

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES**

IN THE HIGH COURT OF JUSTICE

SVGHCV2018/0086

**IN THE MATTER OF AN APPLICATION FOR INTERIM INJUNCTION PURSUANT TO PART 17.1 (A) (B)
OF THE CIVIL PROCEDURE RULES 2000**

AND

**IN THE MATTER OF A MATTER FOR JUDICIAL REVIEW OF A DECISION BY THE PERMANENT
SECRETARY OF MINISTRY OF SECURITY TO TRANSFER JAMALI WHYTE FROM THE INLAND
REVENUE DEPARTMENT IN THE MINISTRY OF FINANCE TO THE MARITIME ADMINISTRATIVE
OFFICE IN THE MINISTRY OF SECURITY**

BETWEEN:

THE PUBLIC SERVICE UNION

CLAIMANT

AND

PERMANENT SECRETARY OF MINISTRY OF NATIONAL SECURITY

FIRST DEFENDANT

THE CHIEF PERSONNEL OFFICER

SECOND DEFENDANT

PUBLIC SERVICE COMMISSION

THIRD DEFENDANT

Appearances:

Mr. Jomo Thomas with him Ms. Shirlan Barnwell for the claimant.

Mr. Duane Daniel with him Mr. Kezron Walters for the respondents.

2019: Jan. 23
Jul. 18
Jul. 31

DECISION

BACKGROUND

- [1] **Henry, J.:** The Public Service Union ('PSU') is a trade union organized in the State of Saint Vincent and the Grenadines to represent public officers who are employed by the Government of Saint Vincent and the Grenadines. Mr. Jamali Whyte is employed by the Government of Saint Vincent and the Grenadines, as a junior clerk in the Inland Revenue Department ('IRD'). The PSU has applied¹ for judicial review of a decision transferring Mr. Whyte to the Maritime Department. The Permanent Secretary in the Ministry of National Security ('P.S'), Chief Personnel Officer ('CPO') and the Public Service Commission ('PSC') are named as defendants. They will be referred to collectively as 'the defendants'.
- [2] By Notice of application filed on 12th December 2018, the defendants have applied for portions of the Fixed Date Claim Form to be struck out on the grounds that they respectively disclose no grounds for bringing the claim and are an abuse of the court's process. They also seek orders striking out parts of Jamali Whyte's supporting affidavit on the grounds that they respectively fail to comply with a court order; constitute an abuse of the court's process; are prolix; and contain hearsay. The CPO and the PSU applied for orders that the claims against them be struck out on the ground that the statement of case discloses no reasonable ground on which to bring a claim against them.
- [3] The PSU resisted the application. It submitted that the judicial review claim can be pursued against the P.S. simultaneously with claims for declaratory relief against the CPO and the PSC. It argued that the rules of court permit this approach.

ISSUES

- [4] The issues are whether:
1. The impugned portions of the Fixed Date Claim Form should be struck out;
 2. The impugned portions of Jamali Whyte's affidavit should be struck out; and
 3. The claim against the CPO or against the PSC should be struck out.

¹ By Fixed Date Claim Form filed on July 12th 2018.

LAW AND ANALYSIS

Issue 1 – Should the impugned portions of the Fixed Date Claim Form be struck out?

- [5] The defendants' application to strike out portions of the Fixed Date Claim Form is made pursuant to CPR 26.3(1) (b) which empowers the court to strike out a statement of case or part of it, if it discloses no reasonable ground for bringing the claim. The Court of Appeal of the Eastern Caribbean Supreme Court and the Privy Council have rehearsed the legal principles which guide the court when it considers an application to strike out a statement of case. The Court is required to examine the parties' pleaded cases. The facts relied on are assumed to be true.
- [6] The judgments in **Didier et al v Royal Caribbean Cruises Ltd.**², **Attorney General of St. Lucia v Allen Chastenet et al**³ and **Real Time Systems v Renraw Ltd.**⁴ outline those legal principles. A striking out order is considered to be nuclear in its effect. It is therefore to be used sparingly and deployed only if the court is satisfied that 'the statement of case is just plain bad in law'⁵ or cannot be sustained on the allegations⁶. If a statement of case raises an issue which the judge must decide, the court generally errs on the side of allowing the case to proceed to trial, even if it is a weak case.

