on the stated topic but can they be regarded as part of a discussion of that topic? It is difficult to fathom how that digression from the topic forms discussion of the topic. In any event, one would expect a student in a class discussion to show respect. The tenor of that digression sounds rude and shows lack of respect student for teacher.
- [19] The claimant said that the Instructor commented that Jesus Christ could not help everyone. A response by a claimant who was offended by what she considered amounted to an assault on her understanding of the Bible, could have been: then **everyone would be lost, or many would be lost, or anyone who so believes would be lost.**
- [20] Those are the likely responses in the context of a discussion on the general role of church, with participants sharing objectively the circumstances in which persons who are not believers would be lost (which was not the topic). Instead, there was a personalized response: "you would be lost": thus seemingly, subjectively attaching condemnation. Having followed Mr. Thomas down the path, a different picture has not emerged.

- [21] The Community College authority excluded the claimant from the course because the college considered that she was insubordinate to an Instructor, which is a disciplinary matter. The situation described by the claimant does not form the base for a violation of her right to freedom of conscience.
- [22] The claimant claims that because she expressed a view point with which the Instructor did not agree, she was punished by being expelled from the course. That she stated, was a violation of her right of freedom of expression. However, I do not think that the expulsion was as a result of expressing a differing view point. The expulsion was a consequence of what the Community College regarded as insubordinate conduct towards the Instructor, which is a disciplinary matter.
- [23] To establish that there was a violation of freedom of religion, the claimant needed to pinpoint facts that tend to show that she was prevented from practising her religion, or of worshipping as she sees fit. The affidavit of the claimant has not identified a factual situation pointing to a bar on, or impediment of, her right to practise her religion or her right to worship as she desired.
- [24] In the absence of that factual situation, and in light of my earlier comments, how could a violation of her right of freedom of religion arise?

THE RIGHT NOT TO BE TREATED IN A DISCRIMINATORY MANNER

- [25] Mr. Campbell submitted that there was no discriminatory treatment directed towards the claimant and posed the question: has the claimant demonstrated that she has been treated in a discriminatory manner in that she was accorded different treatment than other persons, attributable wholly or mainly to her creed, whereby she was subjected to disabilities or restrictions to which persons of other creeds are not made subject?
- [26] Mr. Thomas submitted that there was discriminatory treatment and posed the question: what happens when a student who rightfully belongs to a class is told that everyone except that student is to continue in that class? He argued that that is discrimination, as the

student is separated from other class members and given treatment different from the other students.

[27] In considering that submission I share an example: Three bikers are riding – two on the left hand side of the road and one swerving from one side of the road to the other side of the road. The one swerving from one side of the road to the other side of the road is stopped and charged by the police for so doing, while the others continue unchallenged by the police. Can the biker who was stopped and charged successfully claim that he has been treated in a discriminatory manner?

[28] The Community College authority considered that the claimant's behavior was insubordinate and merited sanction consideration. Having spoken to her and considered the matter, the College excluded her from class. Had any other student behaved in the same manner, that is, told the Instructor "you would be lost" and "take it as a reminder" and the Community College Authority had excluded the claimant, and not the other student from the class, then that would have constituted discriminatory treatment of the claimant.

[29] The claimant's affidavit does not show a factual situation of action by the Community College authority tending to show that she was treated in a discriminatory manner.

CONSTITUTION OF SAINT VINCENT AND THE GRENADINES

[30] Does this claim relate to the protections afforded by the Constitution so as to properly attract the jurisdiction of the constitutional court? Mr. Campbell submitted that the matter does not reach the threshold of contraventions of the Constitution so as to attract a full hearing of the allegations. Mr. Thomas did not agree with that submission.

[31] The fundamental rights and freedoms in the Constitution set out a code of conduct that regulates the behaviour of persons. Those constitutional rights and freedom provisions are not absolute but are subject to the rights of other persons. An individual is free to express an opinion, but that freedom of expression is subject to the rights of other persons

to express their opinions. That is the background against which the fundamental provisions of the Constitution are to be read and understood.

[32] An example: In a discussion as to the colour of the moon, a person may say, 'I believe that the moon is golden'. That is the right of that person to so express. Another person may not agree that the moon is golden and indeed may feel strongly and may express strongly that the moon is not golden but is purple. That person has a right to that opinion.

[33] It is the right of the first speaker to respond, and to respond strongly that the second speaker does not know what he is talking about, but the choice of words should not create the risk of doing violence (in speech) to the second speaker – the phrasing must relate to what the person has said, not relate to the individual.

[34] It is not the right of the person who believes that the moon is golden to verbally abuse the person who does not agree with him and to say; 'You are an ignoramus'. Upon the person commenting 'you are not to say that to me,' for a response to be made: 'take it as a reminder that you are.' The topic being discussed is the colour of the moon, not a person's intelligence or lack of intelligence. A person is at liberty to comment on the action or non action of another person, but is not at liberty to verbally attack another.

