THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

No. CV 2018-04639

BETWEEN

ROGER SAMAROO

Claimant

AND

WASTE DISPOSAL (2003) LIMITED

Defendant

Date of Delivery January 27, 2020

Before the Honourable Madam Justice Margaret Y Mohammed

Appearances

Ms. Janet Peters Attorney at law for the Claimant.

Mr. St Clair O'Neil Attorney at law for the Defendant.

RULING APPLICATION TO STRIKE OUT DEFENCE

1. On the 7 December 2018 the Claimant issued the instant action against the Defendant for damages including aggravated damages for wrongful dismissal and breach of contract. His case is that he was employed by the Defendant since 2012 and he was wrongfully terminated in October 2017. The Claim Form and Statement of Case were served on the 13 December 2018. The time for the Defendant entering an appearance expired on the 21 December 2018 and the time for filing the Defence expired on the 10 January 2019. The Defendant filed its Defence on the 10 June 2019 without having filed any application seeking any extension to file the Defence. On the 25 June 2019 the Court Office issued the notice scheduling a case management conference for the 30 September 2019. On the 19 September 2019 the Claimant filed an application ("the Claimant's Application") to strike out the Defendant's Defence. The Claimant's main

grounds as set out in the Claimant's Application and the affidavit of the Claimant in support were that pursuant to Rule 26. (1) (b) and/or (c) Civil Proceedings Rules ("CPR") or under the inherent jurisdiction of the Court:

(a) The Defence which was filed is an abuse of the process of the court since it was not filed within the prescribed time and the Defendant did not obtain permission to file the Defence out of time.

(b) The substance of the Defence has no realistic prospect of success since the Defendant's position that the claim should have been brought in the Industrial Court as it deals with the issue of redundancy is without merit.

2. In my opinion, the Claimant appeared to challenge the Defence on three bases under Rule 26.2(1) (b), Rule 26.2(1) (c) and under rule 15.2(a), which states that a Court can give summary judgment to a Claimant for whole or part of a claim if the Defendant had no realistic prospect of success.

Abuse of process

3. Rule 26.2(1) (b) CPR empowers the Court to strike out a pleading if it is an abuse of process of the Court. Rule 10.3(1) CPR states that the general rule is that a Defence is to be filed within 28 days after the date of service of the Claim Form and Statement of Case. 10.3(5) CPR provides that a Defendant may apply for an order extending the time for filing a defence. In **Roland James v the Attorney General of Trinidad and Tobago**[1] the Court of Appeal repeated the guidance as set out by the Privy Council decision in **The Attorney General v Keron Matthews**[2] that a Defence can be filed without the permission of the Court after the time for filing has expired.

4. The reasoning of the Privy Council in **Keron Matthews** was explained at paragraphs 14 and 16 where the Board stated:

[1] Civ Appeal 44 of 2014
[2] [2011] UKPC 38

"14. First, a defence can be filed without the permission of the court after the time for filing has expired. If the claimant does nothing or waives late service, the defence stands and no question of sanction arises. If, as in the present case, judgment has not been entered when the defendant applies out of time for an extension of time, there is no question of any sanction having yet been imposed on him. No distinction is drawn in rule 10.3(5) between applications for an extension of time before and after the period for filing a defence….

16. It is striking that there is no similar provision in relation to a failure to file a defence within the time prescribed by the rules. **There is no rule which states that, if the defendant fails to file a defence within the period specified by the CPR, no defence may be filed unless the court permits.** The rules do, however, make provision for what the parties may do if the defendant fails to file a defence with the prescribed period: rule 10.3(5) provides that the defendant may apply for an extension of time; and rule 12.4 provides that, if the period for filing a defence has expired and a defence has not been served, the court must enter judgment if requested to do so by the claimant. **It is straining language to say that a sanction is imposed by the rules in such circumstances. At, most, it can be said that, if the defendant fails to file a defence within the prescribed period and does not apply for an extension of time, he is at risk of a request by the claimant that judgment in default should be entered in his favour.** That is not a sanction imposed by the rules. Sanctions imposed by the rules are consequences which the rules themselves explicitly specify and impose." (Emphasis added)

5. In my opinion, the failure by the Defendant to file the Defence within the time limited to do so and without receiving permission from the Court is not an abuse of process. The Defendant may have run the risk of having a judgment in default entered against it by not having filed an application for an extension of time to file the Defence. However, in the instant case there is no judgment in default entered against the

Defendant at the time the Defence was filed. Therefore, this limb of the Claimant's application has failed.

