

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE COURT OF APPEAL**

Civil Appeal No. P026 of 2016  
Claim No. CV2014-00364

BETWEEN

**THE ST. JOSEPH GOVERNMENT PRIMARY SCHOOL LOCAL SCHOOL BOARD**

**THE MINISTRY OF EDUCATION**

**THE ATTORNEY GENERAL OF TRINIDAD & TOBAGO**

Appellants

AND

**MADGE MAYERS-FLETCHER**

Respondent

**PANEL:**

N. BERAUX, JA

P. MOOSAI, JA

P. RAJKUMAR, JA

**DATE DELIVERED:** 21<sup>st</sup> October, 2021

**APPEARANCES:**

Mr. N. Byam instructed by Mr. B. James for the Appellants.

Mr. R. Thomas for the Respondent.

I have read the judgment of Moosai JA and agree with it.

**N. Bereaux**  
**Justice of Appeal**

I too, agree.

**P. Rajkumar**  
**Justice of Appeal**

## **JUDGMENT**

**Delivered by P. Moosai JA**

### **I. Introduction**

[1] The St Joseph Government Primary School Local School Board (the Board), The Ministry of Education (the Ministry) and The Attorney General of Trinidad and Tobago (the AG), appeal against the decision of the trial judge dated 16 December 2015 in which she:

- i. Made an order of certiorari quashing the decision to terminate the contract of the respondent to rent and operate the cafeteria at the St Joseph Government Primary School;
- ii. Awarded damages for the breach of the legitimate expectation harboured by the respondent that she would be allowed to operate the

cafeteria for as long as she desired in exchange for the payment of her monthly rent;

iii. Ordered that the appellants pay the costs of the respondent.

## II. Relevant Facts and Background<sup>1</sup>

[2] The respondent, Madge Mayers-Fletcher, was initially a member of the cleaning staff employed at the St Joseph Government Primary School (the School) before undertaking the duties of operator of the School's cafeteria. She assumed this role after meeting some time in 2005 with both the School's principal at the time, Ms Hernandez (the former principal), as well as then cafeteria operator, Verna Smith. At this meeting it was disclosed by Verna Smith that she intended to cease operations and vacate the cafeteria, and there recommended that the respondent be given the opportunity to replace her. Ms Hernandez agreed and allowed the respondent to assume operations on the same terms enjoyed by the previous operator, that is, for as long as she wanted to do so and in exchange for the rental fee of three hundred dollars (\$300.00) per month. According to the respondent's evidence, it was accepted practice for the operator of the School's cafeteria to retain that position for as long as he or she was desirous of doing so.

[3] In 2010, a new principal, Ms La Touche (the Principal) was appointed. In December 2012, the Principal orally informed the respondent that the rental fee was being increased to the sum of three hundred and fifty dollars (\$350.00). What followed was described by the respondent as further arbitrary increases in the rental fees, with the rent at the time of the proceedings below set at some seven hundred dollars (\$700.00) per month. In response to her several complaints, the Principal informed the respondent that the increases were necessary as the School was not benefitting financially from the operations of the cafeteria.

[4] At the beginning of the September 2013 school term, the Principal prevented the respondent from opening the cafeteria for that first week, citing a pigeon infestation

---

<sup>1</sup> The only evidence in this matter came by way of the affidavit evidence of the respondent. The appellants were not permitted to file evidence as a result of their breach of a court order for the filing of their affidavits in reply. A full account of the procedural history is contained in *CV2014-00364 Mayers-Fletcher v The St Joseph Government Primary School Local School Board & Ors*. The facts set out herein are therefore the uncontested facts accepted by the trial judge.

within the School as the reason for doing so. According to the respondent, classes were not suspended nor the students sent home. Classes continued as normal and she observed schoolteachers selling snack items to the students while the cafeteria remained closed. Members of the teaching staff selling to the students became a regular practice, which significantly undermined the respondent's profit margins.

