

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 297 OF 1998

In the matter of the Grand Court Rules Order 53

And in the matter of an application for Judicial Review

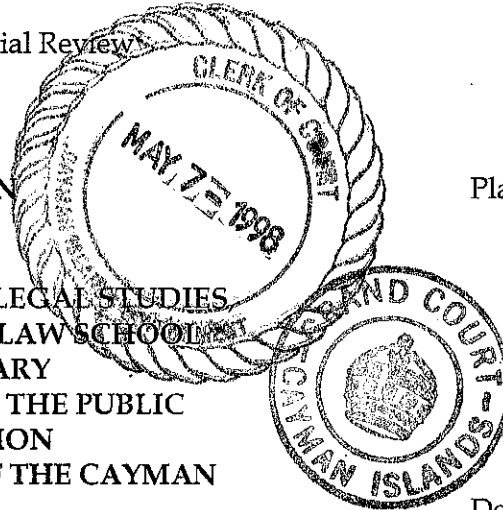
BETWEEN: ANDY DARKOH-AGYEMAN

Plaintiff

AND:

- (1) THE DIRECTOR OF LEGAL STUDIES
CAYMAN ISLANDS LAW SCHOOL
- (2) THE CHIEF SECRETARY
- (3) THE CHAIRMAN OF THE PUBLIC
SERVICE COMMISSION
- (4) THE GOVERNOR OF THE CAYMAN
ISLANDS

Defendants



NOTICE OF ORIGINATING MOTION

TAKE NOTICE that the Court at the Law Courts, George Town, Grand Cayman, will be moved on the 21 day of *September* 1998 at 10 a.m./p.m. or as soon thereafter as counsel can be heard, by counsel on behalf of Andy Darkoh-Agyeman ("Mr. Darkoh")

ON AN APPLICATION for judicial review of the proceedings issuing in the premature termination of the contract of employment between Mr. Darkoh and the Governor acting on behalf of the Government of the Cayman Islands, whereby Mr. Darkoh was employed as a lecturer at the Cayman Islands Law School ("the contract of employment"); specifically (i) the recommendation of the Director of Legal Studies ("the Director") as Mr. Darkoh's Head of Department that the contract of employment be terminated prematurely; (ii) the Chief Secretary's decision to arrange for the Director to inform Mr. Darkoh in writing of the intention to recommend the premature termination of his contract of employment; (iii) the recommendation of the Public Service Commission ("the Commission") that the contract of employment be terminated; and (iv) the Governor's decision to terminate the contract of employment.

AND FOR THE FOLLOWING RELIEF:-

1. A declaration that the said proceedings were unlawful.
2. Damages for breach of Mr. Darkoh's contract of employment.
3. Interest.
4. That the costs of and incidental to this application may be paid by the Defendants.

AND FURTHER TAKE NOTICE that the grounds of this application are:-


1. The proceedings to terminate Mr. Darkoh's contract of employment prematurely were instigated following written allegations of sexual harassment against him by two students at the Cayman Islands Law School. Although not amounting to allegations of criminal conduct, the allegations were nevertheless serious, and would have serious consequences for Mr. Darkoh's reputation and livelihood if upheld. Mr. Darkoh denied any wrongdoing and asserted that the allegations were false.
2. The proceedings were unlawful in that:-
 - (i) The memorandum dated 7th October 1997 (**exhibit "AD 2"**) contained a final written warning on account of the said allegations of sexual harassment. Mr. Darkoh should not therefore have faced any further action for the behaviour complained of in these allegations;
 - (ii) In the alternative that Mr. Darkoh was to face further action with respect to these allegations, he should have been informed of the identities of the complainants and given particulars of their allegations. Further, there should have been an oral hearing at which Mr. Darkoh had the right to be present and to cross-examine his accusers;

- (iii) In that alternative the matter should have been dealt with under **Regulations 47** or **48** of the Public Service Commission Regulations 1985, not **Regulation 30**. This would have allowed the above requirements of procedural fairness to be observed; and
 - (iv) Mr. Davies should have played no part in any proceedings against Mr. Darkoh after issuing him with a final written warning, as he had made up his mind that the allegations against Mr. Darkoh were well-founded before giving Mr. Darkoh the opportunity to answer them. There was therefore a real danger of bias on Mr. Davies' part.
3. Mr. Darkoh claims damages for breach of the contract of employment as follows:-
- (i) It was an implied term of the contract of employment that it would not be terminated in breach of the requirements of procedural fairness, whether as contained in the Public Service Commission Regulations 1985 or otherwise.
 - (ii) The contract was terminated in breach of the said implied term. The breaches of procedural fairness complained of are particularised at paragraph 2 above.
 - (iii) By reason of the matters aforesaid, Mr. Darkoh has suffered loss and damage. His particulars of special damage are as follows.
 - (a) **Loss of salary:** The contract of employment was terminated with effect from 1st January 1998. Mr. Darkoh was paid one month's salary. The contract was due to expire on 6th September 1998. Therefore the measure of special damages is the loss of salary from 1st February 1998 to 6th September 1998 inclusive. Mr. Darkoh' monthly salary was CI\$4,861.05 or thereabouts. This would yield special damages of **CI\$34,999.56** or thereabouts.

- (b) **Medical expenses:** Mr. Darkoh's wife has incurred medical expenses of CI\$6,532.11 or thereabouts for treatment which would have been provided free of charge under the contract of employment had it not been prematurely terminated.
- (iv) Further, Mr. Darkoh claims interest pursuant to section 34 of the Judicature Law (1995 Revision) at the rate of 7.875%:-
- (a) With respect to loss of salary:
- On the said sum of CI\$4,861.05 from 1st February 1998 (96 days), amounting to CI\$100.68 at the date hereof, and continuing until judgment or sooner payment at the rate of CI\$1.05 per day;
 - On the said sum of CI\$4,861.05 from 1st March 1998 (68 days), amounting to CI\$71.32 at the date hereof, and continuing until judgment or sooner payment at the rate of CI\$1.05 per day;
 - On the said sum of CI\$4,861.05 from 1st April 1998 (37 days), amounting to CI\$38.81 at the date hereof, and continuing until judgment or sooner payment at the rate of CI\$1.05 per day;
 - On the said sum of CI\$4,861.05 from 1st May 1998 (7 days), amounting to CI\$7.34 at the date hereof, and continuing until judgment or sooner payment at the rate of CI\$1.05 per day;
- (b) With respect to medical expenses, on the said sum of CI\$6,532.11 from 12th March 1998 (57 days), amounting to CI\$80.33 at the date hereof, and continuing until judgment or sooner payment at the rate of CI\$1.05 per day.

- (c) Further or alternatively on the amount found to be due to Mr. Darkoh at such rate and for such period as may be just.

DATED this 7th day of May, 1998


QUIN & HAMPSON
Attorneys-at-law for the Plaintiff

To: The Clerk of the Court

And to: The Solicitor General on behalf of the Defendants
Legal Department
Tower Building, George Town, Grand Cayman

This Notice of Originating Motion was issued by Quin & Hampson, Attorneys-at-Law on behalf of the Plaintiff herein whose address for service is Third Floor Harbour Centre, P.O. Box 1348, George Town, Grand Cayman.