No ground for defending the claim/no defence with a realistic prospect of success.

6. Rule 26.2(1) (c) CPR empowers the Court to strike out a pleading or any part thereof where it discloses no ground for bringing or defending the claim.

7. Rule 15.2(a) CPR, empowers the Court to give summary judgment on the whole or part of the claim if the Defendant has no realistic prospect of success on his Defence or part thereof. In **Western Union Credit Union Co-operative Society Limited v Corrine Amman**[3] Kangaloo JA was dealing with an application for summary judgment by the Claimant. The learned Judge applied the English approach on applications for summary judgment and gave the following guidance:

> "The court must consider whether the Defendant has a realistic as opposed to fanciful prospect of success: **Swain v Hillman** [2001] 2 AER 91
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> A realistic defence is one that carries some degree of conviction. This means a defence that is more than merely arguable: **ED &F Man Liquid Products and Patel** [2003] EWCA Civ 472 at 8.
>
> In reaching its conclusion the Court must not conduct a mini trial **Swain v Hillman** [2001] 2 AER 91:
>
> This does not mean that the court must take at face value and without analysis everything the Defendant says in his statements before the court. In some cases it may be clear there is no real substance in the factual assertion made, particularly if contradicted by contemporaneous documents: **ED & F Man Liquid Products v Patel** EWHC 122
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> However in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment but also the evidence which can reasonably be expected to be

[3] CA 103/2006 Kangaloo JA

available at trial **Royal Brompton NHS Trust v Hammond** (No 5) [2001] EWCA Cave 550

Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case: **Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd** [2007] FSR 63."

8. A Court should be hesitant to shut out a party before the trial. In **Belize Telemedia Limited v Magistrate Usher**[4] Abdulai Conteh CJ considered the interaction between striking out under the court's case management powers in Part 26 and the power to award summary judgment under Part 15 CPR. He stated:

> "15. An objective of litigation is the resolution of disputes by the courts through trial and admissible evidence. Rules of Court control the process. These provide for pre-trial and trial itself. The rules therefore provide that where a party advances a groundless claim or defence or no defence it would be pointless and wasteful to put the particular case through such processes, since the outcome is a foregone conclusion.
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> 16. An appropriate response in such a case is to move to strike out the groundless claim or defence at the outset.
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> 17. Part 26 of the powers of the Court at case management contains provisions for just such an eventuality. The case management powers conferred upon the Court are meant to ensure the orderly and proper disposal of cases. These in my view, are central to the efficient administration of civil justice in consonance with the overriding

[4] (2008) 75 WIR 138

objective of the Rules to deal with cases justly as provided in Part 1.1 and Part 25 on the objective of case management."

9. In **The University of Trinidad and Tobago v Professor Kenneth Julien & Ors**,[5] Kokaram J examined the different tests for summary judgment and striking out a Defence. He stated:

> "**The rolled up Striking out and Summary Judgment applications**
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> 24. In my view I agree with the observations made in **Swain v Hillman** [2001] 1 All ER 91 that there is an obvious relationship between CPR rule 26.2 (c) and rule 15. They are both summary proceedings that seek to bring a premature end to proceedings without the opportunity being given for the parties or the Court to fully investigate the facts and the law at a trial. The premise of both applications is that it would be a waste of the parties' and Court's resources to do otherwise and that further management to trial is an uneconomical, un-proportionate response to the nature of the case presented by the litigant. The approach maintains the equality of arms between a litigant spared the further expense of a hopeless or weak case and a Defendant's right not to be harassed by such cases. The assessment in both cases is an exercise of the Court's case management powers to give effect to the overriding objective. See CPR rules 1.2, 25.1 (a) (b) and (h). See also the judgment of Jamadar JA in **Real Time Systems Ltd v Renraw Investments Ltd** CA Civ. 238 of 2011. The Court makes a broad judgment after considering the available possibilities and concentrates on the intrinsic justice of a particular case in the light of the overriding objective. See **Walsh v Misseldine** [2001] CPLR 201. In examining the tests in a rolled up application one may look at the individual trees but then must step back to "look at the forest" in making an overall assessment of the case.

