**OVERSEAS TERRITORY OF MONTSERRAT**
**THE EASTERN CARIBBEAN SUPREME COURT**
**IN THE HIGH COURT OF JUSTICE**
**(CIVIL)**

**No: MNIHCV2015/0023**

**BETWEEN:**

**VERONICA DORSETTE- HECTOR**

**AND**

**THE GOVERNOR OF MONTSERRAT**

**THE ATTORNEY GENERAL**

**Before:**

**The Hon. Justice James Bristol**

**Appearances:**

**Dr. David Dorsett for the Applicant**

**Mrs. Sheree Jemmotte-Rodney for the Defendants**

**TRANSCRIPT OF ORAL JUDGEMENT**

By a fixed date claim form for Judicial Review pursuant to the leave of the Court granted on the 15th September 2015 for leave to apply for Judicial Review. The Applicant seeks the following remedies:

1) A declaration that the decision of the 1st Respondent to revoke the appointment of the Applicant as Chief Magistrate was in breach of the rules of natural justice and
2) A declaration that the decision of the 1st Respondent to revoke the appointment of the Applicant as Chief Magistrate was in contravention

of the Applicant's right to the protection of the law as guaranteed by section 2 of the Montserrat Constitution Order 2010.

3) Damages
4) Costs
5) Interest
6) Any other relief that the Court deems fit by virtue of section 20 of the Montserrat Constitution Order 2010 and/or section 20 of the Supreme Court Act.

The facts show that the Applicant was employed or appointed to the position of Magistrate in Montserrat on a contract which was for a fixed term ending on the 31st August 2014. That by an email of the 3rd September 2014 from the Governor to the Applicant the Governor indicated that he is prepared to offer the Applicant a 2 month extension to her contract. That was at that stage and if at the end the government is not prepared to substantially extend the contract, in other words it's not going to be extended after the 2 month period, the Applicant will be given 3 months' notice of intention not to renew and I think that is clearly as a matter of courtesy.

On the 2nd October 2014 the Governor emailed the Applicant indicating and attaching correspondence from the private Bar and DPPs Chambers. These correspondences indicate some issues with the Applicant's suitability to continue in that post. Inviting the Applicant to comment on those bits of correspondence within 14 days so that he, the Governor, may determine whether or not to renew the contract. However, what he said in the meantime he'll grant an extension of 2 months, that is, to the 1st November.

The Governor did not receive a response and by way of a formal letter of 4th November 2014 the Human Resources Management Unit wrote to the Applicant indicating that the Applicant did not respond to the aforementioned email and having considered the representations from the Bar and the DPP and having consulted the Chief Justice on what are apparently matters of a serious nature he decided not to renew the contract and therefore that contract comes to an end effective 1st November 2014, the 2 month extension previously granted expiring then.

Subsequent to that, in 2015 the Governor under his seal on the 20th January 2015 sent a notice revoking the appointment of the Applicant as Chief Magistrate pursuant to his powers under section 85 (2) of the Constitution. Those powers are similar to those in other Constitutions in the Caribbean whereby Public Service Commissions and Judicial and Legal Services Commissions are empowered to appoint, terminate and grant leave to the person subject to those particular sections.

The Applicant's complaint is that, according to the fixed date claim by which the Applicant is bound, the said revocation was in the breach of the rules of natural justice. First of all, because the Applicant was not given an opportunity to be heard pursuant to the email correspondence of the 2nd October 2014 which contained the correspondence from the Bar and the DPP as it was not received by the Applicant and, given the nature of these proceedings, the nature of the allegations concerning the tenure of office of the Chief Magistrate, the Defendants should have ensured that the most certain way of conveying the allegations ought to have been engaged and Counsel for the Applicant points to the letter of November 4th 2014 from the

Human Resources Management Unit. The termination letter being sent to a postal address as evidence that the Defendants were aware that a postal address ought to be used.

The second relief is that a declaration that the revocation as mentioned above was also in contravention with the rights of the protection of law guaranteed by section 2 of the Constitution. I would say for myself at this stage those rights are also procedural as indicated by the case referred to in the submissions of Counsel for the Defendants **Grape Bay, Newbold** and **Maya Leaders Alliance** and that is correct. The protection of the law is to ensure procedural fairness when any rights are being determined.

I am of the view that the revocation issued by the Governor on the 20th January 2015, which is backdated effective **1st** November 2014, is ofno moment and has no legal effect because the Applicant ' s contract came to an end by effluxion of time effective November 1st 2014. There was a 2 month extension which had expired on the 31st October so therefore effective 1st November she no longer held the position of Chief Magistrate and in support of that I refer to the Privy Council decision emanating out of St. Lucia of **Horace Fraser v the Judicial and Legal Services and the Attorney General** at paragraphs 15, 16, 17 where the Court held that "to remove from office, embraces every means by which a contract of employment not being a contract for a specific period is terminated against a persons own free will." "The expiry in ordinary course of a fixed term contract cannot be described as a "re1noval " ."

It therefore follows that declaration 1 cannot be granted because there was no revocation, in fact, of the appointment because it had previously come to an end.

