



IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 2022

IN THE MATTER OF SECTION 38 OF THE LEGAL AID ACT, 2021

IN THE MATTER OF ORDER 55 OF THE GRAND COURT RULES

AND IN THE MATTER OF AN APPLICATION FOR LEGAL AID FOR ANNESHIA THOMAS

ANNEISHA THOMAS

Appellant

-v-

DIRECTOR OF LEGAL AID

Respondent

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NOTICE OF  
ORIGINATING MOTION

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This Motion was filed by HSM Chambers, Attorneys at Law for and behalf of the Appellant herein whose address for service and correspondence is 68 Fort Street, George Town, PO BOX 31726, Grand Cayman KY1-1207, Cayman Islands

**TAKE NOTICE** that the Grand Court at the Law Courts, George Town, Grand Cayman will be moved on the \_\_\_\_\_ day of \_\_\_\_\_ 2022 at \_\_\_\_\_ a.m./p.m. or as soon thereafter as counsel can be heard, by counsel on behalf of Anneisha Thomas (“the Appellant”) for an order in the following terms:

- I. The decisions of the 16 November 2021 and 21 December 2021 were wrong in law.
- II. The Respondent is to grant the Appellant a legal aid certificate.
- III. The Legal Aid certificate is to cover the costs of the application and the appeal to the Grand Court.

And for an order that the costs of and incidental to this Application be paid by the Respondent.

**AND FURTHER TAKE NOTICE** that the grounds of this Application are:

1. The Appellant is a 43 year old Jamaican National. The Appellant has been a resident in the Cayman Islands since 2011 when she came to the Cayman Islands as a work permit holder. In 2014, the Appellant married a Caymanian and on May 15th 2015 she obtained a Residency and Employment Rights Certificate (“RERC”) as the Spouse of a Caymanian. Her Caymanian husband is Fred Augustus Boothe.
2. The Appellant was Naturalised as a British Overseas Citizen with a connection to the Cayman Islands on the 29 October 2019.
3. Even though the Appellant is a British Overseas Citizen with a Connection to the Cayman Islands, this Citizenship gives the Appellant no rights to live and work in the Cayman Islands. The Appellant’s RERC is the only permission that the Appellant has which allows her to remain and work in the Cayman Islands.
4. On 2 January 2021, The Appellant reported her husband to the police as a result of him, in a rage, causing damage to her car. Fred Boothe was charged with Criminal Damage and was initially granted bail on the condition that he was not to contact the Appellant directly or indirectly. Mr

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Boothe breached his bail conditions and further assaulted the Appellant. As a result of this, he has been charged with assaulting the Applicant and he has been remanded in custody.

5. As a result of Mr. Boothe's actions and the fact that he had been charged by the DPP, an Enforcement Officer (Officer Powell) from the Department of WORC in or around early March 2021 reached out to the Applicant to enquire about her marriage and its status, i.e. whether or not the Applicant intended to reconcile with Mr. Boothe.
6. In response to the concerns of the Department of WORC, in a letter dated 24 March 2021, HSM Chambers wrote to Officer Powell and copied into the letter, the Secretary of the Caymanian Status and Permanent Residence Board ("the Board"), the Attorney General's Chambers and the Director of WORC. In this letter, an interpretation of Section 40 of the Immigration (Transition) Act (2021 Revision) ("the Act") was provided in which the Board were not required to revoke the Applicant's RERC upon them concluding that the marriage of the Applicant and Mr Boothe had irretrievably broken down, which it had. Section 40 of the Act states:
  - (1) *Subject to subsection (2), the holder of a Residency and Employment Rights Certificate who is the spouse or civil partner of a Caymanian or has obtained a Residency and Employment Rights Certificate as a result of his or her marriage to or civil partnership with, the holder of a Residency and Employment Rights Certificate under section 37(16) or any other earlier analogous provision, shall forfeit his or her rights under that Certificate if —*
    - (a) *the holder falls within any of the provisions of section 51;*
    - (b) *the holder's spouse or civil partner ceases to be a Caymanian or to be a Residency and Employment Rights Certificate holder;*

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- (c) *within ten years of the marriage or the civil partnership, the marriage or civil partnership is dissolved or annulled;*
  - (d) *the holder ceases to be legally and ordinarily resident in the Islands; or (e) the holder and his or her spouse or civil partner are living apart —*
    - (i) *under a decree of a competent court;*
    - (ii) *under a deed of separation; or*
    - (iii) *in circumstances where, in the opinion of the Board or the Director of WORC, the marriage or civil partnership has irretrievably broken down.*
7. On 27 April 2021, the Attorney General’s Chambers responded to the letter of 24 March 2021. In the body of the letter, the Attorney General’s Chambers did not deal with any of the substantive issues raised.
8. In a letter dated 16 September 2021, the Board wrote to the Applicant and notified her that they were minded to forfeit (revoke) her RERC on the basis that the Applicant’s marriage to Mr. Boothe had broken down.
9. In response to the letter of 16 September 2021, HSM Chambers wrote to the Secretary of the Board and the Director of WORC seeking confirmation as to whether or not they accept HSM Chambers interpretation of Section 40 (1) of the Act as set out in the letter of 24 March 2021.
10. In an email dated 26 October 2021, the Board notified HSM Chambers that they do not accept HSM Chambers interpretation of Section 40 (1) of the Act. In particular the Board stated:

