THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2015-00485

BETWEEN

AKEEL WRIGHT

Claimant

AND

THE COMMISSIONER OF POLICE

Defendant

BEFORE THE HONOURABLE MR. JUSTICE ROBIN N. MOHAMMED

APPEARANCES:

Mr. Kenneth Thompson for the Claimant
Ms. K. Bello instructed by Ms. N. Simmons for the Defendant

DECISION

Introduction, Application and Procedural History

1. By Fixed Date Claim Form and accompanying affidavit both dated 24 March 2015, the Claimant sought the following relief:

a. A Declaration that the decision of the Commissioner of Police whereby he terminated the Claimant's training as a Special Reserve Police trainee effective the 19th day of November 2014 contravened the Claimant's legitimate expectation that he would be allowed to complete the training and if successful appointed to the office of Special Reserve Police Constable.
b. A Declaration that the said decision constituted an abuse of power, was unreasonable and contravened the rules of natural justice.
c. An order of Certiorari removing into the court and quashing the said decision.
d. An order requiring the Commissioner of Police to re-instate the Claimant in his position as a Special Reserve Police trainee.
e. Damages.
f. Costs.

2. On 21 July 2015 the Defendant filed affidavits sworn by Natalie Allen, Maureen Benjamin- Ruiz, Gideon Boodjarrat and Durmot Highly in response to the Claimant. On 2 July 2015 the Court gave an order granting the Claimant permission to file and serve a reply affidavit only on new matters raised in the Defendant's affidavits. On 28 September 2015, the Claimant then filed an affidavit in response, sworn by himself ("The C2 Affidavit") and an affidavit in support of the Claimant which was sworn by Kacy Ann O'Neil ("The KO Affidavit"). The Defendant on 20 November 2015 filed an affidavit of the Acting Commissioner of Police Stephen Williams, and an affidavit sworn by Acting Police Sergeant Lorine Joefield Regimental No. 14636.

3. The Defendant raised evidential objections to the C2 Affidavit and the KO Affidavit at a Case Management Conference held on 22 October 2015. Pursuant to a Court Order dated 22 October 2015, the Defendant filed written submissions on said evidential objections on 6 November 2015. The Claimant filed submissions in response on 27 November 2015, and the Defendant filed submissions in reply on 15 January 2016. The parties also made oral submissions on the evidential objections at a Case Management Conference held on 25 February 2016.

Factual Background

4. The Claimant applied for training as a Special Reserve Police ("SRP") Officer in response to a newspaper advertisement calling for such applications. Pursuant to the requests of SRP personnel, the Claimant successfully wrote an entrance examination, and then underwent a medical examination. From this point the cases of the two parties materially differ. The Claimant stated that he was called by SRP to begin training from the 12 November 2014 while the Defendant stated that the Claimant was not so informed by anyone under the SRP as he had failed the medical examination and was therefore not entitled to commence training for the SRP. Further, the Claimant contended that the SRP failed to give him a reason for his termination, while the Defendant claimed that the Claimant was informed of the reason on the day of the termination. Both parties agreed, however, that the Claimant began attending SRP training from 12 November 2014 and was asked to leave on 19 November 2014.

Evidential Objections

The Defendant's Submissions

5. As aforementioned, the Defendant raised evidential objections to the C2 Affidavit as well as the KO Affidavit filed on behalf of the Claimant. The primary argument raised by the Defendant was that permission was granted to the Claimant to file reply affidavit(s) to new matters raised only in the Defendant's affidavits. The Defendant contended that the Claimant failed to do so, and instead filed affidavits that did not respond to new matters but only served to repeat or buttress the Claimant's allegations already made in his Fixed Date Claim Form and accompanying affidavit. The Defendant consequently objected to the entirety of the KO Affidavit and specifically to paragraphs 9, 13, 16, 17, 18 and 19 of the C2 Affidavit on the basis of the aforesaid reasons.

6. The Defendant submitted that **rule 56.11 of the Civil Proceedings Rules 1998 ("CPR")** 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. Consequently, even without express

direction of the Court, such as was given to the Claimant by the 2 July 2015 Court order, the affidavit must comply with the regular requirements of a reply under **CPR Part 10.10**, as stipulated in **CPR Part 56.11**.

