

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No CV2014-02496

BETWEEN

PAMELA HUNT

Claimant

AND

**JENNIFER DANIEL
PERMANENT SECRETARY IN
THE MINISTRY OF EDUCATION**

1st Defendant

**HARRILAL SEECHARAN
CHIEF EDUCATION OFFICER IN
THE MINISTRY OF EDUCATION**

2nd Defendant

THE TEACHING SERVICE COMMISSION

3rd Defendant

**THE COUNCIL OF ELDERS OF
THE SPIRITUAL SHOUTER BAPTIST FAITH A/C
THE COUNCIL OF ELDERS OF THE
SPIRITUAL BAPTIST FAITH OF
TRINIDAD AND TOBAGO**

4th Defendant

AND

MS. ROSEANNE RONDON

1st Interested Party

ARCHBISHOP BARBARA GRAY-BURKE

2nd Interested Party

**THE COMMITTEE FOR THE COUNCIL OF ELDERS OF THE
SPIRITUAL BAPTIST (SHOUTERS) FAITH OF
TRINIDAD AND TOBAGO LIMITED**

3rd Interested Party

Before the Honourable Mr. Justice Robin N. Mohammed

Appearances:

Mr Martin G. Daly S.C. and Mr Christopher Sieuchand instructed by Mr Kendell Alexander for the Claimant

Mr Avory Sinanan S.C. and Ms Donna Prowell instructed by Ms Amrita Ramsook for the 1st and 2nd Defendants

Mr Douglas L. Mendes S.C. instructed by Mr Anthony Bullock for the 3rd Defendant

Mr Rajiv Persad and Mr Kiel Taklalsingh instructed by Mr Ronald Boynes for the 4th Defendant as well as the Second and Third Interested Parties

JUDGMENT

I. Background:

[1] The Claimant, Pamela Hunt, filed a claim for Judicial Review against the Defendants and Interested Parties seeking several declaratory reliefs that relate to the application for her transfer and/or removal as principal of the St. Barbara's Spiritual Shouter Baptists Primary School (the "School") made on the 3rd December, 2012 and the decision to commence a formal investigation into several allegations made against her.

[2] After the 3rd Defendant, the Teaching Service Commission (the "TSC"), filed its affidavit in response, Pamela applied to withdraw several of the reliefs and in particular, discontinued her entire claim against the TSC. The Court permitted the withdrawal of the claim, however the parties were in disagreement on the issue of costs and as such submissions were filed and exchanged.

[3] A decision on the entitlement of costs for the Claimant's application to withdraw the claim against the TSC was delivered on the 10th January, 2018.

[4] At the date of submissions on the issue of costs, the Court had before it only one affidavit in response to the Judicial Review Claim, being the affidavit of Veronica Creed on behalf of the TSC. Pamela did not file her supplemental affidavit until the 31st March, 2015 and, in response, the 2nd Interested Party, **Archbishop Barbara Burke** ("Mrs Burke") filed hers on the **8th May, 2015**. The 1st and 2nd Defendants then put in their affidavit of **Zorisha Mohammed-Ali** on the **14th May, 2015**.

[5] By an **application filed on the 23rd June, 2015**, the Claimant sought to strike out several of the paragraphs of Mrs Burke's affidavit as follows:

- i. Paragraphs 10, 12, 30 and 31 in their entirety;
- ii. Paragraph 29 from the words "*I wish to state that any and all statements which I made to the media are based on truth and/or are fair comments which I have made based on the events and tenure of the Applicant*".

Pamela's application also sought an order requiring (i) Mrs Burke to attend Court for cross-examination pursuant to **Part 26.1(1) (m) of the CPR**; and (ii) the Council of Elders, the 4th Defendant, to make specific disclosure of the legal correspondence referred to in paragraph 15 of Mrs Burke's affidavit.

[6] With respect to Zorisha's affidavit, the Claimant sought, on even date, to strike out:

- i. Paragraphs 13.1, 13.2, 13.3 and 13.18 in their entirety; and
- ii. Paragraph 13.4 from the words "*I am aware that the claimant had planned a Thanksgiving Service at the school. This is a religious function. The second interested party and or the board objected to it. The claimant was advised that a religious function such as a Thanksgiving Service is the prerogative of the Board. The claimant then did not continue with the Thanksgiving Service*".

An order requiring Zorisha to attend trial for cross-examination along with specific disclosure for the following documents was also sought:

- i. The log book of the School containing the log entry referred to in paragraph 12.1 of Zorisha's affidavit;
- ii. Letters referred to in paragraph 12.1 of the affidavit;
- iii. Letters referred to in paragraph 13.22 of the affidavit;
- iv. Letter referred to in paragraph 13.29 of the affidavit;
- v. Details of the grant referred to in paragraph 14.8 of the affidavit;

[7] Pamela then sought permission to file affidavits of herself and Archbishop Dorothy Hercules in reply to the affidavits of Mrs Burke and Zorisha Mohammed-Ali.