Paragraphs (2) IV and (3) I of the Fixed Date Claim Form

- [7] The defendants contended that part of paragraph (2) IV and paragraph (3) 1 of the Fixed Date Claim Form should be struck out. It is prudent to set out both paragraphs for context. The impugned words are highlighted in bold for ease of reference. They state respectively:

'The Claimant ... claims against the following Defendants ...:

(2) IV A declaration that the said decision of the First Defendant in letter dated 25th April, 2018 is unreasonable in the circumstances **and or alternatively the decision of the First Defendant failed to consider relevant considerations;**

² SLUHCVAP2014/0024 (unreported).

³ SLUHCVAP2015/007 (unreported).

⁴ [2014] UKPC 6.

⁵ Didier case at para. 24 per Pereira CJ.

⁶ Michael Wilson and Partners Limited v Temujin International Limited et al BVIHCV2006/0037.

(3) I A declaration that the **second and** third defendants acted unlawfully, unjustly and or unfairly by denying Mr. Jamali Whyte to be heard.’

[8] Regarding paragraph (2) IV, the defendants submitted that the PSU has supplied no evidence that there are legal considerations that the P.S. did not take into consideration. The defendants argued that the supporting affidavits of Jamali Whyte and Phillip Bailey did not identify any lawful enactment or document (governing the employment relationship) that the P.S. allegedly failed to take into account which he should have, before re-assigning Mr. Whyte. They contended that even if the PSU filed further evidence, this contention cannot be supported.

[9] The defendants submitted further that the allegation presupposes that there are relevant legal considerations which the P.S. should have considered before making the decision to re-assign Mr. Whyte. They argued that there is nothing in the Civil Service Orders 2.16 or 2.17 which placed a duty on the P.S. to consider any factor or set of factors before assigning an officer within his purview. They contended that his discretion is unfettered. They concluded that the impugned part of paragraph (2) IV contains no reasonable ground for bringing the claim and should be excised.

[10] The PSU has not refuted the PSC’s submission that it failed to identify the legal considerations which the P.S. allegedly failed to consider. It rejoined that it relies on the court to apply the overriding objective to deal with cases justly in relation to the application. It submitted that the cases of **Olga Nichols et al v Epicurean Holding et al**⁷, **Real Time Systems case** and the **Baldwin Spencer case** demonstrate that the court should strike out claims only in exceptional cases.

[11] Mr. Whyte outlined a number of matters which he hinted should have been part of the P.S.’s consideration. He deposed among other things that he has no place of abode on the mainland. The PSU contended that Mr. Whyte was not provided with reasons for the impugned decision. It appears that one of its arguments is that the alleged absence of reasons demonstrates that none exist and by extension that relevant matters were not taken into account.

⁷ BVIHVC2015/0133.

[12] The PSU argued that the law on relevant and irrelevant considerations is not exhaustive. It submitted that the court will determine whether any particular consideration is relevant or not to the exercise of discretion 'by reference to the implied objects of the statute. In this regard it relied in support on **Halsbury's Laws of England**⁸. At paragraph 623, the learned authors make it clear that the issue of relevancy or irrelevancy is a legal consideration for the court. This is a correct statement of the law. Accordingly, the defendants' objection on this basis is premature and involves matters to be considered after legal arguments have been made at the end of the trial. It would be imprudent to investigate them at this stage. I refrain from doing so.

[13] The defendants' contention that the P.S.'s discretion to re-assign a public officer is unfettered is not one which the court is at liberty to adjudicate at this stage of the proceedings in the absence of a finding on the contradictory evidence and substantive legal submissions. This is still moot and one of the issues in contention between the parties. I make no finding of that issue at this stage. It would be premature for me to do so.

