`REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civil Appeal No. S 304 of 2017

BETWEEN

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Appellant

AND

MARCIA AYERS-CAESAR

Respondent

PANEL: **A. Mendonca, C.J. (Ag.)**
P. Jamadar, J.A.
N. Bereaux, J.A.

APPEARANCES:
Mr. R. Armour S.C., Mr. R. Nanga, Mr. R. Heffes-Doon, Mrs. Z. Haynes-Soo Hon and Ms. S. Maharaj for the Appellant.
Mr. R. L. Maharaj S.C., Mr. R. Bissessar and Ms. V. Maharaj for the Respondent.

DATE DELIVERED: Thursday, 29th March, 2018.

DELIVERED BY P. JAMADAR, J. A.

JUDGMENT

INTRODUCTION

1. On the 12th April, 2017 Marcia Ayers-Caesar (MAC) was sworn in as a Puisne judge of the Supreme Court of Trinidad and Tobago by the President of the Republic, His Excellency Anthony T. A. Carmona. The Chief Justice Ivor Archie was present, as were the Registrar of the Supreme Court, the Administrative Secretary to the Chief Justice, and members of her family. Two other persons were also sworn in as judges on the same occasion. MAC received her Instrument of Appointment from the President that very day. No doubt it was a moment for celebration.[1]

2. On the 27th April, 2017 (15 days later), at 5.10 p.m., MAC left the Hall of Justice in Port of Spain to attend at President's House for the purpose of tendering a resignation letter to His Excellency. When she arrived, her husband was already there, waiting on her. She was "upset and in tears". Her husband tried to console her, unsuccessfully. The following is her description of what transpired next (paragraphs 60, 61, 62, and 63 of her affidavit filed on the 19th July, 2017 in support of these proceedings):

> "60. The Chief Justice arrived shortly after I arrived. The Chief Justice was called in to speak with the President for about 10 minutes, before my husband and I were called in to join them. Whilst waiting to meet the President I told my husband that I was given no choice but to resign otherwise the Chief Justice would get the President to revoke my appointment. The Chief Justice's personal assistant Mr. Kariym and a member of his security detail were also in the waiting area. My husband and I were ushered in to meet the President. The Chief Justice was already there. I was in tears and very emotional. The President appeared to be concerned and his tone was a bit subdued. He told me that he was sorry about the way things had turned out. My husband then asked the Chief Justice why I had to resign and the Chief Justice told him that he felt that

[1] MAC was admitted to practice law in 1986; appointed a Magistrate in 1992; and made Chief Magistrate in 2010. She was the first female to be appointed Chief Magistrate in Trinidad and Tobago.

the JLSC had been misled because I had said that I had 28 part heard matters and he (the Chief Justice) had subsequently, in an independent audit found that I had 52 part heard matters and because of this he and the JLSC had questioned my case management abilities.

61. I then told the Chief Justice that at no time did I ever deliberately or intentionally misled him or the JLSC. I then took out the resignation letter which was given to me by Ms. Pierre which I was requested to hand to the President and gave it to His Excellency. I was crying and the President was also crying. After I delivered the letter to the President he told me that I should not do anything stupid like commit suicide and he then told me a story about a St. Lucian friend of his from the Cave Hill Campus who had committed suicide and how he the President never came to terms with this. The President reminded me that I had my children to think of. He then hugged me and my husband and I left.

62. I told my husband that I could not face my security detail and requested him to send them home. My husband then took me home.

63. I was not given a copy of the resignation letter or the press release which had been prepared for me to sign."

3. Following this two press releases were issued by the Judiciary on the very 27th April. One by the Chief Justice and the other purportedly by MAC. The former accused MAC of "failing to manage her transition from the Magistracy to the High Court" and of "departing from established practice" and in effect wilfully or negligently or carelessly misleading the Judicial and Legal Service Commission (JLSC). It also informed the public of a decision by the JLSC to "restore Mrs. Ayers-Caesar to the Magisterial Bench". Hence her resignation. The latter, MAC contends, was neither composed or prepared by her, and was only signed by her as result of undue and unlawful pressure brought to bear on her by the JLSC acting through the Chief Justice, to agree to its terms.

4. In a mere 15 days, for MAC, celebration had become despair, joy turned into angst, success into apparent failure, and professional pride and reputation into public shame.

