

IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)

CLAIM NO. GDAHCV2008/0223

IN THE MATTER OF SECTIONS 88 AND 101 OF THE CONSTITUTION OF GRENADA,
SCHEDULE 1 TO THE GRENADA CONSTITUTION ORDER 1973

AND

IN THE MATTER OF THE SUPREME COURT (CONSTITUTIONAL
REDRESS-GRENADA) RULES 1968, SRO NO. 41 OF 1968

AND

IN THE MATTER OF PART 56 OF THE CIVIL PROCEDURE RULES 2000

AND

IN THE MATTER OF AN APPLICATION BY PATRICIA MARK, CHIEF MAGISTRATE OF
GRENADA, PURSUANT TO SECTION 101 OF THE CONSTITUTION OF GRENADA FOR A
DECLARATION AS TO THE CONTRAVENTION OF SECTION 88 OF THE CONSTITUTION
AND FOR RELIEF

BETWEEN:

PATRICIA MARK
(Chief Magistrate of Grenada)

Claimant

and

THE ATTORNEY GENERAL OF GRENADA

Defendant

Appearances:

Dr. Francis Alexis, Q.C. for the Claimant
The Solicitor General, Mr. Rohan Phillip, for the Defendant

2009: April 28
May 6
August 28

JUDGMENT

[1] MICHEL, J. (Ag.): The Claimant had been employed as the Chief Magistrate of Grenada, first in an acting capacity from 1st January 1994 and then permanently from 1st June 1995, until 3rd March 2009 when she was compulsorily retired.

- [2] On 1st April 2008 the Claimant received a letter from the Acting Permanent Secretary in the Ministry of Legal Affairs informing her that it had been observed that she had attained the compulsory retirement age of sixty years on 5th June 2003 and that, in accordance with the provisions of Regulation No. 43 of the Public Service Regulations, the Ministry proposed to advise His Excellency the Governor General that she be retired from the Public Service on the grounds of age at the expiry of her vacation leave, that is, with effect from 3rd March 2009.
- [3] The Claimant subsequently received another letter also dated 1st April 2008, this time from the Chief Personnel Officer of the Public Service Commission, informing her that His Excellency the Governor General had granted her three hundred and one days vacation leave with effect from 5th May 2008.
- [4] The Claimant wasted no time and on 4th April 2008 she filed a Fixed Date Claim, with supporting affidavit and accompanying exhibits, against the Attorney General seeking the following relief:
1. A declaration that the decision by the Ministry of Legal Affairs of Grenada to propose to advise His Excellency the Governor General of Grenada that the Claimant, Patricia Mark, holder of the office of Chief Magistrate of Grenada, be retired from that office on the grounds of age is a contravention of section 88 of the Constitution of Grenada and is therefore unconstitutional, null and void and of no effect in law.
 2. A declaration that the Claimant, Patricia Mark, may not be retired from the office of Chief Magistrate on the basis of the said decision of the Ministry of Legal Affairs.
 3. Such further or other relief as to the Court seems appropriate.
 4. Costs.

- [5] On 16th April 2008 the Defendant filed an Acknowledgement of Service of the Claim Form and on 30th April 2008 the Defendant filed an affidavit in response to the Claimant's claim, along with accompanying exhibits.
- [6] By Notice of Application filed on 30th May 2008 the Claimant applied to the Court for leave to file an affidavit in reply to the affidavit filed on 30th April 2008 on behalf of the Defendant and to amend the Fixed Date Claim Form by adding an additional prayer.
- [7] The Claimant's application was granted by a Judge in Chambers on 5th June 2008 and, on that same day, the Claimant filed an affidavit in reply to the affidavit filed on behalf of the Defendant and filed also an Amended Fixed Date Claim Form in which she sought the following additional relief:
- "2A. Further or alternatively, an order that the Defendant pay to the Claimant –
- (a) damages or compensation measured by her net loss of salary and other remuneration and benefits for such period as to the Court may seem just proper;
 - (b) damages or compensation for distress and inconvenience."
- [8] On 20th June 2008 the Defendant filed an affidavit replying to the further affidavit filed by the Claimant on 5th June 2008.
- [9] Then on 27th February 2009 came a letter from His Excellency the Governor General to the Claimant, which letter was subsequently cancelled and replaced by a letter dated 10th March 2009 - there having been a typographical error on the 27th February letter. The material part of this letter reads:
- "In accordance with the advice of the Judicial and Legal Services Commission and pursuant to my powers under the Constitution and Laws of Grenada, I hereby require you to retire from the Public Service on March 3, 2009 on the ground that you have attained the age of sixty (60) years."
- [10] On 14th April 2009 Learned Queen's Counsel acting on behalf of the Claimant wrote to the Honourable Attorney General requesting that the Claimant be furnished with (1)

information as to the day and date when the Judicial and Legal Services Commission gave His Excellency the Governor General the advice on which His Excellency acted in requiring the Claimant to retire and (2) a copy of the letter from the Judicial and Legal Services Commission giving His Excellency the Governor General such advice.