[14] The CPR⁹ provides that pleadings and affidavits contain assertions of fact. It is trite law that legal arguments and contentions are to be excluded from such documents.¹⁰ It seems to me that the issue of what are relevant considerations can be settled only after all of the evidence is adduced. It may be that Mr. Whyte's case is weak on this point. However, I am satisfied that he has highlighted some matters in his affidavit which he might rely on to prove that they were relevant and not considered. For the foregoing reasons, I make no order striking out paragraph (2) IV of the Fixed Date Claim Form.

[15] The defendants argued that paragraph (3) I alleged that the CPO, the 'second defendant' acted unlawfully, unjustly and or unfairly by denying Jamali Whyte an opportunity to be heard. They submitted that the PSU was granted leave to apply for judicial review against the PS but not against the CPO. They submitted that the PSU may not bring a claim for relief against the CPO.

⁸ 5th Ed. Vol. 61 (2010) para. 622.

⁹ Part 8 and 30 respectively.

¹⁰ East Caribbean Flour Mills Limited v Ormiston Ken Boyea et al SVGHC VAP2006/0012.

[16] The defendants relied on the decisions in the cases of **Robert Leotard of Reel Irie Ltd. v Saint Lucia Air and Sea Ports Authority**¹¹ and **Otto Sam v Chief Personnel Officer, the Director of the National Emergency Management Organization, and the Attorney General**¹². They submitted that the learned Judge in the latter case struck out the claim against two defendants because no leave had been granted to bring judicial review proceedings against them.

[17] In rendering her judgment Justice Thom stated:

‘Where ... the statement of case or a part of the statement of case is not in keeping with the leave granted, the statement of claim of the part of the statement of claim ought to be struck out.’

[18] The defendants reasoned that the words ‘second and’ must therefore be struck from paragraph (3) I of the Fixed Date Claim Form. They echoed statements by the learned judge in the **Otto Sam v Public Service Board of Appeal** case where she stated:

‘Where for example the statement of case or a part of the statement of case is not in keeping with the leave granted, the statement of claim of the part of the statement of claim ought to be struck out.’¹³

[19] The defendants argued that the evidence does not support the PSU’s contentions. They submitted that the PSU seeks a declaration that the CPO and PSC acted ‘unlawfully, unjustly and or unfairly by denying Jamali Whyte an opportunity to be heard and a declaration that the CPO acted unlawfully and procedurally improper by failing to state the public interest basis for forcing the ‘claimant’ on compulsory leave under CSO 6.7. It should be noted that the claimant is the PSU. Conceivably this reference might be to Mr. Whyte?

[20] They contended that the affidavits of Jamali Whyte and Phillip Bailey provide the evidence in support of the claim. They submitted that Phillip Bailey’s affidavit does not mention the CPO and PSC. They observed that although Mr. Whyte claimed in his affidavit that the CPO and PSC were

¹¹ SLUHCV2011/0732.

¹² SVGHCV2010/0399.

duty bound to give him audience and failed to do so, that there is no factual or legal basis to support such contentions. They pointed to the CPO's affidavit in which she indicated that she met with Mr. Whyte on April 25th 2018 and explained his re-assignment.

[21] They also highlighted the affidavit of the PSC's Chairman in which he asserted that the PSC was not given the opportunity to hear Mr. Whyte because the claim was filed before the matter arose in its regular meetings. The defendants acknowledged that Mr. Whyte's affidavit¹³ addresses the circumstances under which he was sent on compulsory leave. He averred that the CPO did not specify a basis for that directive and he was not interdicted. The parties' respective accounts present conflicting positions from which the court is not at liberty to make a finding. It would be imprudent for the court to prefer one over the other. The resolution of factual inconsistencies must be reserved for trial. The defendants submitted that the CPO is not required to give a public officer a hearing in those circumstances. The PSU is of the opposite opinion. I cannot resolve such legal contentions at this stage.