5. Between the 3rd May and the 8th May, 2017 meetings took place between MAC and the Chief Justice and/or his Administrative Secretary aimed, it would appear, towards MAC's return to the Magistracy to resume her duties as Chief Magistrate on the 8th May, 2017. These discussions culminated in a letter dated 8th May, 2017 written by MAC to the Chief Justice, as follows:

> "May 8th, 2017
>
> **Subject: Meeting of Wednesday May 3rd, 2017**
>
> Following on from the meeting I attended at His Lordship's invitation on Wednesday May 3rd, 2017, I have given great thought to the matters discussed therein.
>
> Having regard to the views reportedly expressed by members of the Inner Bar, the statements attributed to the Criminal Bar Association and the Law Association of Trinidad and Tobago, both major stakeholders in the Criminal System, as well as the unresolved issues surrounding my purported resignation as a High Court Judge and my future as a judicial officer, I have decided that it will be in the best interest of all concerned, that the above issues be resolved before I take any further step.
>
> Respectfully,"

6. Then, on the 9th May, 2017 the JLSC issued another press release detailing its narrative on the entire incident up to that point. It culminated, among other things, with the following statements:

> "The JLSC was of the view that the situation was sufficiently grave to trigger a disciplinary enquiry but after some further discussion it was agreed that Justice Ayers-Caesar should be given an opportunity to return to the Magistracy to complete the matters that she had left unfinished. The JLSC was of the view that it was a viable course of action as a means relieving possible hardship to defendants, victims and other interested parties.

Accordingly the Chief Justice summoned Mrs Ayers-Caesar to a meeting on 28th April 2017 in the presence of his Administrative Secretary where he reminded her of the importance of her accepting personal responsibility for the manner in which events had unfolded and invited her to consider her options, Mrs Ayers-Caesar decided to resign from the High Court Bench as means of acknowledging her default. No promises were made to Mrs Ayers-Caesar that if she finished her part heard matters, she would be returned to the High Court Bench.

It should be reiterated that Mrs Ayers-Caesar had a professional duty to conclude matters as far as reasonably possible before taking up office."

7. MAC asserts that the contents of the JLSC press release of the 9th May are "incorrect and misleading" and that the statements in it brought her character into disrepute, by "accusing her of dishonesty, irresponsibility and ineptitude".[2] She responded by writing directly to the President on the 19th May, 2017. In that letter she "put on record the circumstances surrounding my resignation" and "responded to the allegations made against me by the Chief Justice and the JLSC in the statement dated 09th May 2017".[3]

8. This lengthy letter to the President comprised 36 paragraphs. It began as follows: "It is with a deep sense of regret and personal disquiet, that the time has come for me to place on record the circumstances under which I was made to tender my resignation, to Your Excellency, as a Puisne Judge of the High Court."

9. Paragraphs 4 to 7 then set out in summary MAC's position:

"4. First, my 'resignation' was in effect my dismissal by the JLSC. I was presented with no option but to resign, in the light of what I was told the JLSC had already decided to do about my conduct.

[2] See paragraphs 73 and 74 of MAC's affidavit filed on the 19th July, 2017.
[3] See paragraph 75 of MAC's affidavit filed on the 19th July, 2017.

5. Second, at no stage before that decision was I given an opportunity to answer the charges now made publicly against me. They were not put to me before I was informed of the decision to require my resignation.

6. Third, I dispute the charges against me, and I deny that I have acted in breach of my professional duties or in a way that calls into question my competence to be appointed as a Judge.

7. Fourth, I believe that the termination of my appointment as a High court Judge was unlawful."

10. The letter ended with these requests:

"36. Accordingly I do respectfully ask you to consider these matters and respond to me as a matter of urgency. I ask you to acknowledge that my removal from office was unlawful and unconstitutional and can have no legal effect."

11. On the 14th June, 2017 the President replied in writing, acknowledging receipt of MAC's purported letter of resignation dated 27th April 2017, and responding to her letter of the 19th May, 2017 in the following terms:

"I am also in receipt of your letter addressed to me dated 19th May 2017.

I am advised by Queen Counsel that it would be inappropriate and outside of my constitutional remit to comment on your letter dated 19th May 2017 and/or to accede to your requests contained therein and in particular, your request that I 'acknowledge that' your 'removal from office was unlawful and unconstitutional and can have no legal effect'."

