

Lc no: LACV 0299 | 2012

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 13 of 2013

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW PURSUANT TO ORDER
GCR ORDER 53

BETWEEN:

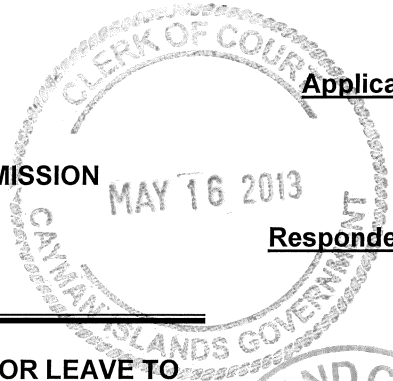
CELICIA ALLEY

Applicant

v

CIVIL SERVICE APPEALS COMMISSION

Respondent



AMENDED EX PARTE APPLICATION FOR LEAVE TO
APPLY FOR JUDICIAL REVIEW



To the Clerk of the Court, Law Courts, George Town, Grand Cayman	
Name, address and description of Applicant	Celicia Alley c/o Stuarts Walker Hersant 4 th Floor, Cayman Financial Centre 36A Dr Roy's Drive George Town, Grand Cayman
Judgment, order, decision or other proceeding in respect of which relief is sought	The following Decisions of the Respondent which all arise from publication of the 'Decision Following Hearing' document on 18 October 2012. (" the Decisions ") (exhibited First Affidavit of Celicia Alley as CA-1):- (1) Refusal to reverse the finding of gross misconduct made by Kevin McCormac;

	<p>(2) Refusal to remove the finding of gross misconduct from the Applicant's record of employment;</p> <p>(3) Refusal to reinstate the Applicant to a position within Judicial Administration;</p> <p>(4) Refusal to reinstate the Applicant to a position within the Civil Service;</p> <p>(5) Refusal to order the payment of pension benefits; and</p> <p>(6) Refusal to order payment of the Applicant's legal expenses.</p>
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Relief Sought

The Applicant seeks leave of the Court to permit the Judicial Review of the aforementioned Decisions of the Respondent and seeks the following relief:-

- (1) An Order of *Certiorari* to quash the Decisions of the Respondent;
- (2) An Order of *Mandamus* requiring the Respondent to order that:-
 - i. The finding of gross misconduct by Kevin McCormac be reversed and/or quashed;
 - ii. The finding of gross misconduct be removed from the Applicant's record of employment;
 - iii. The Applicant be reinstated to her former position in Judicial Administration and thereafter transferred to another civil service department and/or reinstated directly to another department within the civil service;
 - iv. Judicial Administration pay the Applicant's salary from the date of the Decisions to the present date;
 - v. Judicial Administration pay any outstanding pension contributions to the Applicant's pension provider after her suspension to the present date; and
 - vi. Judicial Administration pay the Applicant's legal costs.

- (3) In the alternative to paragraph (2), an Order of *Mandamus* requiring the Respondent to reconsider the Decisions;
- (4) An Order of *Mandamus* requiring the Respondent to publish guidelines as to the Orders they have imposed in the past and considerations that they will take into account when making Orders;
- (5) A Declaration that the Respondent has power and authority to order that the Applicant may be reinstated to any department in the civil service;
- (6) A Declaration that the Respondent was not entitled to draw conclusions and/or make findings in relation to the Applicant's alleged misbehaviour;
- (7) A Declaration that the Decisions were unreasonable and contrary to the principles of natural justice;
- (8) Such further and/or other relief as this Honourable Court thinks just; and
- (9) Costs

Pursuant to the Grand Court Rules, Order 53, Rule 7 the Applicant claims:-

- (1) As a result of the circumstances set out in the 'Introduction' to the Grounds Upon Which Relief is Sought, the Applicant suffered loss and damage as follows:

Particulars of claim – Breach of The Cayman Islands Constitution Order 2009, Schedule 2, Part 1, Section 7 (Right to Fair Trial)

- (2) Pursuant to schedule 2, part 1, section 27 of The Cayman Islands Constitution Order 2009 the Applicant claims damages for breaching her right to a fair trial in that the Respondents:-
 - i) Failed to provide an adequate forum upon which the Applicant could put forward her case in relation to allegations of impropriety, misconduct and/or negligence at work;

ii) Failed to provide any or any adequate rules or guidance upon the matters which would be heard at the hearing;

iii) Failed to provide any or any adequate rules or guidance to govern the procedures in relation to admissibility of evidence;

iv) Failed to provide any or any adequate rules or guidance in relation to the matters that the Respondents would take into account in reaching a judgment and/or decision;

v) Allowed matters to be taken into consideration during the course of the hearing which were irrelevant;

vi) Passed judgment and based their decisions upon matters which were improperly before them;

vii) Passed judgment and based their decisions upon matters which they were not entitled to take into consideration;

viii) Failed to allow the Applicant to address the Respondents on the remedies they sought;

ix) In all the circumstances, failed to provide the Applicant with a right to a fair trial

(3) As a result of the aforesaid matters the Applicant suffered loss and damage, including pain, suffering and loss of amenity.