[22] The Court takes judicial notice of the PSC's role and functions within the context of the operation of the public service as set out in the Constitution of Saint Vincent and the Grenadines and the Public Service Regulations. It recognizes that the PSU may apply those provisions to the referenced assertions in pursuing its claim for relief against the PSC. While it is arguable that such an attack might be weak, that is no reason to strike out the claim against the CPO or the PSC.

[23] The PSU argued that the CPO's decision to send Mr. Whyte on compulsory leave is connected to the PSC's decision to transfer 'the claimant' hastily and indefinitely to an unnamed post. It submitted that leave is not required to seek a declaration. It argued that CPR 56.7 provides for a claimant to seek declaratory relief without bringing an application for judicial review. This is indeed the case.

[24] The relevant part of court's decision granting leave to the PSU to apply for judicial review stated:
'4. The PSU is granted leave to apply for **judicial review of the first respondent's decision** to transfer or re-assign Jamali Whyte from his post as junior clerk of the Inland

¹³ Filed on 19th October 2018.

Revenue Department in Union Island to the Maritime Administrative Office in the Ministry of Security, Kingstown.’ (bold added)

The first respondent named in the application for leave was the CPO. Leave was not granted to the PSU to seek judicial review in respect of any other person.

[25] A claimant who applies for judicial review must bring its claim against the person or authority in respect of which the leave is granted.¹⁴ No such leave is required to initiate a claim for other administrative orders such as declaratory relief pursuant to CPR 56.7 (1) (a).¹⁵ The PSU argued that it does not require leave from the court because it is seeking declarations and not ‘pejorative’ (sic) remedies. It cited the judgment in **Honourable Attorney General and another v Isaac**¹⁵.

[26] In that case, the Privy Council ruled that the CPR 2000 recognizes four distinct categories of applications for administrative order and that leave is required only if the application is for judicial review.¹⁶ Lady Black agreed with the Court of Appeal that an ‘in-depth analysis of the nature of the claim will not normally be necessary’ to determine whether the claim is one for judicial review because ‘generally the nature of the remedies actually sought will identify whether the application is for judicial review.’

[27] The Board also agreed with the Court of Appeal that the CPR permits a party to seek declaratory relief in respect of an alleged illegal action by a public body, without necessarily applying for judicial review of the action.

[28] Writing the judgment for the Court of Appeal Blenman JA opined:

[72] The term judicial review is not a term of art. As a general rule it is used to refer to a multiplicity of procedures in which the court is engaged. For example, it is used to refer to the court’s review procedure when it is adjudging the challenge to the constitutionality of legislation in which the applicant seeks an administrative order. Equally, the term

¹⁴ CPR 56.3 (1).

¹⁵ See also *The Honourable Attorney General and another v Isaac* [2018] UKPC 11.

¹⁶ At para. 33 of the *Honourable Attorney General et al v Isaac* case.

judicial review is used to refer to the court's supervisory jurisdiction of administrative bodies or tribunals. ... For a bit of historical context, a claimant was always permitted at common law to file a statement of claim and seek declaration.¹⁷