12. The above facts are thus far more or less undisputed, as the JLSC and the President have not filed any affidavits in these proceedings (though there are documents from them that have been referred to and exhibited). As well, in so far as the trial judge made findings

of fact or drew inferences on the leave application and these have not been appealed, they are to be treated at this stage as accepted. This analysis proceeds on this basis.

THE COMMENCEMENT OF LEGAL PROCEEDINGS

13. On the 19th July, 2017 MAC commenced judicial review proceedings against the Judicial and Legal Service Commission (JLSC) and the President (via the Attorney General). Essentially she seeks to have the resignation letter handed to the President on the 27th April, 2017 (her purported resignation) declared null and void and of no effect, because it was brought about by unconstitutional, illegal and unlawful actions by the JLSC, including by the use of undue pressure, threats, duress, and coercion, and was therefore not the free and voluntary/volitional act of MAC. Alternatively, to have it set aside. Several discrete heads of relief were therefore sought against both parties, which in effect underpin and support these two primary goals.

14. Following an inter-parties and heavily contested hearing, Harris J, on the 6th October, 2017, granted leave to MAC to seek judicial review in relation to several decisions and actions of the JLSC. The factual matrices supporting them cover the terrain raised in the primary plea at paragraph 13 above. There has been no appeal by the JLSC. The JLSC therefore accepts that these issues raised against it are, as at the leave stage, arguable with a realistic prospect of success (see **Sharma v Browne-Antoine & Ors**., (2006) 69 WIR 379 at page 388; per Lord Bingham).

15. Harris J. also granted leave in relation to decisions, actions and inactions by the President. In his opinion the single reviewable decision of the President was: "The President's continued refusal upon receipt of the Applicant's letter dated the 19th May, 2017 to set aside the Applicant's resignation and to reinstate her in her post as a judge."[4]

[4] At page 36 of the judgment.

16. He then granted leave to MAC to claim the following relief against the President[5]:

"9. The President's continued refusal upon receipt of the Applicant letter dated the 19th May 2017 to set aside the Applicant's resignation and to reinstate her in her post as a Judge. (sic)

10. A declaration that the impugned decision of the President was unconstitutional, because his continued acceptance of the Applicant's purported resignation upon receipt of the said letter dated the 19th May 2017 contravened the protections in s. 137 of the Constitution.

11. A declaration that the impugned decision of the President is null and void and of no effect.

12. An order of certiorari to quash the said decision of the President.

13. A declaration that the President infringed the Applicant's constitutional right to the protection of the law as guaranteed in Section 4(b) of the Constitution.

14. An order for the payment of damages to be assessed, for breach of the Applicant's constitutional rights, including compensation for loss of office and the benefits that go with it (if she is not reinstated); and the award to include an additional award by way of general or vindicatory damages.

THE APPEAL

17. This appeal only concerns the trial judge's decision to grant leave to MAC to review the President's alleged decision and to pursue the relief against the President as stated above. There are several grounds of appeal. The first is that the judge gave no reasons for this aspect of his decision. The second is that there was no decision made by the President

[5] At pages 37 and 38 of the judgment.

as found by the judge in relation to MAC that is reviewable. The third, fourth and fifth grounds have to do with the interpretation and application of section 142 of the Constitution to the circumstances of this case, to wit: (i) the President did not have any power to set aside MAC's resignation or reinstate her once he had received the purported letter of resignation dated the 27th April, 2017, and (ii) there cannot be any review of any continuing decision by the President to accept the letter of resignation, as having once accepted it the President became *functus officio* in the matter.

ANALYSIS

18. The standard test for granting leave for judicial review in Trinidad and Tobago is as set out by Lord Bingham in **Sharma v Brown-Antoine & Ors**. (Supra). Harris J. correctly identified the relevant test as being whether there was an arguable case with a realistic prospect of success, that was not subject to any of the discretionary bars. He also appreciated that the test for 'arguability' is flexible and impacts the strength or quality of the evidence required, and that it is to be judged by reference to the nature and gravity of the issues raised.[6] There is no error or misapprehension of law in this regard.