[8] **Evidential objections** of the **1st and 2nd Defendants** were then filed on the **31st July, 2015** seeking to strike out certain paragraphs of Pamela's affidavit and supplemental affidavit of the 15th July, 2014 and the 31st March, 2015, respectively. Further, a notice of their intention to oppose her application to cross-examine Zorisha was also filed by the 1st and 2nd Defendants on even date.

[9] Submissions in respect of the above applications were filed and exchanged by the Claimant and the 1st and 2nd Defendants on the 16th November, 2015.

[10] Having considered the submissions, the Court must now give its decision on:

- i. The Claimant's application to strike out certain paragraphs of Zorisha Mohammed-Ali's affidavit;**
- ii. The Claimant's application for the said Zorisha Mohammed-Ali to attend for cross-examination;**
- iii. The Claimant's application for specific disclosure by the 1st and/or 2nd Defendants;**
- iv. The Claimant's application to strike out certain paragraphs of the affidavit of Mrs Burke;**
- v. The Claimant's application for Mrs Burke to attend for cross-examination;**

- vi. The Claimant's application for specific disclosure by the 4th Defendant;
- vii. The Claimant's application for permission to file affidavits in reply.

II. Submissions & Analysis:

Application at (i): Re: to strike out paragraphs of Zorisha's affidavit

Paragraphs 13.1, 13.2, 13.3 & 13.18:

[11] Counsel for the Claimant submitted that paragraphs 13.1 - 13.3 should be struck out because they are essentially statements of fact made by Zorisha without disclosing the source of the information or the grounds for her belief. Therefore, it was submitted that these paragraphs contravened **Part 31.3(2) of the Civil Proceedings Rules 1998** (the "CPR").

[12] **Part 31.3(2) of the CPR** states:

- i. *"The general rule is that an affidavit may contain only such facts as the deponent is able to prove from his own knowledge.*
- ii. *However, an affidavit may contain statements of information and belief—*
 - a. *where any of these Rules so allows; and*
 - b. *where it is for use in any procedural or interlocutory application or in an application for summary judgment, provided that the source of such information and the ground of such belief is stated in the affidavit.*
- iii. *The court may order that any scandalous, irrelevant or otherwise oppressive matter be struck out of any affidavit.*
- iv. *No affidavit containing any alteration may be used in evidence unless all such alterations have been initialed by the person before whom the affidavit was sworn."*

[13] In paragraph 13.1, Zorisha is merely outlining the fact that she became aware of the general impasse between Pamela, the Council of Elders and Mrs Burke and states the several allegations made against Pamela by the Council and Mrs Burke. Paragraph 13.2 summarised Pamela's responses while paragraph 13.3 spoke of a meeting held between Mr Suepaul, the line supervisor for the School, representatives of the Ministry of which Zorisha is an employee, and Pamela.

[14] However, upon reading the preceding paragraphs of the affidavit, it is clear that the Claimant has made her application to strike out without properly considering the context in which the deponent's evidence was given:

At paragraphs 1-3 of the affidavit, Zorisha detailed her occupation and averred that, as School Supervisor III for the St George East Education District, she has control of the books and records of the district *and has access to the records of the Ministry*. She specifically stated that she makes this affidavit either from her own knowledge *or from information forming part of the records of the District or Ministry*.

Moreover, Zorisha stated that Mr Suepaul, the line supervisor for the School, often consulted her when he faced challenges at the School and that letters from the Council of Elders concerning the said impasse among the parties had been sent to the Ministry.

Therefore, considering this context given, this Court finds that Zorisha has sufficiently disclosed the source of the information stated in paragraphs 13.1 - 13.3. Based on her discussions with Mr Suepaul, and her access to and review of the Council's and Pamela's letters delivered to the Ministry, Zorisha was very much entitled to give the evidence contained therein.

[15] Accordingly, the Claimant's objections to paragraphs 13.1- 13.3 are overruled.

Paragraph 13.18:

[16] Counsel submitted that this paragraph contained inadmissible opinion evidence which amounted to conclusions of law that Zorisha was not competent to give. In particular, counsel referenced Zorisha's evidence on the Ministry's policies, procedures and powers with respect to sick leave without setting out the grounds for her conclusions.

[17] Considering the context contained in the initial paragraphs of Zorisha's affidavit as set out above, in particular Zorisha's position within the Ministry and her access to its records, this Court views that she is entitled to give evidence on the Ministry's policy with respect to sick leave applications. Further, Zorisha's statement that she never informed Pamela that she would not be allowed to go on sick leave is a statement of fact and not opinion. Finally, the source of the information for Zorisha's evidence that Pamela's sick leave was approved and that she was paid for the period would be the Ministry's records to which she had access.

[18] **Accordingly, the Claimant's objection to paragraph 13.18 is overruled.**

Part of Paragraph 13.4:

[19] Counsel omitted to give any submissions on its application to strike out the following portion of paragraph 13.4: *"I am aware that the claimant had planned a Thanksgiving Service at the school. This is a religious function. The second interested party and or the board objected to it. The claimant was advised that a religious function such as a Thanksgiving Service is the prerogative of the Board. The claimant then did not continue with the Thanksgiving Service"*.