[5] At a subsequent meeting with the respondent, the Principal, accompanied by three staff members, informed her that she would be required to vacate the cafeteria at the end of the school term. It was at this meeting that she was also told that the rent was being raised to seven hundred dollars (\$700.00) per month, effective immediately.

[6] At the opening of the January 2014 school term, when attempting to access the cafeteria in order to commence operations, the respondent was denied entry by the Principal, who continued to do so until being informed by the School's supervisor that she was not entitled to do so. She then told the respondent that she would only be permitted to operate the cafeteria until the end of the month.

On 20 January 2014, the respondent was given a letter bearing the Ministry's stamp by which she was informed that the Board was assuming management of the School, and as a result of this restructuring of the School's management, she would be required to vacate the cafeteria by 31 January 2014.

[7] The respondent subsequently commenced proceedings in the court below.

### **III. The Trial Judge's Findings**

[8] The judge identified four issues for her consideration. They were:

- i. whether the promise/agreement made by the Principal to rent the cafeteria was capable of binding the State in contract;
- ii. whether the actions of the principals in renting the school's cafeteria amounted to a lawful promise/practice such as to ground a legitimate expectation;
- iii. whether the Principal acted irrationally and/or unreasonably and/or was unfair and/or in breach of the rules of natural justice in making the decision to terminate the respondent's use and management of the cafeteria; and

- iv. if the above questions could be affirmatively answered, what remedy or remedies were available to the respondent.

**[9]** In addressing the first issue, the judge found that under the provisions of the Act, a principal was a public officer, who, when acting within the scope of their authority, was accountable to the State.<sup>2</sup> She went on to find that the list of duties enumerated under section 27 was not an exhaustive one, but one which sets out the principal's duties in general terms, and she was therefore empowered by Parliament to exercise powers necessary and attendant to the effective management and productivity of the school.<sup>3</sup> Responsibility for the overall daily management of the School extended, in her view, to the management of the cafeteria, and the Principal was empowered to contract with the respondent in relation to same. She was therefore acting within the scope of her duties and her actions thereby bound the State.

**[10]** On the second issue, the judge was satisfied that the terms of the promise initially made between Ms Hernandez and the respondent were that she would be permitted to operate the cafeteria for as long as she was interested in doing so, provided that the rent was continuously paid. This promise was subject however to the School's right to terminate in keeping with any change in policy that was fairly implemented.<sup>4</sup> She accepted the evidence of the respondent that this promise was premised on a practice that had been in existence for over twenty years prior to the respondent's engagement, and for an additional eight years in her case. The judge was satisfied that Ms La Touche not only continued, but validated this settled practice when she became principal in 2010.<sup>5</sup> She also found that there had been a lawful promise by the former principal to the respondent which was clear, unambiguous and devoid of any qualification, which induced a legitimate expectation of a substantive benefit.<sup>6</sup> Having filed no evidence, the appellants below were unable to justify the frustration of the legitimate expectation.

**[11]** With regard to the third issue identified by the trial judge, she held that, based on the evidence, it was clear that the Principal did not address the issue of the

---

<sup>2</sup> *CV2014-00364 Mayers-Fletcher v The St Joseph Government Primary School Local School Board & Ors* [40].

<sup>3</sup> *Ibid* [41].

<sup>4</sup> *Ibid* [60].

<sup>5</sup> *Ibid* [63].

<sup>6</sup> *Ibid* [64].

respondent's termination in a rational and reasoned manner, and took into consideration irrelevant considerations.<sup>7</sup> Additionally, she did not deal with the respondent fairly or in a manner that accorded with the principles of natural justice.<sup>8</sup>

[12] On the final issue of remedy, in light of her findings and conclusions, she was of the view that the respondent was entitled to the reliefs claimed in her fixed date claim form.<sup>9</sup>

#### IV. Issues on Appeal

[13] In their written submissions, the appellants renewed their challenge to the authority of the Principal to enter into the agreement with the respondent. At the hearing of the appeal, additional questions were raised as to whether this matter ought to have been pursued and determined by way of private law claim instead of judicial review. The court referred the parties to the court of appeal decision in *BK Holdings Ltd & Ors v The Mayor, Aldermen Councillors and Citizens of Port of Spain & Ors*<sup>10</sup> and invited further written submissions on same. Counsel for the respondent availed himself of this opportunity.

