

**IN THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**CV 2017-01325**

**BETWEEN**

**DARINE ALEXANDER**

**Claimant**

**AND**

**THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**

**Defendant**

**Before The Honourable Madame Justice Margaret Y Mohammed**

**Dated the 24<sup>th</sup> November 2017**

**APPEARANCES:**

Mr. Selwyn Mohamed Attorney-at-Law for the Claimant.

Mr. Natoya Moore instructed by Ms. Radha Sookdeo Attorneys-at-Law for the Defendant.

**REASONS**

1. On the 20<sup>th</sup> October 2017 (“the order”) I exercised my powers under Part 26.2 (1) (b) of the Civil Proceedings Rules (“the CPR”) and struck out the Claimant’s Fixed Date Claim filed on the 19<sup>th</sup> April 2017 on the basis that it was an abuse of process. I also ordered the Claimant is to pay the Defendant’s costs in the sum of five thousand dollars. I now set out the reasons for my decision.
2. The Claimant instituted the Fixed Date Claim seeking the following reliefs:
  - “i. *A Declaration that the disparity in salary between the Claimant’s present position as an Immigration Officer and his former position of Prisons Officer I, as a consequence of his secondment and transfer to the Immigration Division, Ministry*

*of National Security, so long as the disparity exists is a breach of the Claimant's right to equality of treatment by a public authority in contravention of section 4(d) of the Constitution of Trinidad and Tobago.*

- ii. A Declaration that the decision of the Chief Personnel Officer to pay the Claimant a salary during his secondment which is lower than the salary the Claimant would have received as a Prison Officer I is a breach of the Claimant's right to the enjoyment of property and not to be deprived thereof except by due process of law in contravention of Section 4(a) of the Constitution of Trinidad and Tobago.*
  - iii. Damages in the sum of Two Hundred and Eleven Thousand One Hundred and Twenty Four Dollars and Forty Five Cents (\$211,124.45) which represents the disparity in salary for the period December 2011 to July 2016.*
  - iv. Interest pursuant to Section 25 of the Supreme Court of Judicature Act, Chapter 4:01.*
  - v. Costs and*
  - vi. Further or other relief."*
3. By Notice of Application ("the Application") on the 2<sup>nd</sup> June 2017 the Defendant applied to strike out the Fixed Date Claim. The grounds in the Application were the Claimant did not comply with Rule 56.7 () and (3) Civil Proceedings Rules ("the CPR") which deals with administrative orders since it failed to file a supporting affidavit; based on the facts in the matter the Claimant has an alternative remedy since he ought to have sought redress by judicial review; and the Claimant has delayed in filing the instant claim and he has not provided any explanation for the delay.
  4. Under Part 26.2(1)(b)CPR the Court is empowered to strike out a statement of case where it is an abuse of process of the Court. Lord Diplock in **Hunter v Chief Constable of the West Midlands Police [1982] AC 529 at page 536** stated that this is a power "*which any court of justice must possess to prevent misuse of its procedure in a way which, although not inconsistent with the literal application of its procedural rules, would nevertheless be*

*manifestly unfair to a party to litigation before it would otherwise bring the administration of justice into disrepute among right-thinking people.”*

5. There were four reasons I formed the view that in the Fixed Date Claim was an abuse of process of the Court.
6. Firstly, the instant action was filed as a constitutional motion but based on the facts the Claimant had an alternative remedy in judicial review. The Claimant’s contention was that in December 2011 he was employed by the Trinidad and Tobago Prison Service as Prison Officer I and in December 2011 he was seconded to the Immigration Division of the Ministry of National Security as an Immigration Officer I. He received a basic salary of \$10,253.00 as a Prison Officer I and after he was seconded to the Immigration Division as an Officer I he received the initial basic salary of \$5,287.00. He was still on secondment to the Immigration Division and he was currently receiving a basic salary of \$7,407.00. He claimed that for the period December 2011 to July 2016 there has been a disparity in salary totaling \$211,124.45 and that the disparity continued. He made several requests to the Chief Personnel Officer (“the CPO”) to rectify the disparity in salaries and the CPO has refused to do so.
7. I was of the opinion that the Claimant’s remedy was in judicial review against the CPO for failing to act on rectifying the alleged disparity in salary, which the Claimant said he suffered. In **Jaroo v The Attorney General PCA 54 of 2002** the Privy Council held that relief under section 14 of the Constitution is a remedy of last resort to be exercised in only exceptional circumstances. I was of the opinion that if the Claimant was not satisfied with the failure by the CPO to act he had the option of first pursuing his claim in judicial review. This was an option which was available to him and he did not set out any exceptional reason for seeking to pursue his remedy under section 14 of the Constitution.
8. Secondly, the Claimant delayed in making his claim without any explanation for the delay. In **Cyrilla De Bourg v the Attorney General of Trinidad and Tobago HCA 1844 of 1997** Jamadar J (as he then was) held that delay in commencing proceedings may be a basis that could render a constitutional action under section 14 an abuse of process or

disentitle a Claimant to relief. The delay must be so inordinate that it operates as a denial of the relief.

