REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2020-00070

BETWEEN

RICHARD THOMAS

Claimant

AND

ANTHONY MARINE SERVICES LIMITED

Defendant

Claim No. CV2020-00077

BETWEEN

SELWYN JOSEPH

Claimant

AND

ANTHONY MARINE SERVICES LIMITED

Defendant

Before the Honourable Mr. Justice Robin N. Mohammed

Date of Delivery: Friday 19 February 2021

Appearances:

Mr. Gerald Ramdeen instructed by Ms. Dayadai Harripaul for both Claimants

Mr. Pascall N. Marcelin for the Defendant

RULING ON THE PRELIMINARY ISSUE OF THE COURT'S JURISDICTION IN BOTH CLAIMS

I. Introduction and Procedural History

[1] Both Claims as filed before the Court arise out of the same circumstances involving the same Defendant. The Court will therefore give one decision regarding both Claims. Both Claimants filed their Claim Form and Statement of Case against the Defendant on 8 January 2020.

[2] Both Richard Thomas and Selwyn Joseph were permanently employed by the Defendant. Richard Thomas was continuously employed by the Defendant during the period 8 November 2012 (*sic*)[1] to 8 January 2016 as Chief Engineer. Selwyn Joseph was continuously employed by the Defendant during the period June 2009 to 8 January 2016 as a Deckhand.

[3] On 8 January 2016, the Defendant's Managing Director told the Claimants that they would no longer be employed with the Defendant Company. The Claimants' positions had become surplus to the requirements of the Defendant and as a result their positions became redundant. By letter dated 17 May 2016, both Claimants were given notice that their employment with the Defendant was being terminated. The Claimants were served with formal notice of their retrenchment on 17 May 2016.

[4] Both Claims relate to the outstanding retrenchment and severance benefits owed to them by the Defendant for services performed at the Defendant Company pursuant to **section 18(3) of the Retrenchment and Severance Benefits Act, Chap 88:13**. In relation to Richard Thomas, the period of services performed was 13 years and 2 months whereas Selwyn Joseph's period of services performed was 9 years, 6 months and 8 days.

[5] According to the Claimants, the Defendant is in breach of the statutory obligation imposed on it by law since they have not received payments of any severance benefits despite a period of more than 3 years and 11 months having elapsed since the date of their retrenchment.

[6] On 14 July 2020, the Defendant filed its appearance to both Claims giving notice of its intention to defend both Claims. The Defendant, however, admitted part of Richard Thomas's Claim in the amount of **$70,157.50** but filed no application to pay by instalments. However, on 30 July 2020, Richard Thomas filed a Notice that he does not accept the amount admitted by the Defendant and he wished the proceedings to continue in accordance with **Part 14.6(2) and (3) of the Civil Proceedings Rules 1998 (CPR)**.

[1] **It should be 2002** since the period calculated by Richard Thomas adds up to about 13 years and some months.

[7] The Defendant filed its Defence on 4 August 2020. The Defendant's Defence to both Claims is that the Claimants' Claim ought to be struck out as an abuse of the process of the Court as the Court does not have jurisdiction since the matter regarding outstanding severance payments to the Claimants is currently before the **Industrial Court Reference Trade Dispute No. GSD-TD054/2017(S) Oilfield Workers Trade Union and Anthony Marine Services Limited.**

[8] As it relates to **Richard Thomas**, the Defendant averred that it had all intentions to settle all of its outstanding severance payments to Richard Thomas which was confirmed to the Ministry of Finance, Board of Inland Revenue as **$93,545.33.00** However, the Defendant has paid part of the severance to Richard Thomas in the amount of **$23,385.83** to his bank account on 23 September 2016 leaving a **balance of $70,157.50**.

[9] According to the Defendant, in 2016 as the last year of audited statements for the Defendant Company, the Defendant made a significant loss of $2,964,653.00. The Defendant averred that it has not received any further contracts since 2016 for its vessel on which the Claimants have worked and has been unable to pay the outstanding balance owed to Richard Thomas. The Defendant, however, acknowledged its obligation under the **Retrenchment and Severance Benefits Act** to Richard Thomas for payment of severance but it does not have the financial means to satisfy the balance of the Claim. **As a result, the Defendant and the representative union for the Claimants are in discussions at the Industrial Court on this matter**.

[10] As it relates to **Selwyn Joseph**, the Defendant averred that the period for payment under the **Retrenchment and Severance Benefits Act** is 6 years and 10 months. Nonetheless, the total severance benefits as confirmed to the Ministry of Finance, was **$59,269.22**. The Defendant denied that it owed outstanding severances benefits to Selwyn Joseph since it has paid all outstanding sums to Selwyn Joseph to his bank account on various days, namely: **10.04.2017, 27.07.2017, 23.09.2017 and 23.09.2017 totalling $59,269.22.**

[11] The Defendant maintained that it has complied with the Laws of Trinidad and Tobago and all terms of the contract of employment and it has not failed to honour its

obligations to Selwyn Joseph under the **Retrenchment and Severance Benefits Act** since Selwyn Joseph was paid his full entitlement.

[12] On 9 September 2020, the Defendant filed a Notice of Application in both Claims applying to the Court for an Order that (1) pursuant to **Part 26.6(2) of the CPR**, the Defendant be granted relief from sanction for failing to comply with the requirements of **Part 9.7(3) of the CPR**; and (2) pursuant to **Part 26.1(1)(d) of the CPR**, the Defendant be granted an extension of time to the 14 September 2020 to file an application under **Part 9.7(1) of the CPR** disputing the Court's jurisdiction in this matter. This application was scheduled for hearing on the date fixed for the Case Management Conference (CMC), that is, 21 September 2020.

[13] Subsequently, on 11 September 2020, the Defendant filed a Notice of Application in both Claims applying to the Court pursuant to **Part 9.7 of the CPR** for an order that (1) the Honourable Court does not have jurisdiction to try this Claim; (2) even if the Court has jurisdiction, it should not exercise any jurisdiction which it may have; (3) that the Claimants' Statement of Case be struck out; and (4) there be no order for costs. This application was also scheduled to come up for consideration at the CMC.

[14] However, the Defendant filed two Notices of Withdrawal in both Claims. One on 16 September 2020 withdrawing its Notice of Application dated and filed on 9 September 2020 and the other on 17 September 2020 withdrawing its Notice of Application dated and filed on 11 September 2020.

[15] Thereafter, the Defendant filed an Amended Defence in both Claims on 18 September 2020. In essence, the Defendant maintained that the Claimants' Claims ought to be struck out on the basis that the High Court does not have jurisdiction in the matters since the individual Claims brought by Richard Thomas and Selwyn Joseph for payment of severance benefits owed to them for a period of 4 years, 7 months and 16 days, both pursuant to **section 18(3) of the Retrenchment and Severance Benefits Act** are deemed trade disputes according to **section 23(2) of the Retrenchment and Severance Benefits Act**.

