**IN THE REPUBLIC OF TRINIDAD AND TOBAGO**

IN THE HIGH COURT OF JUSTICE

**Claim No: CV 2017 – 04173**

**In the matter of the Constitution of the Republic of Trinidad and Tobago Chapter 1:01**

And

**In the matter of an application by Dr. Nalini Kokaram-Maharaj for redress pursuant to section 14 of the Constitution of the Republic of Trinidad and Tobago Chapter 1:01 in respect of the failure of the North West Regional Health Authority to treat her equally by its decisions dated 26th October, 2017 to treat as not renewed Dr. Nalini Koraram-Maharaj's contract dated 16th September, 2015 and to interview for her appointment of specialist medical officer, Radiology and fail to so appoint Dr. Nalini Koraram-Maharaj as Specialist Medical Officer.**

And

**In the matter of Part 56 of the Civil Proceedings Rules, 1998**

And

**In the matter of the Equal Opportunities Act Chapter 22:03**

And

**In the matter of the Regional Health Authorities Act Chapter 29:05**

BETWEEN

**DR. NALINI KORARAM-MAHARAJ**

Claimant

And

**THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**

First Defendant

AND

**NORTH WEST REGIONAL HEALTH AUTHORITY**

Second Defendant

**Before Madame Justice Avason Quinlan-Williams**

Attorneys at Law for the Claimant:
Ian L. Benjamin, Tekiyah Jorsling and Tamilee Budhu

Attorneys at Law for the First Defendant:
Karen Boodan and Michelle Benjamin

Attorneys at Law for the Second Defendant:
Kerwyn Garcia and Kimberleigh Peterson

## Reasons for Decision

1. Before the court for its consideration and decision was a Notice of Application filed on behalf of the Applicant (the First Defendant), the Attorney General of Trinidad and Tobago. The Notice of Application was filed on the 30th of November 2017. The application seeks an order that the First Defendant be struck out as a party to the proceedings pursuant to Rule 26.2 (1) (c) Civil Proceedings Rules (CPR). The First Defendant relies on the fact that the Claimant's Amended Fixed Date Claim Form, Affidavit and Supplemental Affidavit filed on the 20th of November 2017 discloses no grounds for bringing a claim for constitutional redress under section 14 of the Constitution of Trinidad and Tobago against the First Defendant.

2. Also before the court for its consideration and decision was a Notice of Application, with supporting evidence, filed by the Applicant (the Claimant), on 9th of February 2018 for permission to Re-Amend the Fixed Date Claim Form, to file a further Affidavit sworn to by the Claimant and to file an Affidavit of one Anthony Moore.

3. To avoid confusion the two Applicants shall be referred to as the First Defendant and the Claimant when and where necessary. The two Notices of Application will be addressed in the calendared order of their filings.

**Notice of Application Filed on the 30th of November 2017.**

4. In this Notice of Application, the First Defendant sought the order of the court that the First Defendant cease to be a party, that the Claimant's Amended Fixed Date Claim Form and Affidavits be further amended by striking out the name of the First Defendant and that the Claimant pays the First Defendant's the costs of the Notice of Application. The First Defendant relied on Rule 19.2 (4), Rule 26.2 (1) (c) and Rule 58.4 (1) of the CPR. Rule 19.2 (4) is clear in what is means as it relates to the court ordering a party to cease to be a party, it states as follows:

> *Change of parties—general*
> *19.2 (1) This rule applies where a party is to be added or substituted.*
> *(2) A party may add a new party to proceedings without permission at any time before a case management conference.*
> *(3) The court may add a new party to proceedings if—*

*(a) it is desirable to add the new party so that the court can resolve all the matters in dispute in the proceedings; or*

*(b) There is an issue involving the new party which is connected to the matters in dispute in the proceedings and it is desirable to add the new party so that the court can resolve that issue.*

*(4)* ***The court may order any person to cease to be a party if it considers that it is not desirable for that person to be a party to the proceedings.***

5. Rule 26.2 (1) (c) of the CPR states:

> *Rule 26.2 (1) The court may strike out a statement of case or part of a statement of case if it appears to the court—*
> *(a) ...;*
> *(b) ...;*
> *(c) that the statement of case or the part to be struck out discloses no grounds for bringing or defending a claim; or*
> *(d) ...*

