REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No**. CV2017-04029**

BETWEEN

JENA JACKSON-RENNIE Claimant

AND

THE DEFENCE COUNCIL Defendant

BEFORE THE HONOURABLE MME. JUSTICE M. DEAN-ARMORER

Appearances:
Mr. Keith Scotland and Ms. Chevonne Garcia attorneys-at-law for the Claimant
Michelle Benjamin Attorney-at-Law for the Defendant

JUDGMENT

1. Jena Jackson-Rennie was a private in the Defence Force, when she was forced to sign documents which led to the end of her engagement. Through her attorney-at-law, Ms. Jackson-Rennie petitioned the defence council, as she was entitled to, under section 195 if the ***Defence Force Act***[1] seeking an investigation as to the circumstances, in which her engagement ended.

[1] Defence Force Act Chap 14:01

2. Many months later, when Ms. Jackson-Rennie had waited in vain for a ruling from Defence Council, she instituted these proceedings for judicial review claiming that there had been unreasonable delay on the part of the Defendant.

3. On November 8, 2017, the Applicant, Jena Jackson-Rennie filed a Notice under Part 56.3, ***CPR*** for leave to apply for judicial review of the alleged unreasonable delay of the Defence Council, in investigating complaints which she had made by petition on the April 25, 2017. The Claimant also applied for declarations under section 4(b) of ***the Constitution***.

4. In the course of this judgment, I considered whether there had be unreasonable delay as contemplated by section 15 of the ***Judicial Review Act***[2]. I also considered the ambit of the protection of the law as enshrined at section 4(b) of the ***Constitution***[3] and whether it had been contravened in relation to the Claimant.

Procedural History

5. The relief in respect of which the Claimant sought the Court's leave to apply for judicial review is set out below

    i) A declaration that the Applicant/Intended Claimant is entitled to a decision due to her in accordance with section 195 of the

[2] Judicial Review Act Chap. 7:08.
[3] The Constitution Chap 1:01

Defence Act Chapter 14:01 with respect to her complaint and/or petition dated the 28th day of November 2014, 4th day of April 2017, and or 25th day of April 2017.

ii) *A declaration that there has been unreasonable delay on the part of the Respondent/Intended Defendant in making a decision on the Applicant/ Intended Claimant's complaint and/or petition dated 28th day of November 2014, 4th day of April 2017 and or 25th day of April 2017.*

iii) *A declaration that the failure and/or neglect and/or refusal of the Respondent/Intended Defendant, a failure which is continuing, to make a decision with respect to the Applicant/ Intended Claimant's complaint and/or petition dated the 28th day if November 2014, 4th day of April 2017 and or 25th day of April 2017 is procedurally improper, unreasonable, and illegal.*

iv) *An order of mandamus to compel the respondent/Intended Defendant to make a decision with respect to the Applicant/ Intended Claimant's complaint and/or petition for redress of grievance pursuant to section 195 of the Defence Act 14:01 within seven (7) days thereof to determine whether her*

petition has been redressed and if so what steps are being taken to do or whether it has been refused with written reason for it decision.

v) *A declaration that the failure of the defence council to make a decision pursuant to Section 195 of the Defence Act 14:01 on the complaint of the Applicant/ Intended Claimant is in breach of the Applicant/ Intended Claimant's right to protection of particularised under section 5(2) e of the Constitution.*

vi) *That the Respondent/Intended Defendant do pay the Applicant/ Intended Claimant the cost of and associated with the making of their application to be assessed in default of agreement.*

vii) *Such further other order, directions or writs as the courts considers just and as the circumstances of the case warrants pursuant to Section 8 (1) (d) of the judicial Review Act (as amended).*

6. The Claimant's application for leave to apply for judicial review was supported by an affidavit which was sworn by the Claimant on the November 7, 2017 and filed on the November 8, 2017.

7. On November 21, 2017, this Court granted leave as sought in respect of the items of relief listed at paragraph 2 above. Pursuant to the grant of leave, the Claimant filed her Fixed Date Claim Form on December 7, 2017.