[16] Furthermore, **section 4(1) of the Industrial Relations Act, Chap 88:01** establishes the Industrial Court as a Superior Court of Record and **section 7(1)(a) of the Industrial Relations Act** gives the Industrial Court power as a Superior Court of Record to hear and determine trade disputes. Since the issues raised in the Claim Forms and Statements of Case pertain to an employer-employee relationship, the Industrial Court is the proper forum for persons falling within the definition of "workers" under **section 2 of the Industrial Relations Act** and that the Claimants are workers under the Act.

[17] The Defendant further averred that the Claims for unpaid severance are claims based on a statutory right and the statutes have provided a procedure in both the **Industrial Relations Act** and the **Retrenchment and Severance Benefits Act** for settlement of such trade disputes. Additionally, the High Court does not form part of the Industrial Relations regime as contemplated by those statutes and the High Court should not entertain this matter unless the Claimants are clearly outside the parameters of the Industrial Relations Act.

[18] At the first Case Management Conference on 21 September 2020, the Defendant raised the issue of jurisdiction of the High Court. Counsel for the Claimants, however, argued that the Defendant is estopped from disputing the jurisdiction of the Court since it failed to file the appropriate application within the time prescribed for filing a defence and in fact has already filed a Defence and an Amended Defence. In this regard, counsel submitted that the Defendant has accepted that the Court has jurisdiction to try the Claims as provided for by **CPR Part 9.7(5)**.

[19] At the conclusion of the CMC on 21 September 2020, the Court gave directions for the filing of submissions on the issue of whether the Court has jurisdiction to hear this Claim. The Defendant and Claimants filed their written submissions on 12 October 2020 and 13 October 2020. The Defendant filed Reply Submissions on 27 October 2020.

[20] The Court will now give its ruling on the Court's jurisdiction in both Claims and whether the Claims ought to be struck out.

II. Submissions

Defendant's Submissions

[21] Counsel for the Defendant, Mr. Marcelin, submitted that the issues raised in the Claim Form and Statement of Case by the Claimants relate to the statutory right for all persons falling within the definition of **"*worker*"** under **section 2 of the Industrial Relations Act** and that the Industrial Court is the proper forum to bring such claims unless the employee is not a worker under the Act. It was submitted that the Claimants have not provided any evidence that they fall outside the definition of "worker" under the **Industrial Relations Act** and that the High Court should determine this matter.

[22] Mr. Marcelin contended that the High Court does not form part of the Industrial Relations Regime contemplated by the **Industrial Relations Act** and the **Retrenchment and Severance Benefits Act. As such,** it should not entertain this matter unless the Claimants are clearly outside the purview of the **Industrial Relations Act**. Mr. Marcelin agreed that the High Court can have jurisdiction in certain employer/employee matters but that the jurisdiction is over persons who fall outside the definition of "worker" in **section 2(3) of the Industrial Relations Act.**

[23] In support of his argument that the Industrial Court is the proper forum for this matter, Mr. Marcelin relied on the statement of Davis JA in **Attorney General of Trinidad v Chaman Algoo**[2] where he stated:

> "*where a liability not existing at common law is created by statute which at the same time gives a special and particular remedy for enforcing it… the remedy provided by the statute must be followed and it is not competent to a party to pursue a course applicable to cases of the second class."*

Mr. Marcelin stated that the second class referred to by the learned Judge was a case where the Statute gives the right to sue but provides no particular remedy.

[24] Mr. Marcelin submitted that the claim for unpaid severance is a right based on statute, **Retrenchment and Severance Benefits Act**. **Section 28(1) of the Retrenchment**

[2] Civil Appeal No 47 of 1984

and Severance Benefits Act states that any contravention of the Act constitutes an industrial offence within the meaning of the Act and also under **section 25(2)** where such contravention is brought before the Industrial Court, it shall be dealt with in accordance with the procedure laid down by the **Industrial Relations Act** and the Industrial Court may make an award in favour of an aggrieved party.

[25] Mr. Marcelin contended that the Claimants are "*workers*" and therefore, they ought to follow the procedure established in the **Retrenchment and Severance Benefits Act** which requires that their matters be determined by the Industrial Court, a Court of Superior Record. Counsel relied on the authorities of **Joanne Ferdinand v North West Regional Health Authority**[3] and **Dianne Ramdhan v Trinity Industries Limited**[4] in support of his proposition that the High Court does not have jurisdiction. Mr. Marcelin's position is that a claim for unpaid severance was deliberately classified as a trade dispute under **section 23(2) of the Retrenchment and Severance Benefits Act** so that the Industrial Court would have jurisdiction and not the High Court to pursue such claims.

[26] Mr. Marcelin also submitted that the bringing of the Claims in the High Court is an abuse of process of the Court as the Claimants, through their representative trade union, have brought a claim for termination of their services against the Defendant which is before the Industrial Court at the conciliation stage. It was contended that in accordance with the definition in **section 2 of the Retrenchment and Severance Benefits Act**, "*retrenchment*" means the termination of employment of a worker at the initiative of the employer for reasons of redundancy and "*redundancy*" is also defined as the existence of surplus labour in an undertaking for whatever cause.

[27] Mr. Marcelin further contended that the Claimants, having had the matter of their termination of services referred to the Industrial Court, acknowledged the proper forum for any relief consequent to the termination of their services, severance payments included. Therefore, to allow the Claimants to simultaneously bring their claims in the High Court seeking such relief would constitute an abuse of process of the Court. Mr. Marcelin cited **Part 26.2(1)(b) of the CPR** which provides that the

[3] CV2006-00316
[4] CV2019-02385

Court may strike out a Statement of Case or part of a Statement of Case if it appears to the Court that the Statement of Case or part to be struck out is an abuse of the process of the Court.

[28] Mr. Marcel quoted the Latin maxim "*nemo debet vexari pro una et eadem causa*" which means that no person ought to be vexed twice by the same cause. Mr. Marcelin submitted that this maxim is applicable in this situation. Mr. Marcelin relied on the authority of **Henderson v Henderson**[5] wherein Sir James Wigram VC stated as follows:

> *"In trying this question, I believe I state the rule of the court correctly, when I say, that where a given matter becomes the subject of litigation in, and of adjudication by, a court of competent jurisdiction, the court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward only because they have, from negligence, inadvertence, or even accident, omitted part of their case."*

[29] Mr. Marcelin contended that the matter of termination of services of the Claimants is before the Industrial Court, a Court of competent jurisdiction and the Claimants' union will be able to bring their claim for severance before that Court. It was further contended that it is inconceivable to believe that the termination of services of the Claimant will be heard before the Industrial Court and the representative union will not have as part of its claim payment of severance benefits to the Claimant. Mr. Marcelin relied on **Johnson v Gore Wood & Co (a firm)**[6].

