

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 60 OF 2014

BETWEEN:

BILIKA HARRY SIMAMBA**CHIEF OFFICER, PORTFOLIO OF LEGAL AFFAIRS****APPLICANT****RESPONDENT****APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW**

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

Name, Address and description of Applicant:

Bilika Harry Simamba
17 Mystic Retreat
John Greer Boulevard
P O Box 1393
Grand Cayman, KY1-1110

Decision and Omission in respect of which relief is sought

- (1) The decision of the Respondent contained in a letter dated 28th January, 2014 to the Respondent and annexed to the Affidavit in Support as Exhibit BHS 4:
 - (a) denying the Applicant's request to engage in private gainful activity outside of his employment by way of part-time teaching of the mini courses set out in **Exhibit BHS 1** and, in the alternative, those contained in **Exhibit BHS 2** of the Affidavit in Support, as well as the course **Preparing Cabinet Papers for Legislation**.
 - (b) that the teaching of all of any of the courses aforesaid as per letter aforesaid "conflict, or may be reasonably perceived to conflict, with [my] duties".
- (2) The failure by the Respondent, in her purported reasons contained in **Exhibit 12** of the Affidavit in Support (Appendix 4 to that Exhibit), to provide reasons that in law comply

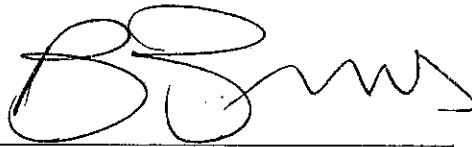
with the requirement in section 19 of the Constitution of the Cayman Islands, the reasons having been requested by the Applicant in the last paragraph of **Exhibit 3** to the affidavit.

Relief Sought:

- (1) An order of *certiorari* to quash the decision contained in the Respondent's letter dated 28th January, 2014 and send the matter back to the Respondent to be reconsidered and decided in accordance with the findings of the Court;
- (2) An order of *mandamus* directing the Respondent to reconsider and decide, in accordance with the findings of the Court, (i) whether the teaching of the courses aforesaid falls within the terms and conditions of the Applicant's employment (ii) whether their teaching would in law be in conflict or may be perceived as being in conflict with his duties as Senior Legislative Counsel;
- (3) An order that the Respondent furnish the Applicant with reasons for the decision, as requested by the Applicant under section 19 of the Constitution of the Cayman Islands, and that such decisions be sufficient in law in terms of the details required as may be ordered by the Court.
- (4) An Order that the reasons aforesaid be given in respect of each of the seven courses specified in paragraph 1 above.
- (4) Costs; and
- (5) Such further, consequential, or other relief as this Honourable Court deems just.

Name and address of the Applicant:

Bilika Harry Simamba
17 Mystic Retreat
John Greer Boulevard
P O Box 1393
Grand Cayman, KY1-1110



BILIKA HARRY SIMAMBA
Applicant in Person

Dated: 23 April, 2014

Grounds on which relief sought:

1. Errors of Law:

- (i) The Respondent erred in law in stating (as set out in paragraph 6 of the Affidavit in Support) that for permission to be granted under paragraph 8 of the Annex to the Schedule 4 of the Personnel Regulations (2011 Revision), which constitutes part of the Applicant's terms and conditions of employment as agreed under section 4(3) of the Public Service Management Law (2011 Revision), that the Applicant had to show that an entity within Government had to request for him to teach the courses concerned, for no such requirement is stated or implied in that paragraph or anywhere in the terms and conditions or the Law or Regulations.
- (ii) The Respondent further erred in law in holding (as recounted in paragraphs 4 and 5 of the Affidavit in Support) in effect that the doing of anything outside the office which the Applicant could even remotely be asked to perform in the office, is necessarily in conflict with his duties in the office.
- (iii) The Respondent further erred in law in holding (as recounted in paragraphs 4, 5 and 6 of the Affidavit in Support) in effect that anything done outside of the Applicant's duties in Government which draws on my knowledge from the office would be in conflict with my terms and conditions of service or be perceived to be so.
- (iv) The Respondent erred in law in not recognizing that conflict, be it real or perceived, must amount to something that undermines an employee in the performance of his duties.

2. Bias: The decision is biased considering that the same Chief Officer has granted permission for two other officers to engage in gainful activity outside their normal duties namely, Kim France, Chief Financial Officer, who does accounting work for the Information Commissioners' Office and Christine Cooke, Paralegal, who on a temporary basis undertook compilation work for legislation for the Judiciary for the updating of the Judicial and Legal Information website. Further and in the alternative, there is at the very least, perceived bias making the decision in relation to the Applicant liable to judicial review as per the principles in, among many cases, *R v Sussex Justice ex parte McCarthy* [1924] 1 KB 259; and *Metropolitan Properties Co Ltd v Lannon* [1969] 1 KB 577.