[5] Claim No. CV2013-00212

10. At paragraphs 28 to 33 Kokaram J continued:

> 28. I consider the approach in "dismissing" a claim under a rolled up application of striking out and summary judgment such as this one as adopting at the same time a "soft" and "hard" or more robust approach in the assessment of a Claimant's case. The governing caveat of course is that a Court must not, regardless of the nature of its assessment, embark upon a mini trial requiring the resolution of the minutiae of detail in evidence or the applicable law to disputed facts only available at a full blown trial. If there is a legally determinable claim based upon the Claimant's facts, then the Court must consider the available evidence in assessing the prospect of success. See *Caribbean Civil Court Practice Note 23.23* and **Chief Constable of Kent v Rixon** [2000] AER 476.
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> 29. The enquiry under CPR rule 26.2 (c) is in my view the soft approach where the language of rule 26(2) (c) is so generous that so long as the statement of case discloses a ground for bringing the claim it cannot be struck out. The Court of Appeal and Privy Council in **Real Time** CA Civ. 238 0f 2011 and [2014] UKPC 6 respectively added a new dimension to the curative powers available in lieu of the draconian measure….
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> 33. It is indeed worthy of note of this soft approach, especially in the context of this case that a case will not be struck out in an area of developing jurisprudence and where the facts need to be investigated before conclusions can be drawn about the law. **Farah v British Airways plc and the Home Office** (2000) Times 26 January. In **Partco Group Ltd v Wragg** [2002] EWCA Civ. 594. This "soft approach" is further explained in Zuckerman:
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> > "A strike out decision may also be criticized on an entirely different ground: that the court was in error in deciding that the issues did not require investigation by the normal procedural process. In certain circumstances it would be appropriate to allow an issue to

> be aired at the trial even if the court believes that the claim or defence is groundless. For instance, even though the court considers an allegation of sexual abuse farfetched, it may be desirable to allow the allegation to be tested at the trial. See S v Gloucestershire County Council. Similarly the court may allow proceedings to go forward in order to enable the court to clarify an uncertain point of law."

11. The test in Rule 26. 2 (1) (c) is the "soft approach" and not the high threshold of Rule 15. 2(a) of no realistic prospect of success.

12. The Claimant's action is grounded in breach of contract. The Claimant's case is that he was employed by the Defendant in 2012 in the permanent capacity of Maintenance Manager with responsibility for the Maintenance Section and Recycling Unit. His working hours were 6:00am to 2:00pm. In April 2015, the Defendant revised the organisation's structure and split the Maintenance Department into two Divisions namely the Welding Division and the Fleet Maintenance Division. By letter dated 29 April 2015, the Claimant was advised by the Defendant of its unilateral decision to revise his position from that of Maintenance Manager to Manager Welding in the Maintenance Division retroactive from 1 April 2015. The Claimant contends that the terms and conditions of his contract were unilaterally varied changing his hours of work to 10:00am to 6:00pm. The Claimant continued to operate in the capacity of Maintenance Manager for almost an entire month without notification of the Defendant's decision. In the absence of the Fleet Manager, the Claimant still performed his original functions on a part time basis. The Defendant simultaneously hired an additional Manager to supervise the Fleet Division which increased the Managers from eight to nine.

13. On 27 September 2017, without warning, the Claimant was verbally instructed by an agent of the Defendant, Allan De Boehmler, Chief Executive Officer (CEO) to attend a meeting on even date. The meeting comprised the CEO and the Human Resources

Manager. The Claimant was advised that his job had been identified as being subject to redundancy.