[30] Mr. Marcelin submitted that the ***Henderson Rule*** is a rule of law and there is no discretion for a judge to exercise once he/she has decided that Henderson abuse will occur. It was further submitted that the rule encourages parties to bring forward all their potential claims and arguments in one set of proceedings rather than wasting the

[5] (1843) 3 Hare 100
[6] [2010] All ER (D) 2293 *(sic)*. The Court, however, is of the opinion that this case was incorrectly cited. The correct citation is [**2002**] **2 AC 1 or [2000] UKHL 65 or [2001] 1 All ER 481**

Court's time by successive applications on the same facts and issues in a second set of proceedings. Mr. Marcelin submitted that the rule requires the judge to take account of all the facts of the case focusing attention on the crucial question whether in all the circumstances a party is misusing or abusing the process of the Court in seeking to raise before it all issues which could have been raised before.

[31] Mr. Marcelin further submitted that the Defendant should not be oppressed by successive suits. Counsel cited Jamadar J (as he then was) in **Danny Balkissoon v Roopnarine Persaud**[7] where he stated as follows:

> *"A fourth category of the abuse of the process of the court is where a party commences two or more sets of proceedings in respect of the same subject matter, and which amount to a harassment of a defendant because of the attendant multiplication of costs, time and stress."*

Mr. Marcelin contended that the authority supports his arguments of abuse as the Defendant's (*sic*[8]) trade union has, on their behalf, approached the proper forum, the Industrial Court, on the issue of their termination of service where the matter of payment for their years of service under the **Retrenchment and Severance Benefits Act** can and should be properly addressed and where any decision made by the Court under **section 19(1)** is binding on all the parties.

[32] Mr. Marcelin contended that as a consequence of the Claimants having elected to have the issue brought to the Industrial Court as a trade dispute, they should not be allowed to simultaneously pursue a claim on the same issue and facts in the High Court as this would result in an undesirable form of abuse and "forum shopping" which cannot be in the interest of justice.

Claimants' Submissions

[33] Mr. Ramdeen submitted that the Defendant has accepted the jurisdiction of the Court to hear the claim and that **Part 9.7 of the CPR** is the relevant rule to be considered. It was submitted that there is no dispute that the Defendant did not make any application under the provision of **Part 9.7 of the CPR** in this matter. Instead, the Defendant

[7] CV 2006-00639
[8] Should be ***the Claimants'***

sought to file a Defence in both Claims seeking to challenge the jurisdiction of the Court in its Defence. Mr. Ramdeen submitted that this is clearly not permitted under **the CPR**. Therefore, since there is no compliance with **Part 9.7 of the CPR**, the Defendant has accepted the jurisdiction of the Court.

[34] Mr. Ramdeen contended that **Part 9.7 of the CPR** is a rule that imposes a sanction in default of the filing of an application challenging the jurisdiction of the Court. The express sanction that is imposed is that if no application is filed to challenge the jurisdiction of the Court, the Defendant is *treated as having accepted that the Court has jurisdiction to try the Claim.*" Accordingly, in those circumstances, unless the Defendant files an application for relief from this express sanction, effect must be given to the express provisions of **the CPR** and there can be no plea in the Defence that the Court has no jurisdiction to hear the Claim. It was submitted that any such plea will amount to an abuse of process of the Court since the provisions of the CPR prevent the Defendant from advancing such a plea without first seeking relief from sanctions.

[35] Mr. Ramdeen further submitted that **the CPR** mandate the manner by which a litigant may challenge the jurisdiction of the Court. Where statutory provision is made for the manner in which jurisdiction is to be challenged, the inherent powers of the Court to uphold a challenge to jurisdiction on the same basis is ousted. Counsel relied on **Attorney General v De Keyser's Royal Hotel**[9]. Therefore, to challenge the jurisdiction of the Court in the present case, **Part 9.7 of the CPR** is clear on what the Defendant ought to have done. The Defendant must therefore suffer the sanction that has been imposed.

[36] Mr. Ramdeen submitted that it has long been held that the negligence of attorneys cannot cross the threshold to grant any type of relief to a litigant. Counsel relied on the authorities of **Deryck Mahabir v Courtnay Phillips**[10] and **National Lotteries Control Board v Michael Deosaran**[11]. In **National Lotteries Control Board**

[9] [1920] AC 508
[10] Civil Appeal No. 30 of 2002
[11] Civil Appeal No. 132 of 2007

(supra), Jamadar JA (as he then was) quoted the late Kangaloo JA in **Mahabir v Phillips (supra)** as follows:

> *9. What I stated in Trincan Oil Ltd. (In Trincan Oil Ltd. and Ors. V Chris Martin, Civ. App. No. 65 of 2009, at page 8, paragraphs 18 and 19) may be worth repeating here: "Simply put, in the context of compliance with rules, orders and directions, the 'laissez-faire' approach of the past where non-compliance was normative and was fatal to the good administration of justice can no longer be tolerated".*
>
> *10. In fact, in July 2003, the full court of the Court of Appeal emphatically denounced as a reason for seeking the indulgence of the courts, the lack of diligence, reasonableness or competence by attorney: See, Kangaloo J.A. in Deryck Mahabir v Courtnay Philips, Civ. App. No. 30 of 2002, at pages 6 to 7, paragraphs 20, 21 and 22.*
>
> > *20. ...Counsel for the Appellant has without specifically saying so contended that the Appellant ought not to be punished for the incompetence of his two previous attorneys. He has contended that the Appellant did all that he could do, which is to go to attorneys and place the matter in their hands so that he should not be penalized by having the matter dismissed as an abuse of process for their failing to act with diligence, reasonableness or competence. 21. This Court is unable to accept that submission. Gone are the days when the litigant is allowed to pursue litigation dilatorily and use the incompetence of his attorneys as the excuse. The tide turned some time ago with the decision of The National Commercial Bank of Trinidad and Tobago Limited v Pouchet Civ. App. No. 133 of 1995 (unreported) and has continued to flow with the decisions of Ramkissoon v Ramkissoon Civ. App. No. 161 of 1998 (unreported) Laveau v Port Authority Civ. App. No. 181 of 1996 (unreported) Bassett v McKenzie Civ. App. No. 41 of 1999 (unreported) Port Authority of Trinidad and Tobago V Elvis Marketing Civ. App. No. 120 of 2002 (unreported) and Williams v The Attorney General Civ. App. No. 73 of 2002 (unreported). It is bound to gather momentum and become torrential otherwise civil litigation in this country, deprived as it is of modern rules of procedure is bound to collapse under its sheer weight, made all the more burdensome by the casual and often cavalier*

approach to litigation by practitioners. The legal profession has a responsibility to police itself to ensure as far as possible that hapless litigants, as Counsel has made the Appellant out to be, are not made victims of incompetent and negligent attorneys. The Courts have the responsibility to ensure that its process is not abused, and that matters before it proceed with dispatch so that the public gets the quality of justice it deserves. As Lord Bingham said in Johnson v Gore Wood and Co. [2001] 2 W.L.R. 72 at 90B in the English context "the public interest is reinforced by the current emphasis on efficiency and economy in the conduct of litigation, in the interest of the parties and the public as a whole". This Court eagerly looks forward to the day when a similar statement can be made in the Trinidad and Tobago context without a concomitant hollow ring to it.