[14] There were therefore two issues for our consideration:

- i. With what authority, if any, did the Principal act when entering into an agreement with the respondent to operate the School's cafeteria?
- ii. Was this decision amenable to judicial review?

#### V. The Arguments

##### The Appellants

[15] The appellants contend that there was no lawful authority by which the Principal could have granted a licence of the School's property in perpetuity to the respondent to operate a cafeteria. Furthermore, there was no evidence to suggest that the actions of the Principal were for or on behalf of the Board or the Ministry and could not therefore be binding upon the State. The judge fell into error in finding that she was

---

<sup>7</sup> *Ibid* [75].

<sup>8</sup> *Ibid* [76].

<sup>9</sup> *Ibid* [79].

<sup>10</sup> CA P348/2019.

vested with the requisite authority and that the agreement entered into was capable of binding the State.

#### The Respondent

[16] Counsel for the respondent adopted the analysis and conclusions of the trial judge that the Principal acted with the lawful authority vested in her under the relevant provisions of the Act. He further submitted that, given the significant duration of the agreement between the former principal and the respondent's predecessor (some twenty years), as well as the respondent's own tenure of eight years, it must be concluded that any permission granted to operate the cafeteria was with the knowledge and approval of the Board and therefore authorised. The Principal in her own right, as well as through the Board, could lawfully have entered into the agreement that she did with the respondent. Her actions, and by extension the actions of the Board, were therefore capable of binding the State.

[17] On the issue of judicial review being the appropriate remedy, the respondent submitted that the general reluctance of the courts to allow for judicial review of matters of a contractual/commercial nature may give way where there exists the likelihood that the public officer or body acted fraudulently, corruptly or in bad faith. The bad faith of the Principal and Board was clearly exhibited in all of the actions taken in the lead up to and eventual termination of the agreement with the respondent.

## VI. Law and Analysis

### The Principal's Authority

[18] The parties relied, both in this court and before the trial judge, on the authority of ***The Attorney General for Ceylon v D.A. Silva***<sup>11</sup> which states:

*It is a simple and clear proposition of law that a public officer has not by reason of the fact that he is the service of the Crown the right to act for and on behalf of the Crown in all matters which concern the Crown. **The right to act for the Crown in any particular matter must be established by Statute or otherwise.** . . . Next comes the question of whether the Principle Collector had ostensible authority, such as would bind the Crown, to enter the contract sued on. All "ostensible" authority involves a representation by the principal as to the extent of the agent's authority. No representation by the agent as to the extent of his authority can amount to a "holding out" by the principal. **No public officer, unless he possesses some special***

---

<sup>11</sup> [1953] AC 461, 478

*power, can hold out on behalf of the Crown that he or some other public officers has the right to enter into a contract in respect of the property of the Crown when in fact no such right exists. [Emphasis mine]*

[19] Section 27 of the *Education Act Chap 39:01* (the Act) outlines the duties of the school principal:

*Subject to this Act and the Regulations, Principals of Schools shall be responsible for the day to day management of their school including –*

- (a) the supervision of the physical safety of pupils;*
- (b) the suitable application of the syllabus in conformity with the needs of the pupils of the school, and the administration of the school's programme;*
- (c) allocation and supervision of the duties and responsibilities of members of their staff;*
- (d) the discipline of the school;*
- (e) teaching;*
- (f) the proper use of school equipment and stock;*
- (g) the keeping of proper school records;*
- (h) the making of financial reports...*
- (i) the furnishing of such returns...*
- (j) ensuring the observance of the provisions of the Act and any Regulations made thereunder in their respective schools; and*
- (k) co-operation with parents and with approved authorities in the execution of authorised schemes.*

[20] It is clear from the aforestated section that a principal is vested with administrative authority over the day-to-day management of the school. We agree with the judge's determination that the principal of a government school appointed pursuant to the Act is a public officer who, when acting within the scope of their power, is accountable to the State.<sup>12</sup> The determination of the scope of the principal's power is essential therefore to the determination of this appeal.