- [29] In the case at bar, the PSU seeks two declaratory orders against the CPO and PSC; that:
1. they acted unlawfully, unjustly and or unfairly by denying Mr. Jamali Whyte to be heard; and
 2. the CPO acted unlawfully and procedurally improper by failing or refusing to state the public interest basis for forcing 'the claimant' on compulsory leave under CSO 6.7.
- [30] CPR 56.7 provides that a claimant seeking an administrative order must file a Fixed Date Claim Form and indicate among other things whether it is a claim for declaration; judicial review; relief under the relevant Constitution or other administrative order. The PSU has sought judicial review of the PS's decision in paragraph (2) of the Fixed Date Claim Form. This is also reflected in the heading of the claim. In paragraph (3) the Claim Form lists the 2 declaratory orders which it claims against the CPO and PSC. This approach complies with CPR 56.7.
- [31] CPR 56.8 permits a claimant to include in his claim for an administrative order a claim for any other relief that arises from or is connected or related to the subject matter. The PSU submitted that its claims for declaratory relief against the CPO and the PSC at paragraph (3) I of the Fixed Date Claim Form are anchored in allegations outlined in Mr. Whyte's supporting affidavit. He alleged that the P.S. and the CPO respectively sent him on vacation and compulsory leave in proceedings related to the subject matter of the judicial review application.
- [32] The PSU submitted that they are closely connected to the subject matter of its claim for judicial review of the P.S.'s impugned decision and are conveniently dealt with in the present proceedings. There is no legal impediment preventing it from joining those claims. They are all public law matters.
- [33] The PSU is not seeking any prerogative orders against the CPO or the PSC. There is nothing in the

¹⁷ The Hon. Attorney General and The Hon. Michael Brown v D. Gisele Isaac SVGHC VAP2015/0015, at para. 72..

pleadings or supporting affidavit which lead me to conclude that it is seeking judicial review of any decision by either. I am of the considered opinion that the legal framework within which the PSC operates, create an opportunity for the PSU to charge (purely from a legal standpoint) that it acted unlawfully and or in a procedurally improper manner; based on the factual allegations made by Mr. Whyte against the CPO and P.S.. In those circumstances, there is a case which the PSC is required to defend. No order is made striking out the words 'second and' from paragraph (3) I of the Fixed Date Claim Form.

Paragraph (3) II

[34] Paragraph (3) II of the Fixed Date Claim Form was also attacked by the defendants. It outlined one of the reliefs which the PSU was seeking against the defendants. It stated:

'A declaration that the second defendant acted unlawfully, procedurally improper by failing or refusing to state the public interest basis for forcing the claimant on compulsory leave under CSO 6.7'

[35] The defendants submitted that the PSU did not obtain leave in relation to this part of the claim. That is so. The PSU countered that no leave is required. I agree, based on the reasons articulated in respect of paragraph (3) I. I find too that it does not constitute an abuse of the court's process. I make no order striking out paragraph (3) II of the Fixed Date Claim Form.

Issue 2 - Should the impugned portions of Jamali Whyte's affidavit be struck out?

Alleged non-compliance with order granting leave

[36] The defendants contended that paragraphs 19 and 20, and 27 through 30 of Jamali Whyte's affidavit filed on July 12th 2018 should be struck out. They argued that the information in those paragraphs is not relevant to the current proceedings, and is an abuse of the court's process. The defendants submitted further that the paragraphs are prolix and do not comply with the order for leave to apply for judicial review.

[37] Paragraphs 19 and 20 of Mr. Whyte's affidavit state:

'19. On the 7th May, 2018 around 9:00am I attempted to submit my sick leave certificate to

Mrs. Selby-Adams my supervisor at the Revenue Office in Union Island. Mrs. Selby-Adams was not in office. I left and returned about an hour later but she was not there once more. I left the certificate with Mr. Duane John a co-worker. At about 11:00 am Mr. John called me to say that I must come back for my sick leave certificate because he tried to give my certificate to Mrs. Selby-Adams and that she refused to take it. As I was not feeling well I returned to pick up my sick leave certificate on the 11th May, 2018.