22. All these authorities now speak with one voice and it is that unless there is a real prospect of a miscarriage of justice occurring from the Court's denial of a litigant to proceed further with a matter, when the reason for delay is solely a matter dealing with the competence, negligence, inadvertence or otherwise of his legal representatives, the matter will not be allowed to proceed.

[37] Mr. Ramdeen submitted that the Court is being asked by the Claimant to do no more than the application of what the Rule requires the Court to do in the circumstances. Counsel relied on the authority of **West Indies Players Association v West Indies Cricket Board Inc.**[12] by which he said that the Court is not bound.

[38] Mr. Ramdeen submitted that evidence does not support the Defendant's submission that there exists a claim for severance before the Industrial Court. It was submitted that reference is made to a Notice of Trade Dispute and a document exhibited as "D" to the Amended Defence. This document makes reference to Trade Dispute No GDS TD054/2017 (S). However, when this document is examined, it is clear that this trade dispute relates to the "the termination of services of Kenrick James…" Additionally, the Certificate of Unresolved Dispute confirms that "*by letter dated the 17 August*

[12] CV2011-03031

2016, the Union reported a dispute over the termination of services of Kenrick James…" Mr. Ramdeen submitted that there is no evidence that the matter before the Industrial Court has anything to do with the non-payment of severance benefits to the Claimant. It was further submitted that if the matter before the Industrial Court had anything to do with the non-payment of severance to the Claimants, the Defendant had ample opportunity to place before the Court the documents in support of same.

[39] Mr. Ramdeen submitted that an important issue for the Court to consider is whether the High Court can entertain a claim for unpaid severance. It was submitted that the proper interpretation of **section 23 of the Retrenchment and Severance Benefits Act** is that this section was enacted by the legislature to confer jurisdiction on the Industrial Court to determine an issue of unpaid severance. Where that remedy is pursued by report to the Minister the matter shall be dealt with under the provisions of the **Industrial Relations Act**. The enactment of **subsection 2 of section 23** only makes clear that a dispute relating to unpaid severance will fall within the statutory definition of a "trade dispute" for the purposes of triggering the jurisdiction that is conferred on the Industrial Court by **section 7 of the Industrial Relations Act**.

[40] Mr. Ramdeen submitted that this would have been a logical act on the part of the legislature as the **Retrenchment and Severance Benefits Act** was enacted some thirteen (13) years after the enactment of the **Industrial Relations Act** which contains a definition of a trade dispute, and as originally enacted, it could not have included in the statutory definition a dispute as to severance because the **Retrenchment and Severance Benefits Act** had not yet been enacted. It was further submitted that what is clear from a reading of the **Industrial Relations Act** is that the jurisdiction that is conferred by **section 7** which includes the jurisdiction to determine a trade dispute is not an exclusive jurisdiction. This is confirmed by an examination of the provisions of **section 47 of the Industrial Relations Act** where the legislature used the word "*only*" to confer jurisdiction upon the Industrial Court to enforce the terms of a collective agreement. By the use of the word "*only*" it is clear that the jurisdiction that is conferred by **section 47** is exclusive as compared to the jurisdiction that is conferred on the Court by **section 7 of the Industrial Relations Act**.

[41] Mr. Ramdeen contended that in order to remove the right of citizens to approach the High Court in the exercise of their right to access to the Court, the clearest of words would need to be employed by the legislature. However, there are no such words employed by the legislature in relation to the determination of the issue of non-payment of severance.

Defendant's Reply Submissions

[42] Mr. Marcelin, in response to the Claimants' submissions in relation to the provisions of **Part 9.7 of the CPR**, submitted that the general powers of the Court under **Part 26.1(1)(w) of the CPR** allow the Court to take any step and give any direction including non-compliance with any rule based on all the circumstances in furtherance of the overriding objective. It was further submitted that unless the Claimants fall outside the definition of "worker" in the **Industrial Relations Act**, the Claimants cannot bring the matter to the High Court and that this does not depend on whether the Defendant files an application under **Part 9.7(3) to (4) of the CPR**. Counsel relied on the inherent jurisdiction of the Court to strike out and/or dismiss proceedings which are an abuse under **Part 26.2(1)(b) of the CPR**.

[43] Mr. Marcelin submitted that the Defendant could not accept the jurisdiction of the Court as the legislation clearly identifies the Industrial Court as the proper forum for a claim of unpaid severance as a trade dispute under **section 23(2) of the Retrenchment and Severance Benefits Act**. Counsel relied on the Grenadian authority of **Williams v Casepak Company (Grenada) Limited**[13] where the Court of Appeal of the Eastern Caribbean Supreme Court stated as follows:

> *"There is no doubt that where a right, not existing at common law, is created by a statute which at the same time gives a special and particular remedy for enforcing it, it must be followed, and it is not competent for a party to pursue another course in an effort to resolve it."*

[44] Mr. Marcelin contended that the Defendant cannot suffer a sanction for failing to file an application on jurisdiction under **Part 9.7 of the CPR** and that the Court has a duty to look at all the circumstances of the case and to take whatever decision under its

[13] [2019] 3 LRC

powers in **Part 26.1 of the CPR**. Counsel quoted Blenman JA in **Williams v Casepak Company (supra)** who stated that-

> *"The Legislature, in its wisdom, has decided not to provide for access to the court in circumstances where it has created a statutory right, it is simply not open to the court to so provide, bearing in mind that unfair dismissal is exclusively a creature of statute."*

In the instant case, payment for unpaid severance is a creature of statute founded on the **Retrenchment and Severance Benefits Act** of which unpaid severance is made a trade dispute by **section 23(2).**

[45] Mr. Marcelin contended that Mr. Ramdeen's submission that the use of word "only" in **section 47 of the Industrial Relations** confers exclusive jurisdiction on the Industrial Court to enforce the terms of collective agreement, therefore, in the absence of clear words in the legislation, the submission that a claim for non-payment of severance can be made in the High Court is a flawed argument. It was contended that since **section 7(1)(b) of the Industrial Relations Act** gives the Industrial Court the power to register collective agreements and to determine matters relating to the registration of such agreements with no other legislative body being given such powers, it is logical that the terms and conditions of such collective agreements be binding and directly enforceable "only" in the Industrial Court. It was further contended that it was the intention of Parliament that matters related to collective agreements be dealt with by the Industrial Court and that same intention relates to the issues of unpaid severance, hence its classification as a trade dispute.

[46] Mr. Marcelin contended that had the legislature desired for the resolution of unpaid severance claims to be made in the High Court, it simply would have done so. Counsel relied on **Williams v Casepak Company (supra)** where at **paragraph 52**, Blenman JA stated:

> *"Therefore, it must be recognised that in the area of industrial relations and industrial law, where the matter is one that is specifically created by statute, it is for the Legislature to determine whether the method by which the trade dispute should be resolved is by way of conciliation, or whether it should be by way of the formal and usual access to the court. I*

accept Ms. Chaitan's argument that industrial disputes in non-essential services are meant generally to be resolved by way of reconciliation, this is the mechanism that is provided for by the legislation. However, if the Legislature intended for an aggrieved person to have recourse to the court, in relation to a matter that has been created by statute, the Legislature would have so legislated."