7. The Defendant consequently submits that replies under the regular rules are only supposed to respond to new matters raised in the defence. The Defendant referred to paragraph 6.25 of **Zuckerman on Civil Procedure 15th Edn** which states that replies should not repeat or bolster allegations "*by challenging the defendant's denials"*. The Defendant also referred to **Civil Litigation by John O'Hare and Kevin Browne**, in which it was said that a reply should only be limited to new facts. The authors of ***Civil Litigation*** further stated at paragraph 12-030:

> "*...the facts in reply should not be inconsistent with the facts alleged in the claim. If after seeing the defence the claimant wishes to change his story he should do so by amending his particulars of claim."*

8. The Defendant further claimed that in the two said affidavits the Claimant placed material before the Court that was always in his possession. Such material should have therefore been included in his Fixed Date Claim and his supporting affidavits. Counsel cited the case of **Tricia Bissoon v AG CV2011-01388** wherein Gobin J decided that an issue contained in a reply should have been rightly placed in the statement of case, which was at that point filed over a year before the reply. The counsel defending the reply stated that he "*did not settle the original statement of case and now considered it an issue to be argued"*. Gobin J held that such a statement suggested that the matter in question was placed in a reply when it really should have been placed in a statement of case. As such it was not allowed. Counsel also referred to the case of **Jagdeesh Thannoo v Harold Suepaul CV2013-01517** in which the claimant used the reply to introduce a shift in his circumstances. In this instance, the reply was also disallowed.

9. Counsel for the Claimant further contended that in judicial review proceedings, affidavits in support of a fixed date claim are the equivalent to a statement of case in matters that

only require a claim form. Accordingly, an affidavit in opposition to the claimant's affidavit is the equivalent to a defence, and an affidavit in response is equivalent to a claimant's reply. As such, counsel submitted that the offending parts of the reply should be struck out, as to do otherwise would violate the 2 July 2015 court order and further place before the court material which does not conform to the nature of a properly constructed reply.

The Claimant's Submissions in Response

10. Counsel for the Claimant submitted in turn that **CPR Part 56.11** refers to an answer made by a defendant and not an affidavit made by a claimant. Counsel submitted that the C2 Affidavit and the KO Affidavit were not filed in answer to an application, and as such **Part 56.11** is not applicable to the present proceedings.

11. The counsel further argued that there was a distinction between a defence and an affidavit, as a defence is a pleading while an affidavit is evidence. It was further contended by counsel for the Claimant that **CPR Part 10** deals with a defence for general cases, that is, cases that are not subject to judicial review and consequently the use of fixed date claim forms. The only relevant part in **Part 10** to claimants, it was submitted, was **Part 10.10** which sets out the requirements for a claimant's reply to a defence.

12. The counsel then came to the conclusion that **CPR Part 56.11** upon a true construction applies only to the period in which the state or its servant/agent is required to file affidavit evidence in answer to an application for judicial review or any such similar application.

13. It was consequently submitted by the counsel that the Defendant's reliance on ***Zuckerman's Civil Procedure*** (supra) and ***John O'Hare's Civil Litigation*** (supra) was misplaced as when the learned authors used the term "reply" they were, in effect, referring to a pleading. This was the similar contention in relation to the case law relied upon by the Defendant.

14. The counsel did admit to him being duty bound to comply with the order of the Court which directed the Claimant to reply only to "new matters" raised by the Defendant's affidavits. In relation to the KO Affidavit, however, the counsel argued that that affidavit was not an affidavit in reply, but rather an affidavit in response which serves to support the Claimant's version of events. As such, it was contended that the KO Affidavit should not be objected to as it is not one in reply, and should thus be allowed to stand as part of the Claimant's case in the interest of justice.

15. The Claimant then responded to the objections made over the C2 Affidavit. It was submitted that at paragraph 6 the Claimant replied to a new matter in denying that he was not contacted and was not informed that he was successful. It was submitted that this was in response to the Gideon Boodjarrat affidavit ("The Boodjarrat affidavit") which stated that the Claimant had failed the psychometric evaluation. It was also submitted that his paragraph 9, which denied that he was not contacted, was again in response to the new matter raised in the Boodjarrat affidavit that the Claimant had attended the training on his own accord.