Particulars of Damage

(4) The Applicant has suffered psychological harm as a result of the aforementioned.

(5) The Applicant has incurred debt as a result of being unable to secure gainful employment. The Applicant claims interest on loans obtained in order to sustain herself and her children.

(6) And, the Applicant claims:-

i) Damages;

ii) Costs; and

iii) Interest.

Particulars of claim – Defamation

(7) On the 18 October 2012 the Respondents published a document entitled 'Decision Following Hearing'. Within that document they made the following defamatory statements:-

i) 'Some of Ms Alley's conduct was, undeniably, contrary to the Code of Conduct for Public Servants, notably her involvement with Mr Mclean's file, about which there had previously been a complaint, and which could plainly give rise to a perception (at least) of conflict of interest by a reasonable observer. It is not to Ms. Alley's credit that she was not prepared to acknowledge that this conduct on her part was misguided as it gave the impression that she did not understand the concept of conflict of interest.'

ii) Paragraphs 50.6.1 to 50.6.3 of the 'Decision Following Hearing';

iii) Paragraph 50.6.5 of the 'Decision Following Hearing';

iv) Paragraph 61.2 of the 'Decision Following Hearing'; and

v) Paragraph 61 of the 'Decision Following Hearing'.

(8) The comments referred to Ms. Alley.

(9) The aforementioned comments were published in the document 'Decisions Following Hearing'. This document was ordered to remain on the Applicant's employment file and were therefore published within the Civil Service generally.

(10)The order for the 'Decisions Following Hearing' to be published on the Applicant's employment record effectively prohibited the Applicant from obtaining a positive reference from her previous employer or applying for an alternative position within the Civil Service.

Particulars

(11)The 'Decision[s] Following Hearing were published within the Civil Service;

(12)The 'Decision Following Hearing' contained defamatory findings that the Respondents were not lawfully authorised to make;

(13)The Respondents erred in fact in making the findings; and

(14)In all the circumstances, the Respondents published defamatory comments about the Applicant which they were not entitled to do in law and fact and caused the loss, suffering and damage to the Applicant's reputation.

(15)And the Applicant claims:-

i) Damages for defamation of character;

ii) An injunction prohibiting further publication of the 'Decisions Following Hearing' document;

iii) An order that the Respondent publish a letter to be held on the Applicant's employment file in terms that they were unauthorised make the findings contained within the 'Decision Following Hearing'; and

iv) Costs.

GROUNDS UPON WHICH RELIEF IS SOUGHT

Introduction

1. The Applicant, who worked as an Accounts Officer II for Judicial Administration, was suspended from her employment on 15 February 2012 pursuant to the Personnel Regulations, r.40 (**'the Regulations'**). Regulation 40 governs the procedure that must take place when an employee is suspended on suspicion of criminal activity.

2. An investigation was conducted and no criminal charges were brought against the Applicant, however, she was dismissed by Kevin McCormac on 27th June 2012 for gross misconduct pursuant to the Regulations, r.39. Regulation 39 provides for the dismissal of an employee if there is a finding of gross misconduct.
3. She appealed the decision to the Respondent and the appeal was heard on 26 September 2012. The appeal centred on the contention that the Applicant had been suspended pursuant to the Regulations, r.40 (suspected criminal activity), no criminal charges were brought against the Applicant and yet the Applicant was then dismissed pursuant to the Regulations, r.39.
4. The Respondents published a document entitled 'Decision Following Hearing' on 18 October 2012. At paragraph 51 the Respondent concluded that:-

'For the reasons set out above, the Commission concludes that Ms. Alley has established that, in dismissing her on 27th June 2012 after a period of suspension, the Judicial Administration has acted in a manner inconsistent with Part VII of the Law namely:

51.1 that the correct procedure under Regulation 40 has not been followed, and

51.2 that the Chief Officer was not procedurally entitled to dismiss Ms Alley for gross misconduct under Regulation 39.'