III. Issues

[47] Having considered the pleadings and submissions of the parties, the following issues arise for determination:

1. **Has the Defendant accepted the jurisdiction of the Court to hear and determine both Claims?**
2. **What is the nature of the both Claims before the Court?**
3. **Does the High Court have jurisdiction to hear and determine a claim for unpaid severance?**
4. **Do the Claims amount to an abuse of process of the Court?**

IV. Law and Analysis

Issue 1: Has the Defendant accepted the jurisdiction of the Court to hear and determine both Claims?

[48] The Defendant's main contention in both Claims is that the High Court does not have jurisdiction to hear and determine the matters. In the body of its Amended Defence, the Defendant indicated that the Defence was filed without prejudice to the preliminary legal argument that the Claimants' Claims ought to be struck out as the High Court does not have jurisdiction. However, as submitted by the Claimants, this is not the proper procedure to be followed if the Court's jurisdiction is being disputed. The Court agrees with the Claimant on that submission.

[49] **Part 9.6 of the CPR** provides that the right to dispute jurisdiction of the Court is not taken away by a Defendant who enters an appearance. **Part 9.7 of the CPR** then sets out the procedure for disputing the Court's jurisdiction. **Part 9.7 of the CPR** reads as follows:

"9.7(1) A defendant who wishes—

(a) to dispute the court's jurisdiction to try the claim; or

(b) to argue that the court should not exercise its jurisdiction,

may apply to the court for an order declaring that it has no such jurisdiction or should not exercise any jurisdiction which it may have.

(2) A defendant who wishes to make such an application must first enter an appearance.

(3) An application under this rule must be made within the period for filing a defence.

(Rule 10.3 sets out the period for filing a defence)

(4) An application under this rule must be supported by evidence.

(5) If the defendant—

(a) enters an appearance; and

(b) does not make such an application within the period for filing a defence,

he is treated as having accepted that the court has jurisdiction to try the claim.

(6) An order containing a declaration that the court has no jurisdiction or will not exercise its jurisdiction may also make further provision including—

(a) striking out any statement of case;

(b) setting aside service of the claim form and statement of case; and

(c) discharging any order made before the claim was commenced or the claim form served.

(7) If on application under this rule the court does not make a declaration, it—

(a) must make an order as to the period for filing a defence; and

(b) may treat the hearing of the application as a case management conference.

(Part 26 sets out powers which the court may exercise on a case management conference)

(8) Where a defendant makes an application under this rule, the period for filing a defence is extended until the time specified by the court

under paragraph (7)(a) and such period may only be extended by an order of the court.

[50] Accordingly, where a Defendant wishes to dispute the Court's jurisdiction to try the Claim or argue that the Court should not exercise its jurisdiction, the Defendant may apply to the Court for an order declaring that the Court has no jurisdiction or the Court should not exercise any jurisdiction which it may have. However, the Defendant ought to enter an appearance first and then make such an application within the period for filing a Defence. **Part 10.3(1) of the CPR** sets out the period for filing a Defence. However, where a Defendant enters an appearance to the Claim and does not make such an application as provided for in **Part 9.7(1) of the CPR**, the Defendant is treated as having accepted that the Court has jurisdiction to try the Claim.

[51] It is evident that **Part 9.7(5) of the CPR** provides an express sanction for non-compliance with **Part 9.7(1) and (3) of the CPR**. The express sanction is that the Defendant is to be treated as having accepted that the Court has jurisdiction to try the Claim. However, **Part 26.6(2) of the CPR** states that any sanction for non-compliance imposed by the rule has effect unless the party in default applies for and obtains relief from the sanction.

[52] As stated above, the period of time for the filing of an application disputing the Court's jurisdiction is the period of time for filing a Defence. The general rule is that the period for filing a defence is 28 days after the date of service of the Claim Form and Statement of Case: [**CPR 10.3(1)**] Exceptions to this rule are provided for by **CPR 10.3(2)**.

[53] Accordingly, the period for filing an application to contest jurisdiction is 28 days after the date of service of the Claim Form and Statement of Case except where the exceptions identified in the rule apply. None of the exceptions apply in this case. Both Richard Thomas and Selwyn Joseph filed their Claim Forms and Statements of Case on 8 January 2020. The Defendant entered its appearance to both Claims on 14 July 2020 stating that it received the Claim Forms and Statements of Case on 7 July 2020. Therefore, the Defendant had 28 days from 7 July 2020 to make an application under **Part 9.7(1) of the CPR** disputing the Court's jurisdiction.

[54] In the circumstances, I find that the application to dispute the Court's jurisdiction ought to have been made by 5 August 2020. As a result of the period having expired, the Defendant ought to have filed an application for relief from sanctions seeking as well an extension of time to file an application to dispute the Court's jurisdiction. The Defendant did in fact file a Notice of Application in both Claims, on 9 September 2020, applying to the Court for an extension of time for filing the relevant application as well as seeking to obtain relief from sanction. This application was fixed for hearing on the same date fixed for the CMC, which was the 21 September 2020. However, on 11 September 2020, the Defendant filed another Notice of Application in both Claims, this time disputing the Court's jurisdiction. This was also due to be called at the CMC. Interestingly, on 16 and 17 September 2020, the Defendant filed Notices withdrawing the Applications filed on 9 and 11 September 2020.

[55] Therefore, as it stands, there is no application made by the Defendant: (i) to dispute the Court's jurisdiction; (ii) to apply for extension of time to file an application to dispute the jurisdiction; nor (iii) to obtain relief from sanction. In that regard, without an application being made by the Defendant for relief from sanction along with an application for an extension of time to file an application to dispute the Court's jurisdiction, the sanction in **Part 9.7(5) of the CPR** takes effect[14].

[56] Consequently, pursuant to **Part 9.7(5) of the CPR**, the Defendant is to be treated as having accepted the Court's jurisdiction to hear and determine the Claims filed by both Richard Thomas and Selwyn Joseph.

[57] However, although the Defendant is treated as having accepted the jurisdiction of the High Court to hear and determine both Claims by virtue of his failure to comply with procedural rules, the question still arises on the preliminary issue as to whether by virtue of statute the Court is denied jurisdiction. To answer this question, the nature of the Claims before the Court must first be considered.

Issue 2: What is the nature of both Claims before the Court?

[58] A **"*worker*"** is defined in **Section 2 of the Industrial Relations Act** as follows, subject to subsection (3) as-

[14] **Part 26.6(2) of the CPR**

(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; or

(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, retrenched, 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." [Emphasis mine]

[59] The **exemptions** are set out in **subsection (3)** which states:

"(3) 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."

