

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CIVIL CLAIM NO. 31 OF 2013

BETWEEN:

**ELVIS DANIEL
ADDISON THOMAS
KENROY JOHNSON
OSWALD ROBINSON**

**(in his representative capacity as President
of the St. Vincent and the Grenadines
Union of Teachers)**

Claimants/Respondents

v

**THE PUBLIC SERVICE COMMISSION
THE ATTORNEY-GENERAL**

Defendants/Applicants

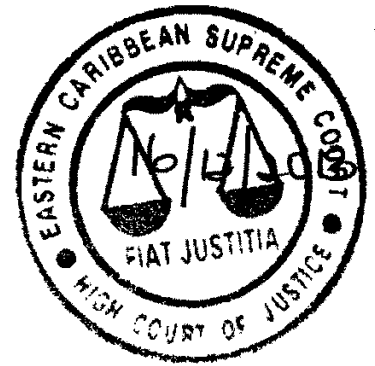
Appearances:

Mr. J. Thomas, Ms. S. Barnwell and Mr. R. Ferguson for the Claimants/Respondents.
Mr. R. Williams and Ms. C. Harper for the Defendants/Applicants.

2013: June 26
December 16

JUDGMENT

- [1] **THOM, J:** On the 22nd day of February 2013 the Claimants filed a Fixed Date Claim Form in which they seek among other reliefs a declaration that Article 16 of the Collective Bargaining Agreement ("the Collective Agreement") between the Government of Saint Vincent and the Grenadines ("the Government") and the Saint Vincent and the Grenadines Teachers' Union ("the Teachers' Union") does not offend Section 26(1)(d) of the Constitution of Saint Vincent and the Grenadines; a declaration that their fundamental right



to property as guaranteed by section 6 of the Constitution has been violated; and damages for breach of their constitutional rights.

- [2] First hearing of the Claim was fixed for 24th April 2013.
- [3] On the 16th day of April 2013 the Defendants filed an application to strike out the Fixed Date Claim.

BACKGROUND

- [4] It is useful to give a brief background of this case.
- [5] On the 3rd day of November 2005 the Teachers' Union of which the Claimants are all members signed a Collective Agreement with the Government. Article 16 of the Agreement reads as follows:

"ELECTION LEAVE

A member of the Union of at least three (3) years standing, shall on application, be granted leave-of-absence to contest National/General/Local Elections. The Leave of Absence shall be no pay leave for a period not exceeding six (6) months. In the event that the member is unsuccessful, that member shall return to his/her original post or one of equivalent status, all benefits intact. The resumption of duty must be at the beginning of the school term."

- [6] All of the Claimants contested the December 2010 General Election and they were all unsuccessful. Prior to nomination day all of the Claimants resigned their post as teachers. The Claimants alleged they were forced to resign. Having been unsuccessful at the polls, they applied to the Public Service Commission to reenter the Public Service and their application was unsuccessful. Subsequently, they instituted these proceedings.
- [7] The grounds on which the Defendants seek to have the Fixed Date Claim struck out are as follows:
 - "(1) The Claimants failed to obtain leave as required by S 56 of the CPR before bringing the claim.

- (2) The Claimants' cause of action is against public policy and void as it seeks to enforce an agreement which contravenes S 26(1)(d) of the Constitution of Saint Vincent and the Grenadines Cap. 10 of the Laws of Saint Vincent and the Grenadines.
- (3) Article 16 of the Collective Bargaining Agreement seeks to usurp the functions of parliament and the entrenched provisions set out in S 38 of the Constitution.
- (4) The Claimants having duly resigned from their positions held in the public service cannot compel the defendants to reinstate them to their original teaching posts or post of equivalent status.
- (5) The Claimants having been duly referred to the restrictive provisions of S 26(1)(d) of the Constitution which does not permit a public officer to be qualified to be elected or appointed as a representative or Senator and the Claimants then subsequently deciding to resign from the Public Service cannot complain that they had a legitimate expectation that the Defendant would honor the terms of the agreement.
- (6) The Claimants were not parties to the Agreement and cannot maintain an action in their own name.
- (7) Articles 1 – 6 and 31 of the Agreement provides for the resolving of disputes regarding the interpretation of alleged violation of any clause in the agreement or for any arbitration award.

[8] The Claimants opposed the application.

SUBMISSIONS

- [9] At the hearing Mr. Richard Williams did not pursue the first ground of opposition that the Claimants had not obtained leave pursuant to Part 56 of CPR 2000, in my opinion, rightly so, since the Claimants did not require leave of the court. Mr. Williams also informed the court that he would not pursue grounds 6 and 7 of the application.
- [10] Mr. Richard Williams submitted that the Fourth Named Claimant Oswald Robinson has no locus standi. The proper party is the Teachers' Union. Mr. Richard Williams relied on the Trade Union Act of Saint Vincent and the Grenadines (St. Vincent), Halsbury's Laws of England 3rd Ed. Vol. 47 at 1007, and the case of **Caesar v The British Guiano Mine Workers' Union** (1959) 1 WIR 232.
- [11] Mr. Williams next submitted that the Agreement contravenes section 26 (1) (d) of the Constitution and is unenforceable since only Parliament by a two-thirds majority can permit public officers to contest elections the Government cannot confer this right via a contract. Mr. Williams next submitted that estoppel by representation or otherwise does not arise as estoppel is a concept in private law and is not applicable in public law – see **R v East Sussex County Council; ex p Reprotech (Pebsham) Ltd; Reprotech (Pebsham) Ltd. v East Sussex County Council** [2002] 4 AER 58
- [12] Mr. Williams next submitted that enforcement of Article 16 would amount to a usurpation of the constitutional functions of the Public Service Commission as set out in section 78 of the Constitution.
- [13] Mr. Ferguson in response submitted that the issue whether section 16 of the Agreement offends section 26 (1) (d) of the Constitution is a matter to be determined at trial. In so doing the court would have to consider section 11 of the Constitution which guarantees the fundamental right of freedom of association and the Constitution as a whole. Article 16 does not offend Section 26 (1)(d), rather it preserves the benefits of a public officer who wishes to contest an election. Leave of office serves to temporarily suspend an officer