16. The Claimant submitted that paragraph 13 in the C2 Affidavit, which stated that he was told that trainees must resign their jobs as they were training for full time employment by the SRP, was also in response to a new matter raised in the Boodjarrat affidavit, which stated that the trainees could choose to be employed as SRPs on either a full time or part-time basis. The Claimant also claimed that he responded to a new matter at paragraph 16 in denying the claim made in the Durmot Highly affidavit ("Highly affidavit") that Corporal Highly informed the Claimant that he was unsuccessful in the medical examination and psychometric test.

17. The Claimant submitted that he also replied to a new matter at paragraph 17 where he denied the claim made in the Natalie Allen affidavit ("Allen affidavit") that no officer contacted him and told him to report to the place of training. Similarly, that he replied to a new matter at paragraph 18 in denying the claim made in the Maureen Benjamin-Ruiz affidavit ("Benjamin-Ruiz affidavit") that no one contacted him and told him to report to the place of training. He similarly submitted that he replied to a new matter in denying a

claim made in the Benjamin-Ruiz affidavit that he was not called by a SRP officer and informed that he had passed the psychological test, particularly as it was a new matter to the Claimant that officer Natalie Allen had informed officer Maureen Benjamin-Ruiz that she (Natalie Allen) did not contact the Claimant to report for training, and further that no one other than Natalie Allen and Maureen Benjamin-Ruiz were authorised to so contact and invite persons for training.

18. It was accordingly the submission of the Claimant that neither the KO Affidavit nor the disputed paragraphs in the C2 Affidavit should be struck out.

19. In his oral submissions, it was contended that paragraphs 18 and 19 of the Benjamin-Ruiz affidavit were hearsay. The Claimant further supported his previously made submission that the KO Affidavit was not caught by the order as it just happened to be filed after the order was made, but it was not filed consequent to or as a direct result of the order. Further, that the KO Affidavit was not available to be filed before (i.e., closer to the Claimant's first affidavit in support of the fixed date claim). The Claimant consequently stated that the Defendant could seek leave of the Court to reply to the KO Affidavit if so desired.

20. Counsel submitted that the only issue to be determined in relation to the KO Affidavit was whether it was relevant to the issues in the case at bar. Counsel then obviously contended that it was relevant. Counsel for the Claimant then ended his submissions by asking the Court for leave to file the KO Affidavit. As a basis for such an application counsel submitted that the Defendant would suffer no prejudice, the affidavit is relevant to the proceedings, and that the Claimant is not required to make an application in writing when applying for an affidavit to be filed and served.

Defendant's Submissions in Reply

21. The Defendant in reply emphasized that Rule 56.1(1) and (2) state that applications for judicial review are applications for an administrative order, which is what is dealt with at Part 56.11. Counsel also argued that the Court did have the power to strike out the KO and C2 Affidavits as a result of rules 29.1, 31.3 and 26.1(w) of the CPR all of which

enable the court to control evidence and strike out scandalous, irrelevant or otherwise oppressive evidence, as well as to ensure compliance with orders.

22. The counsel for the Defendant further stated that the relevance of rule 56.11 directing its application under Part 10 is also borne out by rule 56.7, which in outlining the criteria for making a judicial review application provides that the claim form must be accompanied by an affidavit (rule 56.7(3)), which in function is similar to a statement of case. As such it was contended that all the provisions of Part 10 apply to such an affidavit, and there are no qualifications to the contrary as contended by the Claimant. It was submitted that there is no express or implied constraint in applying Part 10 to affidavits that are filed under rule 56.11 and that there was no rule, law or authority to support any such limited construction as alleged by the Claimant.

23. The Defendant further submitted that while the C2 and the KO Affidavits were both clearly filed in furtherance to the Claimant's application for judicial review, the Claimant has no independent right to reply to a defence or to affidavits in response made by the Defendant. As such, the submission seems to be that the Claimant's affidavits could only be properly filed under the order given by the Court, under which the Claimant was, as aforementioned, explicitly directed to only respond to new matters raised. It is upon that basis that the Defendant objects to the non-compliance of said affidavits.