[21] Before proceeding with this analysis, two other statutory provisions are of some relevance for the role they played in assisting the judge below in arriving at her conclusions. The first is section 23 of the Act, which, by order of the Minister, constituted local school boards for the management of every government school.

*23 (1) The Minister shall, by Order, constitute Local School Boards for Government Schools with each Board constituted in accordance with the Regulations.*

---

<sup>12</sup> Fn 2 [40].



*(2) Subject to this Act, a Local School Board shall be responsible for the management of the school with respect to the matters and in the manner prescribed.*

*(3) A Local School Board shall prepare and submit to the Minister before the end of each financial year an annual report of its operations which includes a financial and management audit of the Board.*

The second is regulation 18 of the **Education (Local School Board) Regulations** (the regulations) which outlines that principals are to be supported in the execution of their duties by the schools' board, and particularises the board's remit.

*18. (1) The Board shall have the following duties and powers to support the Principal in the management of the school:*

- (a) in the development of a strategic plan for the school plant;*
- (b) in the conduct of an operational and environmental audit of the activities of the school;*
- (c) in the development and implementation of school improvement plans;*
- (d) by receiving information, complaints and expressions of concern and hope from the public concerning the school and its members, and to make recommendations as they see fit and relay them to the competent authority;*
- (e) by encouraging, promoting, sustaining and fostering mutual understanding, good fellowship and co-operation among the Minister, staff, parent, pupils and other persons associated with the school;*
- (f) by requesting the assistance of local government bodies and other agencies and departments to assist in the maintenance of the school;*
- (g) by liaising with all relevant agencies in order to ensure that the school is adequately served with water and electricity and sanitation services;*
- (h) by liaising with members of the community particularly those in the vicinity of the school;*
- (i) by mobilising community support for the school;*
- (j) by strengthening community relations with specific bodies and individuals in the community;*
- (k) by making recommendations for the better performance of the school in the assessment of school plant;*
- (l) in preparing short, medium and long-term plans for capital improvement and the upgrading of plant and equipment;*
- (m) in the development and implementation of a maintenance programme for the plant and equipment of the school;*
- (n) in the development and implementation of plans to improve the security of the school;*

- (o) by promoting fund-raising activities on behalf of the school and controlling the expenditure of funds so raised;*
- (p) by making recommendations for the better performance of the school to the Minister through the Permanent Secretary;*
- (q) by liaising with a past pupil association of the school; and*
- (r) in taking such action which may redound to the benefit of the school.*

*(2)The Board may make Rules for and in relation to the matters specified in subregulation (1).*

Section 11 (4) of the Act is also instructive for the purposes of our analysis. It states that:

*A Government school is a public school **wholly owned by the Government.***  
*[Emphasis mine]*

[22] Sections 23, 27 and regulation 18 were examined by the judge below. She paid particular attention to the wording of sections 23 and 27, the comparative analysis of which led her to the conclusion that the broad and inclusive language of section 27, as opposed to the restrictive language employed in section 23, was indicative of a specific intention on the part of Parliament. This intention was to allow principals a greater degree of flexibility and latitude in order to best meet their statutory obligations centred around the day-to-day management of their schools.<sup>13</sup> She found that regulation 18 was consistent with this interpretation and that the school board was required to provide the requisite support to them in accomplishing same.

[23] It is on this basis that the judge was of the view that:

*...the Principal's power and responsibility over the daily management of the school extends to the management of the cafeteria and the power to contract with an individual in relation to the management of same. The management of a school cafeteria is undoubtedly an important aspect of the school's daily life as it is patronized by students and staff of the school and serves the needs of the school population.*

She found that section 27(f) in particular, which tasks the principal with the responsibility of dealing with the school's equipment and stock, was apposite.