14. The Claimant contends that at no time were Managers requested to reduce staff and at no time the Management team got any indication that Managers could be made redundant. He also contends that at all material times, the Defendant held out to him and the entire Management team that the workforce would be maintained. The Claimant further contends that the Defendant failed to provide him with information regarding other vacancies or areas within the Defendant where his skills could be utilised. He identified his own areas where he could be accommodated.

15. The Claimant was mandated by the Defendant, through its agent not to report for duty from 28 September 2017 and instead to report to another meeting on 2 October 2017 at 11:30am. As at this date, the Claimant was not issued with any formal correspondence of his termination by the Defendant. The Claimant's attorney at law issued a letter dated 2 October 2017 to the Defendant expressing concerns over the informality of the Defendant's actions. On 5 October 2017, the Claimant made a proposal, which suggested inter alia that his scope of duties should be expanded to all branches of the Defendant especially the Arima and Freeport facilities, and aspects of the Health and Safety of all branches.

16. On 12 October 2017, the CEO of the Defendant advised the Claimant that the Defendant was in the process of restructuring the organisation and was reviewing the competencies of the entire work force, including Managers. The Defendant alleged in the said correspondence that the Claimant required the most supervision as compared with his peers, and that numerous meetings were held with the Claimant regarding his performance. The Claimant contends that no performance appraisals were ever conducted for him and the Defendant at no time had placed him on a performance improvement plan during his tenure, and in any event, the subject of his dismissal was redundancy and not performance.

17. Based on the aforesaid facts, the Claimant also asserts that the Defendant's actions were tantamount to summary and or constructive dismissal under the guise of redundancy since he was the only Manager terminated on the grounds of redundancy. By cheques nos. 040525 and 040698 dated 12 October 2017 and 22 November 2017, the Defendant paid the Claimant a settlement totalling $89, 847.00 representing severance benefits under the **Retrenchment and Severance Benefits Act**[6].

18. The Defence raised a point in limine and a substantive Defence. With respect to the point in limine the Defendant pleaded that the Court has no jurisdiction to deal with the instant matter since it is in the nature of a trade dispute. The Defendant pleaded that it relied on sections 4 and 7(1) of the **Industrial Relations Act**[7] ("the IRA")and the judgments of **Texaco (Trinidad) Incorporated v Oilfield Workers Trade Union**,[8] and **Joanne Ferdinand v North-West Regional Health Authority**[9]**.**

19. The substantive defence which the Defendant pleaded was that the Claimant was employed as the Maintenance Manager, Welding from 26 March 2012 to 12 October 2017 and that he was retrenched by letter of even date. A Memorandum dated 16 October 2018 was subsequently sent to all employees informing them of the Claimant's retrenchment and the reason for same.

20. The Defendant averred that several other positions were made redundant, including the Maintenance Manager, East Branch, who was retrenched by letter dated 18 September 2018 and that the main reason for retrenching the Claimant was financial difficulties of the Defendant.

21. The Defendant denied all the allegations of breach of contract/wrongful dismissal made by the Claimant.

[6] Chapter 88:13
[7] Chapter 88:01
[8] (1981) 34 WIR 215
[9] CV2006-00316

22. It was submitted on behalf of the Claimant that the Defence should be struck out for the following reasons: (a) paragraphs 3 to 7 of the Defence are without merit, do not have a realistic prospect of success and disclosed no grounds for defending the claim since the Claimant did not fall within the definition of a "worker" under section 3 of the IRA (b) paragraphs 8 to 12 of the Defence are without merit , do not have a realistic prospect of success and disclosed no grounds for defending the claim since the defence that the Claimant was made redundant due to financial difficulty is a blanket defence lacking in particulars and any details of its financial position.

Jurisdiction of the Court - Is the claim of the nature of a trade dispute?

23. Section 4 of the IRA establishes the Industrial Court and section 7 (1) empowers it to hear and determine trade disputes.