9. The Claimant filed this action in 2017 contending that there has been a disparity in his salary since December, 2011 and that he has made several requests to the CPO to rectify the disparity in the salaries and the CPO has failed and/or refused to do so. The Claimant also alleged that his Attorney-at-Law wrote letters to the CPO dated 17<sup>th</sup> March 2014, 2<sup>nd</sup> May 2014, 27<sup>th</sup> June 2014 and 18<sup>th</sup> May, 2015 but there has been no favourable response. The Claimant did not provide any details of circumstances which could have been considered a real cause for his inordinate delay in bringing these proceedings nor did the Claimant provide evidence to show that there was a real cause for his six year delay. I was of the opinion that in the absence of any explanation for the inordinate delay in bringing the instant proceedings the Defendant was also prejudiced.
10. Thirdly, the reliefs sought by the Claimant were without merit. The Claimant based his claim on breach of sections 4(a) and 4 (d) of the Constitution of Trinidad and Tobago (“the Constitution”). Section 4(a) concerns the right to the enjoyment of property and not to be deprived without due process. The Claimant alleged that he has been deprived of salary, which he alleged was his property, without due process. In **Bernadette Hood Ceasar v The AG HCA 3015 of 1987** the Court considered whether Cost of Living Allowance (COLA) and incremental increases which the Applicant had established she was entitled to, constituted property within the meaning of section 4 (a) of the Constitution. The Court held that since the COLA and the incremental increases were due to the Applicant it was money and a debt due to her and therefore it was property within the meaning of section 4(a) of the Constitution.
11. I was of the opinion that the facts in instant case were distinguishable from than in **Bernadette Hood-Ceasar** since the Claimant was still to establish that the salary he was claiming was a debt which he was owed by the State. Therefore I was not satisfied that the facts in the instant claim could have supported a claim for breach of section 4(a) of the Constitution.

12. Further section 4 (d) of the Constitution deals with the right to the equality of treatment by a public authority. At paragraph 45 in **The AG v Ravi Doodnath Jaipaul Civ Appeal 35 of 2011** the Court cited the Privy Council judgment in **Bhagwandeem v the AG PC App No 45 of 2003** where Lord Carswell propounded the test for inequality of treatment as:

*“a claimant who alleges inequality of treatment or its synonym discrimination must ordinarily establish that he has or would be treated different from some other similarly circumstanced person or persons described by Lord Hutton in Shamoon v Chief Constable of Royal Ulster Constabulary [2003] 2 All ER 26 at paragraph 71 as actual or hypothetical comparators. The phrase which is common to the anti-discrimination provisions in the UK is that the comparison must be such that the relevant circumstances in the one case are the same or not materially different in the other.”*

13. In **Ravi Jaipaul** the Court of Appeal found that where a claim is brought for inequality of treatment under section 4 (d) of the Constitution a Claimant need only raise a prima facie case that he was treated less favourably than one similarly circumstanced. The onus then shifts to the public authority to justify an objective basis for the difference in treatment.
14. In the instant case, the Claimant did not place any facts before the Court of other persons who were similarly circumstanced as him. Therefore I was of the view that the Claimant failed to raise any prima facie case that he was treated less favourably than any other similarly circumstanced person. Thus, the onus did not shift to the Defendant and I was of the opinion that the Claimant could not succeed with this relief.
15. Fourthly, the Claimant did not follow the appropriate procedure in the CPR for instituting the Claim. According to Rule 56.1 of the CPR, applications to the court for declarations in which the State is a party are generally referred to as applications for an administrative order and are governed by Part 56 of the CPR. Under Pursuant to Rules 56.7 (1) and (3)

of the CPR, an application to the Court for any administrative order must be made via Fixed Date Claim Form and filed together with a supporting affidavit containing particulars set out at Rule 56.7 (4) (a) to (g) of the CPR. In light of the reliefs in the Fixed Date Claim, the Claimant was seeking to apply for administrative orders. The Claimant did not file any affidavit in support but rather a Statement of Case was filed and there was no explanation for not complying with rule 56.7 (4).

16. It was also brought to the Court's attention during the oral submissions that the Claimant had instituted a previous action **CV 2016- 2636 in 2016 Darine Alexander v the Attorney General of Trinidad and Tobago** by Claim Form and Statement of Case for the same reliefs sought in the instant action, against the same Defendant and based on identical facts as stated in the instant action. The Claimant obtained permission from Dean-Armorer J to withdraw the 2016 action after the Defendant filed an application to strike it out on the grounds of abuse of process.

**Margaret Y. Mohammed**  
**Judge**