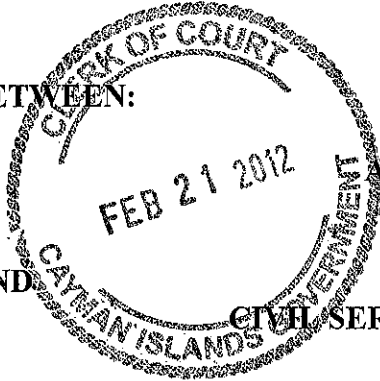


IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 71 OF 2012

BETWEEN:

AND: ATTORNEY GENERAL
CIVIL SERVICE APPEALS COMMISSION



APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

To: The Clerk of the Court
Law Courts Building
George Town
Grand Cayman

Civil Service Appeals Commission
c/o Secretary of the Civil Service Appeals Commission
2nd Floor, Cayman Corporate Centre
P.O. Box 32115
KY1-1208, Grand Cayman

and

Attorney General
First Floor DMS house
P.O. Box 907
KY1-1103 – Grand Cayman

Judgment, order, decision of the Civil Service Appeals Commission in respect of Appeal of Donnell Dixon against the Chief Officer, Financial Services dated December 8, 2011 of which relief is for the Chief Officer of Financial Services to pay damages in the amount of CI\$18,168.00 to Mr. Dixon.

Relief Sought:

1. An order of certiorari quashing the Decision and send back for rehearing.

2. A stay of the payment of the compensatory award in the amount of CI\$18,168.00 to Mr. Donnell Dixon.
3. Costs reserved; and
4. Such further and other relief as this Honourable Court may deem just.

GROUND ON WHICH RELIEF IS SOUGHT

1. The Civil Service Appeals Commission (“the Commission”) had no jurisdiction to hear the appeal by Mr. Donnell Dixon (“the Appellant”) against the decision of the Chief Officer who, in turn, had dismissed an appeal against a decision appointing a candidate to the post of Deputy Registrar. By virtue of section 54(1) the Law of Public Service Management Law (2011 Revision) (“the Law”), a staff member seeking to appeal “must do so within thirty days of being notified of the Chief Officer’s decision”. “Days” means calendar days not, as the Commission held in its preliminary decision dated 5 July 2011, working days. An appeal therefore had to be brought within 30 days of the date of notification of the decision (i.e. within 30 days of 31 January 2011 and by 2 March 2011 not, as the Commission concluded, within 30 working days of 31 January 2011 and by the 15 March 2011). The appeal was not brought within 30 days of being notified of the Chief Officer’s decision (it was lodged on 8 March 2011) and so the Commission had no jurisdiction to entertain the appeal.
2. The decision of the Commission allowing the appeal is wrong in law and is unreasonable.
3. The Commission erred in finding that the Chief Officer acted in an unfair or biased manner and that he acted in a manner inconsistent with the requirements of the Part VII of the Law as:
 - (1) Section 53(4) of the Law required the Chief Officer to determine the appeal against the appointment of a candidate to a post on the basis of information provided by the Appellant, the Head of department and any other relevant information.
 - (2) The Chief Officer did precisely that. He considered the information provided by the Appellant in his appeal. He considered the views of the Head of Department (who was the Appointing Officer and a member of the interviewing panel). He took into account the views of the other members of the interview panel: that is not unreasonable or

impermissible, not least because section 41(7)(b)(ii) of the Law expressly requires the interview panel to have regard to their personal knowledge of the candidates and such material is accordingly relevant to the appeal and material that the Chief Officer can consider;

- (3) The Chief Officer therefore did act in accordance with the requirements of Part VII of the Law;
 - (4) Further, the Chief Officer acted specifically in accordance with the procedure prescribed by the Law and did not act unfairly. Further, in the circumstances, there was no basis for concluding that he acted unfairly.
 - (5) Furthermore, the Commission erred in its finding that the Chief Officer acted in a biased manner towards Mr. Dixon as Mr. Dixon had not alleged bias and there is no basis for such a finding;
 - (6) The Commission's findings and decision in each of these respects are unreasonable and irrational.
4. The Commission erred in law in its interpretation of section 53(4) of the Law in considering that that subsection required that the Chief Officer must review "the entire interview and appeals processes with independence and in a thorough manner before making his decision". Section 53(4) does not prescribe the scope or grounds of the appeal – it sets out the material upon which the Chief Officer is expected to base his decision. Section 53(3) of the Law sets out the grounds for and scope of an appeal and that requires the Appellant to provide evidence that the Head of Department acted in an unfair or biased manner or in a manner inconsistent with the requirements of Part VII of the Law. In considering those issues, the Chief Officer correctly took into account the material provided by the Appellant in the Appeal to him and the response to these allegations. That is what section 53 of the Law requires and that is what was done. Section 53 does not impose any further duty upon the Chief Officer dealing with any appeal in relation to the appointment of staff.
 5. Further, the Commission acted irrationally or failed to have regard to relevant considerations in reaching its conclusion that the Chief Officer did not properly and thoroughly address his mind to the requirement that, where two or more