**6.** The court considered Rule 26.2 (1) (c) and its interpretation in the case ***Real Time Systems Limited v Renraw Investments Limited and Others*** **[2014] UKPC 6 (2014.03.03)**. Lord Mance in delivering the decision of the Privy Council, said:

> *The court has an express discretion under rule 26.2 whether to strike out (it "may strike out"). It must therefore consider any alternatives, and rule 26.1(1) (w) enables it to "give any other direction or make any other order for the purpose of managing the case and furthering the overriding objective", which is to deal with cases justly. As the editors of The Caribbean Civil Court Practice (2011) state at Note 23.6, correctly in the Board's view, the court may under this sub-rule make orders of its own initiative. There is no reason why the court, faced with an application to strike out, should not conclude that the justice of the particular case militates against this nuclear option, and that the appropriate course is to order the claimant to supply further details, or to serve an amended statement of case including such details, within a further specified period. (at paragraph 17)*

7. In Jermaine Raymer v Trinidad and Tobago Mortgage Finance Company Limited and Another Civ App No 33 of 2016 the Court of Appeal affirmed the judgment of the first instance judge that the Statement of Case should be struck out if the court finds that the "pleadings did not reveal any reasonable grounds for the institution of the claim and the Court felt that the Claimant's claim had no reasonable prospects of success should it

proceed to trial. Accordingly the Claimant's claim was struck out and the Claimant was ordered to pay costs to the Defendant" (at paragraph 9). Undisputedly, a court can strike out a claim against a party where there are no reasonably grounds for bringing a claim against that party.

8. Applying the discretion given by Rule 26.2 and the authorities of **Real Time Systems Limited (surpa)** and **Jermaine Raymer (supra)**, the court must consider all the possible alternatives available when determining an application to strike out a statement of case. The alternatives available to the court when exercising its case management powers under Rule26.1, are not applicable to all situations. In the circumstance where it is clear that the wrong party or parties are before the court, the claim will have no real prospect of success and the Statement of Case should be struck out.

9. With respect to Rule 58.4 of the CPR which states the following:

> *Rule 58.4 (1) of the CPR. This rule provides that where a claim is made in proceedings against the State the claim form or statement of case must contain reasonable information as to the circumstances in which it is alleged that the liability of the State has arisen and as to the government department and officers of State involved.*

10. According to Rule 56.7 (4) (d) of the CPR, in applications for administrative orders, the reasonable information required in such applications must be contained in affidavits in support of the application and the stated reliefs sought. The First Defendant relied on the averments contained in the Claimant's affidavits to show that there were no grounds for naming the First Defendant as a party. The Claimant averred that the Second Defendant's, the North West Regional Health Authority's (NWRHA), decision not to renew her contract was in breach of her rights, is discriminatory against her and that she has been treated unequally in violation of her rights under section 4 (d) of the Constitution of Trinidad and Tobago. As such the NWRHA is the proper party and not the First Defendant and the claim should be dismissed pursuant to the CPR Rule 26.1(1) (c) and Rule 56.7 (4) (d). The First Defendant's Notice of Application was supported by the Affidavit of Michelle Benjamin.

11. The Claimant averred that the Attorney General is representing the Minister of Health and not the NWRHA or anyone else. The claimant alleged that the Minister of Health as well as the NWRHA treated the Claimant unequally and discriminated against her. To answer

this question the court had to resort to the contents of the affidavit and supplemental affidavits filed by the Claimant.