[20] In similar fashion to the analysis on the Claimant's objections to paragraphs 13.1- 13.3, the Court finds that Zorisha sufficiently set out the source of her information for the evidence stated at paragraph 13.4. Zorisha's knowledge of the Thanksgiving service, Mrs Burke's objections and the resulting cancellation would have come from the various letters that were addressed to the Ministry and to which Zorisha specifically stated that she had access.

Accordingly, the Claimant's objection to paragraph 13.4 is overruled.

Application at (ii): Re: Zorisha to attend for cross-examination

[21] The authorities submitted by both parties make it clear that cross-examination in judicial review proceedings is rare and will only be allowed if there is a dispute on a critical factual issue and it is necessary to resolve that issue by cross-examination¹. The local

¹ Para 10 of **Gopichand Ganga and Ors v Commissioner of Police CV 2006-01420**

case of **Gopichand Ganga and Ors v Commissioner of Police** referred to the Court of Appeal decision of **Patrick Manning v Sharma**² which stated that cross-examination in judicial review proceedings would be allowable if:

- i. *There are glaring omission which amount to a failure to observe the duty of frank disclosure of a party in judicial review; and/or*
- ii. *There needs to be a resolution of disputes of fact which is necessary for determining jurisdiction to grant judicial review relief.*

[22] The English Court of Appeal in **Jones & Jones v Secretary of State for Wales**³ stated that cross-examination would be allowed when the justice of the case requires and the decision whether justice so requires is a matter for the discretion of the judge. In **Jones** supra, the case of **George v Secretary of State for the Environment**⁴ was cited in which Forbes J stated:

“However, where you have a complete conflict over a question of fact, and it is accepted that the case would turn on whose version is to be accepted, then it does seem that justice can only be done by allowing cross-examination.”

[23] Balcombe L.J. in **Jones**, however, warned of the dangers of too frequently allowing cross-examination in judicial review matters:

“While there is jurisdiction to order cross-examination in such proceedings as this, it is to be exercised extremely sparingly, only where the justice of the case requires it. One of the principal reasons for this is if it is sought to cross-examine an inspector or a magistrate, it is, in general, undesirable that such application should be acceded to because inspectors and magistrates occupy, in one case, quasi-judicial, and, in other, judicial office. There are great risks and dangers in bringing about a state of affairs where officers of that kind may be required to

² Civ. App. No. 21 of 2007

³ 1995 70 P. & C.R. 211

⁴ 1979 J.P.L. 382.

justify what they have said in later proceedings in the witness box. The Court would only accede to an application of this kind if the justice of the case so compellingly pressed for that result that there was no proper alternative.”⁵

[24] In analysing the application for Zorisha to be cross-examined, the Court must therefore consider (i) whether there is a complete conflict over a question of fact between the Claimant and the 1st and 2nd Defendants; (ii) if so, does the case turn on this conflict of fact; and (iii) whether there is no proper alternative to resolve this material conflict other than by cross-examination.

Paragraph 12 and 13.12:

[25] Counsel for the Claimant argued that these paragraphs contained glaring omissions which amounted to a failure by the Defendants to observe their duty of full and frank disclosure to the Court. It was also submitted that there was a material fact in dispute, being whether Zorisha removed the Claimant as principal of the School and appointed Ms Rondon as the new principal.

[26] At the outset, this Court is at a loss as to which parts of paragraphs 12 or 13.12 of Zorisha’s affidavit contained evidence that the Defendants did not disclose, especially when considering that Zorisha’s affidavit is the first affidavit in response to the Judicial Review Claim filed by the 1st and 2nd Defendants.

[27] With respect to the material fact in dispute, Zorisha denied at paragraph 12 that she or the Ministry ever removed Pamela as principal of the School as neither of them had the authority to do so. She also denied that she or the Ministry ever installed Roseanne Rondon as a new principal.

[28] At paragraph 13.12, Zorisha gave evidence that she made an amendment to the entry in the log book to state that Roseanne Rondon was put to perform the duty of principal in the interim until the situation was resolved.

⁵ Jones & Jones v Secretary of State for Wales (1995) 70 P. & C.R. 211 at 216

[29] In opposition, Pamela stated in her affidavit that Zorisha and Mr Suepaul (i) instructed her to remove her belongings from the principal's office at the School (ii) did not allow her to remove her resource books, literacy program, stereo system or stationery from her office and (iii) installed Roseanne Rondon as the acting principal of the School. These events occurred on the 23rd April, 2014. However, subsequently at paragraph 78, Pamela gave evidence that on the 25th April, 2014, Zorisha asked her if she was interested in being transferred from the School to which Pamela replied no. This latter averment suggests that Pamela was still the principal some two days after her alleged removal.

[30] Nevertheless, based on a comparison of paragraphs 73 - 75 of Pamela's affidavit and paragraphs 12 and 13.12 of Zorisha's, it is clear that there is a material conflict of fact over whether Zorisha was responsible for removing Pamela as principal and installing Roseanne Rondon as the new principal. The question now becomes whether the case or the outcome of any of the reliefs sought turns on this conflict of fact.