8. The first hearing of the application for judicial review was fixed for March 1, 2018. Prior to this date and without the Court's permission, the Claimant filed an Amended Fixed Date Claim Form on February, 2018. By the Amended Fixed Date Claim Form, the Claimant augmented the relief which was sought in the Notice which she had filed under ***Part 56.3***[4]. In her amended Fixed Date Claim she included an application for damages and pecuniary, exemplary or vindicatory damages. [5]

9. On March 1, 2018, the court gave directions for the filing and service of affidavits and written submissions. The Claimant relied on her own affidavit filed on November 08, 2017 while the Defendant relied on the evidence of Lydia Jacobs, whose affidavit was sworn and filed on June 12, 2018. The Claimant also filed an affidavit in Reply on July 13, 2018.

The Facts

10. In the year 2006, the Claimant was enlisted as a private in the Defence Force of Trinidad and Tobago.

[4] **CPR 1998**

[5] See the Amended Fixed Date Claim filed on February 27, 2018

11. She began experiencing health challenges in February, 2012, following childbirth by a caesarean section. Upon her return to work, at the end of her maternity leave, the Claimant presented a medical certificate from Dr. Charles of the Mt. Hope Maternity Hospital. Dr. Charles recommended that the Claimant be allowed to avoid standing for more than 6 hours and be allowed to avoid excessive physical exercise. Despite the medical certificate, the Claimant was informed on July 28, 2012, that she was required to be part of a funeral usher detail. Despite her protests, she was ordered to participate in the security detail by Provost, Sargent Williams.

12. As a result of the exercise in July 2012, the Claimant began haemorrhaging and was rushed to the Emergency Department of the Woman's Health Clinic in Mt. Hope. At this time, the Claimant was placed on sick leave and her doctor made an additional request for her to undertake light duties.

13. Dr. Charles, in his professional recommendation dated the August 9, 2012 referred to his earlier recommendation that the Claimant be placed only on light duties and noted that the recommendation had not been followed.

14. When the Claimant returned to work following her sick leave, she met with Dr. Dowlat, the Defence Force Medical Officer on August 4, 2012. Dr. Dowlat took the unusual step of disapproving her sick leave. Dr. Dowlat, accepted however the Claimant's condition

was serious and placed her on disposals, meaning that the Claimant was relieved of drills, PT, night duty, prolonged standing and heavy duty.

15. Upon leaving the office of Doctor Dowlat, on the August 4, 2012, the Claimant was instructed by Regiment Police Corporal Dipchand that she was to be taken to the Cumoto Barracks and she was commanded to sign three documents. These documents have not been disclosed by the Defendant. What is clear however, is that they led to the Claimant's discharge on the ground of Completion of Engagement. [6]

16. The Claimant attempted to seek redress and was told to go through the chain of command. Her efforts at securing meetings proved to be fruitless.

17. The Claimant herself made attempts to seek redress. She has provided details of her efforts at paragraph 19 of her affidavit[7]. These included a letter dated November 28, 2014[8].

18. The Claimant recalled, as well, one of two attempts at meeting with Command Forces Warrant officer, Michael Foo. On the first occasion, the Claimant sat waiting for 6 hours without success.

19. Thereafter, the Claimant enlisted the assistance of her attorney-at-law. A letter was sent by the Claimant's attorney at law on March 31, 2016 to the Chief of Defence staff.

[6] See the affidavit of Lydia Roberts filed on June 12, 2018
[7] See See paragraph 18 of the Claimant's affidavit, filed on February, 27, 2018.
[8] Ibid, Exhibit "E"

20. On April 4, 2017, attorney-at-law, Keith Scotland forwarded the Claimant's Petition to the Secretary of the Defence Council Pursuant to Section 195 of the ***Defence Act*** Chap 14:01. An amended Petition was sent under the cover of a letter dated April 25, 2017.