12. It required an analysis of the evidence that supported the constitutional motion. If there was evidence on which the Claimant relied and which supported the claim that the Claimant was treated unfairly by the Minister of Health then the First Defendant would be correctly intituled as a party. In that case the First Defendant would be named as the representative of the Minister of Health and not connected with the actions or behaviour of the NWRHA. The evidence that referred and related to the First Defendant appeared in the Claimant's affidavit, at paragraphs 58, 59 and 60 filed on the 16th November 2017:

> *58. In or around April 2017, I was advised by Dr. Sinanan that the RHA'S Radiology Heads of Department would be having a meeting with the Ministry of Health to discuss the current backlog of reporting and to strategise on a plan to deal with the backlog which included a charge for each report.*
>
> *59. I was concerned that it was unnecessary and a waste of financial resourced to have that backlog exercise as upon becoming Head of Department, I worked overtime and implemented systems to successfully reduce the backlog from 51.1% reporting average at the end of 2015 to 86.8% reporting average by March 2016 at no additional cost to the NWHRA. In particular in March 2016 under my direction the radiology department was at 99.1% reporting.*
>
> *60. Ahead of the scheduled meeting to discuss the backlog exercise, I prepared a backlog report dated 16 April 2016, which I submitted to Minister of Health Mr. Deyalsingh. The report showed the reduction in backlog in reporting of all scans at POSGH since I took the post as HOD. The report also outlined the challenges that lead to a backlog in reporting and solutions and/or recommendations to overcome the challenges and prevent future backlog. At the meeting I was adamant that given my progress in clearing the backlog at no additional cost to the NWRHA and my recommended plan to prevent backlog in the future the suggested backlog exercise was unnecessary. There is now produced and shown to me a true copy of the backlog report dated 16 April 2016 and marked "NK-M 9"*

13. The Claimant relied on Section 5 of the Regional Health Authority Act Chapter 29:05 to assert that the Minister of Health had legal control over the decisions of the board of the

Second Defendant. Section 5 of the Regional Health Authority Act Chapter 29:02 states as follows:

> *5. (1) Subject to subsection (2) a Board shall exercise its powers and functions in accordance with such specific or general directions as may be given to it by the Minister.*
> *(2) In the exercise of its powers and functions, the Board of the Tobago Regional Health Authority is subject to the provisions of the Tobago House of Assembly Act.*

**14.** The suggestion made by the Claimant was; because the Minister of Health had the legal authority to give specific or general direction to the NWRHA it followed that the Board was not independent of the Minister of Health. The Board acted for the Minister of Health and did not act independently of him. Regarding that submission, the court considered the case of **The Attorney General of Trinidad and Tobago v Carmel Smith**[1] (Carmel Smith) and the Statutory Authorities Act Chapter 24:01 (SAA). The SAA established the Statutory Authorities Commission (SAC) to regulate the employees of Statutory Authorities. The SAA and the SAC were considered in Carmel Smith. The Privy Council decided, in Carmel Smith, that the Attorney General of Trinidad and Tobago was not the correct party to the action, instead the Statutory Authorities was identified as the correct party. The National Lottery Board of Control (NLCB), for whom Carmel Smith worked and had her dispute, exerted its power and authority under and by virtue of the SAA and Carmel Smith as an employee of a Statutory Authority, the NLCB, was regulated by the SAC. The SAA gave Statutory Authorities of Trinidad and Tobago, legal personality. Since the Statutory Authorities have legal personality they are capable of bringing an action as well as defending an action brought against it.

**15.** Since the SSA has legal personality, it was important, therefore, to examine the provisions of the Act to ascertain whether they take direction from anyone as they carried out their functions and duties. In this regard the court considered Section 6 of the SSA which states as follows:

> *6. The Commission may with the consent of the Prime Minister by Regulations or otherwise regulate its own procedure, including the procedure for appointment, promotion, transfer and removal from*

[1] [2009] UKPC 50

*office of officers of statutory authorities and for the exercise of disciplinary control over such officers.*

16. It is pellucid that the Statutory Authorities, just like the NWRHA, operates within the policy positions established by the government of the day. The fact that the Prime Minister may consent to regulations made under the SSA, does not affect the legal personality thus created by law. Similarly, in this matter before the court, Section 5 of the Regional Health Authorities Act, does not detract from the legal status given to the NWRHA by law, to the extent that they are not independent of the Minister of Health and responsible for acts and omissions or to seek to be protected from unlawful acts. Section 5 of the Regional Health Authorities Act, merely sets out the confines within which the NWRHA must operate. Just as, in the usual course of events, the Prime Minister is not responsible for the Acts of the Statutory Authorities Commission, so here the Minister of Health, in the usual course of events, cannot be responsible for the Acts of the NWRHA.