20. On the 11th May, 2018 I wrote a letter to the First Defendant informing him that I tried to submit my certificate of sick leave to Mrs. Selby Adams but she refused to accept it. I sent this May 11th, 2018 letter to the Claimant with the sick leave enclosed and asked the Claimant to forward it to the First Defendant on my behalf. *A copy of this letter is exhibited and labeled PSU 8”.*

[38] Paragraphs 27 through 30 states respectively:

- '27. On the 12th June 2018 I had submitted a request for vacation from the 13th – 26th of June, 2018. In a letter dated June 28th, 2018, the Second Defendant responded to my request for vacation for the period June 13th -26th, 2018 and advised me that in accordance with CSO 6.7 I must remain on leave after the expiration of my vacation and until further notice. *A copy of this letter is exhibited and labeled PSU 12”.*
28. The Second Defendant did not specify the basis for directing me to take compulsory leave indefinitely under CSO 6.7. Charges of misconduct have not been laid against me, nor have I been interdicted. I note however, that my salary has remained undisturbed.
29. Notwithstanding, I find the decision of the Second defendant disconcerting especially as this decision was taken one day after the Claimant's successful application against the Defendants. I was advised by my attorneys and verily believe that having not stated a reason the Second Defendant's decision does not have a proper basis in law and is not permitted under the Civil Service Orders.

30. It appears as if the second Defendant is reacting in a vindictive manner toward me. The Second Defendant has not indicated to me what if any action, I have taken that affects the rights, health or finances of the public at large. I was further advised by my attorneys and verily believe that the regulations governing disciplinary proceedings are provided under Regulations 39 of the Public Service Commissions (sic) Regulations CAP 10 of the Constitution of St. Vincent and the Grenadines. Therefore, if for whatever reason the Second Defendant wants to bring disciplinary proceedings against me then there is proper procedure to follow under Part V of the Public Service Regulations under CAP 10 of the Constitution of St. Vincent and the Grenadines.

[39] The defendants contended that paragraphs 19 and 20 speak to the submission of a sick leave certificate, subsequent to the P.S.'s decision which is challenged in this claim. They contended that the information is not relevant to the current proceedings for which leave was granted. They argued that they should be struck out for failure to comply with the approval for leave to apply for judicial review.

[40] The defendants submitted further that paragraphs 27 through 29 are not relevant to the present proceedings because they address events relating to vacation and compulsory leave which arose subsequent to the decision in respect of which judicial review is being sought. They argued that the CPO's decision that Mr. Whyte remain on leave is not the subject of this claim. They contended that the claimant has failed to comply with the court order granting leave, by introducing new matters in respect of which leave was not granted. They submitted that those references should therefore be struck out.

[41] The PSU rejoined that the decisions and omissions by the CPO and the PSC arise out of and are related and connected to the PS's decision. They submitted that in accordance with CPR 56.8(1), the court is encouraged to join such related claims for other relief or remedy in an application for an administrative order. It prayed in aid CPR 26.9 which authorizes the court to correct a procedural irregularity.

[42] The PSU submitted that no leave is necessary in light of the decision in the **Honourable Attorney General et al v Isaac** decision. Nothing in the PSU's statement of case or affidavits suggests that it

is seeking judicial review of the CPO's and PSC's decisions. It seeks only declarations. The CPR permits it to do so without applying for leave.

[43] The defendants contended further that paragraphs 19 – 21 of Mr. Whyte's affidavit are prolix and irrelevant. They argued that they fail to comply with the requirement for brevity and economy in keeping with CPR 2000 and as enunciated in **Pinneys Hotel Development Ltd v St. Kitts Nevis and Anguilla National Bank Ltd**.¹⁸ In that case, the learned judge commented that extensive particulars can obscure the issues rather than provide clarification.

[44] The details provided by Mr. Whyte in the impugned paragraphs provides some background details which appear to highlight some steps he allegedly took to obtain leave and to describe his physical and mental condition at that time. I do not consider them to be prolix and superfluous. As stated before, they are relevant to a determination of the claim against the CPO and PSC who are accused of violating the provisions of the Public Service Regulations relating to disciplinary action; and leave to apply for judicial review is not required for that purpose. In the premises, the impugned portions of Mr. Whyte's affidavit are not objectionable for failure to comply with a court order or for being an abuse of the court's process. I make no order striking them out.

Hearsay

[45] The defendants objected to certain portions of Mr. Whyte's supporting affidavit on the ground that they contained hearsay. They identified sections of paragraphs (3) and (4) of the referenced affidavit which offend against the hearsay rule.