24. It was again stressed by counsel for the Defendant that the said affidavits of the Claimant serve only to repeat statements already made by the Claimant. It was stated that constant repetition of the facts would be of no assistance to the Court.

25. The Defendant contended that the Claimant wrongly interpreted the Court order and reiterated that the order clearly directed permission only for the reply to new matters. Counsel cited the case of **Lesley Almarales v Director of Personnel Administration Judicial and Legal Service Commission CV2014-02019**, in which the Court in that case similarly granted permission to the defendants to file affidavits in response in respect to new matters raised only. Madam Justice Jones (as she then was), held at paragraph 26 that-

> "*The Defendants were not entitled as of right to respond to the affidavits.... Their entitlement to respond was based solely on the permission granted by me.... This permission was with respect to new matters raised only."*

The Defendant therefore maintained that the Claimant was not entitled as of right to reply, and that consequently any such reply had to be made in terms of the Order granted by the Court.

26. Counsel for the Defendant then referred to various instances in the ***Lesley Almarales*** decision where the Court had to determine whether portions of the reply properly responded to new matters or were improperly constructed. The Court accepted a reference to a telephone call as being new evidence as well as an annexure of an affidavit in response to a matter newly arising. The Court, however, struck out paragraphs that referred to issues that were already raised and replied to, even referring to an issue as "*the basis for the deponent's application"* and was consequently struck out as "*exceeding the remit of the permission granted*."

27. The Defendant further submitted that the matters raised in the contended paragraphs of the C2 Affidavit reiterated the Claimant's argument initially stated in his first affidavit, that he was not informed of the reason for his termination, and that he was in fact contacted to begin training with the SRP. As such, it is submitted that these matters are not new and are but an attempt to corroborate and bolster the first Claimant affidavit. The same was contended in relation to the KO Affidavit, as it was submitted that this witness served to only repeat the Claimant's initial statements made in said first affidavit. As such, the Defendant submitted that these two affidavits are irrelevant to the present proceedings in light of the limitations of the permission of the court to respond only to new matters raised. The Defendant further contended that for the Claimant and KO to repeat what has already been stated is regardless of no evidential value.

28. Counsel for the Defendant rejected the Claimant's submissions wherein he contended that the C2 Affidavit replied to new matters raised in the GB Affidavit (at paragraphs 6, 9, 14, 15). Paragraph 16, where the Claimant denied that Highly told him his reasons for termination, was particularly referred to as a repetition of paragraph 14 of the Claimant's first Affidavit ("C1 Affidavit"), where the Claimant claimed that Corporals Joefield and Joseph did not tell him his reasons for termination. It was further submitted that said paragraph is in fact the Claimant's entire case; that is, that he was not informed of the reason for his termination while training.

29. The Defendant further denied that the issues raised in paragraphs 17 and 18 were in response to new matters raised, as the NA and MBR Affidavits only answered assertions already made by the Claimant in paragraph 11 of his being informed to report for training. Counsel stated that the issues of whether the Claimant passed or failed the psychometric evaluation, whether he was invited to training or attended of his own accord, and whether the trainees were told that it was full time employment or also given the option of part time employment, were already stated by the Claimant and were thus only being raised in the Defendant's affidavits as a response. It was submitted by the Defendant that said matters were already raised by the Claimant in his first Affidavit. Paragraph 19 was also submitted as a reiteration of paragraph 11 in the C1 Affidavit, as it again asserted that he was called for the training.

30. In reference to the Claimant's introduction at paragraph 9 of the C2 Affidavit of Ms. Park's contacting him in relation to payment for his attendance at SRP training, the Defendant submitted that the Claimant was aware of this information at the time that he filed his Fixed Date Claim form and accompanying affidavit. The Defendant contended that the Claimant did not fulfil his duty of candour to the court, and kept this information which resulted in the Defendant being unable to respond to such a claim in his response affidavits. As such, it was submitted that the relevant paragraph (9) of the C2 Affidavit should be struck out.