21. There was no response to the Petition for several months. Following the institution this application for judicial review, the Defence Council met on February, 2018 and deliberated on the Petition. It was the evidence of Ms. Lydia Jacobs that the Claimant had been discharged on the ground of completion of engagement.[9]

22. The Claimant, by her affidavit in reply, queried the decision of the Defence Council. She stated that she had enlisted in the Defence Force for engagements in 3 year increments. The Claimant referred to the Certificate of discharge, a copy of which was annexed to the affidavit of Lydia Jacobs. The Claimant refuted the suggestion that the length of her service could have been 8 years and 184 days and contended that her engagement should have been 9 years with further options to re-engage. [10]

23. The Claimant alleged further that PUHLEEMS was a medical examination conducted at the beginning and at the end of each engagement. She asserted that no PUHLEEMS examination was conducted at the purported end of her engagement.

[9] See paragraph 6 of the affidavit of Lydia Jacobs filed on 12th June, 2018
[10] See paragraph 3 of the Claimant's Reply affidavit filed June 12, 2018

Submissions

24. Learned attorney-at-law for the Claimant submitted that there had been unreasonable delay on the part of the Defence Council, and that the Claimant suffered a breach of her fundamental right as enshrined at Section 4 (b) of ***the Constitution.*** [11]

25. As a preliminary objection, the Defendant objected to the Amended Fixed Date Claim Form in so far as it purported to include new facts and new items of relief. The Defendant argued that the Amended Fixed Date Claim Form should be struck out.

26. The Defendant argued further that the issues as raised in these proceedings are now academic since the Defence Council investigated the Claimant's complaint on February 23, 2018.

27. Learned Counsel for the Defendant contended, in the alternative, that the Claimant's contention was misconceived in so far as she has argued that her rights under subsection 4(b) and 5(2) (e) of ***the Constitution*** had been breached.

28. The Claimant, through her Attorneys-at-Law filed Submissions in Reply on December 17, 2018. Mr. Scotland, Learned Counsel for the Claimant purported to answer the preliminary objection, that the Claimant should have obtained the Courts permission, prior to filing an Amended Fixed Date Claim Form. Mr. Scotland was content simply to

[11] Chap 1:01

rely on the fact that the defendant had made no objection to the amendment at case management conferences on March 1, 2018 and June 14, 2018.

Law

29. ***Defence Act*** Chap 14:01

"195) (1) If an other rank thinks himself wronged in any matter by any officer other than his commanding officer or by any other rank, he may make a complaint with respect to that matter to his commanding officer.

(2) If an other rank thinks himself wronged in any matter by his commanding officer, either by reason of redress not being given to his satisfaction on a complaint under subsection (1) or for any other reason, he may make a complaint with respect thereto to the Council.

(3) The Council or the commanding officer shall investigate any complaint received by him under this section and the matters complained of."

30. ***Judicial Review Act Chap*** 7:08:

"*15. (1) Where—*

(a) a person has a duty to make a decision to which

this Act applies;

(b) there is no law that prescribes a period within which

the person is required to make that decision; and

(c) the person has failed to make that decision,

a person who is adversely affected by such failure may file an

application for judicial review in respect of that failure on the ground

that there has been unreasonable delay in making that decision.

(2) Where—

(a) a person has a duty to make a decision to which

this Act applies;

(b) a law prescribes a period within which the person

is required to make that decision; and

(c) the person has failed to make that decision before

the expiration of that period, a person who is adversely affected by

such failure may file an application for judicial review in respect of

that failure on the ground that the decision-maker has a duty to make

that decision, notwithstanding the expiration of that period.

(3) Without prejudice to section 8, on an application for

judicial review under this section, the Court may make all or any of the following orders:

(a) an order directing the making of the decision;

(b) an order declaring the rights of the parties in relation to the making of the decision;

(c) an order directing any of the parties to do, or to refrain from doing, any act or thing, the doing, or the refraining from the doing, of which the Court considers necessary to do justice between the parties."

31. The Interpretation Act Chap 3:01:

"23. Where a written law requires or authorises something to be done but does not prescribe the time within which it shall or may be done, the law shall be construed as requiring or authorising the thing to be done without unreasonable delay having regard to the circumstances and as often as due occasion arises."

Discussion

32. In the course of considering whether the Court should exercise its discretion to grant judicial review as sought, it was necessary, at the outset to examine the Defendant's arguments advanced as preliminary submissions.