from the duties of the office. The Public Services Commission was acting ultra vires its powers when it sought to determine qualification for election as a representative pursuant to section 26(1)(d) of the Constitution as a basis for refusal of leave without pay.

[14] Mr. Ferguson further submitted that the application is premature and misconceived. The principles of private law raised by the Applicants are not applicable in a constitutional matter.

[15] Mr. Ferguson also submitted that the Union could be added as a party to the proceedings.

FINDINGS

[16] Under the provisions of CPR 26.3 (1) the court may strike out a statement of case or part of a statement of case where:-

- “(a) there has been a failure to comply with a rule, practice direction, order or direction given by the court in the proceedings;
- (b) the statement of case or the part to be struck out does not disclose any reasonable ground for bringing or defending a claim;
- (c) the statement of case or the part to be struck out is an abuse of process of the court or is likely to disrupt the just disposal of the proceedings; or
- (d) the statement of case or the part to be struck out is prolix or does not comply with the requirements of Part 8 or 10.”

[17] While the application does not specifically state the Rule under which the application is being made, Mr. Williams during the hearing of the Application indicated the application was made pursuant to Part 26.3(1)(b). Also an examination of the application shows that it is being made under Part 26.3(1)(b).

[18] It is generally accepted that striking out is a draconian step and one which the court will use sparingly. At this stage the court is not required to consider the prospect of success of the case. In **Robert Convich v Ann Von Der Elst** AXAHCV 2001/002 Rawlins J (as he then was) in considering an application to strike out stated:

"It is only where a statement of case does not amount to a viable claim or defence, or is beyond cure that the court may strike out,"

[19] In *Citco Global Custody v Y2K Finance* BVIHC VAP 2008/022 Edwards JA in considering the principles to be applied on an application to strike out a statement of case pursuant to CPR 26(3)(1) stated:

"14. Among the governing principles stated in *Blackstone's Civil Practice 2009* the following circumstances are identified as providing reasons for not striking out a statement of case: where the argument involves a substantial point of law which does not admit a plain and obvious answer; or the law is in a state of development; or where the strength of the case may not be clear because it has not been fully investigated. It is also well settled that the jurisdiction to strike out is to be used sparingly since the exercise of the jurisdiction deprives a party of its right to a fair trial and its ability to strengthen its cases through the process of disclosure and other court procedure such as requests for information; and the examination and cross-examination of witnesses often change the complexion of a case. Also, before using CPR 26(3)(1) to dispose of "side issues", care should be taken to ensure that a party is not deprived of the right to trial on issues essential to its case. Finally, in deciding whether to strike out, the judge should consider the effect of the order on any parallel proceedings and the power of the court in every application must be exercised in accordance with the overriding objective of dealing with cases justly."

[20] The gravamen of the claim is the interpretation to be placed on Article 16 of the Collective Agreement. This application to strike was made prior to the first hearing of the claim. At first hearing the court is given wide powers pursuant to Part 56.11 to include:

- "(1) At the first hearing, the judge must give any directions that may be required to ensure the expeditious and just trial of the claim and the provisions of Part 25 to 27 of these Rules apply.
- (2) In particular the judge may –
 - (a) allow any person or body appearing to have sufficient interest in the subject matter of the claim to be heard whether or not served with the claim form;
 - (b) direct whether any person or body having such interest –
 - (i) is to make submissions by way of written brief, or
 - (ii) may make oral submissions at the hearing;
 - (c) allow the claimant to –

- (i) add or substitute a claim for reliefs other than an administrative order;
- (ii) amend any claim for an administrative order; or
- (iii) substitute another form of application for that originally made; ..."

[21] Having regard to the wide powers given to the court under Part 56.11 at first hearing which has not yet taken place, it would be premature to strike out the statement of case at this stage. I agree with the submission of Mr. Ferguson that the Union could be substituted for the Fourth Claimant. In my opinion it cannot be said that the statement of case does not disclose any reasonable ground for bringing the claim. The claim raises the issue of the interpretation of an Article in an agreement between the Union and the Government. In passing, I note that Article 16 does not only refer to general elections but it also refers to local elections. At this stage the court is not required to determine whether there is a real prospect of success of the claim.

[22] In conclusion, I find that there is no basis for the court to strike out the claim.

[23] It is ordered that:

- (a) The application to strike out the claim is hereby dismissed.
- (b) The Applicants shall pay the Claimants' costs in the sum of \$2,500.00.


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Gertel Thom
HIGH COURT JUDGE