31. The Defendant further notes that Ms. Parks was clearly never raised or even mentioned in the GB Affidavit, and as such could not have introduced the matter. Furthermore, the

Defendant submitted that as the Claimant did not even claim that Ms. Parks was the one to invite him to attend SRP training, the inclusion of her alleged contact is not even relevant and should consequently be struck out.

32. The Defendant maintained therefore that said portions of the C2 and the entirety of the KO Affidavits should be struck out.

33. In his oral submissions, the Defendant maintained that if new circumstances have arisen in the Claimant's case, the Statement of Case, or in this case the affidavit in support of the FDC, must be amended to reflect such change. It was contended that the Claimant should have made an application to change or add to the existing affidavit, or to file a new affidavit with reference to the claim. However, the Claimant did not do so (until hearing this point raised by the Defendant at the Case Management Conference wherein these oral submissions were made).

34. The Defendant submitted that it was not a simple matter of filing new affidavits, but that the initiation of such an application would spark a long but necessary process of taking instructions, redoing the entire process, recalling witnesses and the like. As such, the Defendant objected to the filing of a further response to the KO Affidavit. It was further averred that such an application to be made by the Claimant should be in writing.

Issues, Law and Analysis

35. There are two main areas that need to be considered and answered in this matter. The first area in issue is whether the Claimant affidavits in contention are, according to the CPR and common law, the equivalent of a reply and should consequently be treated as such. The second issue is dependent on the answer to the first, and treats with whether the said affidavits of the Claimant are appropriately constructed if they in fact should be within the structural requirements of a reply.

Whether the C2 and KO Affidavits are equivalent to a Reply

Whether rule 56.11 is applicable to all of Part 10 or only rule 10.10.

36. The Claimant has contended that rule 56.11 is only applicable to rule 10.3 which concerns the time in which a reply is to be given. As the Defendant has submitted, there is no law to support this argument by the Claimant. There is nothing to suggest, either in the provisions of the CPR itself or in common law, that rule 56.11 is limited in its application to the entirety of part 10. As already observed by this court at the hearing for these oral submissions, rule 56.11 is commensurate to all the provisions of Part 10. This includes rule 10.10 which concerns the reply to a defence.

37. Rule 56.11 in its entirety 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."*

This provision can hardly be held to be vague, or construed to have hidden implications contradictory to what appears on the face of it. The rule states that judicial review applications (administrative order applications) must be answered with affidavit evidence. It further and clearly states that the provisions of Part 10 apply to such an affidavit. On the face of the provision therefore, it is clear that the entirety of Part 10 applies to an affidavit that answers an application. In no part of the provision is there any language from which one can imply that only certain elements of Part 10 are to be made applicable. As such, all of Part 10 is to be applied to any affidavit filed in answer to a Judicial Review Application. As rule 10.10 is part and parcel of Part 10, and said rule deals with a Claimant's reply to a Defence, it necessarily follows that if a Claimant files an affidavit in answer to a Defendant's affidavit in response to the application for judicial review, the Claimant's affidavit is constrained by the same rules as a Claimant's reply under rule 10.10.

38. The court can simply look to one of the cases already raised by the Defendant, which is fully cited as ***In the Matter of the Judicial Review Act Chap 7:08 and In the Matter of***

an Application for Judicial Review in accordance with Part 56.3 of the Civil Proceeding Rules 1998 (As Amended) between Lesley Almarales and Director of Personnel Administration Judicial and Legal Service Commission **CV 2014-02019**. The case was joined with another case which is similarly cited, and in its short form is ***Svetlana Dass et al v Director of Personnel Administration Judicial and Legal Service Commission*** **CV2014-02021**. The Court highlights the citation of this case in order to make the point that this case was also a case on judicial review, such as the matter presently before this Court. From paragraph 5, it is stated that "…*permission was sought and granted to the Defendants to file affidavits in reply to new matters raised in the Claimants' affidavits…".* Affidavits in reply are discussed at length in this case. The area of contention was however not whether affidavits in reply are relevant to a judicial review matter, but whether the affidavits of reply in said judicial review matter were appropriately constructed- a matter common to all decisions concerning the admissibility of affidavits in reply, judicial review applications or not. It was therefore inherent in the court's management of the matter in ***Lesley Almarales*** that there is a basic understanding that when a party replies to new matters raised pursuant to an order, that said party is operating under the tenets of an affidavit of a reply as per **Part 10 of the CPR**.