19. In Trinidad and Tobago the Judicial Review Act 2000 (JRA) governs applications for relief by way of judicial review. MAC has a sufficient interest in this matter, she being the person whose interests are directly and adversely affected by the purported letter of resignation and by actions, inactions and decisions in relation thereto. She is therefore a person prima facie entitled to seek relief by way of judicial review.[7]

20. In MAC's application for leave, Part VI of the application sets out the grounds upon which she seeks the relief against the President that was permitted by Harris J. At paragraphs 32 and 33, under the caption - **The President ought to have reinstated the Applicant**, MAC stated:

> "32. Further, the Applicant contends that as her purported resignation was given as a result of unconstitutional action and duress, it was null and void, or at

[6] See paragraphs 3 and 4 of the judgment.
[7] See sections 5 (2) and 6 (2) of the JRA. And see also section 142 of the Constitution.

least, she was and is entitled to revoke it. As said above, by her letter dated 19th May 2017, she informed the President of the unconstitutional action and unlawful pressure, and asked for his acceptance that her removal from office was unconstitutional and of no effect.

33. However, the President has refused to recognise that the Applicant's resignation and removal from office were of no effect. In so refusing, he has misdirected himself in law and misdirected himself as to his powers under the Constitution."

21. What is contended, is that the President in failing and/or refusing to consider MAC's request in writing that he recognise and acknowledge that her purported resignation was unlawful and of no effect (by her letter of the 19th May, 2017), committed a breach of or an omission to perform a duty which he had the power to exercise in the prevailing circumstances.[8] And, that this failure or omission constituted an error of law[9] and had the effect of depriving MAC of her right to the protection of the law.[10]

22. It is also to be noted that section 5(4) of the JRA provides that an applicant is not limited to any grounds set out in an application for judicial review. Indeed, in so far as the Civil Proceedings Rules 1998 (CPR, 1998) may have relevance, what a court is duty bound to do, is to deal with the matter justly and to manage it so as to have the real issues between the parties determined.[11] Part 56.14 (3), CPR, 1998 states that at the substantive hearing, a "judge may grant any relief that appears to be justified by the facts proved before him whether or not such relief should have been sought by an application for an administrative order". What matters is substance, and substance is not usually defeated by form; and this is especially so in public law matters where the goal is ultimately to achieve fairness and good public administration for the benefit of both litigants and community.

[8] See section 5(3)(l) of the JRA.
[9] See section 5(3)(a) and (j) of the JRA.
[10] See section 4(b) of the Constitution.
[11] See Part 1.1 and 1.2; Parts 25.1 and 26.1; and Part 56.4 (10) and 56.12, CPR, 1998.

Did the President have the power and/or duty to consider whether MAC's purported letter of resignation (dated 19th May, 2017) was in fact a resignation for the purposes of section 142 of the Constitution?

23. This is the primary question in this appeal. It is arguable with a realistic prospect of success that the President by his reply to MAC on the 14th June, 2017, determined that he did not have the jurisdiction or the power and/or duty to consider MAC's requests to him in her letter of the 19th May, 2017. It is also arguable with a realistic prospect of success that the President did have the jurisdiction and the power and/or duty to consider her requests and to treat her purported resignation as null, void and of no effect. This decision of the President and these issues are therefore prima facie subject to judicial review in this matter.

24. Section 142 of the Constitution states:

> "(1) Subject to the provisions of this Constitution, any person who is appointed or elected to or otherwise selected for any office established by this Constitution, including the office of Prime Minister or other Minister, or Parliamentary Secretary, may resign from that office by writing under his hand addressed to the person or authority by whom he was appointed, elected or selected.
>
> (2) The resignation of any person from any such office shall take effect when the writing signifying the resignation is received by the person or authority to whom it is addressed or by any person authorised by that person or authority to receive it."

25. Section 142 (1) covers a resignation by a judge. That is to say, a judge may resign by submitting in writing a resignation signed by him/her and addressed to the President. Section 142 (2) provides that such a resignation takes effect in the case of a judge, when the written and signed resignation "is received by" the President. Clearly this is what appears to have transpired on the 27th April, 2017 at President's House, when MAC hand-

delivered to the President what was on the face of it her written resignation as a Puisne judge. And, again on the face of it, at the moment the President received that written resignation from MAC it took effect and MAC was thereafter no longer a Puisne judge.