[60] **Section 2 of the Industrial Relations Act** defines a **trade dispute** as:

"any dispute between an employer and workers of that employer or a trade union on behalf of such 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)"

[61] The Defendant submitted that the Claimant is a worker under **section 2 of the Industrial Relations Act**. The Claimants did not plead any matters in their Statement of Case to demonstrate that the duties they performed as Chief Engineer or Deckhand fell outside of the scope of **section 2(a) or (d) of the Industrial Relations Act** or within the exceptions under **subsection (3)**. Therefore, on the face of the Claimants' case they are workers as defined under the **Industrial Relations Act**.

[62] The Claimants, Richard Thomas and Selwyn Joseph, have both been retrenched by the Defendant. Retrenchment is defined in **section 2 of the Retrenchment and**

Severance Benefits Act as "*the termination of employment of a worker at the initiative of an employer for the reasons of redundancy*". A worker means a worker within the meaning of the **Industrial Relations Act**.

[63] The Claimants' Claim are for outstanding retrenchment and severance benefits owed to them by the Defendant for services performed at the Defendant Company pursuant to **section 18(3) of the Retrenchment and Severance Benefits Act**. **Section 23 of the Retrenchment and Severances Benefits Act** concerns trade disputes arising out of retrenchment and states as follows:

> *"23. (1) A dispute arising out of a retrenchment issue including—*
>
> *(a) a dispute which alleges unfair dismissal;*
>
> *(b) a difference of opinion as to the reasonableness or otherwise of any action taken or not taken by an employer or a worker; or*
>
> *(c) a dispute as to what is reasonably comparable in respect of a terminal benefit scheme,*
>
> *may be reported to the Minister as a trade dispute and shall be dealt with as such under the Industrial Relations Act.*
>
> *(2) A claim against an employer for unpaid severance benefits under this Act is deemed to be a trade dispute."*

[64] Having regard to the above, the nature of the issue of unpaid severance benefits to both Claimants are matters which form the basis of a trade dispute both under the **Retrenchment and Severance Benefits Act** and the **Industrial Relations Act**. Therefore, the nature of both Claims before the Court falls within the definition of a trade dispute under the **Industrial Relations Act**.

Issue 3: Does the High Court have jurisdiction to hear and determine a claim for unpaid severance?

[65] **Section 4(1) of the Industrial Relations Act** established the Industrial Court which is a Superior Court of Record which shall have in addition to the jurisdiction and powers conferred on it by this Act, all powers inherent in such a Court. Further, at **section 7(1)(a) of the Industrial Relations Act**, the Industrial Court shall have the jurisdiction to hear and determine trade disputes in addition to the powers inherent in it as a Superior Court of Record.

[66] Pursuant to **section 22 of the Retrenchment and Severance Benefits Act**, the Claimants as aggrieved workers have a right of action. **Section 22** reads as follows:

> *"22. (1) Subject to section 19, where after thirty days of the expiration of the notice the employer fails to pay the severance benefits or the remainder thereof, as the case may be, the employee may, through his recognised majority union apply to the Industrial Court for redress.*
>
> *(2) Where there is no recognised majority union the aggrieved worker may, through the Minister or through any union, refer such failure to the Industrial Court for enquiry and settlement."*

[67] In **Joanne Ferdinand v North West Regional Health Authority**[15], the Claimant claimed damages for wrongful dismissal. On 30 November 2005, the Defendant terminated her appointment as Manager - Customer Service on the ground of redundancy. At the Case Management Conference, the Defendant questioned whether the High Court had jurisdiction to hear the matter. Pemberton J (as she then was) upheld the preliminary issue and dismissed the Claimant's action on the ground that the Court had no jurisdiction to hear the matter. The learned judge held that the Registration, Recognition and Certification Board is the body mandated under statute to determine whether a person is a *"worker"* under the provisions of the **Industrial Relations Act** and that the issues to be addressed do pertain to the employer-employee relationship. Furthermore, in the absence of a determination from the Board whether the Claimant is a worker or not, the High Court did not have jurisdiction to hear and determine the case.

[68] In **Ferdinand (supra)**, the Defendant did not make an application under **Part 9.7 of the CPR** but the learned Judge, nevertheless, considered the issue of jurisdiction as a preliminary issue. She found that the issues to be addressed were pertinent to the employer-employee relationship and that Parliament has established a forum to deal with these issues: that forum was not the High Court but the Industrial Court. Though **Ferdinand** is not a binding authority on this Court, I am of the view that it is sufficiently persuasive to influence the consideration as to whether the Court has jurisdiction to hear and determine the two Claims at bar as a preliminary issue.

[15] CV2006-00316

[69] **In The matter of the Constitution of the Republic of Trinidad and Tobago enacted as the Schedule to the Constitution of the Republic of Trinidad and Tobago Act, Chapter 1:01 between Michael Boxhill and others v The Port Authority of Trinidad and Tobago**[16], Mendonça JA, at paragraph 58, stated as follows:

> *"The right to pursue a trade dispute before the Industrial Court in respect of a breach of a worker's terms and conditions is an important remedy available to the worker. It is part of the worker's right to the protection of the law under section 4(b) of the Constitution (see Alleyne & Ors. v The AG Civil Appeal No. 52 of 2003). It is an effective alternative remedy by which a worker can vindicate his rights before a court specifically equipped to address issues peculiar to its jurisdiction. The fact that such a right can only be pursued through the Union in no way diminishes its effectiveness".*

[70] In a matter relating to unpaid severance benefits, a worker who falls under the **Industrial Relations Act** or the **Retrenchment and Severance Benefits Act** has a right to pursue a trade dispute before the Industrial Court in respect of retrenchment[17]. Accordingly, the Claimants have a sufficient alternative remedy available to them in claiming their outstanding severance benefits from the Defendant.

[71] Having concluded that the nature of the issue raised in the Claims is a trade dispute and the Claimants fall within the definition of "*worker*" in the **Industrial Relations Act**, the Court is of the opinion that the High Court has no jurisdiction to hear and determine a Claim for unpaid severance benefits. The hearing and determination of a Claim of such nature as in these cases are specifically provided for in statute, in particular, the **Industrial Relations Act** and the **Retrenchment and Severance Benefits Act**. The hearing and determination of a claim for unpaid severance benefits is to be heard in the Industrial Court[18] , a Court which, in the words of Mendonça JA, is specially equipped to address issues peculiar to its jurisdiction, and not the High Court. In that regard, the Claimants ought to follow the procedure established in the **Industrial Relations Act**. If the Claimants were not covered by the Act, then the

[16] Civil Appeal No 11 of 2008
[17] **Section 22 and 23 of the Retrenchment and Severance Benefits Act**
[18] **Section 22 and 23 of the Retrenchment and Severance Benefits Act**

High Court can assume jurisdiction to hear and determine the matter. However, the Claimants have not pleaded that they are outside the purview of the **Industrial Relations Act**.

[72] Furthermore, though the Rules of Court, **the CPR**, stipulate that the Defendant is to be treated as having accepted the jurisdiction of the Court if he fails to file an application disputing the Court's jurisdiction, these Rules cannot override primary legislation, that being, the **Industrial Relations Act** and the **Retrenchment and Severance Benefits Act**.