24. Section 2 of the IRA defines a trade dispute as:

> "trade dispute" or "dispute", subject to subsection (2), means any dispute between an employer and workers of that employer or a trade union on behalf of such workers, connected with the dismissal, employment, non-employment, suspension from employment, refusal to employ, re-employment or reinstatement of any such workers, including a dispute connected with the terms and conditions of the employment or labour of any such workers, and the expression also includes a dispute between workers and workers or trade unions on their behalf as to the representation of a worker (not being a question or difference as to certification of recognition under Part 3);

25. In the IRA "worker "is defined in Section 2 as follows-

> "worker", subject to subsection (3) means-
>
> (a) Any person who has entered into or works under a contract with an employer to do any skilled, unskilled, manual, technical, clerical or other work for hire or reward, whether the contract is expressed or implied, oral or in writing, or partly oral and partly in writing, and

whether it is a contract of service or apprenticeship or a contract personally to execute any work or labour;

(b) Any person who by any trade usage or custom or as a result of any established pattern of employment or recruitment of labour in any business or industry is usually employed or usually offers himself for and accepts employment accordingly.

(c) Any person who provides services or performs duties for an employer under a labour only contract within the meaning of subsection (4) (b) and includes

(d) any such person who-

(i) has been dismissed, discharged, retrench, refused employment, or not employed, whether or not in connection with, or in consequence of, a dispute; or

(ii) whose dismissal, discharge, retrenchment or refusal or employment has lead to a dispute; or

(e) any such person who has ceased to work as a result of a lock out or of a strike, whether or not in contravention of Part 5

as the case may be."

26. Subsection (3) provides the exceptions as:

"For the purposes of this Act, no person shall be regarded as a worker, if he is-

(a) a public officer, as defined by section 3 of the Constitution;

(b) a member of the Defence Force or any ancillary force or service thereof, or of the Police, Fire or Prison Service or of the Police Service of any Municipality, or a person who is employed as a rural constable or estate constable;

(c) a member of the Teaching Service as defined in the Education Act, or is employed in a teaching capacity by a university or other institution of higher learning;

(d) a member of the staff and an employee of the Central Bank established under the Central Bank Act;

(e) a person who, in the opinion of the Board-

(i) is responsible for the formulation of policy in any undertaking or business or the effective control of the whole or any department of any undertaking or business; or

(ii) has an effective voice in the formulation of policy in any undertaking or business;

(f) employed in any capacity of a domestic nature, including that of a chauffeur, gardener or handyman in or about a private dwelling house and paid by the householder;

(g) an apprentice within the meaning of the Industrial Training Act."

27. The Board referred to at (e) above is the Registration Recognition and Certification Board ("the Board"), whose duties are set out in section 23 (1) as follows-

"The Board shall be charged with responsibility for-

(a) The determination of all applications petitions and matters concerning certification of recognition under Part III, including the taking of preferential ballots under section 34(2).

(b) The certification of recognised majority unions;

…

(f) Such other matters as are referred or assigned to it by the Minister or under this or any written law."

28. As the Defendant asserted that the instant dispute is a trade dispute, the first hurdle which it has to overcome was to plead certain facts which showed that the Claimant was a worker under the IRA so that the instant action can fall within the aforesaid definition of trade dispute. The Defendant did not dispute in the Defence that the Claimant was the Maintenance Manager, Welding before his employment ended.

29. In **Caroni (1975) Limited v Association of Technical, Administrative and Supervisory Staff**[10] one of the issues which the Court had to determine was whether the Company

[10] Civ App 87 of 1999

Secretary was a worker. The Court of Appeal found that in light of sections 2, 23 and 32 of the IRA the issue of whether a person is a worker as defined under the IRA is not to be determined by the Industrial Court but rather the Board.

