

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA**

CLAIM NO: ANUHCV 2008/0233

BETWEEN:

AKEEM MURRAINE

Claimant

and

ANTIGUA AND BARBUDA HOSPITALS BOARD

Defendant

Appearances:

Dr. David Dorsett for the Claimant/Applicant
Mr. Hollis Francis for the Mount St. John's Medical Centre Board

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2010: September 21
October 14
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JUDGMENT

[1] **Michel, J.:** By Claim Form and Statement of Claim filed on 10th April 2008 the Claimant, Akeem Murraine, claimed against the Defendant, Antigua and Barbuda Hospitals Board, the following relief:

1. General damages for medical negligence;
2. General damages for breach of statutory duty;
3. Special damages of \$140,000.00 and other special damages to be assessed;
4. Interest pursuant to section 27 of the Eastern Caribbean Supreme Court Act;

5. Costs;
6. Such further or other relief as the Court may deem fit.

[2] By Request for Entry of Judgment in Default filed on 3rd July 2008 the Claimant's Legal Practitioner requested the entry of judgment against the Defendant in default of Acknowledgement of Service for the relief claimed.

[3] On 8th July 2008 Judgment in Default of Acknowledgement of Service was entered against the Defendant to pay to the Claimant damages and cost to be assessed by the Court.

[4] On 17th March 2010 the Claimant filed Notice of Application applying to the Court for an order that:

1. The Mount St. John's Medical Centre Board be substituted as the Respondent/Defendant in this matter pursuant to Part 19 of the Civil Procedure Rules 2000;
2. The Respondent/Defendant do pay to the Applicant forthwith the sum of \$115,000.00, the said sum being an interim payment of damages to be assessed;
3. The cost of the application be provided for by the Respondent.

[5] The Claimant's application was supported by an affidavit by the Claimant filed on 17th March 2010 and an affidavit by Dr. Joseph John filed on 19th May 2010.

[6] An affidavit in reply opposing the Claimant's application was filed on behalf of the Mount St. John's Medical Centre Board on 15th July 2010.

[7] By Order of the Court dated 15th July 2010 both sides were required to file and exchange written submissions on the Claimant's application no later than 9th August 2010.

- [8] Written submissions (with authorities) were filed on behalf of the Claimant on 25th August 2010 and on behalf of the Mount St. John's Medical Centre Board on 14th September 2010.
- [9] The application was heard by the Court on 21st September 2010, with oral submissions made by Counsel on behalf of the contending parties to buttress the written submissions previously filed.
- [10] The Claimant's submissions in support of his application for substitution of the Mount St. John's Medical Centre Board as the Defendant in these proceedings are to the effect that in 2005 he became ill and attended at the Holberton Hospital for treatment of his ailment. At the hospital he was misdiagnosed as having HIV-AIDS and was put on a course of treatment by the hospital. By the time it was determined in 2006 that he did not have HIV-AIDS he had been treated for that condition by the hospital and his physical condition had worsened under the course of treatment. In 2008 he filed this suit against the Antigua and Barbuda Hospitals Board, which - by virtue of the Antigua & Barbuda Hospitals Board Act, 1999 - was responsible for the overall organisation and management of hospitals in Antigua and Barbuda, including the Holberton Hospital. In July 2008 he obtained Judgment in Default of Acknowledgement of Service against the Board. By 2009, before the damages were assessed against the Antigua and Barbuda Hospitals Board, the Act creating the Board was repealed and a new Act creating a new Board - the Mount St. John's Medical Centre Board - was established to perform the functions previously performed by the Antigua and Barbuda Hospitals Board. The Claimant contended that the new Board assumed the responsibilities and liabilities of the old Board, which would include liability under the judgment in favour of the Claimant.
- [11] Learned Counsel for the Claimant argued that although the new Act (the Mount St. John's Medical Centre Act, 2009) did not specifically provide that the new Board would assume the liabilities of the old Board for breach of statutory duty, the

functions and duties of the old and new Boards - in accordance with the statutes creating them - are identical and the new Board does assume the liabilities of the old in terms of statutory functions and duties. He further argued that if the 2009 Act was to be construed so as to deprive the Claimant and persons similarly situated from obtaining vindication of their rights arising from statute with respect to the Antigua and Barbuda Hospitals Board, then such a construction would be inconsistent with the legislative history and would be contrary to two legal principles, the first of which is that the Court should strive to avoid adopting a construction that leads to injustice or unfairness and the other is that the rights of a person in relation to legal remedies and legal proceedings should not be removed or impaired (including the right not to be denied a remedy) except under clear authority of law. Learned Counsel supported the first legal principle with the dicta of Lord Donovan in the Privy Council case of *Mangin v Inland Revenue Commissioner*¹ and supported the second principle with an extract from Halsbury's Laws of England, Fourth Edition, Volume 44 (1), Paragraph 1467. From these two authorities Learned Counsel arrived at the position that it would be unjust and unfair to interpret the provisions of the 2009 Act so as to deny a remedy to the Claimant on the facts of the present case, which he submitted is the consequence that would follow if the Court were not to treat the Mount St. John's Medical Centre Board as having assumed the responsibilities and liabilities of the disestablished Antigua and Barbuda Hospitals Board.