[24] In oral arguments before this court, counsel for the respondent submitted further that support for the judge's conclusion could be found under regulation 18(1)(o), which tasks the board with responsibility for promoting fundraising activities on behalf

---

<sup>13</sup> Fn 2 [41]-[42].

of the school and controlling the expenditure of funds so raised, as well as regulation 18(1)(r), which charges the board with taking such action which would redound to the benefit of the school. He went on to posit that the Board's support of the Principal's decision to enter into an agreement for the management of the School's cafeteria in exchange for a rent would not only serve as a means of fundraising, but would redound to the School's benefit by providing much needed food and beverage services to both students and staff. Counsel appeared to accept that this argument could only be sustained on the establishment of the Principal's authority under the Act to contract as she did. The regulations, being secondary legislation and therefore ancillary to the primary legislation, cannot ascribe or delegate authority unless grounded in the Act itself.<sup>14</sup>

**[25]** With the greatest of respect to the learned trial judge, we do not agree that the relevant statutory provisions empower the principal of a government school with the requisite authority to enter into an agreement of the type witnessed in this case. We say so for the following reasons.

**[26]** The Act and its regulations must be read as a whole. The legislation speaks to the duties of the principal and the board, and the authority vested in each to best accomplish their specific roles. The principal's authority, as evidenced by the wording of the Act, is indeed wider in scope and application than that given to the board, who, while tasked also with the management of the school, is not charged with overseeing its day-to-day affairs. As a matter of fact, the board itself, by section 23(2), is expressly limited to the management functions set out in the Act and only in the manner prescribed.<sup>15</sup> Regulation 18(1) describes the management duties and powers prescribed to the board as being for the support of the principal.

**[27]** It is consistent with the wider scope of duties intrinsic to day-to-day management that the language of section 27 is on its face more inclusive. It must be presumed that Parliament would have intended that principals be afforded an appreciable level of flexibility in the performance of overall management functions so as to best serve their schools. This inclusivity is not however unfettered and all encompassing. It cannot be.

---

<sup>14</sup> See Transcript of Proceedings dated 23 September 2020 at p 18.

<sup>15</sup> The manner prescribed under regulation 18.

Any authority exercised by a principal must be consistent with that expressly set out in the Act.

**[28]** From a reading of section 27, what is immediately apparent is that, stated broadly, a principal is tasked with, *inter alia*,<sup>16</sup> securing students' academic interests,<sup>17</sup> and managing and accounting for the resources assigned to the school, be it finances or personal property.<sup>18</sup> A plain reading of the text of the statute, particularly in light of section 11 (4),<sup>19</sup> is not indicative of an intention by Parliament that a principal be vested with the authority to enter into leases or other agreements for the school's real property, the effect of which would be to bind the State, as part of his/her everyday management function. It follows therefore that we disagree particularly with the judge's assertion that section 27(f) is wide enough to cover the physical property of the school under the umbrella of "equipment and stock". In the context of the section, and the Act as a whole, the equipment and stock referred to could only be the resources allocated to the school by the Ministry and not the school's real property.

**[29]** As was submitted by the appellants below and renewed before us, what the Principal<sup>20</sup> purported to do was to enter into a contractual arrangement with the respondent, the subject of which was the real property of the State. As already emphasised, nothing in section 27 specifically, or the Act as a whole, suggests that it was ever intended that a principal could act as an agent of the State and so contract on its behalf. Outside of such statutory authority, for such a contract to be binding, the principal must evidence some other form of expressed or implied authority to so contract. There was no evidence of such in this case.

**[30]** From the foregoing analysis, it is clear that we are of the view that the judge was plainly wrong in her conclusion on this issue. The Principal was not authorised under the Act, or otherwise, to enter into any agreement with the respondent by which she would have obtained a proprietary interest in the terms described, or at all. She was

---

<sup>16</sup> Section 27 (j) and (k).

<sup>17</sup> *Ibid* 27(a)-(e).

<sup>18</sup> *Ibid* (f)-(i).

<sup>19</sup> See [21].

<sup>20</sup> And former principal Ms Hernandez.

not acting as an agent of the Ministry or the State and her actions were therefore incapable of binding them.

