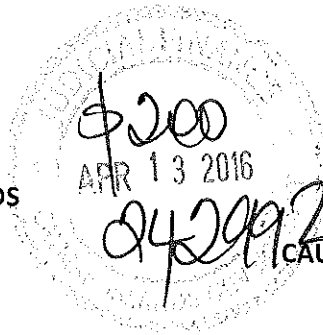


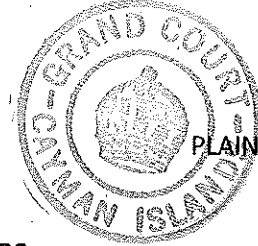
IN THE GRAND COURT OF THE CAYMAN ISLANDS



OF 2016

BETWEEN:

ADUKE NATALIE JOSEPH-CAESAR



PLAINTIFF

APR 13 2016
AND:

THE CHIEF OFFICER OF THE MINISTRY OF HOME AFFAIRS

DEFENDANT

NOTICE OF ORIGINATING MOTION

TAKE NOTICE that the Court at the Law Courts, George Town, Grand Cayman will be moved on
at _____ or as soon thereafter as counsel can be heard on behalf of
Aduke Natalie Joseph-Caesar to grant the following relief:

- a. A Declaration that the Chief Officer's application of the Public Service Management Law was illegal and void;
- b. A Declaration that the Chief Officer's termination decision was invalid, null and void and did not terminate the Plaintiff's tenure as Deputy Director of Prisons;
- c. A Declaration that the Plaintiff is still engaged in the position of Deputy Director of Prisons until such time as she resigns or her tenure lawfully comes to an end;
- d. An Order for payment of arrears of salary and pension contributions since 2 November 2015;
- e. Such further and other relief as the Court may deem appropriate in all the circumstances;
and
- f. Costs of these proceedings.

AND FURTHER TAKE NOTICE that the grounds upon which relief is sought are set out below.

INTRODUCTION

1. The Plaintiff was employed as one of two Deputy Directors in Her Majesty's Cayman Islands Prison Service ("**HMCI Prison Service**").
2. On 14 April 2015, the Chief Officer placed the Plaintiff on required leave. He purported to do so in accordance with Schedule 1 Section 8(2) of the Personnel Regulations (2013 Revision) ("**the Personnel Regulations**").
3. On 8 July 2015 the Chief Officer put the Plaintiff on notice that he considered her actions to amount to Gross Misconduct under the Public Service Management Law ("**PSML**") and the Personnel Regulations.
4. On 2 November 2015 the Chief Officer purported to terminate the Plaintiff's employment in accordance with the PSML.

THE LAW

5. The discipline of Prison Officers is the sole preserve of the Director of Prisons (The Imprisonment Law, now referred to as the Prisons Law, section 7 (a)):

"The Commissioner shall be in charge of the service and...

(a) Shall be responsible for the discipline and good order of officers and prisoners;"

6. The Director is specifically prohibited from delegating this duty (Prisons Amendment Law 1981, section 8).

“The Director may delegate...powers and duties...except the power – (a) to hear an appeal by an officer against a disciplinary award; (b) to make a disciplinary award involving dismissal or reduction in rank.”

7. A “prison officer” is defined (Prisons (Amendment) Law 1981, section 5 (i)) as follows:

“Any person employed in a prison for purposes connected with its administration”

8. The Plaintiff, by virtue of her position as Deputy Director of Prisons, was a prison officer as defined by the law.

THE REGULATIONS

9. The Prisons Law states that the Director, in exercising his disciplinary function, must abide by the procedure laid out in the Prison Officers (Discipline) Regulations (1999 Revision) (“**the Regulations**”).
10. These Regulations apply to all prison officers, irrespective of rank (Regulation 10).
11. The Regulations contain a prescriptive system which guarantees accused officers various rights (which are broader than those set out in the PSML and the Personnel regulations) including:
- (i) the right to be present to hear the case against them,
 - (ii) the opportunity to cross-examine the witnesses called in support of the case against them,
 - (iii) the right to give evidence, and
 - (iv) the right to call witnesses (Regulation 5).
12. The Regulations empower the Director to award any one or a combination of different punishments (Regulation 6) upon a finding that the charge against an accused officer is proved. These “punishments” are more varied than the powers available to the Chief Officer under the PSML.