Secondly, the second declaration for the same reasons. Although the protection of the law guaranteed by section 2 of the Montserrat Constitution must be applied like any form of procedural fairness that is required as set out in **Lloyd v McMahon** at paragraph 20 of the Defendant's submissions, "what the requ ireme nts of fairness demand when anybody, domestic, administrative or judici al, has to make a decision which will affect the rights of individuals depends on the character of the decision-making body, the kind of decision it has to make and the statutory or other framework in which it operates," the rights of an individual must be affected by the decision and the decision to revoke did not affect the rights of the Applicant's tenure or as a Chief Magistrate because that had come to an end on 31st October 2014.

Even if the Applicant were entitled to a fair hearing I am of the view the opportunity for such a fair hearing was granted but the Applicant did not respond. It was granted by the email of the 2nd October 2014 to which was attached the reports or the complaints from the DPP's office and the Bar.

The Applicant' s contention is that given her position, type of job, that the email correspondence was insufficient. However, I disagree with that. The Defendant' s affidavit shows at paragraph 5 that the Applicant utilized the email addr ess vkaye l@hotmail.com and I will call this hereafter the Hotmail address. At paragraph 15 after having had sick leave granted to her as set out in paragraph 14 for travel abroad for specialist, the sick leave certificate

receiv ed, signed off on the th September, contained no address or contact detai ls. At paragraph 17 the Governor says he sent an email and that is understandable given there is no other address and the copies of those emails are attached. Indeed the claim as I said before indicated that that Hotmail address was the address which she could be contacted; that is the address to which the Governor sent the correspondence.

At paragraph 23 an envelope came from Cliffside Medical Center addressed to the Human Resource Unit and at the back was an actual physical address for the first time of the Applicant hence one could conclude that the letter 4th November from the Human Resource Unit was therefore sent to that address rather than the email address and not only that, given the nature of that letter which is a letter indicating that the Applicant' s employment is at an end it should take a formal version which it did.

The iss ue of notice by email was discussed in the case **ofR(on application of Shi) v King's College** which is to be found at paragraphs 22 and 23 of the Defendant's submissions. It was said in that case, this is a disciplinary matter, that the notice was fulfilled by sending a notice and relevant documents to her 2 email accounts, in that case the Claimant's accounts. "In modem times students with email accounts can reasonably be assumed by educational institutions to have access to those accounts on a regular basis so that communication via those email accounts would be adequate notice of discip linary or other proceedings" and I must say in this case that the email address was supplied by the Applicant herself. It is noted that the Applicant did not complain that the email address was inadequate.

In her affidavit she says and I must refer to that at paragraphs 5 and 6 that email address was simply inaccessible to her at the time and she gave no reasons why it was inaccessible to her. Maybe her computer was down, maybe the smartphone wasn't working the Court doesn't know. She hasn't shed any light and has not wish to inform the Court for the reasons for the lack of access but more importantly what she doesn't allege is that this email address wasn't a suitable address for correspondence to her. I continue with the case of **Shi.** The Claimant only in that case obtained emails when she went to internet cafes and this is what the Court said. So saying look I can't receive my emails at all times and this is what the Applicant is saying I didn't have access but when and how; but in any event it does not really help the Applicant because in **Shi** the Court said that too is not something that could have been readily foreseen by the College authorities. Both in relation to this Claimant and generally the College could have reasonably anticipated that she would gain access to her email accounts regularly at least weekly. Having supplied the Hotmail address, having therefore accepted that having received previous correspondence on the Hotmail address it is fair to conclude that the Claimant would have been able to receive the correspondence via that address.

In conclusion the Court said in **Shi,** "accordingly the answer to Mr. Scrivener's submission that the Committee should not have proceeded in her absence is that she was given ample opportunity to attend, but for reasons which the college could not reasonably foresee was unable to avail herself of that opportunity. That is the extent of its obligation. It is not an obligation to ensure, come what may, that she does attend. That is both beyond the power of the college and beyond its obligation. Its duty is to give notice of hearings,

to afford the opportunity of attending and to consider any representations that may be made at the hearing fairly and properly but not to decline to proceed in the absence of an individual student."

So likewise here there is an obligation to ensure that the Applicant had notice, which they did; 14 day period expired and the decision was therefore taken not to renew in the absence of an explanation. In my opinion the Defendants were entitled to rely on the Hotmail address and their action by the way of sending the email 2nd October 2014 was in keeping with their duty and obligations to afford the Applicant notice of the allegations being made about her and so enabling her to respond. It cannot be foreseen at that stage by the Governor that illness or the ailment if they knew about it would prevent her from even reading the email messages.

Having said that, even if the Defendant failed to give the Applicant a hearing or notice of the allegations so she can respond, the actions following cannot be successfully challenged by way of Judicial Review. They are completely lawful. As I said before that is not the Claimant's case. The Claimant's case before the Court is as to the revocation. In the circumstances the declarations sought are refused.

The other reliefs sought are refused and it is not usual to order costs on Judicial Reviews matters. Following that there will be no order as to costs.

**Justice James Bristol**

**High Court** Judge (Ag)