

C-7/LIB

IN CHAMBERS

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 428/2002

BETWEEN:

DR. S. K. MOHANTY

22-08-03

Plaintiff

AND:

- 1. DR. HEAP
- 2. MERVIN CONOLLY
- 3. SENIOR MANAGEMENT
- 4. THE HEALTH SERVICES DEPARTMENT
- 5. THE MINISTER OF HEALTH

Defendants

CAUSE NO: 602/2002

BETWEEN:

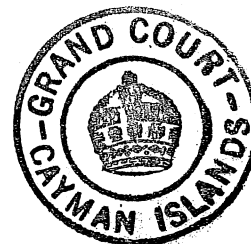
DR. S. K. MOHANTY

Plaintiff

AND:

THE HEALTH PRACTITIONERS' BOARD

Defendant



BEFORE: MADAM JUSTICE LEVERS

APPEARANCES:

Counsel for the Plaintiff: Mr. Simon Dickson of Quin & Hampson
Mr. Keith Myers for the Attorney General

HEARD: 8th and 20th August 2003

RULING

This is an application for leave to file affidavit evidence in two matters Cause No. 625 of 2002 and Cause No. 428 of 2002.

On both matters two orders were made previously:

On the 20th August 2002; and
On the 1st 2003, giving dead lines to file affidavits.

In contempt of these Orders, the Attorney General's Chambers acting on behalf of the Defendants did absolutely nothing. This is all the more contemptuous and surprising when the conduct of this matter was in the hands of the learned acting Solicitor General, a very Senior Officer in these Chambers. Indeed, it was he who asked for an extension in January 2003.

Mr. Myers now comes before this Court asking for leave to file affidavits in both Causes on the following basis that the dynamics of the situation justified the delay. I do not accept this feeble excuse. However, if the interests of justice demands that the Defendants should be heard, then this Court should not penalize the Defendants, for the contemptuous behavior of the attorney having conduct of this matter. In these circumstances, I have studied all these affidavits and rule as follows:

On Cause No. 428 of 2002 – Leave is sought to file a second affidavit from Dr. Heap. Having read the contents of the affidavit, it is clear that it is not being filed in response any affidavits in this Cause. In fact it refers to an affidavit of November 2002, which was not filed in this Cause but in a previous related Cause. However, Mr. Myers urges that it is in fact in response to affidavits in this

cause the would date being an error and as such he should be given leave to file same. I grant leave for this to be filed.

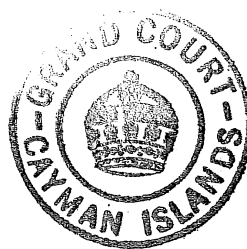
Cause No. 604 of 2002 – Leave is sought to file two affidavits in this matter. These affidavits are the first to be filed in this Cause, and in my view the contents of Dr. Heap's is *Res Judicata*. All the matters raised have been canvassed and ruled on in Cause No. 863/2002. Not only do I find the contents are *Res Judicata*, the Defendants accepted the Chief Justice Ruling in a letter dated the 13th May 2002 (page 10, paragraph 3). Leave is refused to file Dr. Heap's affidavit. Leave is given to file Dr. Gerald Smith's affidavit.

I further order that no further affidavits should be filed in this matter.

Costs to the Plaintiff on both matters on an indemnity basis, which I fix at \$6394CI to be paid within 14 days.

Leave to appeal granted.

Dated this 22 day of August 2003




Madam Justice Levers
Judge of the Grand Court