33. The Defendant, through Counsel, has objected to the Amended Fixed Date Claim, which introduces an application for two (2) new items of relief. The response of learned Counsel for the Claimant was that no objection had been made at the case management conferences, at which the Court gave directions for the filing of affidavits and submissions.

34. It is my view that the rules governing applications for judicial review are clear and have always required an applicant for judicial review first to obtain leave before seeking substantive orders[12]. The requirement for leave was re-stated in the ***Civil Proceedings Rules*** 1998 (as amended) at Part 56.3, in this way:

> *"No application for judicial review maybe made unless the Court grants leave."*

[12] See Order 53 of Rules Supreme Court and commentaries at 1991, Supreme Court Practice Vol 1 53/1- 14/27

By Part 56.3 (3) (b) of ***CPR***, the application for leave is required to specify the relief in respect of which judicial review is sought. It follows that no relief may properly be sought unless the Court's permission had first been obtained.

35. The Claimant never applied for the Court's permission to seek additional relief. The additional items of relief as sought by the Amended Fixed Date Claim Form are therefore not properly before the Court and are therefore, struck out.

Whether the Claim is academic

36. In ***R v. Secretary of State for the Home Department ex parte Salem***[13] , the Court considered an application by a Libyan asylum seeker, who applied for leave to apply for judicial review of the decision of the Secretary of State to notify the Department of Social Security that his asylum had been recorded as determined. This decision resulted in his income support being stopped.

37. The applicant in ***ex parte Salem***, being unsuccessful at both first instance and upon appeal, appealed to the House of Lords. Dismissing the appeal, their Lordships held:

> *"…on an appeal on an issue of public law involving a public authority the House of Lords had discretion to hear the appeal even if by the time it was due to begin there was no longer a lis to be determined directly affecting the parties'*

[13] Regina V. Secretary Of State For The Home Department, Ex parte SALEM - [1999] 1 A.C. 450

rights and obligations inter se; but that the discretion was to be exercised with caution, and academic appeals should not be heard unless there was a good reason in the public interest for so doing…"

38. ***Salem***[14] was followed by the Court of Appeal in Trinidad and Tobago in Civil Appeal No. 97 of 2002 ***Florence Bobb and Girlie Moses v. Patrick Manning*** in which the Claimants challenged the decision of former Prime Minister, Patrick Manning to retain office without a functioning Parliament.

39. Chief Justice Sharma, considering whether the proceedings were academic cited and relied on ***ex parte Salem*** . Chief Justice Sharma quoted these words of Lord Slynn:

"The discretion to hear disputes, even in the area of public law, must, however, be exercised with caution and appeals which are academic between the parties should not be heard unless there is a good reason in the public interest for doing so…[15]*"*

40. As a matter of principle, the Court retains its discretion to grant relief even where the question is academic and there is no ***lis*** between the parties. Such discretion must be exercised with caution.

41. In the proceedings before me, it is correct to say that the claim has been rendered academic. It is my view however, that in exercising my discretion, I must consider the

[14] Regina V. Secretary Of State For The Home Department, Ex parte SALEM - [1999] 1 A.C. 450
[15] Regina V. Secretary Of State For The Home Department, Ex parte SALEM - [1999] 1 A.C. 450 at page 457

peculiar facts of this case which culminated in the claim being rendered academic. These facts are set out below.

42. In these proceedings, there was no dispute that on August 04, 2014, when the Claimant returned from sick leave, it was indicated to her by Dr. Dowlat that she would be placed on light duties.

43. It has also not been disputed that upon leaving the doctor's office, she was virtually spirited away to the Cumoto Barracks and was ordered to sign documents.

44. The events of August 04, 2014, were not under challenge in these proceedings. I venture, however, to say *obiter dictum*, that the actions of the Claimant's superiors on the August 4, 2012 were irrational in the Diplock sense, in that they were outrageous in their defiance of logic and accepted moral standards.[16]

45. Thereafter, the Claimant did not sleep on her rights but attempted to seek redress on her own and three years after the event, eventually enlisted the assistance of her attorney-at-law, in order to invoke the procedure for the investigation of complaints at section 195 of the ***Defence Force Act.***

[16] Council for Civil Services Union v Minister for the Civil Service [1984] 3 ALL ER 935 per Lord Diplock 951 a

46. There was no dispute that the Claimant's petition was sent to the Defence Council on April 04, 2017[17]. An amended petition was forwarded under cover of a letter dated April 25, 2017[18].