3. Unreasonableness: The decision is *Wednesbury* unreasonable. In the short chain of emails attached to Exhibit BHS 3 to the Affidavit, the chain of email involving Myrtle Brandt, First

Legislative Counsel (FLC), the FLC categorically states that she did not want “members of [the] department [to] lecture, from time to time, on ‘the legislative process in Cayman’ ”. That was in response to a request made by a Government department. Then the Respondent, in Exhibit BHS 4, her decision to deny permission, she says “ I . . . with to commend you on the initiative you have taken to address what *you consider* to be a lacuna in the training needs of the public service” (Emphasis added). This agrees with the FLC in that both do not consider that teaching of the legislative process is important anyway and yet the same letter goes on to say that, if I were to teach this course, which is irrelevant to Government anyway, it would be or be perceived to be in conflict with my duties and therefore I must be stopped. Even if for the sake of argument a course on the legislative process may be seen to raise issues of conflict, such perception would be unreasonable and it is difficult to see how teaching one-day courses on administrative law, interpretation of statutes, plain English, can be in conflict with my duties, making the decision itself unreasonable. (*Associated Provincial Picture House Ltd v Wednesbury Corporation* [1948] 1 KB 223.)

4. **Improper motives:** The decision is occasioned by improper motives in that, quite apart from the fact that it is difficult to see whose interests it is serving, one can reasonably draw the inference that:

- (i) it is motivated by the fact that the FLC and the Respondent trying to avoid a situation where, if the course is taught by a private company, questions may be asked as to why the Legislative Drafting Department did not conduct the said courses;
- (ii) it is motivated by the fact that since a previous Chief Officer had allowed a workshop to be conducted in Government on the legislative process and that decision was made over the FLC’s objection, the FLC and the current Chief Officer wish to display their power.

(*Porter v Magill* (2002) 2 AC 357 and *Margeston v Attorney General* 91968) 12 WLR 469, generally on improper motives.)

5. **Discrimination:** To the extent that my friends and colleagues Kim France, the Chief Financial Officer, and Christine Cooke, the Paralegal, have been allowed to undertake private gainful activity outside the office, the decision is discriminatory contrary to section 16 of the Constitution and I have

not been given any reason that would make it, in terms of the derogation in that section, reasonably justifiable or reasonably proportionate.

6. Disproportionality: Section 19 of the Constitution of the Cayman Islands requires that all decisions of public officials be proportionate to any purported interest that is being safeguarded. Even if for the sake of argument we were to accept for a moment that there *could be* a slight conflict of some kind, it is not proportionate to say that all the courses *including those that will teach guidelines on how not to abuse statutory powers or how to write in plain English*, are all in conflict with the Applicant's duties as legislative counsel. The operation of the principle of proportionality (where a disproportionate decision was quashed) can be seen from, among many cases, in *Barnsley Metro Borough Council ex parte Hook* [1976] WLR 1052.

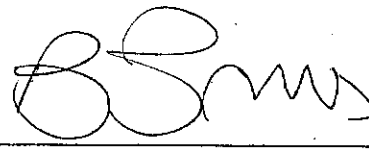
7. Irrelevant considerations: The decision has taken into account irrelevant matters. The Applicant was verbally informed by the Respondent (as recounted in paragraphs 4, 5 and 6 of Exhibit BHS of the Affidavit) that if he could get an institution to request his services, then he could be authorized. This consideration is clearly extraneous to clause 8. Indeed, the Respondent is sure that government did not receive any request in relation to the 151 civil servants who have been authorized under that paragraph. That clause does not require this to be a condition precedent. One Caymanian case (among many local and UK cases) that speaks to irrelevant considerations is *Graham Thompson and Associates v Liquor Licensing Board* (1988-89) CILR 25, GC.

8. Bad faith: The reasons set out above also indicate bad faith. Further, a request from the Director of the company which was in the process of formation, now incorporated, was not considered enough.

9. Unduly onerous conditions: The Respondent's insisting that there must be a request before the Applicant could be granted permission is an unduly onerous condition which does not relate to the relevant issues. (See *Pyx Granite v Ministry of Housing* [1958] 1 QB 554; and *R v Hillingdon London Borough Council ex parte Royco*. [1974] QB 720.)

10. Insufficiency of reasons: The purported reasons given by the Chief Officer are not sufficient in law as they fail to give the real gist of the reasons as to how the teaching of the courses will undermine the Applicant's performance of his duties. (*R v Criminal Injuries Compensation Authority ex parte Leatherland and others* [2000] TLR, 12 October.) Failure to give sufficient reasons that bring the

Applicant's mind to bear on exactly what conflict the courses would bring is tantamount to failure to give reasons at all, placing the Chief Officer in violation of the Constitution.



Bilika H. Simamba

Applicant in Person

Date: 23 April, 2014

THIS APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW is filed by Bilika H. Simamba, in person, whose address for service is 17 Mystic Retreat, John Greer Boulevard, P O Box 1393, Grand Cayman, KY1-1110