39. The second issue claimed by the Claimant was that there is a distinction between a defence and an affidavit. This was also already clarified by the court while the parties gave their oral submissions in this matter. The court stated then, and reiterates now, that in Judicial Review cases, affidavits are equivalent to pleadings and evidence. As such, part 56.11 pertains to rules of pleadings which apply to evidence.

40. This can be observed even by the fact that under **rule 56.7(3)** the claimant is to file an affidavit in support of the fixed date claim form for judicial review, as opposed to a statement of case. This affidavit is however substantially the same as a statement of case in non-administrative order applications. Therefore while these applications and affidavits are termed differently under the ambit of judicial review, the same basic legal principles apply. For the sake of application of the relevant legal principles, a Claimant's affidavit in support of an application for judicial review is understood to be the same as a

Statement of Case, a Defendant's affidavit in response is understood to be akin to a Defence, and a Claimant's affidavit in reply to the Defendant is understood to be akin to a Reply to a Defence.

Whether the said affidavits could be filed merely in support of the Claimant's version of events as claimed by the Claimant without being constrained to the structure of a reply?

41. The court notes that despite the Claimant's contention that the said affidavits are merely in support of his version of events, the two same affidavits proceed at length to identify and elaborate upon evidence submitted in the affidavits of the Defendant. The very nature of a reply is that it is replying to an affidavit of the opposing party. The Claimant cannot contend that his affidavits are merely in support of his own evidence contained within his own affidavits and then in the same breath proceed to point out at length within said affidavits his areas of contention in relation to the Defendant's affidavits. In fact, the Claimant within his submissions for this very point of law, i.e. whether or not his affidavits are in fact affidavits in reply and therefore should be treated as such, after his argument that they are not affidavits in reply, then proceeded to highlight and further elaborate on the points that he raised in the C2 and KO Affidavits in response to the Defendant's affidavits. The content of the C2 and KO Affidavits are therefore clearly meant to be, and effectually are, a response to the affidavits of the Defendant.

42. For the sake of clarifying the legal issue however, the court will consider what would occur if the Claimant filed affidavits that seemed to only support his version of events, after receiving affidavits by the Defendant and after being directed by court order to respond to the Defendant concerning new matters only. The first question that one may ask is, why would the Claimant only seek to file affidavits in support of his evidence so much later of his first affidavit in support of the fixed date claim form, and after affidavits of the Defendant have already been filed?

43. This was in fact raised by this Court while the parties were giving their oral submissions on the point. The Court made the observation that at no time was anything filed and

served for the court in relation to the KO Affidavit to give explanation as to why said affidavit was not filed beforehand (i.e. closer to the time of the 1st affidavit in support of the FDC). As has been made clear by the timeline and the evidence of both parties, both the C2 Affidavit and the KO Affidavit were filed and served after the Defence had already filed and served their affidavits in response.

44. Rule 56.10(1) states that the claim form and accompanying affidavit in support must be served 14 days before the CMC. Even if the C2 and KO Affidavits were therefore merely affidavits in support as claimed by the Claimants, they should have been served 14 days before the CMC took place. At very least, an application should have been made for the admittance of the said affidavits, and not an oral, "fly by night" application as was made by the Claimant at the hearing for the oral submissions on this matter upon being informed by the court as to the need for an explanation of their late filing of the said affidavits.

45. This is even without the court considering an affidavit by the Claimant under the relevant provision, i.e., rule 10.10 (pursuant to rule 58.11). Under this, the claimant may not file or serve a reply without the court's permission (or the defendant's consent if before a CMC). As CMCs took place before the Claimant filed the affidavits in contention, even if the Claimant maintains his argument that the C2 and KO Affidavits were not filed in pursuance to the Court Order dated 2 July 2015, said affidavits still could only be properly filed with the permission of the court. The Claimant was not merely without this permission. He was specifically only allowed permission to reply to new matters. For him to file affidavits that he now submits to not be under the purview of said order is accordingly subversive not only to the order itself but to the provisions given by the CPR. As such, if the affidavits in contention are not in response to new matters raised in the Defendant's affidavits, they must, as a matter of due course, be struck out as failing to comply with court order and civil procedure.