47. After five months of experiencing deafening silence from the Defence Council, the Claimant applied for permission to apply for judicial review on November 08, 2012.

48. Almost four months after the institution of an application for judicial review alleging unreasonable delay on the part of the Defence Council, they met on February 23, 2018. A letter was sent by the Secretary to the Defence Council three days later, informing attorney-at-law for the Claimant that the Claimant had been discharged on the ground of completion of engagement.

49. I considered the sequence of events and have found the inference irresistible, that the Defence Council was galvanised into action by the institution of these proceedings.

50. There was a direct causal connection between these proceedings and the decision of the Defendant. It is my view therefore, that it is disingenuous to suggest that the proceedings are academic and ought to be dismissed. The proceedings were not academic, they achieved the purpose for which they were filed, that is to say to compel the Defence Council to make a decision.

[17] See paragraph 5 of the affidavit of Lydia Jacobs filed on June 12, 2018
[18] See paragraph 21 of the Claimant's affidavit dated November 08, 2017

51. For this reason, I will exercise my discretion to consider the Claimant's application for declarations. There will clearly be no need to grant an order of mandamus, since the filing of the proceedings has had the effect of the order of mandamus which was sought.

Unreasonable Delay

52. In ***Andrew Seesahai v. Defence Council***[19], Seepersad J, set out the factors, which ought to be considered in determining whether there had been unreasonable delay for the purpose of section 15 of the ***Judicial Review Act***[20]. These factors are set out below:

> *"(i) The importance of the issues to be determined to the person whose interest is at stake, per Elias J in R v Secretary of State for the Home Department ex parte Mersin [2000] QBD 522.*
>
> *(ii) The volume of matters that the public authority has to deal with, per Carnwath J in R v Secretary of State for the Home Department ex parte S [2007] EWCA Civil.*
>
> *(iii) Any policy of the Defendant public authority in relation to timing (R v Secretary of State for the Housing Department ex parte Jawad [2010] EWHC 1800 (Admin) paragraph 27-28 and 47 per Wyn Williams J).*

[19] .CV.2016-01690.
[20] Chap 7:08

(iv) The nature and complexity of the issues that the tribunal is required to determine.

(v) The prejudice that is being suffered by the Claimant as a result of the delay (R v Secretary of State for the Home Department ex parte Jawad (supra) paragraph 43-47 per Wyn Williams J).

(vi) The reasons advanced for the delay.

(vii) The need to ensure fairness (R v Secretary of State for the Home Department ex parte S (supra)).

(viii) The nature of the statutory provision that imposes the duty to make a decision."[21]

53. I considered the facts of this claim, in the light of the above factors. As to the first and fifth factors, it is my view that the issues before the Defence Council were of extreme importance to the Claimant. Her application pertained to employment and to her means of earning her living. The importance of her application to the Defence Council was augmented by the fact that she had tried for three years to obtain redress, and the application to the Defence Council was her only hope of obtaining relief, from what she clearly perceived to have been an oppressive and unfair summary dismissal. It is

[21] CV.2016-01690 at paragraph 16

therefore my view that the Claimant's petition to the Defence Council was of extreme importance to her.

54. As to the fifth factor, there was clear prejudice to the Claimant by the delay, since she had been awaiting relief for many years.

55. The remaining factors concern the Defence Council and their response to the petition and the need for their delay. It has not been disputed that the Defence Council did not respond to the Petition until its meeting in February, 2018. At that time, February, 2018, the application for judicial review was considerably advanced, beyond the application for leave and beyond the filing and service of the Fixed Date Claim Form.