17. The court therefore ruled that the NWRHA does have the legal personality to be a party and is the proper party to the action. As it related to the evidence averred in the affidavit of the Claimant, there was no evidence, or no sufficient evidence to say that the NWRHA was not operating in the usual course of events and so the Minister of Health is not a proper party to the action. This court was therefore prepared, at that stage, to order that the First Defendant, Attorney General, be struck out as a party and the concommital orders and that the Second Defendant was the proper party.
18. However, before this court gave its decision, it was required to consider the Notice of Application filed by the Claimant on the 9th of February 2018. The issues raised in that Notice of Application, were possibly relevant to the issue whether the Attorney General was a proper party to the action.

**Notice of Application filed on the 9th of February 2018**

19. The Notice of Application filed on the 9th of February 2018, was filed pursuant to Rule 20.1 (3A) and Rule 56.12 (2) of the CPR. In part, the Notice of Application sought the court's permission to allow the Claimant leave, to rely on her Further Affidavit filed on the 8th of February 2018 and to rely on the Affidavit of Anthony Moore filed on the 8th of February 2018, in support of her claim.

20. The issues raised and arguments for and against the 9th of February Notice of Application were ventilated before the court on the 8th of March 2018. In support of the Notice of Application, the Claimant filed an affidavit of Tamilee Budhu, instructing Attorney at Law for the Claimant. The deponent averred, that subsequent to the filing of the matter and the orders made by the court on the 1st of December 2017, new information came to the attention of the Claimant. It was averred that one Mr. Anthony Moore, the former CEO of the Second Defendant, had information that the Minister of Health directed Dr. Dylan Narinesingh to dismiss the Claimant. The specifics of what is alleged by Mr. Anthony Moore, were not known to the Claimant before the 1st and 2nd of February 2018, by which time she had filed her affidavits in support of her claim and affidavit in opposition to the First Defendant's Notice of Application that the Attorney General was not a proper party to the matter. The Claimant also filed a Second Supplemental Affidavit and an affidavit of Mr. Anthony Moore.

21. The First and Second Defendants addressed the court on the 9th of February Notice of Application and the evidence in support of it as well as the Affidavit of Mr. Anthony Moore and the Further Affidavit of the Claimant. The Defendants objected to the reliefs sought. The First Defendant's main ground of objection was that this information was not new. The First Defendant implored the court to consider the contents of the affidavit of the Claimant, in particular the contents at paragraph 16 of the Second Supplemental Affidavit of the Claimant filed on the 4th of December 2017. In that Second Supplemental Affidavit, the Claimant averred at paragraph 16 "Sometime after Divali (13 October 2017) I was led to understand that the Board of the Second Defendant had been directed to remove me by the Minister of Health as a result of the PAHO report, which showed the Ministry of Health in a bad light."

22. The First Defendant submitted that this showed that the information alleged by the Claimant to be new was not in fact new, that it was known by her since October 2017. The court considered what followed in paragraph 17 of the Claimant's said Second Supplemental Affidavit. The Claimant averred that she "dismissed the information of my impending removal as gossip as Dr. Fleishon had made clear in our meeting on 2 October 2017 that PAHO's assessment was based on systems, infrastructure, policy, equipment and

did not make any comment with respect to the staff whether they were consultants or technical people".

23. It was clear, to the court, from the Claimant's averments in her Second Supplemental Affidavit, in paragraph 17, that she had no specific or particular information that the Minister of Health was responsible from her not getting a renewed contract. The "information" the Claimant had she considered to be "gossip". However when the Claimant read the draft Affidavit of Mr. Moore in early February 2018, as she averred in paragraph 3 of her Further Affidavit filed on the 8th of February 2018, she then and only then, became aware for the first time of actual information which showed "It appears that the Director of Health acted in accordance with the directive of the Minister of Health to dismiss me and effected the following steps in treating me unequal and contrary to my fundamental right under Section 4 (d) of the Constitution."