- [12] The submissions on behalf of the Mount St. John's Medical Centre Board in opposition to its substitution for the Antigua and Barbuda Hospitals Board are to the effect that the two Boards, although having very similar functions and duties, are different entities and the obligations and liabilities of one cannot simply be imputed to the other without express, clear and unambiguous words in the 2009 Act to that effect. If the intention of Parliament was to cause the new Board to be responsible for any obligations and liabilities of the old Board then such would have been expressly stated in the Act. It was further argued on behalf of the Mount St. John's

¹ [1971] A.C. 739 at 746

Medical Centre Board that in any event the old Board could not have been held liable for the negligent actions or omissions of the hospital's medical staff and so the new Board should not, by substitution, be fastened with that liability. This argument was advanced on the basis of the provisions of section 13 of the 1999 Act and section 29 of the 2009 Act, which it is contended had the effect that the medical staff were not servants or agents of the old Board but rather were servants or agents of the Crown. This being the case, Counsel argued, an act or omission of negligence by the medical staff at Holberton Hospital could not attach liability to the old Board and so the new Board could not properly be substituted for the old Board with a view to attaching liability to the new Board.

[13] As attractive as the submissions of Learned Counsel for the Claimant might be and as much as the Court may be inclined to go along with them so as to give relief to an apparently deserving litigant, the Court can not find a foundation on which it can rest a judgment in favour of the Claimant. There is no provision in the Act establishing the Mount St. John's Medical Centre Board that requires or even permits the Board to assume rights, duties, liabilities or obligations in any form or of any kind of the Antigua and Barbuda Hospitals Board or of the Holberton Hospital for that matter. Had there been any provision which could even by a process of generous statutory interpretation possibly lead to such a result, then the dicta of Lord Donovan in the case of *Mangin v Inland Revenue Commissioner* earlier-cited or the learning from Volume 44 (1) of *Halsbury's Laws of England, Fourth Edition* earlier referred to might conceivably have been employed to achieve that result. But there is simply no such provision. Section 24 of the Act which provides for the Mount St. John's Medical Centre Board to assume the rights and liabilities of Mount St. John Medical Centre Limited could not accommodate an interpretation that would allow the Board to assume the rights and liabilities of the Antigua and Barbuda Hospitals Board.

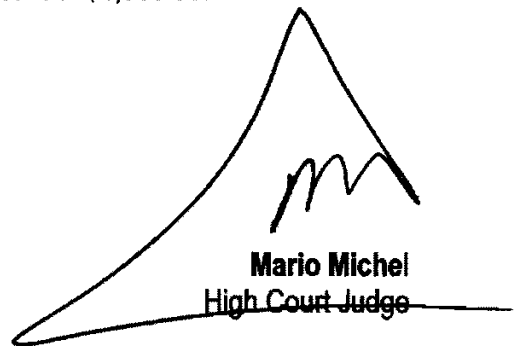
[14] To be forthright, the Court can remark that the 2009 Act is not the best piece of legislation which has fallen to be interpreted by a Court, because (among other

things) having repealed the Antigua and Barbuda Hospitals Board Act, 1999 it did not then speak to the Board established by the repealed Act or to any rights, duties, liabilities and obligations of that Board. Be that as it may, a Court is not thereby enabled to create provisions which are not in the legislation, desirable though such provisions might appear to be.

- [15] Having regard to the Court's determination that the 2009 Act which established the Mount St. John's Medical Centre Board did not provide for the assumption by that Board of the rights, duties, liabilities and obligations of the Antigua and Barbuda Hospitals Board, it is unnecessary to consider the submission of Learned Counsel for the Mount St. John's Medical Centre Board to the effect that if the new Board were to assume the obligations of the old Board that it would not include obligations arising from the negligence of the medical staff of Holberton Hospital since these were never obligations of the old Board in the first place.
- [16] In terms of the application by the Claimant for an award of an interim payment on the damages to be assessed, the Court hereby grants the Claimant's application and orders that the Defendant, the Antigua and Barbuda Hospitals Board, do pay to the Claimant, Akeem Murraine, the sum of \$115,000.00 forthwith as an interim payment on damages to be assessed, together with costs of \$1,000.00.
- [17] The Claimant will have the obvious difficulty of recovering the amounts hereby ordered to be paid to him in light of the fact that the Antigua and Barbuda Hospitals Board may have ceased to function in 2009 after the repeal of the Act establishing it. The Attorney General's Chambers and the Ministry of Justice of Antigua and Barbuda are however being urged (although this is entirely obiter dicta) to step in to do justice to this unfortunate Claimant whose life may have been adversely and severely affected by the negligence of employees of a state institution in the course of their employment.

[18] The Court's orders are as follows:

1. The application to substitute the Mount St. John's Medical Centre Board as the Defendant in this matter is dismissed, with no order as to costs.
2. The Defendant is ordered to pay to the Claimant forthwith the sum of \$115,000.00 as an interim payment on damages to be assessed, with costs to the Claimant in the sum of \$1,000.00.



Mario Michel
High Court Judge