56. In the ten months, when the Petition was before them, the Defence Council sent no indication, verbal or written as to the reason for their delay or as to the volume or complexity of work that engaged their attention. They provided no indication of any policy, to indicate the time they would normally allow themselves to investigate a complaint.

57. Not having responded to the Claimant's petition, the silence of the Defendant continued after the filing of the application for judicial review. By the affidavit of Lydia Jacobs[22] the Defence Council did not provide particulars of the reason of their delay, or the volume or complexity of petitions which may have been engaging their attention.

[22] Affidavit of Lydia Jacobs filed on June 12, 2018

They simply proceeded to meet, determine the petition and advise the Claimant and the Court accordingly.

58. In my view, it was unreasonable for the Defence Council, to have failed to respond to the Claimant or to attempt to explain their delay. It follows that it is my view that the Defence Council delayed unreasonably in dealing with the Claimant's petition. The Claimant is entitled to the Declaration sought at paragraph 2 of her Fixed Date Claim Form.

59. The declaration sought at paragraph 1 of the Fixed Date Claim Form will at this stage, serve no useful purpose, since the Claimant as a consequence of her application for judicial review, has already received a decision.

60. I will also grant the declaration in terms of paragraph 3 of the Fixed Date Claim Form, excising however, the grounds of procedural impropriety and illegality since these grounds have not been argued.

Section 4 (b) of the Constitution

61. Section 4(b) of the Constitution invests in the individual, the fundamental right to equality before the law and protection of the law[23].

[23] Section 4(b) Constitution Ch 1:01

62. In ***Attorney General & Another v. Mc Leod***[24] , upon appeal to the Privy Council, the question for the Court's determination was whether an invalid law deprived a person of protection of the law pursuant to section 4(b) of the Constitution. In the course of his judgment, Lord Diplock, per curiam, stated:

> *"For Parliament to purport to make a law that is void under section 2 of the Constitution, because of its inconsistency with the Constitution, would deprive no-one of the "protection of the law" (section 4(b) of the Republican Constitution), so long as the judicial system affords a procedure by which any person interested in establishing the invalidity of that purported law can obtain from the courts of justice a declaration of its invalidity that will be binding on Parliament itself and upon all persons attempting to act under or enforce the purported law. Access to a court of justice for that purpose is itself "the protection of the law" to which all individuals are entitled under section 4(b)."*[25]

63. In the case of ***Maya Leaders Alliance v. Attorney General of Belize***[26] ***[2015] CCJ*** , the Caribbean Court of Justice discussed the meaning of the protection of the law. In delivering the Court's judgment, the Right Honourable Sir Dennis Byron, President and The Honourable Mr Justice Winston Anderson stated that:

[24] Attorney General v. Mc Leod (1984) 32 WIR 450
[25] Attorney General v. Mc Leod (1984) 32 WIR 450 at page 459
[26] CCJ Appeal No BZCV2014/002,BZ Civil Appeal No. 27 of 2010

"The right to protection of the law is a multi-dimensional, broad and pervasive constitutional precept grounded in fundamental notions of justice and the rule of law. The right to protection of the law prohibits acts by the Government which arbitrarily or unfairly deprive individuals of their basic constitutional rights to life, liberty or property. It encompasses the right of every citizen of access to the courts and other judicial bodies established by law to prosecute and demand effective relief to remedy any breaches of their constitutional rights. However the concept goes beyond such questions of access and includes the right of the citizen to be afforded, "adequate safeguards against irrationality, unreasonableness, fundamental unfairness or arbitrary exercise of power." 52 The right to protection of the law may, in appropriate cases, require the relevant organs of the State to take positive action in order to secure and ensure the enjoyment of basic constitutional rights. In appropriate cases, the action or failure of the State may result in a breach of the right to protection of the law. Where the citizen has been denied rights of access and the procedural fairness demanded by natural justice, or where the citizen's rights have otherwise been frustrated because of government action or omission, there may be ample grounds for finding a breach of the protection of the law for which damages may be an appropriate remedy.[27]"

[27] At paragraph 147 of the judgment

Maya was referred to the recent pronouncement of their Lordships in ***Sam Maharaj v AG.***[28]

Sam Maharaj

64. In ***Sam Maharaj v AG***[29], their Lordships considered the ambit of the right to the protection of the law, as enshrined at Section 4(b) of the Constitution.