30. The Court of Appeal referred to two other judgments of that Court to support its finding. In **The Registration Recognition and Certification Board v Bank Employees**[11] the Minister had referred the question of whether the Operations Manager was a worker to the Board. Ibrahim, J.A. expressed a view on the manner in which the Board can be approached. He said:

> "Whilst the duty is placed on the Board to make such a determination the person and the procedure for bringing such a question before the Board is not spelled out in the Act. It is, therefore, open to anyone who can raise such a question before the Board to approach the Board in any manner in which the Board can be approached."[12]

31. In **Albert v ABEL**[13], the Court of Appeal had to determine whether an employee was entitled to severance benefits. This question turned on whether or not he was a "worker" de la Bastide CJ said-

> "It is fairly clear from the evidence that the appellant as General Manager of the Concrete and Clay Products Division was responsible for the effective control of that Division and almost certainly had an effective voice in the formulation of policy in the respondent's undertaking or business. The way in which paragraph (e) is structured, however, makes the 'opinion of the Board' a sine qua non' for the exclusion of anyone from the definition of "worker" under that paragraph. To be excluded a person must fit the description contained in that **paragraph in the opinion of the Board**, and no one else. Therefore, until and unless the opinion of the Board to that effect is obtained, the exclusion cannot operate. That seems to me to be the inevitable result of giving paragraph (e) its normal meaning. It is to be noted that the opinion of

[11] CvA 183 and 184 of 1994 (Unreported)
[12] Page 9
[13] CVA. Appeal No 37. Of 2000 (unreported)

the Board is given special protection by the Act. Firstly section 23(7) reserves to the Board the exclusive fright "to expound upon any matter touching the interpretation and application of this Act relating to the function and responsibilities with which the Board is charged …" Secondly, section 23(6) forbids any decision of the Board being "challenged, appealed against, reviewed, quashed or call in question in any Court on any account whatever. The problem is that it is by no means clear how the opinion of the Board as to the application of paragraph (e) is to be obtained unless the question arises in the context of a claim for recognition. Regardless of how, when or whether an opinion can be obtained from the Board that an employee falls within section 2 (3) €, no one can be excluded under that paragraph without it. The opinion of the Board not having been obtained in relation to the appellant, severance benefits in accordance with the scale prescribed by the 1985 Act are prima facie payable to him." (Emphasis added).

32. The Court of Appeal decision of **Attorney General v Chaman Algoo**[14] settled the law on the issue of whether the High Court and by extension the Court of Appeal had the jurisdiction to interpret and enforce the terms of a collective agreement having regard to sections 47 and 48 of the IRA. **Chaman Algoo** was an appeal from the High Court against a decision of the trial judge wherein he awarded the Respondent the amount claimed by him in that action, such sum representing monies due and owing to him by the Appellant. The Memorandum of Agreement referred to in the Statement of Claim and tendered into evidence as part of the agreed bundle of documents was on further examination found to be duly registered as a collective agreement under the provisions of the IRA.

33. The Court of Appeal allowed the appeal and quashed the trial judge's decision. Davis JA held that section 47(1) of the IRA prescribed that the terms and conditions of registered agreements are to be binding on the parties thereto, and it prescribed that the terms and conditions of such agreements are enforceable, only in the Industrial

[14] Civ. App. 47/1984 delivered 30 November 1989

Court. It was clear therefore that as between the parties to a registered agreement the only forum in which they can enforce its terms and conditions is in the Industrial Court.

34. Davis JA considered the full effect of the IRA. Having considered the definition of "trade dispute" or "dispute" under section 2 of the IRA, he concluded that claims for damages for breach of contract of employment by a worker whose terms and conditions of employment are caught by section 47 of the IRA are in fact a trade dispute reportable under the dispute procedure. He concluded further that under the dispute procedure where a question arises or there is a difference between an employer and a trade union as to whether a dispute that has been reported is one that concerns the application to that worker of existing terms and conditions of employment, the Industrial Court is empowered to determine that question of difference and on so doing its determination is binding on the parties and is final. He went further to note that by that appeal procedure under the Act, the decision of the Industrial Court is final on questions of fact, and can only be challenged in the Court of Appeal for error of law, or want of jurisdiction.