46. As the Claimant has contended that the KO Affidavit is not an affidavit in reply, it must consequently be struck out for failing to comply with the court order and civil procedure as per the CPR.

Whether the C2 Affidavit constituted a properly constructed reply

47. The question that must then be asked is whether the Claimant's C2 affidavit responds to new matters as per the court order and as required by the CPR. In determining whether an affidavit actually responds to new matters, the first component that one can look at is whether the said affidavit only serves to repeat and buttress claims.

48. The Claimant buttresses his claim repeatedly in the C2 Affidavit, as correctly contended by the Defendant. He denied that he was not contacted to attend the training at paragraphs 6, 9, 17, 18 and 19 of the C2 Affidavit. This was however already raised in his C1 Affidavit, where he stated that he was contacted by the SRP to attend training. Similarly, the statements made by the Claimant at paragraphs 16 and 18 of the C2 Affidavit where he contends that he was not told that he was unsuccessful in the medical examination and psychometric/ psychological test also amount to a buttressing of his claim, as he had already stated in his C1 affidavit his version of events which included him not being told the reason as to his termination as well as his claim that he was informed that he was successful in the medical examination. The Claimant therefore buttressed and reiterated his claim in these paragraphs.

49. The Claimant further failed to properly constitute a reply by submitting plain denials, or "a defence to a defence", within the C2 Affidavit, which is another feature that is inappropriate when constructing a reply. His repeated denial of not being contacted as aforementioned is one example. Further, his denial at paragraph 13 that he was informed that the SRP position was also for part time employment served only as a "defence to a defence". It was furthermore another incident of a reiteration of his claim, as his version – that they were told that they must resign their jobs- was already stated in the C1 Affidavit.

50. The Claimant further failed to place any material in the affidavit that was not already in his possession when he filed the C1 Affidavit. As such, his introduction of Ms. Park in the C2 Affidavit should have been placed in the C1 Affidavit, as per the dicta in ***Tricia Bissoon v AG*** (supra) as cited by the Defendant.

51. The Court accordingly accepts the submissions made by the Defendant in this regard and finds that the disputed sections of the C2 Affidavit are improper for a reply.

Whether the offending parts of the C2 Affidavit and entirety of the KO Affidavit should be struck out.

52. The Defendant has submitted the appropriate procedure for determining whether a reply has been properly constituted as per the ***Zuckerman on Civil Procedure*** as well as ***Civil Litigation*** by John O'Hare and Kevin Browne. According to such an understanding that a reply should not repeat or bolster allegations, nor serve as a "defence to a defence", the aforementioned paragraphs of the C2 Affidavit are improper for a properly constituted reply. As such, paragraphs 6, 9, 13, 16, 17, 18 and 19 must be struck out.

53. Regarding the KO Affidavit, as aforementioned it is not even professed by the Claimant to fall under the purview of a reply to new matters raised by the Defence. An actual look at its contents reveals this to be true, as like the C2 Affidavit it is rife with matters that are repeated or buttress what has already been stated in the C1 Affidavit. As such, it is to be struck out in its entirety.

Disposition:

54. In light of the court's findings above, the following order is made:

ORDER:

1. **Paragraphs 6, 9, 13, 16, 17, 18 and 19 of the Claimant's affidavit in Support filed on 28 September 2015 be and are hereby struck out.**

2. **The affidavit of Kacy-Ann O'Neil filed on 28 September 2015 in support of the Claimant's Application for Judicial Review be and is hereby struck out in its entirety.**

3. **The Claimant shall pay to the Defendant costs of the evidential objection to be assessed pursuant to CPR Part 67.11, in default of agreement.**

4. **The matter is adjourned to the 14th November, 2017 at 1:30 pm in courtroom POS 03 for a case management conference.**

Dated this 19th day of October, 2017

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Robin N Mohammed
Judge