[35] Similarly, every person has the right to believe that God can help them or that God cannot help them. It may be that those persons who desire other persons to believe as they do, should be perceptive, or should I say discerning, and know how, when and where to try to persuade others to accept their belief. They can unintentionally wound or chase away persons instead of helping in the persuasion process, or encouraging those persons to accept the belief that they hold, by the manner in which they interact with, or respond to, others. In the process of persuasion of, or interaction with, others a helpful approach might be "to render to Caesar the things that are Caesar's..."

[36] Chapter 1 of the Constitution of Saint Vincent and the Grenadines – Protection of Fundamental Rights and Freedoms reads:

"1. Whereas every person in Saint Vincent and the Grenadines is entitled to the fundamental rights and freedoms, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely –

.....

(b) freedom of conscience, of expression and of assembly and association; and

.....

the provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any person does not prejudice the rights and freedoms of others or the public interest."

[37] It follows that the suit has no valid constitutional base. Without that base, there is no issue of violations of the claimant's constitutional rights.

ARE CONSEQUENCES OF EXPULSION EXTANT?

[38] A submission of Mr. Campbell was that the matter is purely academic and ought to be dismissed. Mr. Thomas did not agree with that submission and argued that:

- (a) there was no physical attendance at classes by the claimant;
- (b) no assignments were presented by her up to the date of the consent order;
- (c) no assignments were given to her by the Authority up to date of consent order.

He agreed that, eventually, all assignments were received and processed by the College.

[39] Is the expulsion and the consequences that flow from the expulsion extant today or have they been effectively dealt with? If the answer is that they are extant today and have not been effectively dealt with, then the matter is not academic and the preliminary point goes in favour of the claimant - the substantive matter continues.

[40] If the answer is that they are not extant today and have been effectively dealt with, the matter is academic. The Court does not act in vain and the preliminary point goes in favour of the defendant. Having considered the factual situations I now consider the reliefs and declarations sought by the claimant.

- [41] A relief sought by the claimant was a mandatory injunction:
- (a) requiring that she be reinstated as a student of the Health and Family Life course offered by the Teachers' College;
 - (b) that she be permitted adequate time to complete all assignments which she has been unable to complete due to her expulsion from the course or that she be permitted to submit supplemental assignments in lieu of the assignments which she would have been required to submit had she not been expelled from the course;
 - (c) that she be permitted to sit the final examination for the course.
- [42] Those situations arose as a consequence of her exclusion from the course and are not extant today. By a consent order there was agreement between the claimant and the defendant (Community College), that the claimant will be permitted to write all examinations up to 21st May 2008; that she be will permitted to submit all outstanding assignments by 30th May 2008: and the claimant is to have access to the premises and facilities of the Community College pending the hearing of the substantive matter.
- [43] When the preliminary points were being argued, it was disclosed that the consent order had been complied with: that the claimant had sent in all her assignments, had sat and done extremely well in the examinations set by the Community College. (I congratulate her).
- [44] The consequences that flowed from the expulsion of the claimant from class are not extant. The reliefs sought by the claimant by way of mandatory injunction have already been received by her through compliance with the consent order. To proceed to trial to consider situations on which those reliefs were grounded would be an academic exercise that a Court does not indulge in. A Court does not act in vain.
- [45] An example: Mr. A being thirsty on a hot day, asks Ms. B to give him two glasses of water. Ms B enters her house to obtain the water. In the meantime, Ms. C comes up with a container of water and gives Mr. A two glasses of water. The request for water from Ms. B has become academic as Mr. A has already obtained two glasses of water.

[46] The claimant sought declarations: that the Court declare the expulsion from the course for alleged insubordination are violations of constitutional rights of the claimant: (1) freedom for conscience; (2) freedom of expression; (3) freedom of religion. From the factual situation given by the claimant, I consider the alleged insubordination to be a disciplinary matter and there is no foundation for constitutional redress.

CONCLUSION

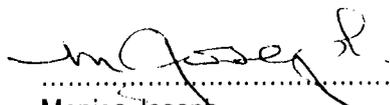
[47] On the points in limine: The factual situation given by the claimant of what transpired during discussions in the class at college does not support the claim that there were violations of the claimant's constitutional rights of freedom of conscience, freedom of expression and freedom of religion.

[48] The factual situation does not establish that the claimant has been treated in a discriminatory manner by the Community College.

[49] The claimant sought a mandatory injunction, the aim of which was to ensure that she did not suffer adversely following her expulsion from the class at the Community College class. That aim was achieved by compliance with the consent order and the injunction is no longer necessary. The matter is now academic.

ORDER

- [50] 1. The claimant's suit is dismissed.
2. There is no order as to costs.


.....
Monica Joseph
High Court Judge (Acting)
28th July 2009