

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV 2017-2570

BETWEEN

VASHTI PRIMAL

Claimant

AND

MINISTER OF EDUCATION

Defendant

BEFORE THE HONOURABLE MME. JUSTICE M. DEAN-ARMORER

APPEARANCES:

Ms. Alana Rambarran, instructing Mr. Alvin Pariagsingh, for the Claimant

Ms. Kezia Redhead instructing Ms. Keisha Prosper, for the Defendant

JUDGMENT

1. On the July 13, 2017, the Applicant Vashti Primal, applied ex parte under **Part 56** of the **Civil Procedure Rules** for leave to apply for Judicial Review. The Applicant filed an amended application for leave on July 24, 2017.
2. The applicant also sought relief under section 14 of **the Constitution** in respect of which there is no requirement for leave.
3. The application for leave was supported by an affidavit which was sworn by the Applicant and filed on July 13, 2017,

4. Leave was granted as sought, on July 28, 2017, and on August 8, 2017, the Claimant filed her Fixed Date Claim Form seeking this relief:

“The Claimant Claims from the 1st Defendant:

1.A declaration that the Claimant has been treated unfairly by reason of the continuing failure and/or refusal of the Ministry of Education to approve and/or pay her Motor Vehicle Upkeep Allowance for the period between April 2010 to June 4th 2017.

2.An order of mandamus directing the First and/ Second Defendant(s) to pay the Claimant her Motor Vehicle Upkeep Allowance for the period between April 2010 to June 4th 2017;

B. The Claimants Claims against the 2nd Defendant:

3. A Declaration that there has been a violation of the Claimant’s right to equality of treatment from public authority in the exercise of its functions under Section 4 (d) of the Constitution of Trinidad and Tobago

4.Declaration of relief in respect of the illegal and unfair treatment of the Claimant;

5. Damages to include monetary compensation and vindicatory damages for the violation of the Claimant’s Constitutional rights and/or for the loss of acting allowances and other benefits;

C) Relief in respect of both Claims

6. Costs

7. Such further other orders, directions or writs as the Courts considers just and as the circumstance of this case.”

5. On October 19, 2017, the Defendant applied to set aside the grant of leave on the ground that there had been undue delay in seeking judicial review. The Defendant also applied to strike out the application under section 14 of *the Constitution Ch 1:01*.
6. On December 19, 2018, I delivered a viva voce decision, dismissing the Defendant's application. In so doing, I decided against granting costs to the Applicant. My reasons for so doing are set out below.

Facts

7. The facts which are relevant to the application to set aside are not in dispute and have been set out in the affidavit of the Applicant.¹
8. By letter dated April 6, 2010, the Claimant was informed that she had been appointed as a temporary System Analyst I in the Ministry of Education for the period April 06,2010 to June 04, 2017. On July 15, 2015, the Claimant was orally informed by officers at the Civil Service Department that she occupied a travelling post and was entitled to emoluments as a travelling officer. The entitlement of the Claimant to receive travelling was confirmed by a letter March 16, 2016.
9. At Paragraph 11 of her affidavit, the Claimant alleged that she complied with the established protocol of submitting travelling allowance vouchers for the approval of the Head of Department, Ministry of Education. She then referred to an undated e-mail

¹ An affidavit sworn by the Applicant was filed on August 08 2017, in support of the substantive application for judicial review

indicating that the director of Human Resources and their Senior Accountant II had directed that all approvals for requests for payments cease.²

10. The Claimant testified that from April 6, 2016, she engaged in countless meetings in an effort to receive her entitlement.³ The Claimant alleged that notwithstanding her efforts, the Ministry of Education has delayed in reimbursing her the outstanding allowances from April 06, 2010 to June 04, 2017.
11. The question which arises is whether the Claimant had delayed unduly and if so, whether the grant of leave to apply for judicial review should be set aside.
12. In determining whether to set aside leave to apply for judicial review, the Court is guided by the test propounded by Justice of Appeal Kangaloo in ***Abzal Mohammed v. Police Service Commission***⁴. The decision was supported by the dissenting judgment of, Jamadar JA in ***Devant Maharaj v Attorney General*** currently on appeal to the Privy Council.
13. The test as formulated by Kangaloo JA, empowers the Court to set aside leave if it considers there has been undue delay in making the application and that the grant of leave will result in prejudice to other persons and detrimental to good administration.
14. I considered whether there had been undue delay in applying for leave to apply for judicial review. It was my view that the Claimant could not be faulted for the delay from April 2010 to March 2016 when she became officially aware of the entitlement.
15. The Claimant can certainly be faulted for the delay from the undisclosed time when according to her paragraph 11, she received an email under the hand of the head of

² See paragraph 11 of the affidavit filed on August 8, 2017

³ See paragraph 13 of the affidavit filed on August 8, 2017

⁴ *Abzal Mohammed v. Police Service Commission* Civil Appeal 53 of 2009

department, that the director of Human Resources had informed the head of the department to cease all approvals.

16. It was my view that from this time, it would have been appropriate for the Claimant to seek the intervention of the Court.
17. It was a cause for regret, that the Claimant had not identified the time and had not annexed the email. From this time, it was my view that the Claimant had slept on her rights.
18. I then considered whether the delay resulted or could result in detriment to good administration.
19. Learned Counsel for the Defendants have alluded to the ***Travelling Allowances Act Ch 23:50*** and the regulations which provide intricate details as to the request for a claim for travelling.
20. The Claimant would not have been entitled to a flat rate but would have been required to make a submission in terms of her motor vehicle and her mileage.
21. It was my view, that it was foreseeable that after so many years, it would have been difficult for the administration to test and verify such applications should the Claimant be ultimately successful in the application for judicial review. However, the Court recognised the detriment of good administration may be taken into account at the substantive application for judicial review as a discretionary ground for refusing relief.
22. In my view it would have been unfair to shut a Claimant out and turn her way from the seat of justice without examining the merits of her claim, if the ground upon which leave was being set aside, could eventually be taken into account in refusing relief.

23. Accordingly, it is my view that leave ought not to have been set aside.
24. In respect of the constitutional motion, I am similarly of the view that it would have been wrong and this stage to shut the Claimant out without hearing the merits of the case.
25. It was my view and I held that the Defendant's application to set aside leave should be dismissed. However, it was my view that there should be no order for costs in so far as I found that the Claimant delayed in seeking judicial review and that her delay could have been detrimental to good administration.

Orders

1. The Notice of Application filed on the November 9, 2017 is hereby dismissed. There be no order as to costs.

Date of Delivery: January 23, 2020

Justice Mira Dean-Armorer