[31] In her Fixed Date Claim Form, Pamela challenged the following decisions of the 1st and 2nd Defendants, which relate to the factual dispute identified in the above paragraphs of Zorisha's affidavit:

- i. Their decision instructing Pamela to vacate office;
- ii. Their decision to install Ms Rondon as the acting principal;
- iii. Their decision instructing Pamela to report to the Tunapuna District Education Office.

[32] Based on these reliefs, it is clear that the judicial review claim against the 1st and 2nd Defendants turns on the resolution of this factual dispute of whether Zorisha, on behalf of the two defendants, instructed Pamela to vacate her office and installed Ms Rondon in the interim.

[33] Nevertheless, the Court is not convinced that cross-examination is the only method to resolve this dispute. Zorisha has contradicted herself by virtue of the contents of paragraph 13.12, which showed that she amended the log book to indicate that Ms Rondon was to be installed as acting principal in the interim until the impasse was

resolved. This admission necessitates that (i) Zorisha authorised the temporary removal of Pamela as principal and (ii) Zorisha also authorised the temporary installation of Ms Rondon as acting principal. Therefore, by virtue of paragraph 13.12, the Court finds that Zorisha effectively resolved the factual dispute by agreeing with Pamela.

[34] Accordingly, the Court dismisses the Claimant's application to have Zorisha Mohammed-Ali cross-examined in relation to paragraphs 12 and 13.12 of her affidavit as the factual dispute can be resolved by an examination of the written evidence filed.

Paragraphs 13.10 and 13.11:

[35] The purported dispute in fact here is whether the Claimant was deprived of her personal property by the 1st, 2nd and/or 4th Defendants.

[36] On a comparative reading of paragraphs 73 and 74 of Pamela's affidavit, which allege that Zorisha and Mr Suepaul instructed her to remove her personal belongings and then later prevented her from doing so, with paragraphs 13.10 and 13.11 of Zorisha's affidavit, in which the deponent denied ever giving such instructions or ever preventing Pamela from removing her belongings, it is clear that a factual dispute has arisen.

[37] Given the fact that Pamela sought reliefs against the 1st and 2nd Defendants for their decision instructing Pamela to remove her personal belongings from her office at the School and preventing Pamela from exercising dominion over her personal belongings located in her office at the School, it is also clear that the judicial review claim against these two Defendants turns on the resolution of this factual dispute.

[38] The conflict in facts is complete and there appears to the Court no other way to resolve same other than through cross-examination.

[39] Accordingly, the Court orders Zorisha to attend the trial for cross-examination on paragraphs 13.10 and 13.11 of her affidavit.

Paragraphs 13.13- 13.15, 13.17, 13.19, 13.21- 13.24 and 13.29:

[40] The Court notes that there are no factual conflicts in the evidence given at paragraphs 13.13, 13.14, 13.15, 13.21- 13.24 of Zorisha's affidavit. The factual conflicts that arise

from the remaining paragraphs are as follows: (i) whether, when Pamela informed Zorisha that she wished to take sick-leave, Zorisha responded saying that she would get back to Pamela; (ii) whether on the 16th May, 2014, Zorisha telephoned Pamela to ask if she abandoned the job; (iii) whether on the 26th May, 2014, upon Mrs Burke's refusal to allow Pamela into the School, Zorisha instructed Pamela to go home; and (iv) whether Zorisha informed Pamela on the 19th May, 2014 by telephone that there was a letter for her to collect.

[41] The Court does not find that any of the reliefs sought in the judicial review claim relate to these disputed facts.

Accordingly, the Court dismisses the application to have Zorisha attend trial for cross-examination on the above paragraphs.

Paragraph 13.26:

[42] There does appear to be a factual conflict in dispute in this paragraph, in which Zorisha gives evidence that the investigation conducted by School Supervisor Fortune was not a disciplinary proceeding. It was in response to paragraph 81 of Pamela's affidavit, where the deponent states that Zorisha informed her, on the 1st May, 2014 that the Ministry intended to take disciplinary action against her.

In this regard, the Court notes that the relief sought at (a) of the Fixed Date Claim made against the 1st Defendant challenges her decision to institute disciplinary action against Pamela on the 1st May, 2014. Accordingly, the claim does turn on this factual dispute as to whether the investigation commenced by the Ministry on the 1st May, 2014 was in fact a disciplinary proceeding.

This issue is crucial not only to this particular relief sought but the entire claim, which is premised on the fact that disciplinary proceedings had been instituted against Pamela incorrectly.

[43] Therefore, the Court orders that Zorisha attend trial for cross-examination on paragraph 13.26 of her affidavit.

Paragraphs 15.2 and 15.3:

[44] Paragraph 15.2 states that the Board is recognized by cabinet as the board of management appointed by the Education Act. This fact does not appear to be disputed in any of Pamela's three affidavits.

[45] At paragraph 11 of Pamela's third affidavit filed on the 31st March, 2015, and to which Zorisha stated that the above paragraphs of her affidavit are in response, Pamela states that Zorisha told her that the "board" was going to allow her to perform her duties until retirement. This is the only mention of the School board in that affidavit. Nowhere in the affidavit is it stated that the School board does not have authority.