person rank broadly equally, Caymanians shall be given preference. The Chief Officer did consider that matter as appears from his decision of 31 January 2011 and which is further referenced in his Affidavit dated September 26, 2011 provided to the Commission for the purposes of the Appeal. He specifically referred to section 41(7) of the Law, he recorded the fact that the Appointing Officer considered why she considered there was a sufficient difference between the shortlisted candidates and why, therefore, Caymanians did not need to be given preference and he recorded that he accepted that conclusion.

6. The Commission's conclusion in relation to the results of the interview are irrational and unreasonable and the Commission has failed to have regard to relevant considerations. The appeal to the Chief Officer did not make specific criticisms of the panel report and interview scores but rather, alleged that the decision was unfair for the reasons given in that appeal. Against that background, the Chief Officer considered whether the interview approach was comparable, whether the decision was based on establishing the candidate that had the best mix of qualifications, skills, knowledge and experience, and concluded that the decision of the appointing officer satisfied the requirements of section 41 of the Act.
7. The Commission has no power under section 54 of the Law to make awards of damages or awards or financial compensation and, in so far as the Commission purported to award a compensatory award of CI\$18,168.00, it had no power to do so.
8. Further, and in any event, the Commission erred in awarding compensation of an amount equivalent to the difference between the appellant's salary and the salary of the successful candidate for the duration of the contract. The successful candidate was not a Caymanian. The 2nd and 3rd ranked candidates were Caymanian. The Appellant was the 3rd ranked – not the 2nd ranked – candidate. Even if, as the Appellant contended and the Commission appeared to find, the candidates were broadly equal and preference would have been given to Caymanians, then the 2nd ranked (Caymanian) candidate would have been offered the post not the appellant. Thus, there was no basis for awarding compensation by reference to the salary attached to the post, or the Commission failed to have regard to a relevant consideration (that the Appellant would not have been the successful candidate in any event) or reached an irrational conclusion.

9. Further, and in any event, there was no basis or evidence for the Commission to take into account the Appellant's loss of office (he had lost none), loss of opportunity (he had lost none) or that he had suffered emotional distress (which he had not alleged and for which there was no evidence) and the decision in these respects are irrational. Further there is no basis in law for awarding compensation on an appeal for emotional distress.

10. The Commission failed to give adequate reasons for:

- (1) its individual findings of fact;
- (2) its conclusion that the chief officer acted in an unfair or biased manner and in a manner inconsistent with the requirements of Part VII of the Law; and
- (3) the award of compensatory damages of CI\$18,168.00 being equivalent to the difference in the appellant's salary and that of the successful candidate for the duration of the successful candidates' contract.

Dated this day of 21st February 2012

Attorney General

Attorneys for the Applicants

NOTE: Pursuant to Order 53 an oral hearing is requested before this application for leave to apply for judicial review is considered and determined by this Honourable Court.

Note - Grounds must be supported by an affidavit which verifies the facts relied on.

THIS APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW was **FILED** by the Attorney General's Chambers whose address for service Dms House, Ground Floor, 20 Genesis Close, George Town, Grand Cayman.

9. Further, and in any event, there was no basis or evidence for the Commission to take into account the Appellant's loss of office (he had lost none), loss of opportunity (he had lost none) or that he had suffered emotional distress (which he had not alleged and for which there was no evidence) and the decision in these respects are irrational. Further there is no basis in law for awarding compensation on an appeal for emotional distress.

10. The Commission failed to give adequate reasons for:

- (1) its individual findings of fact;
- (2) its conclusion that the chief officer acted in an unfair or biased manner and in a manner inconsistent with the requirements of Part VII of the Law; and
- (3) the award of compensatory damages of CI\$18,168.00 being equivalent to the difference in the appellant's salary and that of the successful candidate for the duration of the successful candidates' contract.

Dated this day of 21st February 2012

Attorney General's Chambers
Attorney General
Attorneys for the Applicants

NOTE: Pursuant to Order 53 an oral hearing is requested before this application for leave to apply for judicial review is considered and determined by this Honourable Court.

Note - Grounds must be supported by an affidavit which verifies the facts relied on.

THIS APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW was **FILED** by the Attorney General's Chambers whose address for service Dms House, Ground Floor, 20 Genesis Close, George Town, Grand Cayman.