[73] In a recently decided case of this Court, **Geeta Maharaj v Range Resources Trinidad Limited and Range Resources Limited**[19], the learning at paragraphs [22] and [23] is instructive and worth repeating here. This Court stated as follows:

*[22] "Regard must be had to the Foreword of the **CPR** by Sharma CJ:*

> *"**The power to make rules of court is vested in the Rules Committee under the provisions of section 77 of the Supreme Court of Judicature Act.** These rules govern the practice and procedure to be followed in the civil division of the Court of Appeal and the High Court of Justice. **Rules of court must be distinguished from substantive law. The function of substantive law is to define, create or confer substantive legal rights or legal status or to impose and define the nature and extent of legal duties.** Substantive law therefore permeates into every facet of social infrastructure. Intrinsically, it governs the establishment of the institutions, processes, laws and personnel that provide the apparatus through which law works.*
>
> ***On the other hand, rules of court are a source of procedural law the function of which is to prescribe and regulate the machinery or manner in which legal rights or status and legal duties may be enforced or recognized by a court of law. Since they are procedural in character and effect, they cannot confer, take away, alter or diminish any existing jurisdiction, rights or duties created or conferred by substantive law: Everett v Griffiths (1924) 1 K.B. @ p. 957. Being***

[19] CV2017-02379

made under powers given by statute, however, rules of court have themselves the force of statute: Donald Campbell & Co. v Pollak (1927) A.C. @ p. 804.

The two branches are complementary and interdependent, and the interplay between them often conceals what is substantive and what is procedural. It is by procedure that the law is put into motion, and it is procedural law which puts life into the substantive law, gives it its effectiveness and brings it into being. Rules of court, therefore, are of fundamental importance to the good administration of justice and must accord with the cultural climate pervading society at any particular time."

[23] This is supported by ***Halsbury's Laws of England***[20]*:*

*"**The Civil Procedure Rules are a form of delegated or subordinate legislation, and the Civil Procedure Rules Committee is empowered to make rules only within the strict limits defined by statute**, whether contained in the Civil Procedure Act 1997 or any other Act. Like the Rules of the Supreme Court and the County Court Rules before them, the rules are mere rules of practice and procedure, and their function is to regulate the machinery of litigation; they cannot, unless authorised by specific legislation, confer or take away or alter or diminish any existing jurisdiction or any existing rights or duties. **Since they are procedural in character and effect, they cannot enable a claim to be brought which could not otherwise have been brought."**[Emphasis mine]*

[9] Further, in interpreting legislation, as stated in **Smith v. Selby**[21] the Caribbean Court of Justice noted:

"[9] The principles which the judges must apply include respect for the language of Parliament, the context of the legislation, the primacy of the obligation to give effect to the intention of Parliament, coupled with the

[20] Volume 11 (2020)
[21] [2017] CCJ 28 (AJ) 40

restraint to avoid imposing changes to conform with the judge's view of what is just and expedient. The courts must give effect to the intention of Parliament…"

[74] Having regard to the above learning, it is clear that **the CPR** was meant to complement and not supersede substantive law. The **Industrial Relations Act** and the **Retrenchment and Severance Benefits Act** are Acts of Parliament. **The CPR** were given authority by virtue of the provision of another Act of Parliament, namely, **section 77 of the Supreme Court of Judicature Act**. Therefore, the **Industrial Relations Act**, the **Retrenchment and Severance Benefits Act** and the **Supreme Court of Judicature Act** are substantive legislation, while **the CPR** constitute procedural law, given effect only by virtue of a substantive piece of legislation.

[75] **Sections 22 and 23 of the Retrenchment and Severance Benefits Act** are clear and unambiguous. The Retrenchment and Severance Benefits Act explicitly provides that a claim for unpaid severance benefits is deemed to be a trade dispute. Therefore, it shall be dealt with as such under the Industrial Relations Act. In that regard, the Industrial Court has the requisite jurisdiction to hear and determine the two Claims as filed before this Court, being Claims for unpaid severance benefits.

[76] The Court wishes to highlight the submission made by Counsel for the Claimants where he contended that the jurisdiction of the Industrial Court conferred by **section 7 of the Industrial Relations Act** is not an exclusive jurisdiction which is confirmed by **section 47 of the Industrial Relations Act** by the use of the word "only". **Section 47 of the Industrial Relations Act** deals with the enforceability of registered agreements. **Section 47(1)** provides as follows:

"*47(1) The terms and conditions of a collective agreement registered under section 46 (referred to in this Part as a "registered agreement") shall be binding on the parties thereto and shall be directly enforceable, but only in the Court."*

[77] The Court agrees with the submission in response by Counsel for the Defendant. **Section 7(1)(b) of the Industrial Relations Act** states that the jurisdiction of the Industrial Court also includes registering collective agreements and hearing and determining matters relating to the registration of such agreements. Therefore, it is

only logical that only the Industrial Court would be the appropriate forum to hear any matter concerning collective agreements. In that regard, the use of the word "only" in **section 47 of the Industrial Relations Act** cannot be interpreted to be mean that the Industrial Court does not have exclusive jurisdiction over trade disputes and that the High Court can have jurisdiction to hear and determine same. Thus, this submission is without merit.

Issue 4: Do the Claims amount to an abuse of process of the Court?

[78] **Part 26.2(1)(b) of the CPR** provides that the Court may strike out a Statement of Case or part of a Statement of Case if it appears to the Court that the Statement of Case or the part to be struck out is an abuse of the process of the Court. Jamadar J (as he then was) in **Danny Balkissoon v Roopnarine Persaud and J.S.P Holdings Limited**[22] stated that-

> "*In addition to the specific powers to strike out under Part 26.2(1)(b), the court also always had and continues to have an inherent jurisdiction to strike out, dismiss or stay proceedings and matters which are an abuse of process. This jurisdiction is acknowledged by Part 26.1(5) CPR, though it would exist irrespective of such recognition.*"

[79] Furthermore, under the Court's general powers of management in **Part 26.1 of the CPR**, the Court may stay[23] or dismiss[24] any proceedings or claim at a case management hearing or after the hearing of a preliminary issue. Accordingly, the Court can deal with the issue of abuse of process of the court as a preliminary issue[25]. This was done in **Balkissoon v Persaud and another** (supra) as well as in **Joanne Ferdinand**, (supra).

[80] The term "*abuse of the court's process*" is not defined in **the CPR 1998** or in any practice direction or in the English Counterpart. Lord Bingham in **Attorney General v Barker**[26], albeit in a different context, explained "abuse of the court's process" as "*using that process for a purpose or in a way significantly different from its ordinary*

[22] CV2006-00639
[23] **Part 26.1(1)(f) of the CPR**
[24] **Part 26.2(1)(k) of the CPR**
[25] **Parts 26.1(g), (h) and (w) of the CPR**
[26] [2000] 1 FLR 759

and proper use". I am of the view that this is a fitting explanation for the concept of "abuse of the process of the court".