24. In deciding whether to allow the reliefs sought in the Notice of Application filed on the 9th of February 2018, the court considered Rule 20.1 (3A) and Rule 56.12 (2) of the CPR. First, Rule 20.1 (3A) of the CPR which states:

> *(3A) In considering whether to give permission, the court shall have regard*
> *to—*
> *(a) the interests of the administration of justice;*
> *(b) whether the change has become necessary because of a failure of the party or his attorney;*
> *(c) whether the change is factually inconsistent with what is already certified to be the truth;*
> *(d) whether the change is necessary because of some circumstance which became known after the date of the first case management conference;*
> *(e) whether the trial date or any likely trial date can still be met if permission is given; and*
> *(f) whether any prejudice may be caused to the parties if permission is given or refused.*

25. The court also considered Rule 20.1 (3) as it appeared relevant to the application, it states as follows:

> *(3) The court shall not give permission to change a statement of case after the first case management conference, unless it is satisfied that -*
> *(a) There is a good explanation for the change not having been made prior to that case management conference; and*
> *(b) The application to make the change was made promptly.*

26. The interpretation of Rule 20.1 (3) and Rule 20.1 (3A), was considered by the Court of Appeal in **Estate Management and Business Development Company Limited v Saiscon Limited**[2]. In the judgment of the court, Jamadar J.A. outlined, at paragraph 7, the staged approach applicable when dealing with applications made pursuant to Rules 20.1 (1), (2), (3) and (3A) of the CPR:

> *(i) Prior to a case management conference (and therefore logically, prior to the 'first case management conference'), a statement of case may be changed (any amount of times) without the court's permission.*
>
> *(ii) At 'the first case management conference' a statement of case may be changed, but only with the court's permission AND provided the criteria at Rule 20.1(3A) are satisfied.*
>
> *(iii) After 'the first case management conference' a statement of case may be changed, but only with the court's permission AND provided the criteria at Rules 20.1(3) and (3A) are satisfied.*

27. The court agreed with the Claimant's reliance on Rule 20.1 (3A), that the Claimant, as the applicant required the court's permission for the requested changes to be made, but also that Rule20.1 (3) was applicable. The court has to be clear about when the first case management conference occurred. In that regard the court relied on the decision of **Estate Management and Business Development Company Limited v Saiscon Limited (supra)** where Jamadar J.A. stated, at paragraphs 21 and 22 the following:

> *The notion of 'the first case management conference' as it is used in Rule 20.1(3) is a term of art. 'The first case management conference', for the purposes of Rule 20.1(3), takes place on the first occasion that a court hearing has been specifically scheduled for the purposes of exercising active judicial case management in relation to a particular matter and when there has in fact been the occurrence (whether by orders, directions or otherwise) of active judicial case management by a CPR judge (in any of its myriad aspects as provided for by the CPR,*

[2] C.A.CIV.P.104/2016

> *1998). This is to be distinguished from an occasion when at a hearing of proceedings not specifically scheduled for active judicial case management, a CPR judge for the first time actively exercises any such case management powers.*
>
> *In my opinion, for the purposes specifically of Rule 20.1 and in relation to changes to statements of case, and so as to achieve the objectives of the CPR including the overriding objective to deal with cases justly, 'the first case management conference' as a denotative event marker, refers to the first specifically scheduled court hearing of a particular matter for the purposes of active judicial case management; provided that at such an event there has in fact been the occurrence of active judicial case management.*

28. Having identified when the first case management conference begins, the next necessary information is knowing when the first case management conference ends. On that issue, in **Estate Management and Business Development Company Limited v Saiscon Limited (supra)** Jamadar J.A. stated on the day that the first case management conference is held:

> *The logical inference is that 'the first case management conference' ends at the close of that hearing and once there has in fact been the occurrence (whether by order, directions, or otherwise) of a single act of active judicial case management (in any of its myriad aspects as provided for by the CPR) by a CPR judge.*

29. The case management steps that occurred up to the time the 9th of February Notice of Application was filed, demonstrated that the process of active judicial case management had advanced beyond what can be considered "the first case management conference" within the meaning of Rule 20.1. The parties first appeared in court on the 1st of December 2017. Rule 27.2 (2) gives the court at this first hearing, all the powers of a case management conference. The parties all agreed that the matter should be advanced with a degree of alacrity given the nature of the claim and the job functions of the Claimant. On that date, the first case management conference was held. The court and all the parties, by their involvement and participation, conducted that hearing as the first case management conference. The court gave directions for the filing of a Supplemental Affidavit by the Claimant, the filing of Affidavits in response by the First and Second Defendants and permission to the Claimant to Reply, if necessary.