[46] In Pamela's second affidavit filed on the 20th August, 2014, she requested clarification on what authority the TSC acted on with respect to the events relating to her⁶. To the extent that paragraph 15.2 is a response to that clarification, there is no dispute of fact. Pamela has not given evidence or alleged that the Board has no authority or that the TSC should not have deferred to the Board.

[47] Further, there is no contradiction between the events described in paragraph 15.3 of Zorisha's affidavit and the corresponding description at paragraph 7 of Pamela's third affidavit.

[48] Accordingly, there is no dispute in fact that needs to be clarified by cross-examination.

The Application at (iii): Re: specific disclosure by 1st and 2nd Defendants

[49] The Claimant has sought disclosure of the following documents referred to in Zorisha's affidavit that were not exhibited and which, she submitted, contravened **Part 31.4 of the CPR:**

- i. The letters referred to in paragraph 12.1;
- ii. The letters referred to in paragraph 13.22;
- iii. The letter referred to in paragraph 13.29;

⁶ At paragraph 9.

iv. Details of the grant referred to in paragraph 14.8.

[50] With respect to the exhibit ZMA1 referred to in paragraph 13.12 of the affidavit, the Claimant sought disclosure of the original document as it submitted that the veracity of the exhibit is crucial to the resolution of the proceedings.

[51] **Parts 31.4 (1) & (3) of the CPR** are the relevant provisions referred to by the Claimant in its application. They state as follows:

“(1) Any documents to be used in conjunction with an affidavit must be exhibited to it;”

“(3) Clearly legible photographic copies of original documents may be exhibited, provided that the originals are made available for inspection by other parties before the hearing and by the court at the hearing.”

[52] Both parties in their submissions seemed to agree that the seminal authority on the principles of full disclosure are contained in the English House of Lords case of **Tweed v Parades Commission for Northern Ireland**⁷. In **Tweed**, Lord Bingham of Cornhill viewed that disclosure was not common to judicial review proceedings because most of such applications concern issues of law. However, in the minority of cases, such as the instant case, where precise facts are important, the test is generally whether disclosure appears to be necessary in order to resolve the matter fairly and justly.

[53] He stated at paragraph 4:

*“Where a public authority relies on a document as significant to its decision, it is ordinarily good practice to exhibit it as the primary evidence. Any summary, however conscientiously and skilfully made may distort. But where the authority’s deponent chooses to summarise the effect of a document it should not be necessary for the applicant, seeking sight of the document, to suggest some inaccuracy or incompleteness in the summary, usually an impossible task without sight of the document. **It is enough that the document itself is the best evidence of what it says.**”*

⁷ 2006 UKHL 53.

There may, however, be reasons...why the document should or need not be exhibited. The judge to whom application for disclosure is made must then rule on whether, and to what extent, disclosure should be made.”

[54] Therefore, on a conjoint reading of the **Rules** and the learning from **Tweed**, barring any issues of confidentiality or the volume of the material, any document relied on in Zorisha’s affidavit should be disclosed provided it (i) relates to a material issue of fact; and (ii) is necessary to resolve the matter fairly and/or is significant to the decision.

[55] Further, there is no requirement for the Claimant to show that there was any manifest inconsistency or incompleteness in the document for disclosure to be ordered. Nevertheless, the Court is aware that disclosure orders in judicial review proceedings are exceptional and the Court should guard against fishing expeditions for further grounds of challenge.

[56] Notwithstanding the above, by virtue of the 1st and 2nd Defendants’ concession in their submissions that they do not oppose disclosure to any of the items listed in the Claimant’s application save for the details of the grant referred to in paragraph 14.8, the Court will only consider this item in its analysis below.

The grant in paragraph 14.8:

[57] The reference to the grant was made in response to paragraph 21 of Pamela’s third affidavit filed on the 31st March, 2014, (incorrectly stated as her second affidavit) where Pamela stated that she issued a letter to Zorisha requesting school supplies and that none was ever provided. In response, Zorisha gave evidence that the Ministry disburses a grant to the School Board to ensure the School gets its supplies.

[58] The Court agrees with the 1st and 2nd Defendants’ submission that this issue is irrelevant to the judicial review claim against them. There was simply no relief sought against any of the parties concerning any decision to interfere with or refuse to provide the requested school supplies to Pamela. Further, based on Pamela’s affidavit, she has not disputed or gave evidence that contradicts the fact that the Ministry provides a grant to the School Board.

[59] Accordingly, given that the 1st and 2nd Defendants' do not oppose disclosure on the other items listed, the Court orders disclosure for all items listed in the Claimant's application save for the grant referred to in paragraph 14.8 of Zorisha's affidavit.

The Application at (iv): Re: to strike out paragraphs of the affidavit of Mrs Burke

[60] The Claimant applied to have paragraphs 10, 12, 30, 31 and part of 29 of the affidavit of Mrs Burke struck out on the grounds that they contain statements of no probative value, represent conclusions drawn without factual basis, and/or is irrelevant to the determination of the proceedings.

