IN THE SUPREME COURT OF BELIZE AD 2014

CLAIM NO 275 OF 2014

IN THE MATTER of an application for leave to apply for Judicial Review

AND

IN THE MATTER of section 13 of the Belize City Council Act, Cap 85

BETWEEN:

NORMAN CHARLES RODRIGUEZ — **Applicant**

AND

BELIZE CITY COUNCIL — **Respondent**

BEFORE: Hon. Chief Justice Kenneth Benjamin.

June 16, 2014.

Appearances: Mr. H. Elrington, SC for the Claimant.
Mr. Darrell Bradley for the Respondent.

RULING

[1] By Notice of Application supported by Affidavit filed on June 4, 2014, the Applicant, Mr. Norman Rodriguez, sought permission to apply for Judicial Review by way of *certiorari* pursuant to Rule 56.3 of the Supreme Court (Civil Procedure) Rules

("CPR") in respect of a decision of the Respondent, the Belize City Council, terminating his employment as Prosecutor/Legal Assistant by letter dated March 31, 2014. The following orders were sought:

> "1. Permission to apply for Judicial Review by way of an order of certiorari to quash the decision of the Belize City Council (contained in letter to the Applicant dated 31st day of March, 2014) terminating the employment of the Applicant as Prosecutor/Legal Assistant.
>
> 2. Permission to apply for Judicial Review by way of a Declaration that the decision of the Belize City Council is unlawful and illegal because the Belize City Council never held a hearing before purportedly dismissing the Applicant from the office of Prosecutor/Legal Assistant, never informed the Applicant of any charges against him and never afforded the Applicant an opportunity to show cause why he should not be dismissed, and never afforded the Applicant an opportunity to be heard in his defense, thereby breaching the rules of natural justice (the right to be heard) as against the Applicant.
>
> 3. Damages for the unlawful termination of the Applicant's employment as Prosecutor/Legal Assistant without cause, including full benefits from the date of purported dismissal to the date of order granting same.
>
> 4. Any such order which the Court thinks just in the circumstances of this case, including an order that the respondent pays the cost of this application.
>
> 5. SUCH FURTHER or other orders as the Honorable Court deems just."

The substantive grounds as stated in the said Notice of Application are that:

(a) The decision of the Belize City Council terminating the employment of the Applicant for no reason is *ultra vires* the Belize City Council Act, Cap 85.

(b) The decision of the Belize City Council terminating the employment of the Applicant is unlawful, unreasonable and oppressive because it was taken without first informing the Applicant of the reasons for the termination and without affording the Applicant an opportunity to defend and exculpate the rules of substantive procedural fairness and natural justice (the right to be heard).

(c) The dismissal is unlawful and *ultra vires* the Labour Act, Cap 297."

It was also averred that the Applicant has no alternative form of redress and therefore has no choice but to seek judicial review and the declaration sought.

[2] The Notice of Application was supported by an affidavit to which the Applicant swore setting out the facts upon which he intended to rely as the basis upon which permission ought to be granted. In essence, it was deposed that the Applicant had been employed by the Respondent since May 14, 2008 in different capacities until March 31, 2014 when his employment was terminated. At the time he had received notice to attend a disciplinary hearing on May 2, 2014. Paragraph 9 of the affidavit states as follows:

> "I was surprised at my sudden termination on the 31st March, 2014 without any reason given for my termination or any opportunity being afforded me to defend any allegation which could have resulted in my termination, considering I was only two days away from a hearing in accordance with the natural justice process."

Reference was also made to Part III of the Belize City Council Act, Chapter 85 and the Labour Act, Chapter 297.

The Court must remind itself and be guided by the applicable test. The threshold for the grant of leave is relatively low as the Applicant is only required to show that he has an arguable case. Consequently, at this permission stage, the Court acts as a gate-keeper by deterring or eliminating claims which are frivolous, vexatious or of no arguable substance in advance of ordering the proceedings to continue with the issuance of a Fixed Date Claim Form.