- [11] On 16th April 2009 the Learned Solicitor General responded on behalf of the Attorney General to Queen's Counsel's letter indicating that the Attorney General's Chambers is of the view that the information sought is not relevant to the present proceedings as His Excellency's letter is in no way the object of the claim and, in any event, the maxim "omnia praesumuntur rite esse acta" will apply in the present situation involving an official act of the Governor General. The quoted maxim, which is abbreviated from its full form, is translated to mean all things are presumed to be done correctly. The full form of it is "omnia praesumuntur rite et solemniter esse acta" – all things are presumed to be done correctly and solemnly, unless of course the contrary is proved. The maxim is referred to as the presumption of legality.
- [12] On 27th April 2009 the Claimant filed a Notice of Application with supporting affidavit and accompanying exhibits seeking an order that the Defendant be compelled to give the Claimant the information which was sought by Dr. Alexis' letter of 14th April 2009.
- [13] This application was heard on 28th April 2009, with oral submissions made to the Court by Learned Queen's Counsel, Dr. Francis Alexis, on behalf of the Claimant and by the Learned Solicitor General at the time, Mr. Rohan Phillip, on behalf of the Defendant.
- [14] This Court accepts the submission of Counsel for the Defendant that the information requested by the Claimant is not relevant to the case before the Court, which is about whether the letters to the Claimant dated 1st April 2008 constituted a contravention of section 88 of the Constitution of Grenada, thus entitling the Claimant to the orders sought pursuant to section 101 of the Constitution. The Court also accepts the submission of the Defendant on the applicability of the maxim "omnia praesumuntur

rite et solemniter esse acta" - the presumption of legality ought to be applied to the actions of the Governor General of the State.

- [15] The Claimant's application is accordingly denied.
- [16] On 6th November 2008 the Defendant had filed an application seeking an order that the claim filed against the Defendant be struck out pursuant to Rule 26.3 (1) (b) of the CPR. On 3rd December 2008 the Claimant filed Notice of Opposition to the Defendant's Notice of Application. When the matter came before the Judge in Chambers on 16th January 2009 the Learned Judge ordered that skeleton arguments with authorities be filed and served by both parties by 20th February 2009, which was complied with on the said 20th February.
- [17] This application was heard on 6th May 2009, with Counsel for the Defendant relying on his written submission filed on 20th February 2009, while Counsel for the Claimant augmented his skeleton arguments with an oral submission.
- [18] The Defendant relied on the following cases in support of his application to strike out the Claimant's claim:
- (a) **Ingraham et al v Glington et al**¹;
 - (b) **Russell et al v Attorney General of St. Vincent and the Grenadines**²;
 - (c) **Attorney General of Anguilla et al v Lake et al**³;
 - (d) **Domer v Gulf Oil (Great Britain) Ltd.**⁴.
- [19] The Claimant relied on the following cases in opposition to the application to strike out the claim:

¹ (2006) 69 WIR 20

² (1995) 50 WIR 127

³ Anguilla Civil Appeal No. 4 of 2004

⁴ [1975] Ch D

- (a) **Duncan v Attorney General of Grenada**⁵;
- (b) **Thomas v Attorney General of Trinidad and Tobago**⁶;
- (c) **Donovan v Attorney General of Grenada**⁷;
- (d) **Fraser v Judicial and Legal Services Commission et al**⁸;
- (e) **Attorney General of Antigua and Barbuda et al v Lake**⁹.

[20] The Defendant has asked the Court to strike out the claim filed by the Claimant against the Defendant on the basis that the claim does not disclose any reasonable ground for bringing it in that no provision of the Constitution has been or is being contravened as required by section 101 (1) of the Constitution of Grenada. The Defendant's submission, however, is premised not on the Claimant failing altogether to allege that a particular provision of the Constitution has been or is being contravened in relation to her, but rather on what the Defendant regards as the insufficiency of the breach alleged by the Claimant.

[21] The Claimant's claim, as per her Fixed Date Claim Form and affidavit in support, is that the Defendant (via the Ministry of Legal Affairs) made a decision expressed as follows in a letter to the Claimant dated 1st April 2008 that: "the Ministry proposes to advise His Excellency the Governor General that you be retired from the Public Service on the grounds of age at the expiry of your vacation leave, that is, with effect from 3rd March 2009," which decision was confirmed by another letter of the same date from the Chief Personnel Officer of the Public Service Commission to the Claimant granting her 301 days vacation leave (her full eligibility) with effect from 3rd March 2009. The Claimant alleges that this decision of the Defendant contravened section 88 of the Constitution which vests in the Governor General acting in

⁵ [1998] 3 LRC 414

⁶ (1981) 32 WIR 375

⁷ [1993] 2 LRC145

⁸ [2008] UKPC 25

⁹ (1998) 53 WIR 145

accordance with the advice of the Judicial and Legal Services Commission the power to remove (by whatever means) a person holding the office then held by the Claimant of Chief Magistrate of Grenada.

[22] This Court considers that, though the argument of the Defendant is not an unattractive one in positing that a mere indication by the Acting Permanent Secretary in the Ministry of Legal Affairs of a proposal to advise His Excellency that the Claimant be retired on account of her age, even juxtaposed with a letter from the Chief Personnel Officer granting the Claimant her full leave entitlement, does not amount to a determination that section 88 of the Constitution is being or has been contravened by the Defendant, especially having regard to the absence in section 88 of the Grenada Constitution of the additional words contained in the Constitutions of some of the Commonwealth Caribbean countries, that is, "or is likely to be contravened," the fact that there is a contravention alleged makes the striking out remedy inappropriate in this case. Cognizance too must be taken of the fact that this is a claim of violation of the constitutional rights of a citizen of Grenada, and a citizen who at the relevant time held a senior judicial office, and the Court should be slow to drive the Claimant in a case such as this from the seat of judgment.

[23] The Defendant's application is accordingly denied.

[24] Applications by both parties having been denied, there shall be no order as to costs.

[25] This matter should now be set down for case management early in the new law term.

Mario Michel
High Court Judge (Ag.)