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*The Board does not agree with the conclusion that a provision of law providing that the holder of RERC “shall forfeit” his rights under a certificate should be interpreted as “May”.*

11. It is therefore the position of the Board s that irrespective of the fact that the Appellant is a victim of domestic violence, her RERC must be revoked and if she has no other means of remaining in the Cayman Islands, which she does not, she has to leave the Cayman Islands.
12. On 27 October 2021, the Applicant with the aid of HSM Chambers applied to the Respondent seeking legal aid to bring an action pursuant to Section 26 of the Bill of Rights (“the BOR”). The Appellant sought Legal Aid to, depending on the actions of the Board, to bring the following actions and seek the following relief from the Grand Court:
  - i. An interim Injunction preventing the Board or the Director of WORC from revoking the Applicant’s RERC until the conclusion of the Proceedings.*
  - ii. An Injunction preventing the Board or the Director of WORC from revoking the Applicant’s RERC upon the successful resolution of her claim.*
  - iii. A Declaration of Incompatibility in that Section 40 (1) of the Act is incompatible with Section 9 of the Bill of Rights (“BOR”).*
13. As part of that application, an opinion from an Attorney from HSM Chambers was provided as well as the necessary forms and evidence.
14. On 16 November 2021, the decision of the Respondent was reject the application on the basis that the Respondent concluded:

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- i. It seems a decision has not been confirmed by the board as yet to revoke the status and thus action for judicial review seems premature.*
  - ii. If decision made by Board, there are other options available to Applicant besides judicial review (e.g. Immigration Appeals Tribunal) and the options have not been properly explored before seeking judicial review.*
  - iii. The interpretation outlined by counsel for certain terms and law are not accepted. For example, we do not accept that the word "shall" can be also represented as 'may' in that relevant section of the law. Additionally having regard to the section of the law in which the Applicant gain status and her acknowledgement that the marriage has broken down, it is difficult to accept the contention being made by counsel and we also note that there are no minor Caymanian children of the union.*
  - iv. Legal Aid limited to court proceedings and thus a legal aid certificate in this situation cannot be extended to deal with the Tribunal matters.*
  
15. The decision appeared to be based upon the fact that the Appellant was seeking to bring Judicial Review Proceedings against the Board despite the Opinion clearly stating:  
  
*It is the author's view that a free standing claim pursuant to Section 26 (1) of the BOR is the appropriate action, especially in light of fact that the threat amounts to an infringement of the Applicant's personal rights and freedoms.*
  
16. The whole decision of the Respondent was therefore based upon an application which the Appellant was not seeking to make and would only be making in the "alternative".
  
17. In an email dated 16 November 2021, HSM Chambers sought a reconsideration of the matter and the following was pointed out to the Respondent:

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- i. The Appellant was not seeking to bring a Judicial Review claim rather a free standing claim pursuant to section 26 of the Bill of Rights.
- ii. The issues that the Appellant took with the decision of the Respondent.
- iii. How the Respondent should have considered the application.

18. On 21 December 2021, the Respondent rejected the reconsideration application stating:

*Further to the review of counsel's request for reconsideration dated 16th November 2021 and upon a detailed review of the initial submission, the consideration of the supporting documents, prevailing law, interpretation of the same and counsel's further outline, it is not accepted that the prospects of succeeding in this civil matter is good and declines to use discretion provided to grant legal aid in this matter. In this situation, the Director declining to exercise the discretion to grant legal aid is limited to the interpretation of the law and the determination on the prospects of success only despite any other suggestions made by counsel.*

#### **Error of Law**

19. It is averred that the Appellant has the necessary prospects of success and therefore the Director of Legal Aid should have granted the Appellant Legal Aid to bring a challenge to the decision of the Board to threaten to revoke the Appellant's RERC and seek a declaration that Section 40 of the Act is incompatible with Section 9 and Section 16 of the BOR.
20. Section 5 of the Legal Aid law requires that the Appellant needs a "reasonable prospect of succeeding on the merits" and it is clear that the Appellant has a reasonable prospect of success, by the Respondent concluding otherwise, the Respondent has erred in Law.

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**Breach of Natural Justice**

21. The decision of the Respondent and the reconsideration decision neither deals with the issues set out in the opinion provided by HSM nor deals with the issues raised in the reconsideration request. There is no analysis in the reasons for the rejection and therefore it is averred that the decision is insufficient and amounts to a breach of natural justice as per *National Roads Authority v Bodden et Ors* [2014] 2 CILR 47.

Dated: 13 January 2022

Hsm Chambers

**HSM CHAMBERS**

TO: The Clerk of the Court

AND TO: Director of Legal Aid  
61 Edward St.  
Albert Panton St.  
P.O. Box 495  
Grand Cayman  
KY1-1106  
Cayman Islands

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