ISSUES

[3] The Respondent opposed the granting of permission to apply for judicial review under Part 56 of the CPR on three limbs. Firstly, it was contended that the subject matter of the claim was not one in public law although it seeks public law remedies as is required of cases of judicial review. Secondly, the Applicant had failed to exhaust alternative remedies available to him. Thirdly, it was submitted that the Applicant had failed to provide the requisite written notice to the Respondent in its capacity as a public authority pursuant to section 3(1) of the Public Authorities Act, Cap 31 of the Laws of Belize. These matters essentially represented the issues to be considered by the Court. Learned Senior Counsel for the Applicant was content to respond by way of reply to the objections laid by opposing Counsel.

(a) IS THIS A MATTER OF PUBLIC LAW?

[4] This matter involved an employment contract between the Applicant and the Respondent. The Applicant's complaint is that his services were terminated and that prior to this decision being taken by the respondent by way of its letter of March 31, 2014, he was not afforded an opportunity to be heard. Learned Counsel for the Respondent contended that the only matter touching public law is the fact of the Applicant being employed by a public authority, a fact which was insufficient to invoke Part 56. It was further argued that the decision was required to be in the realm of public law, which it was not.

[5] In the case of **Vidyodaya University of Ceylon and Others v Silva [1965] 1 WLR 77** the council of the University terminated the appointment of the Respondent as a professor and head of department at the University. The Judicial Committee of the Privy Council allowed an appeal against an order of the Supreme Court that the decision of the council be quashed and held that the contract of employment was an ordinary contract between master and servant and that *certiorari* was not available where a master summarily terminated a servant's employment. Lord Morris of Borth-y-Gest commenced the advice of the Board with the following statement (at p 867):-

> "The law is well settled that, if, where there is an ordinary contractual relationship of master and servant, the master terminates the contract the servant cannot obtain an order of certiorari. If the master rightfully ends the contract there can be no complaint: if the master wrongfully ends the contract then the servant can pursue a claim for damages."

His Lordship went on to mention the speech of Lord Reid in **Ridge v Baldwin [1963] 2 All ER 66** at p 71 where he said:

> "The law regarding master and servant is not in doubt. There cannot be specific performance of a contract of service, and the master can terminate the contract with his servant at any time and for any reason or for none. But, if he does so in a manner not warranted by the contract he must pay damages for breach of contract. So the question in a pure case of master and servant does not at all depend on whether the master has heard the servant in his own defence: it depends on whether the facts emerging at the trial prove breach of contract. But this kind of case can resemble dismissal from an office where the body employing the man is under some statutory or other restriction as to the kind of contract which it can make with its servants, or the grounds on which it can dismiss them."

The point was made that the Applicant's employment was governed by the provisions of the Labour Act, Chapter 297 to which the Respondent referred in its letter of termination and to which the Applicant referred among the grounds of his application.

[6] The case of **R v East Berkshire Health Authority, ex parte Walch [1985] QB 152** was also cited by learned Counsel for the Respondent as authority in support of the contention that the intended claim by the Applicant did not raise any question of public law. The Court of Appeal of England and Wales held that to pursue judicial review an applicant must demonstrate that a public law right which he enjoyed had been infringed and an order of *certiorari* was not applicable as a remedy in a civil action.

[7] In his reply, learned Senior Counsel for the Applicant asserted that the procedure of judicial review was available in respect of persons of the Applicant's position employed by a public authority in the same way as a public officer employed by the Crown. However, no argument was presented nor evidence adduced to bolster this position.

[8] As I see it, the only element of the Application that is in any way akin to public law is the fact of the Belize City Council being a public entity established by statute. Although reference was made to section 13 of Part III of the Belize City Council Act, Cap 85 which empowers the Respondent to employ persons, there is no provision made for or special procedure prescribed for the position previously enjoyed by the Applicant. Accordingly, the relationship between the Applicant and the Respondent can be put no higher than that of ordinary master and servant. There being no element of public law attracted, the procedure of judicial review is not available to the Applicant.