35. The position set out by Davis JA aforesaid was followed by Gobin J in **Moonesar v Ministry of Works and Infrastructure and Decentralisation & Anor**[15]**.** In **Moonesar** the application before the Court arose out of a dispute over the interpretation and application of the terms contained in the collective agreement between The Chief Personnel Officer and the NUGFWU.

36. Gobin J dismissed the claim on the basis that what is clearly being sought is an interpretation of the collective agreement and the enforcement of the applicant's perceived rights arising thereunder. The Court accepted the submission of the attorney for the Defendant that the Court was bound by the decision of the Court of Appeal in **Attorney General v Chaman Algoo**, and held that the Industrial Court is the proper forum for the matter to be litigated.

[15] HCA No. 152 of 1995 delivered on the 15 December 1997

37. The decision in **Chaman Algoo** was again followed in Leslie **Lynch v Trinidad and Tobago Electricity Commission.**[16] In **Leslie Lynch,** from the 25 day of July, 2000 to 31 July, 2002 the Defendant deducted from the Claimant's salary the sum of $325.84 notwithstanding that to date the grievance remained unresolved due to the fault of the Defendant. The Claimant identified the issues as: (a)whether the Defendant's deduction of $325.84 per month from the Claimant's salary was null and void; (b)whether the Defendant followed the grievance procedure set out in the Industrial Agreement; and (c) whether the removal of the claimant from one of the defendant's department is null and void.

38. Rajkumar J (as he then was) dismissed the claim and concluded that even the Court of Appeal, as established in **Chaman Algoo** has no jurisdiction to entertain appeals on findings of fact by the Industrial Court. He found that findings of fact by the Industrial Court are final and the High Court has no jurisdiction to make findings of fact in relation to collective agreements. He accepted the decision of the Court of Appeal in **Chaman Algoo** as binding on it. The effect of that decision is that the Industrial Court has exclusive jurisdiction over matters involving interpretation of a collective agreement for the reasons set out therein, and the High Court does not have such jurisdiction.

39. In my opinion, the cases which the Defendant relied on cannot support its point in limine. In **Joanne Ferdinand** the Claimant was employed by the Defendant, the North West Regional Health Authority (the NWRHA). By letter dated 15 June 2000, she was informed that her appointment as Manager Customer Service was made permanent with effect from 1 March 2000. On 30 November 2005 the NWRHA terminated her appointment on the ground of redundancy, a decision of the Board to "streamline the Authority's operations by inter alia, integrating the Customer Service function into the Quality Management Department". The Claimant filed an action in the High Court claiming damages for wrongful dismissal. One of the issues the Court had to determine

[16] CV2008-04671/s-54 of 2003 delivered on 14 February 2012 by Rajkumar J (as he then was)

was whether it had the jurisdiction to hear the action. The Court concluded that it did not have the jurisdiction to hear the matter since the Registration, Recognition and Certification Board is the body mandated under the Industrial Relations Act to determine whether a person is a "worker". The High Court did not have jurisdiction to hear and determine this case in the absence of a determination from the Board whether the Claimant was a worker or not.

40. In the instant action, the Defendant has not pleaded any facts setting out that the Claimant was a worker under the IRA.

41. In Texaco **(Trinidad) Incorporated** the union had been formally recognised by the company. A shop steward, who was also an employee of the company, raised a matter concerning other employees with the superintendent of his department. In so doing, he used language which was commonly used in everyday conversation on the shop floor but which was inappropriate for use by an employee to his supervisor. In consequence, the company suspended the shop steward without pay. The union challenged the right of the company to take such action. There was at the material time a registered collective agreement which contained the procedure for dealing with grievances and complaints. The Court of Appeal confirmed that the Industrial Court had the jurisdiction to interpret the provisions of the collective agreement.

42. In my opinion the Texaco **(Trinidad) Incorporated** case is of no assistance to the Defendant since there was no pleading in the Defence that there was a collective agreement, which governs the procedure for any dispute as that raised in the instant action.