30. The next date for active judicial case management was the 17th of January 2018. On that date, the court gave direction relative to the Notice of Application filed by the First Defendant on the 30th of November 2017. The court also gave directions on the substantive claim, for the filing and serving of Affidavits in Response by the First Defendant and the Filing and Serving of written submissions by the Claimant, First Defendant and Second Defendant. A trial date was also fixed for the 25th of April 2018. Subsequently, the Notice of Application of the 9th of February 2018 was filed. Case management is not an event but a process geared towards advancing a civil matter to completion; whatever form that takes. The court's view is that the First Case Management Conference had been completed on the 1st of December 2017, when the court gave clear management directions to advance the progress of the matter.

31. Therefore the Claimant was required to prove that the requirements of "good explanation and "promptitude" were met. The Claimant has submitted, in effect, that she did not know of the information either before the first case management conference or at the first case management conference and so could not amend or seek the court's permission to amend at those stages. Additionally, the date of the application to amend filed on the 9th of February 2018 was made promptly after she became aware of the information in "early February". The court accepted that the requirements of both "good explanation" and "promptitude" as laid out in Rule 20.1(3) and by Jamadar J.A. in **Estate Management and Business Development Company Limited v Saiscon Limited (supra)** had been satisfied by the Claimant.

32. The court was thereafter next required to consider the perquisite requirements, for the granting of permission under Rule 20.1 (3A) of the CPR. The requirements under Rule 20.1 (3A), are cumulative although the impact of one or other maybe more pertinent than one or others. The interest of the administration of justice requires resolving the dispute between the parties within the confines of the overriding objective in Rule 1.1 (1) of the Civil Proceedings Rules, to treat with cases justly. Ensuring that the parties are on equal footing includes allowing the parties to lead all available and relevant evidence in support of their position. If as is the case here, relevant information became available after the matter was filed, the interest of the administration of justice should be to allow such evidence to be made available to the court as it seeks to treat with the case justly.

33. The evidence the claimant sought the court's permission to adduce, did not appear to be as a result of any failure of either the Claimant or her Attorneys. Rather in the true sense of the words, it had recently become available to the Claimant.

34. The proposed evidence would not cause a change to the Claimant's case that would be factually inconsistent with what was certified by the Claimant as the truth. What the Claimant hoped was that the new evidence would provide incontrovertible information on an issue that she had previously thought to be a "rumor". If the evidence eventually satisfies the burden and standard of proof necessary, it could impact the outcome of the case.

35. Based on the dates provided by the Claimant as to when she became aware of the new evidence, the information became known to the Claimant around the beginning of February 2018, this was after the first case management conference had been completed.

36. At the first case management conference, the court set an aggressive timetable in this matter with the concurrence of all the parties. This was based on the nature of the case, the significance of the allegations made by the Claimant and the consequences to the Second Defendant of having the issues unresolved. On the second date of hearing, after the first case management conference had ended, the trial date was set. This Notice of Application seeking new evidence will not materially affect the timetable.

37. If the permission was refused, more prejudice would be done to the Claimant than the prejudice likely to be done to the Defendants if permission was granted. Without permission being granted, the court would have made an order striking out the First Defendant as a party since there was no sufficient evidence that the Minister of Health was connected in any way with the decision not to renew or grant a new contract of employment to the Claimant. Granting permission allowed the Claimant an opportunity to possibly prove something which, but for, the additional evidence was mere supposition by the Claimant. The Defendants had notice of what the Claimant claims, albeit the Claimant averred that it was mere rumor. If permission was not granted to allow the additional evidence, the Claimant would have been prejudiced as she would not have the opportunity to put before the court relevant evidence which came to her attention in February of 2018. The Defendants will still have the opportunity to answer the "rumors" alleged by the

Claimant that the Minister of Health was responsible for certain events that led to the Claimant not getting a new contract of employment.