26. Thus the argument by the Appellant, that following delivery and receipt of MAC's written and signed resignation, the President was *functus officio* and had no jurisdiction or power to do anything further at all in relation to this matter. It is a simple, logical argument. There is however an equally simple, logical and possible fallacy in this argument that this matter brings to light. The fallacy is this: What if what was tendered as a resignation was in fact not a resignation, or not the resignation of MAC?

27. A couple of hypothetical examples help make the point. What if a resignation is forged, or delivered by mistake and without authority? Would it be a resignation as contemplated by section 142 of the Constitution? Is it that what the section and the legislators intended was that compliance with form and formality only, triggered the irrevocable consequences of delivery and receipt of a written and signed resignation document? This is the line of argumentation that senior counsel for the Appellant stuck to resolutely. Senior counsel for MAC disagreed. This is therefore a material issue between the parties as yet unresolved. Sub-issues include: (i) What do the words 'resign' and 'resignation' as used in section 142 mean? (ii) Do they presume 'lawfulness'? (iii) What were the intentions of the makers of the Constitution?

28. In my opinion it must certainly be arguable with a realistic prospect of success, that for section 142 to be operative and effective, what is required is a bona fide, legitimate, lawful and voluntary resignation that also meets the substantive requirements of form and process prescribed by the section. In my opinion, if a written and signed resignation is obtained by undue pressure, duress or coercion, or by any other unlawful means, it is arguable with a realistic prospect of success that such a resignation is null and void ab initio and of no effect, or alternatively voidable.[12] Indeed, in this matter, it is exactly this issue

[12] See **Mc Laughlin v the Governor of the Cayman Islands** [2007] 1 WLR 2839: an unlawful dismissal is null and void and without legal effect and the office holder remains in office until his/her tenure is lawfully brought to an end (per Lord Bingham, at pages 2846 and 2848, paragraphs 14 and 20). By analogy, a

for which leave has been granted to examine and review; and that the JLSC has now agreed is arguable with a realistic prospect of success (by not appealing the decision of the trial judge on this aspect of the leave application). In my opinion these propositions in relation to section 142 are seriously arguable on both a textual analysis and on intentionality.

29. There are also well established precedents in other areas of the law, such as in contract and probate law, where if a document is found not to be that of its maker by reason of say fraud, mistake, undue influence, duress or unlawful pressure, the document is considered void or voidable depending on the circumstances. Arguments based on precedent and by way of analogy are therefore also realistically possible.

30. In addition there may be pure policy arguments, that assert, following upon a predictive analysis of the consequences that will flow from giving the law one interpretation or another and an evaluative assessment that decides which set of consequences is preferable, that section 142 read as contended for by MAC is more consistent with the underlying values of the Constitution and the law in relation to the resignation of a Pusine judge. Any such arguments I would consider to be neither frivolous or vexatious nor wholly unmeritorious or patently unarguable, and to be both relevant and material in this matter.[13]

31. What then are the implications for the President in this matter? First, it must be seriously arguable that the President is only governed by section 142 of the Constitution if what was delivered to and received by him was in fact, in substance, the lawful and voluntary resignation of MAC. Second, if it was not, then it is arguable that the President was also not constrained by section 142 (2), was therefore not *functus officio*, and had a continuing jurisdiction and power, even duty, to at least meaningfully consider the substance of what MAC had raised in her letter to him of the 19th May, 2017. That is to

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resignation acquired by unlawful means is also arguably null, void and without legal effect; ineffective in law to end the tenure of a duly appointed office holder.

[13] See Kangaloo J.A. in **Ferguson v. The AG**, Civ. App. No. 207 of 2010, at paras. 3, 4, and 5, in which he commented on the standard of proof required for arguability as set out **Sharma v. Brown-Antoine** (supra).

say, it is arguable that the powers of consideration, review, and recall, or of rejection, may all be powers that the President had in this matter and did not exercise in the mistaken belief that these were powers that he did not have. Third, it is arguable that for a resignation to be effective and lawful it must at least be an act of free and intentional volition. That is to say, if intentionality and volition are impaired to such a degree that there is no free and voluntary exercise of will, whether by reason of undue pressure, duress, coercion, or by misrepresentation, manipulation or otherwise, then what purports to be a resignation may not be one. In such a situation, which is exactly the case for which leave has been granted to MAC to pursue, there may simply never have been any effective, valid or lawful resignation.