43. The Claimant has brought his action based on the common law principle of breach of contract for wrongful termination. On the face of his pleading, the position he held at the time he was dismissed was at the managerial level as Maintenance Manager. The Defendant did not dispute this in the Defence. The Defendant did not plead any facts in its point in limine in its Defence that the Claimant fell within the definition of a worker under the IRA. The Defendant also did not plead any facts that the Board had

determined that the Claimant was a worker under the IRA. Therefore, from the pleadings there is no issue that the Claimant is not a worker under the IRA.

44. Further, there was also no pleaded facts in the Defence that the Claimant was a person whose terms and conditions were embodied in a collective agreement. If there was a collective agreement then the High Court would not have jurisdiction to deal with the dispute.

45. In the absence of such pleaded facts, there is no good basis in the Defence for the Defendant to assert that the issue between the Claimant and the Defendant in the instant matter is a trade dispute and by extension that this Court has no jurisdiction to deal with the claim.

The Substantive Defence

46. With respect to the substantive defence, Rule 10. 5 CPR sets out the matters which a Defendant must set out in a defence. It which provides:

> 10.5 (1) The general rule is that the period for filing a defence is the period of 28 days after the date of service of the claim form and statement of case.
>
> (2) However where permission has been given under rule 8.2 for a claim form to be served without a statement of case, the period for filing a defence is the period of 28 days after the service of the statement of case.
>
> (3) In proceedings against the State the period for filing a defence is the period of 42 days after the date of service of the claim form and statement of case.
>
> (4) Where the defendant within the period set out in paragraph (1) (2) or (3) makes an application under section 7 of the Arbitration Act (Chap. 5:01) to stay the claim, the period for filing a defence is extended to 14 days after the determination of that application.

(5) A defendant may apply for an order extending the time for filing a defence.

(6) The parties may agree to extend the period for filing a defence specified in paragraph (1), (2) or (3) up to a maximum of three months after the date of service of the claim form (or statement of case if served after the claim form).

(7) Only one agreement to extend the time for filing a defence may be made.

(8) The defendant must file details of such an agreement.

(9) Any further extensions may only be made by court order.

(10) The general rule is subject to rule 9.7".

47. In the leading case which sets out the Defendant's duty to plead in the Defence, **M.I 5 Investigation v Centurion Protection Agency Limited**[17] Mendonca JA stated at paragraph 7:

> "In respect of each allegation in a claim form or statement of case therefore there must be an admission or a denial or a request for a claimant to prove the allegation. Where there is a denial it cannot be bare denial but it must be accompanied by the defendant's reasons for the denial. If the defendant wishes to prove a different version of events from that given by the claimant he must state his own version. I would think that where the defendant sets out a different version of events from that set out by the claimant that can be a sufficient denial for the purposes of 10.5(4)(a) without a specific statement of the reasons for denying the allegation. Where the defendant does not admit or deny an allegation or put forward a different version of events he must state his reasons for resisting the allegation (see 10.5(5)). The reasons must be sufficiently cogent to justify the incurring of costs and the expenditure of the Court's resources in having the allegation proved."

[17] Civ App No 244 of 2008

48. In my opinion, there is no ground in the Defence to defend the action since the Defendant has fallen woefully short of complying with the requirements of rule 10.5 CPR in setting out its substantive Defence. The Defendant has not addressed the averments set out by the Claimant in his Statement of Case. It has given a blanket denial of all the allegations of breach of contract/wrongful dismissal made by the Claimant without setting out any reasons save and except that the Claimant was employed for a specific period of time, he and several other positions were made redundant, including the Maintenance Manager, East Branch and the main reason to retrench the Claimant was financial difficulties.

49. The Defendant having failed to meet the threshold of not having any ground to defend the action, in my opinion it has also failed to cross the threshold of demonstrating that it has a Defence with a realistic prospect of success.

ORDER

50. The Defence is struck out.

51. Summary judgment for the Claimant on the claim.

52. The Claimant's damages are to be assessed by a Master in Chambers at a date, time and place to be fixed by the Court Office.

53. The Defendant to pay the Claimant's costs of the application. I will hear the parties on quantum.

Margaret Y Mohammed

Judge