[46] The impugned sections of paragraphs (3) and (4) state respectively:

'He advised me to attend the meeting with the First Defendant and hear what the First Defendant had to say and the reasons for the meeting'. and

'I inquired as to whether any of the executive members were in office. She told me that none of the elected members were in office at the time' and 'I informed him that I was on the mainland and that I was about to go to office of the First Defendant as requested'.

¹⁸ SKBHCV2017/0002.

[47] The defendants submitted that the words in paragraph (3) were allegedly spoken by Leroy James 1st Vice President of the PSU; and those in paragraph (4) were attributed to the PSC's administrative secretary Ms. Williams. Neither Mr. James nor Ms. Williams have provided affidavits in this case. The defendants argued that in the absence of direct evidence from Mr. James and Ms. Williams, the offending words must be struck out because they constitute hearsay.

[48] They submitted that hearsay refers to 'any statement made otherwise than by a person while giving oral evidence in proceedings which is tendered in evidence of the matter stated and refers to hearsay of whatever degree.' They relied on pronouncements in **Subramaniam, Son of Munusamy v The Public Prosecutor**¹⁹ and in section 46(1) of the Evidence Act²⁰. They also cited the decision in **Yolander Jardine v Elliot Laborde**.²¹

[49] The PSU contended that the impugned parts of Jamali Whyte's affidavit introduce background information and are not meant to establish the truth of those statements. It submitted that instead they were inserted to indicate the subsequent set of events which unfolded after Mr. Whyte received the P.S.'s directive to report to a meeting at his office on April 25th 2018.

[50] The parties have accurately summarized the main elements of the rule against hearsay. In **Subramaniam**, the Board explained what constitutes hearsay and what does not. Delivering the judgment, Mr. L. M. D. De Silva opined:

'Evidence of a statement made to a witness by a person who is not himself called as a witness may or may not be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement. It is not hearsay and is admissible when it is proposed to establish by the evidence, not the truth of the statement, but the fact that it was made. The fact that the statement was made, quite apart from its truth, is frequently relevant in considering the mental state and conduct thereafter of the witness or of some other person in whose presence the statement was made.'¹⁹

¹⁹ [1956] 1 W.L.R. 956.

²⁰ Cap. 220 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009.

²¹ SVGHCV2015/0019.

[51] The PSU's submission that it does not rely on the impugned parts of Mr. Whyte's affidavit to establish the truth of what he alleged was said, is relevant to a consideration of whether those assertions constitute hearsay. Because the PSU is seeking merely to enter such testimony as background and not to establish its truth, takes it out of the realm of hearsay. I find therefore that the impugned statements attributed to Mr. Leroy James and Ms. Williams do not constitute hearsay. They are admissible for the sole purpose of establishing that they were made, not to establish the truth of what was reportedly said. The application to strike them out is dismissed.

Issue 3 - Should the claim against the CPO or against the PSC be struck out?

[52] The PSU has not obtained leave to prosecute a claim against the CPO or the PSC for judicial review. It has not applied for such leave. As indicated, leave was not necessary in the circumstances of this case. In light of the legal principles enunciated above, the PSU must prevail on this aspect of the application. No order is made striking out the claim against the CPO and the PSC.

ORDER

[53] It is accordingly ordered:

1. The defendants' application to strike out portions of the Fixed Date Claim Form is dismissed.
2. The defendants' application to strike out portions of Jamali Whyte's affidavit is dismissed.
3. The defendants' application to strike out the claim against the Chief Personnel Officer and the Public Service Commission is dismissed.
4. The defendants shall pay to the Public Service Union pursuant to CPR 65.11, costs to be assessed on application to be filed and served by the Public Service Union on or before 16th September, 2019.

[54] The court is grateful to the parties for their submissions.

Esco L. Henry
HIGH COURT JUDGE

By the Court

Registrar