

IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
GRENADA

HIGH COURT OF JUSTICE

CLAIM NO. GDAHCV 2014/0172

BETWEEN:

RAY SYLVESTER

Claimant

and

KEITH MITCHELL,
MINISTER OF FINANCE

Defendant

Appearances:

Ms. Celia Edwards, Q.C for the Claimant

Mr. Adebayo Olowu for the Defendant

2014: July 23

REASONS IN ORAL RULING

[1] **MOHAMMED, J.:** By application without notice filed on 10th April 2014 (“the application”), Ray Sylvester (“the Applicant”) applied for permission to issue an order of mandamus directing the Respondent, in his capacity as Minister of Finance, to satisfy a judgment of Master Cenac-Phulgence date 6th March 2014 in Civil Suit GDAHCV 2012/0009 (“the judgment”). Under the judgment the Applicant was awarded damages in the sum of \$52,691.78, interest and costs.

[2] In support of the application the Applicant has stated that: the Crown Proceedings Act anticipates that the judgment should have been satisfied forthwith by a directive from the Respondent; under the Financial Rules the Respondent has a

duty to direct the Permanent Secretary in the Ministry of Finance to satisfy the judgment, and it has remained unsatisfied; finally, he has no alternative relief, and that he has suffered financial embarrassment and prejudice.

- [3] The Respondent has opposed the application for the following reasons: it is not because a duty arises on the Respondent it is his duty to discharge it, and that if it is a public duty that mandamus may issue to command him to perform it, but there must be evidence that there was a demand for the performance of the duty and a refusal to perform it, and that there is an alternative relief which is not less convenient, beneficial and effective.
- [4] A Court will refuse leave to a claim for judicial review unless it is 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 an alternative relief (**Sharma v Browne-Antoine**¹). This test was later explained by Kangaloo JA in the Trinidadian Court of Appeal decision of **Ish Galbaransingh and Steve Ferguson v the AG**², not to be misinterpreted in any dogmatic manner but that it must be applied contextually against the nature of the decision maker, the decision and the circumstances of the case. Indeed in **Sharma** Lord Bingham and Lord Walker explained that the test of "arguability" is not to 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."*

Is there an alternative remedy?

- [5] CPR does not allow enforcement of money judgments against the State/Crown (Section 71 of the Civil Procedure Act Cap 55 and section 21 (4) of the Crown Proceedings Act Cap 74). Although Counsel for the Respondent submitted that there is an alternative relief, he failed to indicate to the Court the said alternative

¹ [2006] UKPC 57

² Unreported decision CA Civil 207 of 2010

relief. In light of any information of an alternative relief the Court agrees with Counsel for the Applicant that there is none.

Is a formal demand for the Respondent to perform his duty a necessary prerequisite?

- [6] The Applicant relies on **Jennifer Gairy v The Attorney General of Grenada**³ to submit that no formal demand is necessary where there is a mandatory duty for the Minister of Finance to perform his duty to pay a debt owed by the State to a party. The Respondent relies on **Re Maharaj**⁴ in submitting that although a public duty arose, a formal demand is necessary.
- [7] Section 21 of the **Crown Proceedings Act CAP 74** sets out the procedure for the satisfaction of an order against the Crown. Section 21(1) states that the proper officer of the Court issues a certificate to the person who has obtained the benefit of the judgment setting out particulars of the order. Subsection (2) provides for service of the certificate by the said person on the Attorney General and subsection (3) deals with the payment of money. It states that the Permanent Secretary (Finance) shall pay the sum in the certificate to the person. Section 71 of the **Civil Procedure Act CAP 55** states that the Court shall transmit a copy of any order made against the Government to the Minister of Finance who, if the order is for the payment of money, shall direct the amount awarded in the judgment to be paid by the Permanent Secretary (Finance). The Minister of Finance's responsibilities under the said sections are consistent with his responsibilities under section 4 of the Public Finance Management Act.
- [8] In **Jennifer Gairy** the Privy Council was not dealing with an application for leave to make a claim for judicial review but rather granting a remedy for a party who

³ PC Appeal 29 of 2000

⁴ (1996) 10 WIR 149

had already established a right for Constitutional redress. The Court was of the view that in those circumstances it had the power to determine the most appropriate remedy, which included an order for mandamus. In my view, the application before the Privy Council, the facts and circumstances can be distinguished from the instant application.

[9] In **Re Maharaj** the Court of Appeal of Trinidad and Tobago was dealing with refusing an ex parte application for leave to commence proceedings for an order of Mandamus against the Governor-General of Trinidad and Tobago. The words of Wooding CJ at page 151 H-I are relevant and instructive to the instant application before this Court. He said, "The reality of the matter is that there is a distinction which must always be kept in mind between the creation of a duty and a demand for its performance. The duty may be created perhaps by a statute or, as here, in consequence of a step taken as a Constitution prescribes But, however the duty may be created, the obligation thereupon arises for the officer to perform it. If he should fail to perform it, it is thereafter competent for anybody interested in its performance to make demand that he do his duty. And it is only when there is such a distinct demand and it is followed by a refusal that the prerogative writ of mandamus can issue."

[10] In my opinion, Wooding CJ drew a distinction between the creation of a public duty and the obligation to perform it. In this regard, the aforesaid sections in the Civil Procedure Act, Crown Proceedings Act and Public Finance Management Act may have created the statutory duty on the Respondent but the obligation to perform it arises upon the Applicant making a demand to the Minister. There is no evidence that a formal demand was made to the Respondent to pay the sum due to the Applicant. The Registrar's Certificate dated 10th March 2014 (Exhibit B) to the Applicant's affidavit in support at best complies with section 71 of the Civil Procedure Act which speaks to transmission of the order of the Court to the Minister of Finance. There is no evidence in the Certificate or otherwise in the affidavit in support of the application of a demand by the Applicant to the Minister

to pay the money set out in the Registrar's Certificate. In the absence of evidence of this formal demand, it would be premature for the Court to take the next step and assume that there has been a refusal by the Respondent to perform his duty to satisfy the judgment.

[11] For the reasons set out aforesaid, I dismiss the application on the basis that the affidavit in support of the application has failed to disclose an arguable case, and order the Applicant to pay the Respondent's costs.

[12] The Applicant is to pay the Respondent's costs of the application assessed in the sum of \$500.00.

Margaret Y Mohammed
High Court Judge