13. The Regulations set out the appeal process to the Governor (Regulation 8):

"An officer, upon whom the Director has imposed any punishment, may appeal in the manner hereinafter provided to the Governor against either the finding or the punishment or both, and the Governor, in his discretion, may confirm, set aside or vary the finding and confirm, set aside, reduce, suspend or otherwise vary the punishment."

14. The grounds upon which an appellant may challenge the findings of the Director under the Prisons Law and Regulations are broader than the grounds upon which a civilian employee may challenge the findings of the Chief Officer under PSML. The appeal to the Governor appears to allow for a challenge to the finding of guilt (both on the facts and/or the law) and in respect of the punishment imposed whereas an appeal under the PSML (to the Civil Service Appeals Commission ("CSAC")) may only lie where the Chief Officer has *"acted in an unfair or biased manner, or in a manner inconsistent with the requirements of this Part"* (Section 54 PSML).

THE ERROR

15. The Prison Director is responsible for the discipline of his staff. He must carry out that function in accordance with the Regulations.
16. The Chief Officer did not have standing to conduct the disciplinary proceedings. The Chief Officer had no power to (and therefore did not) terminate the Plaintiff's appointment.

THE CONSEQUENCES

17. The Chief Officer's actions were wrong in law and have resulted in the Plaintiff being deprived of procedural safeguards (built into the Prison disciplinary process) and a right of appeal to the Governor against both the finding of guilt and the level of punishment imposed.

18. The Plaintiff has been deprived of any statutory appeal mechanism at all. Since the Prison Law (not the PSML) should have governed the disciplinary proceedings it would be procedurally incorrect for the Plaintiff to use the appeal mechanism under the PSML. It is simply not available to her. This conclusion is supported by the CSAC '*Guidance Notes for Lodging an Appeal*' which state at page 3:

"Under the PMSL, only civil servants (i.e. existing employees of government) can lodge an appeal with the CSAC. This means that the following are not eligible to lodge an appeal to the CSAC:

.....

- Royal Cayman Islands Police Service Officers as their employment conditions are otherwise governed within the remit of the Police Law; and*
- Her Majesty's Cayman Islands Prison Officers relating to any disciplinary matter as this employment condition is governed within the remit of the Prisons Law and the Prison (Discipline) Regulations."*

19. The corollary of this analysis is that the only means by which the Plaintiff can now challenge the Chief Officer's termination decision is by means of judicial review.

THE RELIEF SOUGHT

Declarations

20. The Plaintiff seeks the declarations set out above, namely that the decision to dismiss her was unlawful, that the dismissal itself is null, void and of no effect and that she remains in office until such time as her tenure is lawfully brought to an end by resignation or dismissal (McLaughlin v Governor [2007 CILR 321]).

Financial Orders

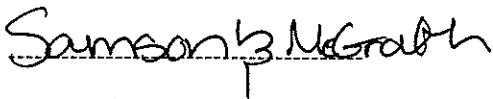
21. The Plaintiff is entitled to recover arrears of salary from the date of her purported dismissal and the payment of pension contributions on her behalf, less an allowance for any salary she has earned in the meantime (*McLaughlin v Governor* [2007 CILR 321]).

Costs

22. The Plaintiff is entitled to her costs.

Dated the 13 day of April 2016

Filed the day of April 2016



Samson & McGrath

Attorneys-at-Law for the Applicant

TO: The Clerk of the Courts

THIS NOTICE OF ORIGINATING MOTION was filed by Samson & McGrath, Attorneys-at-Law for the Plaintiff, whose address for service is 5th Floor, Genesis Building, PO 446 GT, Grand Cayman.