

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CLAIM NO. CV 2017-03276

IN THE MATTER OF AN APPLICATION FOR REDRESS  
PURSUANT TO SECTION 14 OF THE CONSTITUTION OF  
THE REPUBLIC OF TRINIDAD AND TOBAGO FOR THE  
CONTINUING VIOLATION OF CERTAIN RIGHTS GUARANTEED  
UNDER SECTION 4

BETWEEN

SHARON ROOP

Applicant/Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Respondent/Defendant

BEFORE: Assistant Registrar Mr. Dion Phillip

Appearances:

Mr. A. Pariagsingh instructed by Dr. Che Dindial for the Appellant

Ms. S. Dass for the Respondent

DATE OF REASONS: August 3, 2020

## REASONS

### Introduction

1. Before the Court, was the Applicant's Amended Statement of Costs filed on 20 January, 2020. The matter was heard on 11 February, 2020 and 18 February, 2020. On the 11 February, 2020, both parties indicated the items that were agreed/no objection and the items left for deliberation. These were Senior and Junior Counsel's Fee on Brief and Care and Conduct.
2. On 18 February, 2020, after hearing arguments for both sides, costs were assessed in the sum of \$398,472.25 inclusive of VAT, with the sums of \$75,000.00, \$50,000.00 and \$37,150.00 being awarded under the heads of Senior Counsel's Fee on Brief, Junior Counsel's Fee on Brief and Care and Conduct respectively.
3. By Notice of Application dated 26 February, 2020, the Claimant filed for leave to appeal, pursuant to **section 38(2), Supreme Court of Judicature Act Chap 4:01**, against the awards allowed for Senior Counsel's and Junior Counsel's Fee on Brief and Care and Conduct.

### The Facts

4. The Claimant filed an Originating Motion pursuant to **section 14(1) Constitution of Trinidad and Tobago** and **Part 56.7(2) Civil Proceedings Rules (CPR)** on 14 February, 2017 asking for the following reliefs:
  - i. A declaration that the Claimant's right to freedom of conscience and religious belief and observance has been infringed by the denial of the request to wear a hijab and/or the prohibition against wearing a hijab together with her uniform whilst on duty as an officer of the Trinidad and Tobago Police Service;
  - ii. A declaration that the Police Service Regulations, 2007 is unconstitutional, invalid null and void to the extent that it makes no provision for the wearing of the hijab;
  - iii. Damages to be assessed before a Master in Chambers;
  - iv. Costs;

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5. Margaret Mohammed J heard the matter and gave her ruling on 9 November, 2018 wherein she found that the Claimant's rights were infringed and declared that the Police Service Regulations were unconstitutional, invalid, null and void to the extent that it makes no provision for the wearing of a hijab. The Defendant was ordered to pay the Claimant's costs certified fit for Senior Counsel to be assessed by the Registrar in default of agreement.
6. The Claimant's original Statement of Costs was filed on 12 March 2019. On a scheduled hearing of the matter, the claimant sought and was granted leave to file an amended Statement of Costs as several items on the Statement had errors and the main heads (that are the subject of the appeal) were not itemized. The hearing of this matter then proceeded with some alacrity as both parties wanted to have costs assessed before the conclusion of the hearing of the Assessment of Damages. On 18 February, 2020, the court heard arguments on the Fee on Brief for Senior Counsel and Junior Counsel and Care and Conduct.

#### Arguments

7. Counsel for the Claimant argued mainly that the case was a novel case as it dealt with the issue of religious discrimination and the right of a policewoman, who is also a practicing Muslim, to wear a modified hijab. The novelty of the case was reconciling the constitutional right with section 78 (1) Police Service Act and Regulations 121 and 122 Police Service Regulations 2007. They also argued that there was no equivalent local case or in the Commonwealth; also, they had to determine whether the regulations were saved law.
8. Counsel for the State submitted that the case was not a novel one given the reliefs asked for. While each case may be unique in its own set of facts, she posited that the law and determination centered on whether a particular piece of legislation was unconstitutional and infringed on a person's rights. She submitted that there were a

number of local and regional cases referred too on that particular point and that the repeal and reenactment of legislation is not novel in itself.

#### Assessment

9. In the hearing of the matter, the Court was directed to the case of **The Attorney General of Trinidad and Tobago v Haleema Mohammed**<sup>1</sup> and the learning of Jamadar JA is instructive. This assessment proceeded on the standard basis and the Court had to consider whether the costs were reasonably incurred and proportionate to the case under determination, having regard to **Part 1.1(2)(c)** of the **CPR**.