65. Sam Maharaj had been a member of the Industrial Court. When Mr. Maharaj was approaching the end of his first term, he wrote to the President of the Industrial Court in order to indicate his interest in being re-appointed. The President of the Industrial Court, in turn, wrote to the Attorney General.

66. Mr. Maharaj received no answer to his application, even after three new members had been appointed to the court. Mr. Maharaj instituted proceedings for judicial review. One of the arguments raised by Mr. Maharaj, on appeal to the Court of Appeal, was that he had suffered a breach of his right to the protection of the law, as enshrined at Section 4(b) of ***the Constitution***. Lord Kerr, on behalf of the Board considered the breadth of the concept of the protection of the law. At paragraph 37, Lord Kerr said:

> *"Access to the courts in order to challenge a claimed breach of an individual's legal rights is clearly an important aspect of the constitutional protection provided for*

[28] [2016] UK
[29] Privy Council appeal No. 0056 of 2015

in section 4(b). But, for the protection to be effective, access to justice must be prompt and efficacious. In this case, the appellant was deprived of any form of remedy for many years. The passage of those years at least contributed to the decision that the appellant was not entitled to any tangible recompense, for instance, in the form of reconsideration of his application to be reappointed"

67. I proceed therefore to consider whether the Claimant has succeeded in proving that she suffered a breach of her right under section 4 (b), by reasons of the delay of the Defence Council of some 10 months in considering her petition.

68. The Defendant argues that the Claimant's access to this Court, in these proceedings, constitutes the Claimant's right to the protection of the law. It is my view that the circularity of this argument is glaring.

69. It is also my view that the unexplained, open-ended delay of the Defence Council effectively left the Claimant without access to the only remedy which was provided for redressing grievances of an officer or another rank of Defence Force.

70. The Claimant's only avenue for redress was recourse to the Defence Council. It has not been disputed that the Claimant was summarily forced to sign documents leading to her discharge. This was the effect of her evidence at paragraphs 11-16 of her affidavit. Her evidence was not contradicted by the affidavit for the Defendant, and no application was made to have this evidence struck as irrelevant.

71. Had the Claimant attempted to seek any other means of redress she would have encountered the insurmountable argument that ***Defence Act*** provided machinery for redress through the Defence Council, by way of section 195.

72. However, her proper approach to Defence Council did not prove to be a prompt or efficacious access to justice. Additionally, the apparent delay was not explained and the Claimant was not afforded the comfort of knowing when she could expect a determination of the Defence Council.

73. It is therefore my view, that even if I place a narrow interpretation on the term protection of the law, the undisputed facts of this case establish such a breach.

74. It follows that I hold the view that the Claimant is also entitled to the Declaration sought at paragraph 5 of her Fixed Date Claim Form.

Damages

75. As stated above, the Claimant omitted to seek damages, when she sought the Court's leave under Part ***56.3 CPR*** to apply for judicial review. Having so omitted, the Claimant failed to seek the Court's permission to amend her Fixed Date Claim Form, but proceeded through her attorneys-at-law to do so without the Court's permission.

76. Accordingly, the Claimant had not obtained the Court's permission to seek the relief of damages or vindictory damages. These will accordingly be refused.

Orders

There will be judgment for the Claimant as follows:

1. A declaration that there has been unreasonable delay on the part of the Defendant in making a decision on the Claimant's petition dated 25th day of April 2017.

2. A declaration that the failure of the Defendant, to make a decision with respect to the Claimant's Petition dated 25th day of April 2017 is unreasonable.

3. A declaration that the failure of the defence council to make a decision pursuant to Section 195 of the Defence Act 14:01 on the complaint of the Claimant is in breach of the Claimant's right to protection of the law under section 4(b) of the Constitution.

4. That the Defendant do pay to the Claimant the cost of and associated with this Claim be assessed by the Registrar of the Supreme Court in default of agreement.

Date of Delivery: June 27, 2019

Justice Dean-Armorer