Paragraphs 10, part of 29 & 30:

[61] In paragraph 10, Mrs Burke merely alleges that Pamela has made false allegations or misrepresented the events as stated. The Court does not agree with the Claimant's submission that Mrs Burke has failed to identify any of the accusations which she considered untrue. If one reads the subsequent paragraphs of Mrs Burke's affidavit she proceeds to respond to each accusation made by the Claimant that she considered was not factual.

[62] With respect to paragraph 29, Mrs Burke states "*I wish to state that any and all statements which I made are based on truth and/or fair comments which I have made based on the events and tenure of the Applicant*". The preceding sentence in this paragraph says that it is in response to Pamela's complaints against Mrs Burke's media statements identified in her affidavit of the 31st March, 2015.

Accordingly, the Court does not agree with the Claimant's submission that Mrs Burke has failed to identify her statements in that paragraph.

[63] Further, at paragraph 30 of Mrs Burke's affidavit, she specifically says that it is difficult to respond to Pamela's allegations because Pamela has not particularized the exact statements nor did she explain how Mrs Burke's statements were defamatory. However, on a perusal of paragraphs 14, 16, 17, 18 & 19 of Pamela's affidavit of the 31st March, 2014, the Court finds that Pamela sufficiently particularized the offending statements of Mrs Burke and also said why it is defamatory. Nevertheless, Mrs Burke's response at

paragraph 29, while very general and perhaps even superficial, does serve to respond to the allegation by defending her statements on the grounds of truth and fair comment. **Accordingly, the Court sees no reason to strike out paragraph 29 of Mrs Burke's affidavit.**

[64] Paragraph 30 is therefore entirely inaccurate. As stated above, the Court does not agree that Pamela failed to properly particularize Mrs Burke's media statements. Further, while Pamela summarises the effect of the statements complained of in her affidavit, at paragraph 14 she attaches copies of the media reports as exhibit "PH48". **Accordingly, the Court agrees with the Claimant that the contents of paragraph 30 are not at all helpful and should be struck out.**

[65] **The Court therefore overrules the Claimant's objections to paragraphs 10 & 29 but sustains the objection to paragraph 30. Paragraph 30 will therefore be struck out.**

Paragraph 12:

[66] Mrs Burke seeks to give evidence that Archbishop Hercules always attempted to usurp her authority and as a result, she issued a letter informing Hercules that she didn't have the authority to take decisions on Mrs Burke's behalf. This paragraph was in response to paragraph 9 of Pamela's first affidavit of the 15th July, 2014, where Pamela stated that Mrs Burke informed her that Hercules was in charge of the cafeteria.

In essence, paragraphs 11 and 12 of Mrs Burke's affidavit seek to support her claim that she never told Pamela that Hercules was in charge of the cafeteria.

[67] The Court therefore disagrees that paragraph 12 is irrelevant. The contents and the attached letters are evidence to show that Mrs Burke never had an amicable relationship with Hercules and therefore it makes it a less credible claim to say that Mrs Burke informed Pamela that Hercules was in charge of the School cafeteria.

Accordingly, the objection to paragraph 12 is overruled.

Paragraph 31:

[68] The Court agrees that the issue raised in this paragraph of whether these judicial review proceedings is the appropriate forum to bring a defamation claim, is a matter of law for

the Court decide and accordingly, Mrs Burke is not competent to give this evidence.
Paragraph 31 will therefore be struck out.

The Court therefore overrules the objections to paragraphs 10, 12 and 29 but will strike out paragraphs 30 and 31.

The Application at (v): Re: for Mrs Burke to attend for cross-examination

Paragraphs 4, 5 & 6:

[69] In these paragraphs, Mrs Burke gives evidence that: (i) she is the leader of the 4th Defendant who is the recognised School Board; (ii) the 3rd Interested Party was formed to help manage the School; (iii) she is the elected president of the 3rd Interested Party; and (iv) finally gave evidence that the 3rd Interested Party is comprised of herself and Archbishop Hercules. Nowhere in Pamela's affidavits were these facts disputed.

[70] To the contrary, at paragraph 7 of Pamela's first affidavit, she states that Mrs Burke, Archbishop Hercules and Archbishop Clarke are the members of the School Board appointed thereto by the 3rd Interested Party, which coincides with Mrs Burke's evidence.

Accordingly, there is no dispute of fact that needs to be resolved by cross-examination.

Paragraphs 11, 13, 15, 16, 24, 25 and 28:

[71] The issue of whether Mrs Burke ever informed Pamela that Archbishop Hercules was the manager of the cafeteria, which is identified in paragraph 11, is not relevant to the judicial review claim. None of the reliefs sought against any of the Defendants relate to this factual dispute.

[72] Paragraph 13 does not raise any factual dispute in the Court's opinion. It is a response to paragraph 10 of Pamela's first affidavit where she identified several plans which she proposed to Mrs Burke in a meeting. At paragraph 13, Mrs Burke merely stated that she objected to the plan to name part of the School after Archbishop Hercules. The fact of this objection was not disputed nor is it a relevant issue in this proceedings.