38. The court also considered Rule 56.12 (2) of the CPR dealing with the Case Management Conference. It states as follows:

> *56.12*
> *(1) ….*
> *(2) The judge may allow the claimant to amend any claim for an administrative order or to substitute another form of application for that originally made.*

39. Without giving much thought it must be clear than any judge exercising a discretion under this Part of the CPR cannot do so capriciously. The discretion must be exercised judiciously, and in this case, the overriding objection of the CPR must be an overriding consideration when the court considers whether to allow any claim for an administrative order to be amended on an application made by the Claimant. That said, it was also obvious that the court must consider the application to amend and the evidence in support of that application.

40. With regard to the application itself, the court considered the time when the application was made vis a vis when the additional information came to the Claimant's attention. This issue was discussed earlier in the decision. It is worth repeating that the court was of the opinion that the Claimant did not have the information at the time of the filing of her claim and the application for amendment was filed shortly after the information became known to the Claimant.

41. With regard to the overriding objective, this too was considered when the court deliberated upon Rule 20.1 (3A) of the CPR above. The same factors applied here. Given what was known, in the Notice of Application and the evidence supporting it, and having considered the submission made by the Attorneys, the court was satisfied that to be positioned to treat with the case justly, required allowing the application to amend the claim.

**Abuse of Process**

42. The First Defendant's Notice of Application filed on the 30th of November 2017 that the First Named Defendant had been improperly jointed as a party, was supported by a submission filed by the First Defendant. It stated at paragraph 7, "Further, the Claimant has no reasonable grounds for bringing this constitutional claim for the following reasons: - (a) She did not seek the alternative remedies available, i.e. judicial review and a claim under the Equal Opportunities Act". The Second Defendant, in their submission filed on the 6th of February 2018, stated at paragraph 15, they "…agrees with the submission at paragraph 7(a) of the First Defendant's Submissions that the Claimant ought to have, but did not first seek the alternatives remedies available, i.e. judicial review and a claim under the Equal Opportunities Act…the Claimant also has available to her the additional alternative remedies of pursuing a trade dispute under the provisions of the Industrial Relations Act". The Claimant in answer to these submissions, stated that the First Defendant was not entitled to make submissions on this point as no leave was granted by the court to make such submissions. Further the Claimant submitted that no available alternative remedy was effective and/or appropriate based on the specific allegation of discrimination raised.

43. The court did not consider whether or not the First Defendant was allowed to include in their submission this issue and whether or not the Second Defendant was allowed to respond to it. The court considered the merits of the submission. The Second Defendant submitted, in response to the submission made by the Claimant that the claim should be struck out not only against the First Defendant, but also against the Second Defendant. The Second Defendant submitted that the Claimant "ought to have but did not first seek the alternative remedies available. i.e. judicial review and a claim under the Equal Opportunities Act; we say further that, the Claimant also has available to her the additional alternative remedies of pursuing a trade dispute under the provisions of the Industrial Relations Act, and of bringing a wrongful dismissal claim, at common law, in the High Court. We submit that – in the face of these available alternative remedies – the Claimant not having shown in her claim form and affidavits filed therewith, any exceptional circumstances which justify her pursing instead this action for redress under **section 14** of **the Constitution**, this claim for redress under **section 14** of **the Constitution** must be refused."[3]

[3] Second Defendant Submission filed on 6th of February 2018, paragraph 15.

44. The issue, therefore, was whether there is or are another or other available remedies to the Claimant including judicial review or a claim under the Equal Opportunities Act. Further whether the Claimant should have used those alternative remedies before seeking to engage the court pursuant to Section 14 of the Constitution. The court considered the dicta of Lord Diplock in **Kemjajh Harrikissoon v Attorney-General**[4] that the value of the right to constitutional protection of one's fundamental rights will be diminished if the process to claim constitutional relief is "allowed to be misused as a general substitute for the normal procedures for invoking judicial control of administrative action". In that where case a public officer had been transferred against his will, from one place to another, was an example of misuse of the process for constitutional protection.