**[31]** Before proceeding, we would very briefly address the issue of the extent of any authority a principal retains to enter into agreements specific to the school's real property.

**[32]** To state it simply, it does not fall within the exclusive mandate of the principal to treat with the real property of the school by way of a contractually binding agreement in any form. Notwithstanding our agreement with the judge that the section 27 list is a non-exhaustive one, for the reasons already given, we similarly do not agree that such authority can be read into the scope of her day-to-day management powers. Nor are we of the view that, if such authority exists, it may be found within the duties and powers conferred upon the school's board. The answer seems to reside in the grant of any such licence by the Minister or the Permanent Secretary, once authorised by the Cabinet of Trinidad and Tobago. In our view, the remit of the school's board extends solely to the making of recommendations to the Minister that such a licence be granted. This approach recognises the school board's supervisory and recommendatory powers, while preserving the State's authority over the manner in which its property is utilised, even with respect to a non-proprietary interest such as a licence.

In light of this, the State may wish to consider, as a prudent course, the standardisation of any such licence agreements, inclusive of circumstances which would give rise to termination and requisite periods of notice, as this would provide greater certainty for persons making investments to provide school cafeteria services, prevent arbitrariness, and promote equality of treatment. This would of course apply to government owned schools and not those whose property is privately owned.

#### The Remedy of Judicial Review

**[33]** From our conclusions above, it follows therefore that this is not a case amenable to judicial review. As correctly posited by the appellants, in order to avail oneself of this remedy, the decision being challenged, by necessity, must have been one lawfully

authorised under statute or otherwise.<sup>21</sup> There was no lawful authority present in this case. To this we will add the following observations.

[34] The Chief Justice in the recent decision of *BK Holdings (supra)* reminded that not every case involving a public law element will be amenable to judicial review. Cases involving commercial contractual agreements and breaches of same, for example, will be better served as being the subject of private law claims, notwithstanding that one of the contracting parties is a public body or officer.

[35] An interesting perspective was introduced by the respondent in his further written submissions which would have been worthy of some consideration had the first issue been decided differently. In *The State of Mauritius and Anr v CT Power and Ors*,<sup>22</sup> the Board had this to say at paragraph 43:

*The Board also considers that the decision of the Ministry of Energy to refuse to sign the Implementation Agreement is in principle within the scope of the court's judicial review jurisdiction. It is true that a decision whether or not to enter into a contract involves deciding whether to accept obligations sounding in the private law of contract. **However, a contract is made between legal persons, and where the person who is a proposed party to a contract is a public authority the way in which it may behave is subject to rules of public law; and whether the public authority has acted lawfully in accordance with those rules is a matter which may be subject to judicial review.** [Emphasis mine]*

They added at paragraph 66:

*... in the present context the Board takes the opportunity to reaffirm the guidance given by it in the Mercury Energy case, at [1994] 1 WLR 521, 529A-B: "It does not seem likely that a decision by a state enterprise to enter into or determine a commercial contract to supply goods or services will ever be the subject of judicial review **in the absence of fraud, corruption or bad faith.**" [Emphasis mine]*

[36] Had she the requisite authority to enter into an agreement concerning the School's real property, it is arguable that Ms. La Touche's treatment of the respondent evidenced such bad faith that it was wholly capable of placing this matter squarely within the category of cases allowing for judicial review, notwithstanding its contractual underpinnings. In those circumstances, this court would, quite naturally,

---

<sup>21</sup> Fn 11.

<sup>22</sup> [2019] UKPC 27.

have been loath to countenance such conduct by a public official. This case however, must be considered and decided on the application made. We do not doubt that the factual background featured heavily in counsel for the respondent's assessment of the case and his subsequent decision to pursue the specific remedy of judicial review in an attempt to vindicate the rights of his client. Regrettably, the law in this instance is not on her side.

**VII. Disposition**

[37] For these reasons, we will allow the appeal.

[38] The decision of the trial judge is set aside.

[39] There will be no order as to costs.

**P. Moosai**  
**Justice of Appeal**