[73] Paragraph 15 serves as a response to paragraph 14 of Pamela's first affidavit. However, while both parties tell different versions of events concerning the adequacy of supplies for the School, the facts are not in dispute with each other. Pamela averred that she always had problems getting adequate funding and that she had to use personal funds on occasion. She further stated that she requested funding from Mrs Burke but was denied. Mrs Burke, in response did not contradict any of these facts, but rather, stated that the Ministry was responsible for School supplies and that she was concerned with Pamela's attempts to raise funds without accounting for them and that legal correspondence requesting an account for funds was sent to Pamela. Accordingly, there is no factual issues in dispute in this paragraph.

[74] The issue in dispute in paragraph 16 concerns the reason why Mrs Burke objected to the Rasta man painting. Pamela, at paragraph 42 of her first affidavit, stated that she believed, based on the terminology used by Mrs Burke in her letter of complaint that she was objecting to the painting because it depicted Jesus as a black man. In response, Mrs Burke stated at paragraph 16 that she objected to the painting because it depicted Jesus in line with the Rastafarian movement, which was not in keeping with the tenets of the School's religion. This factual dispute as to the reason behind Mrs Burke's objection to the painting is not relevant to any of the reliefs sought against the Defendants and therefore, does not require cross-examination for its resolution.

[75] Paragraph 24 raises the issue as to the purpose of the meeting held on the 5th July, 2013 at the School. Pamela alleges at paragraph 25 of her affidavit, that the issue of the teacher's clothing was not appropriate for discussion at the meeting because no dress code had been issued by the Board. Mrs Burke, in response, stated that the purpose of the meeting was the teacher's attire and instead, Pamela sought to complain solely about her lack of pay. While these facts are in dispute, it is not relevant to any of the reliefs sought against any of the opposing parties and therefore, does not require cross-examination.

[76] The issue at paragraph 25 is whether Pamela was doing a good job in ensuring that the School was properly maintained. Pamela averred at paragraph 31 that she disagreed with Mrs Burke's opinion that the contractor was not cleaning the School properly. Mrs Burke gave evidence that she had to employ someone to cut the grass as it had become

overgrown and posed a risk by harbouring snakes, etc. There arises, therefore, a factual dispute between the parties on whether Pamela properly maintained the School grounds and environs. While this dispute may have formed part of the case made against Pamela for her removal, it did not form part of the reliefs sought against any of the Defendants. Therefore, cross-examination on this issue is not required.

[77] It is undisputed at paragraph 28 that there was a boat ride fundraiser and that the tickets had the School stamp on them. Mrs Burke alleged that there was a scantily clad woman on the tickets next to the School's stamp and that neither she nor the Board was informed of the fundraiser. Pamela maintained that it was the PTA who had the fundraiser and that they claimed they had permission of the Board to do so. While these paragraphs contain factual issues in dispute, none of the reliefs sought by Pamela in her judicial review claim refers to, or is relevant to the boat ride fundraiser. Accordingly, resolution of this issue by cross-examination is not essential to the determination of these proceedings.

Application at (vi): Re: specific disclosure by the 4th Defendant

[78] The Claimant seeks disclosure of the legal correspondence referred to in paragraph 15 of Mrs Burke's affidavit. However, on a reading of paragraph 15, the Court notes that Mrs Burke has attached all the legal correspondence as exhibit "BB5". Further, one of the letters attached, which is dated the 5th November, 2013 and sent to the TSC from Mrs Burke, specifically states that "*The principal has been doing fundraisers with no accountability to the Board and when the school is in need of anything she calls on me to provide it.*" Mrs Burke then proceeded to list some of the fundraisers held by Pamela in the said letter. Accordingly, the Court finds that the legal correspondence referred to in paragraph 15 was disclosed in the attached exhibit "BB5".

[79] The Claimant's application for specific disclosure by the 4th Defendant is therefore refused.

Application at (vii): Re: Claimant's application to file affidavits in reply

[80] The Claimant seeks permission to file affidavits of herself and Archbishop Hercules in reply to the affidavits of Mrs Burke and Zorisha Mohammed-Ali pursuant to **Parts 56.12 and 26.1(1) (w) of the CPR.**

With respect to Mrs Burke’s affidavit, Pamela seeks to reply to the following paragraphs: 4 – 6, 11, 12, 13, 14, 20, 22 and 24.

[81] **Part 56.12** allows the Judge to give any directions at the case management conference that may be required to ensure the expeditious and just trial of the claim. **Part 26.1(1) (w)** allows the Court to take any other step, give any other direction or make any other order for the purpose of managing the case and furthering the overriding objective.

[82] The Court notes that the 1st and 2nd Defendants have not challenged the Claimant’s application to file a reply affidavit. However, notwithstanding their lack of challenge, the Claimant must still justify to the Court the necessity and appropriateness for a reply as **Part 56.11 of the CPR** contemplates. **Part 56.11** states:

“Any evidence filed in answer to an application for an administrative order must be by affidavit but the provisions of Part 10 apply to such affidavit.”