45. In the case of **Thinkur Persad Jaroo v. The Attorney General of Trinidad and Tobago (supra)**[5] the court found that the aggrieved party clearly had the right to bring a claim in detinue for the return of his vehicle which had been detained by the police for a protracted period. If a claim for detinue had been brought, the issues of fact in dispute between the parties could have been resolved, as such to bring a claim for constitutional reliefs in those circumstances amounted to an abuse of process.

46. The allegations here, were that the Claimant was singled out for unfair treatment and she alleged that this was demonstrated by the comparators identified. The allegations giving rise to the suggestion of unfairness makes the case one where other possible alternative remedies of judicial review, recourse to the industrial court and Equal Opportunities Tribunal, if available, will not serve to sufficiently address the seriousness of the alleged unfair treatment. The claim is also of extreme public interest based on the fact that the public are directly affected as the Claimant worked at a public health care facility, if there was unequal treatment the public would be deprived of the benefit of her professional services. With respect to the appropriateness of the use of a constitutional motion, in **Thinkur Persad Jaroo v. The Attorney General of Trinidad and Tobago (supra)**, Lord Hope said:

> *Their Lordships wish to emphasise that the originating motion procedure under s 14(1) is appropriate for use in cases where the facts*

[4] (1979) 31 WIR 348 at 349
[5] UKPC 5 OF 2002

> *are not in dispute and questions of law only in issue. It is wholly unsuitable in cases which depend for their decision on the resolution of disputes as to fact, Disputes of that kind must be resolved by using the procedures which are available in the ordinary courts under the common law. (paragraph 35)*

47. With respect to the facts, there is no dispute that the Claimant was contracted for a specific period of time. There is also no dispute that the Claimant was not offered a new contract of employment. What is in dispute is whether, in law, the circumstances that pertained to those undisputed fact amounts to unequal treatment when juxtaposed with what the Claimant has suggested are comparators.

48. The court considered and is bound by the decision of **The Attorney General of Trinidad and Tobago v Jaipaul**[6]. In delivering the decision of the Court of Appeal Mooai J.A. said:

> *There was a clear prima facie case that the respondent was treated less favourably than others similarly circumstanced, and that the appellant could not objectively been criticized for continuing along the constitutional path. Moreover, on the facts of this case, it is doubtful whether judicial review, rather than a constitutional motion, would provide an adequate or effective remedy. Accordingly, and in agreement with the trial judge, it was proper for the respondent to commence proceedings by way of a constitutional motion*

49. In this matter the Claimant alleged that it was the normal practice of the Second Defendant to renew contracts of Specialist Medical Officers provided that their performance appraisals are satisfactory without the Specialist Medical Officers re-applying for the post and being re-interviewed. The Claimant alleged that she had to re-apply and re-interview. The Claimant alleged that she was treated unequally as other Specialist Medical Officers' contracts were renewed without them having to re-apply and re-interview; these included Dr. Sally Ann Ishmael – Obstetrics and Gynecology, Dr. Shaheeba-Barrow – Pathology, Dr. Ricardo Jurawan – Internal Medicine and Dr. Wendell Dwarika – ENT.

[6] Civil Appeal No. 35 of 2011

50. This court made the same finding in this matter. The Claimant cannot be criticized for choosing to pursue a constitutional path in light of the allegations of unequal treatment. No alternative remedy would be appropriate to meet the justice of the case alleged.

**Disposition**

51. It is hereby ordered that:

1) Permission is granted to the Claimant to re-amend her Fixed Date Claim Form, in the form of the Re-Amended Fixed Date Claim form filed on 8th of February 2018;
2) Permission is granted to the Claimant to rely on her Further Affidavit filed on 8th February in support of her claim;
3) Permission is granted to the Claimant to rely on the Affidavit of Anthony Moore filed on the 8th of February 2018 in support of her claim;
4) The Notice of Application filed by the First Defendant on the 30th of November 2017 is dismissed.

Dated this 29th day of March 2018

**JUSTICE QUINLAN-WILLIAMS**
**JUDGE**