10. **Part 1.1(2)(c)** of the overriding objective states:

- (c) Dealing with cases in ways which are proportionate to-
  - (i) the amount of money involved;
  - (ii) the importance of the case;
  - (iii) the complexity of the case; and
  - (iv) the financial position of each party

11. The instant matter, in my view, is not a complex case. The judge had to assess whether the Claimant's rights to freedom of conscience and religious belief were infringed and also whether the Police Service Regulations were unconstitutional in not allowing the modification of the uniform to accommodate a hijab. That much is straightforward. The Claimant's attorney made much reliance on the importance of the case. To every litigant, their case is important and in the Claimant's case, the Regulations did not allow for such modification which would accord with the expression of her faith. Counsel for the Claimant placed much reliance on the nuance regarding the work-wear but this did not find much force with the Court as this did not make the matter exceptionally novel.

12. Therefore, when considering the fee on brief, I found the sums claimed to be disproportionate and unreasonable. For Senior Counsel's fee, the sum of \$200,000.00 was claimed and this equates to 50 hours of work; Junior Counsel claimed a fee of

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<sup>1</sup> CA S-218/2018

\$125,000.00 which equates to 54 hours of work and Instructing Attorney claimed \$100,000.00 which equates to 133 hours of work.

13. The Court took into account the factors at **Part 67.2(3) Civil Proceedings Rules** and the Practice Guide to the Assessment of Costs. Having regard to **Part 67.2(3)** factors, the Court considered:

- i. There was no cross-examination of any of the deponents and the matter proceeded by way of written submissions;
- ii. The matter was filed on 14 February 2017 and the decision with respect to liability was delivered on 9 November 2018. This aspect of the matter was disposed of in one year and nine months;
- iii. There were five extensions granted for the filing of submissions for both claimant and respondent;
- iv. While there was a nuance with regard to the expression of religious beliefs in the context of wearing a hijab, this case was not complex.

14. In respect of Senior Counsel's fees, the Court was not persuaded that Senior Counsel of 21 years vintage would spend 20 hours researching the law with regard to discrimination, freedom of conscious and religious belief and the right to freedom of thought and expression. I also considered the fact that junior counsel spent 23 hours researching the same point and in response to my query on the point, the answer proffered was that since it was an important constitutional point, Senior Counsel would spend that amount of time unless Junior Counsel had particular mastery in that area. Given that Senior Counsel was also involved in the Trinity Cross case (a case which was also on the constitutional point of freedom of conscious and religious belief), I was not persuaded that Counsel would spend 20 hours on this point.

15. I was not convinced that a Senior Counsel of 21 years would spend 8 hours considering whether to file a judicial review or constitutional claim and 3 hours on the general law regarding hybrid claims and any potential objections as one of his rank would be able

to discern such a point much more quickly in addition to whether this claim was appropriate for constitutional review.

16. In my view, taking into account the fact that the matter proceeded principally by way of written submissions, there was no need to allow any amount for evening preparations, consultations between members of the team of counsel, chronologies and dramatis personae. Accordingly, I allowed the sum of \$68,000.00 (17 hours \* \$4,000) and gave an uplift of \$7,000.00 to give a total award of \$75,000.00.
17. Regarding Junior Counsel, his statement mirrored that of Senior Counsel and I adopt my previous misgivings that a Junior Counsel in that particular Band would require that many hours for this case. The Practice Guide to the Assessment of Costs<sup>2</sup> clearly lays out what is to be considered when assessing Junior Counsel's fees at paragraphs 20-25. The Court found that in this particular matter, it was reasonable to allow Junior Counsel two-thirds of Senior Counsel's fee- therefore, the sum of \$50,000.00 was awarded.
18. In respect of Instructing Attorney's fees, the sum claimed was exorbitant and disproportionate. The Court took into account the length of the matter (from filing to the judgment) and the fact that instructing attorney would have had to keep the client apprised of the matter and what took place. As stated, the matter was dealt with via submissions, so the file would have had to be prepared and detailed. The court found that \$37, 500.00 (\$750 \* 50 hours) was reasonable and sufficient for competent instructing counsel in this matter.
19. Having regard to the reasons stated above, the Court is of the view that the amounts awarded were reasonable and proportionate to the case at hand.

Dion Phillip  
Assistant Registrar

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<sup>2</sup> 20 December 2007