Accordingly, **Part 56.11** enables **CPR Part 10 provisions**, which set out rules pertaining to the defence of a claim as well as a reply to a defence, to apply to an affidavit filed in answer to an application for judicial review or in reply to such an answer: [see the case of **Akeel Wright v Commissioner of Police H.C.A. CV2015-00485**]. Consequently, the general law with respect to the filing of a reply to a defence— which states it can only respond to new matters raised in a defence which were and ought not to have been dealt with in the statement of case— is useful guidance in relation to a reply affidavit in judicial review proceedings. As such, any reply affidavit in these judicial review proceedings can only include facts relative to new matters or new issues raised in the opposing parties’ response affidavits.

[83] Paragraphs 4 – 6 of Mrs Burke’s affidavit deals with a new issue, being the establishment as well as the roles of the 4th Defendant, the 3rd Interested Party and herself. A reply affidavit on these paragraphs is allowed.

[84] Mrs Burke raised new facts in paragraphs 11- 14 concerning (i) the management of the cafeteria (ii) the nature of her relationship with Archbishop Hercules and (iii) the events surrounding the naming of parts of the school after certain individuals. Replies to these paragraphs are therefore allowed.

[85] In paragraph 20 Mrs Burke stated that she never authorised the meetings conducted by Archbishop Hercules with the 3rd Interested Party and issued a letter to this effect to Pamela. This paragraph was in response to paragraph 16 of Pamela's affidavit, where it was stated that Pamela happily facilitated these meetings as instructed by Hercules. However, at paragraph 18, Pamela admitted that she received a second letter from Mrs Burke instructing Pamela not to conduct any meeting in the name of the 3rd Interested Party at the School as similarly stated at paragraph 20 of Mrs Burke's affidavit. Therefore, the contents of paragraph 20 of Mrs Burke's affidavit raised no new fact.

[86] Mrs Burke's dissatisfaction with the graduation ceremony and the reasons therefor are stated at paragraph 22 of her affidavit. This is not a new fact as Pamela traversed this issue at paragraph 23 of her first affidavit and ought to have stated her evidence in full at that moment.

[87] Paragraph 24 of Mrs Burke's affidavit, which is in response to paragraph 25 of Pamela's does raise the following new facts (i) that the purpose of the meeting was to discuss the teacher's attire and (ii) the manner in which Mrs Burke voiced her complaints. A reply affidavit to this paragraph is therefore allowed.

With respect to Zorisha's affidavit, the Claimant sought permission to reply to paragraphs 12, 13.3 - 13.6, 13.10 – 13.12:

[88] Paragraph 12 raises a new fact. Zorisha attempts to state that she authorised neither the removal of Pamela as principal nor the installation of Ms Rondon as the new principal. This fact was expressly denied by Pamela and therefore, a reply affidavit to this paragraph is allowed.

[89] Paragraph 13.3 of Zorisha's affidavit is a restatement of paragraph 44 of Pamela's first affidavit and therefore, raises no new facts.

[90] Paragraph 13.4 raises no new facts in response to paragraph 63 of Pamela's affidavit.

[91] Paragraphs 13.5 and 13.6 contain new facts concerning a meeting held in January of 2014 which was not referred to in Pamela's first affidavit. Replies to these two paragraphs are therefore allowed.

[92] Paragraphs 13.10 – 13.12 all raise new facts concerning the removal and prevention thereof of Pamela's belongings from the School along with the purported amendment made in the log book by Zorisha. Replies to these paragraphs are therefore allowed.

[93] Accordingly, the Claimant is allowed to file reply affidavits to the following paragraphs of Mrs Burke's and Zorisha's affidavits: **4- 6, 11 – 14 and 24 of Mrs Burke's affidavit;** and **12, 13.5 – 13.6, 13.10 – 13.12 of Zorisha's affidavit.**

III. Disposition:

[94] Accordingly, having considered the seven applications made by the Claimant along with the relevant learning and Rules thereon, the Court makes the following orders:

- 1. The Claimant's evidential objections to the affidavit of Zorisha Mohammed-Ali are overruled.**
- 2. Zorisha Mohammed-Ali is required to attend the trial for cross-examination on paragraphs 13.10, 13.11 & 13.26 of her affidavit.**
- 3. Zorisha Mohammed-Ali is required to disclose the letters referred to in paragraphs 12.1, 13.22 and 13.29 as well as the original exhibit annexed as "ZMA 1" to paragraphs 13.12 of her affidavit.**
- 4. Paragraphs 30 and 31 of the affidavit of Archbishop Barbara Burke be and are hereby struck out.**
- 5. The Claimant's application to have Archbishop Barbara Burke attend the trial for cross-examination is refused.**
- 6. The Claimant's application for specific disclosure of the legal correspondence referred to in paragraph 15 of the affidavit of Archbishop Barbara Burke is refused.**

- 7. Permission is granted for the Claimant to file reply affidavit to paragraphs 4 - 6, 11 – 14 & 24 of the affidavit of Archbishop Barbara Burke.**
- 8. Permission is granted to the Claimant to file reply affidavit to paragraphs 12, 13.5, 13.6 & 13.10 – 13.12 of the affidavit of Zorisha Mohammed-Ali.**
- 9. The issue of costs of the Claimant’s application of the 23rd June, 2015 is hereby reserved.**

Dated this 18th day of January, 2018

**Robin N. Mohammed
Judge**