(b) ALTERNATIVE REMEDIES

[9] The Notice of Application contains a bald statement as to the Applicant having exhausted all alternative remedies. This is a requirement of Rule 56.3(e). Be that as it may, nowhere in the affidavit was there any evidence to support this statement. Indeed, the said Rule contemplates more than a mere statement by its very terms. An applicant is required to state in his application for permission:

> "(e) whether an alternative form of redress exists and, if so, why judicial review is more appropriate or why the alternative has not been pursued."

No evidence was forthcoming as to the pursuit or unavailability of any alternative modes of redress.

[10] The plain fact is that it is open to the Applicant to pursue his complaint by a suit for wrongful dismissal at common law or under the provisions of the amended Labour Act for unfair dismissal. No explanation has been proffered as to why such a course of action would have been unavailable or disadvantageous to the Applicant. It may well be that the Respondent has acted in breach of contract but that does not affect the efficacy of the termination of employment. Support for this conclusion can be gleaned from the judgment of May, LJ in **R v East Berkshire Health Authority** (supra) (at pp. 169 – 170):-

> ".. I think that at the present time in at least the great majority of cases involving disputes about the dismissal of an employee by his employer, the most appropriate forum for their resolution is an industrial tribunal. In my opinion the courts should be astute to hold that any particular dispute is appropriate for consideration under the judicial review procedure provided by RSC, Ord. 53."

[11] The Applicant, having failed to exhaust the alternative remedies available at common law and under the Labour Act, the Court must decline to permit the invoking of the judicial review procedure.

(c) STATUTORY NOTICE UNDER THE PUBLIC AUTHORITIES (PROTECTION) ACT

[12] Learned Counsel for the Respondent objected to the grant of permission to commence judicial review proceedings on the third ground that the Applicant had not given one month's notice in writing to the Respondent of his intention to apply for judicial review. It was said that this was a requirement of section 3(1) of the PAP Act which provides:

> "3. (1) No writ shall be sued out against, nor a copy of any process be served upon any public authority or anything done in the

exercise of his office, until one month after notice in writing has been delivered to him, or left at his usual place of abode by the party who intends to sue out such writ or process, or by his attorney or agent, in which notice shall be clearly and explicitly contained the cause of the action, the name and place of abode of the person who is to bring the action, and the name and place of abode of the attorney or agent.

(2) No evidence of any cause of action shall be produced except of such as is contained in such notice, and no verdict shall be given for the plaintiff unless he proves on the trial that such notice was given, and in default of such proof the defendant shall receive in such action a verdict and costs."

There is no demur on each side that the Respondent is a "public authority" and that no notice in writing was served by the Applicant upon the Respondent as to his intention to sue.

[13] The submission was supported by authorities including **Eurocaribe Shipping Services Ltd dba Michael Colin Gallery Duty Free Shop v The Attorney General et al** – Claim No 287 of 2009. In his brief reply, Learned Senior Counsel made a vague reference to the case of **Belize City Council v Gordon (1997) BZ L R 363**, a decision of the Court of Appeal approving its own decision in **Castillo v Corozal Town Board et al (1983) 37 WIR 86**.

[14] In the recent case of **Froylan Gilharry Sr v Transport Board et al** – Civil Appeal No 32 of 2011, Morrison, JA was astute to point out that neither the case of **Castillo** nor that of **Eurocaribe** were concerned with judicial review proceedings. His Lordship went on to hold that the PAP Act does not apply to applications for judicial review.

[15] It follows that this submission by the Respondent must fail.

CONCLUSION

[16] In the premises for the reasons given, the application for leave to commence proceedings by way of judicial review fails and is accordingly dismissed. The Respondent is entitled to its costs which are fixed at the sum of $1,000.00.

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KENNETH A. BENJAMIN
Chief Justice