[81] The categories of abuse of process are many and are not closed. The Court has the power to strike out a *prima facie* valid claim where there is abuse of process. However, there has to be an abuse and striking out has to be supportive of the overriding objective[27]. From **Civil Procedure, Volume 1, the White Book Service 2020**, the following categories of abuse of the process of the court have been recognised in case law: (i) vexatious proceedings; (ii) attempts to re-litigate decided issues; (iii) collateral attacks upon earlier decisions; (iv) pointless and wasteful litigation; (v) improper collateral purpose; and (vi) delay.

[82] Jamadar J in **Balkissoon (supra)** stated that there are three common categories of abuse of process. He stated as follows:

> *"While the categories of abuse of the process of the court are many and depend on the particular circumstances of any case, it is established that they include: (i) litigating issues which have been investigated and decided in a prior case; (ii) inordinate and inexcusable delay, and (iii) oppressive litigation conducted with no real intention to bring it to a conclusion."*

[83] Jamadar J, however, stated that there was a fourth category of an abuse of process: two or more proceedings in respect of the same claims. He stated as follows:

> *"A fourth category of the abuse of the process of the court is where a party commences two or more sets of proceedings in respect of the same subject matter, and which amount to a harassment of a defendant because of the attendant multiplication of costs, time and stress. See Johnson v Gore Wood & Co (a firm) [2002] 2 AC 1, Lord Bingham at page 32 H."*

[84] Under the sub-heading "vexatious proceedings", the learned commentators in **Civil Procedure, Volume 1, the White Book Service 2020 at paragraph 3.4.3.1** state as follows:

> *"3.4.3.1 The function of the court is to do justice between the parties, not to allow its process to be used as a means of achieving injustice… It is an*

[27] Jamadar J in Danny Balkissoon v Roopnarine Persaud and another CV2006-00639

abuse to bring vexatious proceedings, i.e. two or more sets of proceedings in respect of the same subject matter which amount to harassment of the defendant in order to make them fight the same battle more than once with the attendant multiplication of costs, time and stress. In this context it is immaterial whether the proceedings are brought concurrently or serially… There is no abuse if the claimant has sufficient justification for commencing concurrent proceedings."

[85] In the persuasive authority of **Demerara Bauxite Co. Ltd v Lilian De Clou**[28], Crane J in the Full Court in Guyana held as follows:

"There is a principle, however, that if a litigant brings actions concerning the same matter in two different courts of the same jurisdiction in the same country, his conduct is in all cases deemed to be vexatious, and a defendant in such a case may demand that he be put to his election between the two proceedings, for the onus is on him to prove the contrary."

[86] In the two Claims before the Court, the Defendant has revealed to the Court that there is an ongoing trade dispute before the Industrial Court, *Trade Dispute No. GSD-TD054/2017(S) Oilfield Workers Trade Union and Anthony Marine Services Limited*. The Defendant has exhibited to its Defence a Notice of Hearing indicating that the trade dispute was fixed for mention and report in the Industrial Court and the Certificate of Unresolved Dispute dated 13 April 2017 which is required for the trade dispute to be determined by the Industrial Court[29]. In the Certificate of Unresolved Dispute referring to the trade dispute, it referred to "*The termination of services… Richard Thomas… Selwyn Joseph…, effective May 17, 2016*". The Defendant submitted that the words "termination of services" in the trade dispute means that the worker was terminated for the reasons of redundancy which would trigger severance payments to the worker.

[87] The Court agrees with this submission by the Defendant. Though the Certificate of Unresolved Dispute refers only to "*the termination of services*…" as stated above, "retrenchment" is defined as "*the termination of employment of a worker at the*

[28] (1965) 23 WIR 13
[29] **Section 59(1) and (2) of the Industrial Relations Act**

initiative of an employer for the reason of redundancy". Accordingly, it can be reasonably concluded that the trade dispute before the Industrial Court would consider the issue of unpaid severance benefits in the dispute arising from the termination of services of the Claimants on the basis of redundancy.

[88] It is to be noted that though the High Court and the Industrial Court, are governed by different statues, namely, the **Supreme Court of Judicature Act, Chap 4:01** and the **Industrial Relations Act**, they are both Superior Courts of Record and share the similar jurisdiction in Trinidad and Tobago, the Industrial Court, however, being circumscribed in its ambit of jurisdiction by statute. Therefore, to have two concurrent matters in both Courts of the similar jurisdiction, is an abuse of process of the Court.

[89] In that regard, the Court is of the opinion that the conduct of both Claimants in filing these Claims before the High Court while there is an ongoing trade dispute in the Industrial Court is vexatious and amounts to an abuse of process of the Court. This Court is not satisfied that the Claimants have justified why they have brought these proceedings before the High Court while there is an ongoing trade dispute before the Industrial Court. Consequently, the Claims as filed ought to be struck out.

The issue of Costs: Entitlement and Quantification

[90] The Defendant having been successful in the preliminary point of jurisdiction consequent on which the Claims are to be struck out, the Defendant will be entitled to recoverable costs appropriate to the stage at which the matters have reached: **CPR Part 66.6(1) and (3)(c)**. I can find no exceptional reason to justify departure from that general rule of costs follow the event.

[91] On the question of quantification, however, the value of the Claims must be determined in accordance with **CPR Part 67.5(2)**. Though both Claims are for monetary compensation, neither of the Claims makes it clear what ballpark figure was actually being claimed, especially as there is an alternative relief of damages for breach of contract. The parties have not agreed nor has the Court stipulated the value of the respective Claims. So that **CPR Part 67.5(2)(b)(i) and (ii)** cannot assist. It

follows therefore that the value of the Claims must be determined in accordance with **CPR Part 67.5(2)(c)** which deems the value at **$50,000.00**, prescribed costs for which are quantified in the sum of **$14,000.00** as pre-determined by the Scale of Prescribed Costs in Appendix B to Part 67. However, the matters having been determined at the stage of ***"after the defence and up to and including the case management conference",*** the recoverable costs are stipulated at **55%** of the full prescribed costs as provided for by **Appendix C of CPR Part 67**. This quantifies in the sum of **$7,700.00** for each Claim.

V. Disposition

[92] In light of the above analyses and findings, the order of the Court is as follows:

ORDER:

1. **The Claim CV2020-00070 between Richard Thomas v Anthony Marine Services Limited be and is hereby struck out pursuant to Part 26.2(1)(b) of the CPR as the Claim is an abuse of process of the Court.**

2. **The Claim CV2020-00077 between Selwyn Joseph v Anthony Marine Services Limited be and is hereby struck out pursuant to Part 26.2(1)(b) of the CPR as the Claim is an abuse of process of the Court.**

3. **The Claimants shall pay to the Defendant costs on the respective Claims quantified in the sum of $7,700.00 for each Claim on the prescribed scale of costs in accordance Part 67.5(2)(c) and Appendices B and C of Part 67 of the CPR.**

_____

Robin N Mohammed
Judge