5. The Applicant denied, and continues to deny, any allegation of wrongdoing and/or any misconduct on her part. She vehemently denies any misconduct and maintain that she was not given an opportunity to defend herself against the allegations. At paragraph 50.4 the Respondent concluded that:-

'We note that Mr McCormac relies on the transparency of the procedure in support of his position, however, in the Commission's view, the approach taken by the Judicial Administration did not comply with even the basic requirements of transparency to which Ms Alley was entitled, and which are mandated in sub-Regulation (1) of Regulation 40.'

6. Despite having made findings adverse to Judicial Administration the Respondent refused to reinstate the Applicant to her former position and order that she be transferred to a different department, refused to reinstate directly to an alternative department within the civil service, refused to reverse the finding of gross negligence, refused to order that the finding of gross negligence be removed from the Applicant's record of employment and refused to make any order in relation to her pension entitlement and legal costs.

7. In essence the Respondents made a finding that the Applicant had been unlawfully dismissed and yet refused to make any Orders that sought to remedy the unlawful dismissal. It is the Applicant's contention that the Respondent's should have restored the Applicant to the same/similar position had the unlawful dismissal not taken place.
8. The only orders that the Respondent made were that Judicial Administration were to pay the Applicant her salary in full from her last payment until the date of the decision (18 October 2012) and that the Applicant be awarded 2 months salary.
9. The effect of the Respondent's Orders is that the Applicant, **who has been unlawfully dismissed**, has been left bereft of employment and with an adverse finding on her employment record, which effectively means that it will be highly unlikely that she will be able to find employment.

Grounds Upon Which The Relief Is Sought

10. The Respondent was not lawfully entitled to reach the said Decisions and, in so doing, erred in law and in fact, acted unfairly and procedurally improperly. Further, the said Decisions were unreasonable in all the circumstances.

Errors of Fact

11. The Respondent wrongly found that:-
 - i) The Respondent's conduct was contrary to the Code of Conduct for Public Servants (paragraph 50.5);
 - ii) the Applicant's conduct was cause for concern (paragraph 50.6);
 - iii) the Applicant was a '*less than fully satisfactory employee*' (paragraph 50.6.5);
and
 - iv) this was a case which factually did not merit the payment of the Applicant's legal fees.

Errors of Law and Illegality

12. In reaching their Decisions and/or making Orders, the Respondent:-
- i) Acted outside their jurisdiction and/or statutory power in that they:-
 - Made factual determinations on the Applicant's behaviour that influenced the Orders that they made; and
 - Took matters into account that were irrelevant and inappropriate to consider when determining what orders to make (paragraph 56).
 - ii) Were ignorant of their legal powers and/or authority in that they:-
 - Did not re-instate the Applicant to Judicial Administration (paragraph 55);
 - Did not re-instate the Applicant to Judicial Administration and order that she be transferred to another department (paragraph 55);
 - Did not order that the Applicant be re-instated to a different civil service department (paragraph 58); and
 - Did not order payment of the Applicant's legal fees.

Procedural Impropriety

13. Further, or in the alternative, the Respondent acted in a procedurally improper manner and/or in breach of the principles of Natural Justice in that:-
- the Applicant did not have an opportunity to address the Respondent on the appropriate remedies before the Orders were made;
 - the Respondent failed to offer guidance as to the type of Orders they are empowered to make and the matters that will be taken into account when considering how to exercise their discretion in making Orders; and
 - the Respondent effectively held a hearing holding the Applicant to account for alleged misconduct which the Applicant did not have to answer at that time.

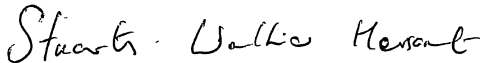
Unreasonableness

14. Further, or in the alternative, the said Decisions of the Respondent were unreasonable in that having found that the Applicant was unlawfully dismissed the Respondents should have:
- restored to the Applicant to the same/similar position that she was in before the unlawful dismissal;
 - expunged her employment record of the finding of gross misconduct;
 - re-instated her to a department within the civil service;
 - ordered that her pension contribution be paid; and
 - ordered that her legal fees be paid for a successful appeal

Conclusion

15. This application is made at the earliest opportunity and within the time limited imposed by Order 53, rule 4(1) of the Grand Court Rules.
16. The Applicant will rely upon the Affidavit of Celicia Alley sworn on 15 January 2013.
17. Further, the Applicant reserves her right to amend and/or supplement these Grounds in due course as permitted by Order 53, rule 6(2) of the Grand Court Rules, if required or if so ordered by this Honourable Court.

Dated this 16th day of May 2013



STUARTS WALKER HERSANT
Attorneys-At-Law for the Applicant