32. Harris J. determined that the President was not aware of or a party to any alleged attempts to pressure or coerce or otherwise manipulate MAC into signing and delivering the purported resignation to him on the 27th April, 2017. There has been no appeal against this aspect of the trial judge's ruling. Therefore when the President met MAC on the 27th April, 2017, he is presumed to have been wholly unaware of what she subsequently asserted to him in her letter of the 19th May, 2017. One assumes, all things being equal, that the President would have been completely shocked by the claims by MAC, a former Chief Magistrate and now Puisne judge of the Republic, that her purported resignation was not a free, intentional and voluntary action taken by her; but rather one unlawfully procured by undue pressure, coercion and manipulation, in circumstances that were rushed and where she did not have the opportunity to prepare, explain or defend herself fully, or to get the full benefit of independent and impartial legal advice. It is in this context that the correctness of the appealed decision of Harris J. must be assessed.

33. In **R v. Hertfordshire County Council ex parte Cheung**; **R v Septon Metropolitan Borough Council ex parte Pau**,[14] Lord John Donaldson MR stated the general approach in public law relating to the correction of errors and/or mistakes, as follows:

[14] The Times 4 April 1986, at page 3.

> "It would be strange indeed if a public authority which discovered that it had inadvertently denied a citizen a benefit to which he was entitled could not correct its error. Indeed, I think that it would have a duty to consider exercising this power, although I also accept that it would have discretion as to what action should be taken. This discretion would have to be exercised in accordance with the requirements of good public administration."

34. Based on this public law principle of 'consideration and correction' (in addition to the statutory power and duty arguments outlined above), which may be re-stated as the public law power and duty to correct what is or is found to be wrong, the President also arguably had the power and duty to meaningfully consider what MAC had brought to his attention in her letter of the 19th May, 2017, and to act appropriately in the exercise of this power/duty as the circumstances demanded. To the extent that he may not have done so; both the belief that he did not have the jurisdiction or power/duty to do so and/or the decision not to do so, are reviewable with a realistic prospect of success in this matter.

35. It cannot be overlooked that the President appointed MAC[15] and she was duty bound to address him in relation to her purported resignation and its alleged unlawfulness and nullity. What MAC argues (as outlined above) is that it was not constitutionally or administratively lawful or reasonable or fair for the President to simply do nothing, in the belief that he was *functus officio* once he had received the purported resignation on the 27th April, 2017.[16] In my opinion this is an issue that at the leave stage is arguable with realistic prospect of success in this matter. Harris J. cannot therefore be faulted for granting leave to MAC to pursue this issue in this matter.

[15] See section 104(1) of the Constitution: a judge shall be appointed by the President acting in accordance with the advice of the JLSC.

[16] Compare section 39(1)(b)(i) of the Interpretation Act, which confers a power on the President to reappoint a judge following his/her resignation in like manner applicable to an appointment; that is, acting in accordance with the advice of the JLSC (section 104(1) of the Constitution).

PUBLIC INTEREST CONSIDERATIONS

36. Sections 5(2)(b) and 7(1) of the JRA recognise that in judicial review proceedings a court may grant leave and relief where they are justifiable in the public interest. This is a policy position taken by the legislature, which empowers courts to act effectively in the public interest. The reasons for this are many, and include for the development and good of both public administration and democratic governance. Indeed, it is for these public interest reasons that the courts can grant declarations and give advisory opinions in public law matters, even when there are no actual decisions taken that are per se reviewable, and even *a priori* any such potential decisions.[17]

37. In this matter, one material factor is whether a review of the President's belief that he was *functus officio*, or of his decision not to meaningfully consider MAC's written requests of the 19th May, 2017, or of his decision not to act on her said requests, will serve some useful public interest purpose. In my opinion it will. First, such a review is directly raised in the circumstances of this case and is not therefore purely academic or theoretical. MAC is entitled to know whether the President should have meaningfully considered her requests and/or acted on them (in whatever way was appropriate in the material circumstances). Second, such a review will serve the useful purpose of guiding future Presidents and other relevant office holders in the discharge of their public duties in similar circumstances.

38. This analysis disposes of the second, third, fourth and fifth grounds of appeal. It is sufficient to dispose of the entire appeal, since even if the trial judge did not give any reasons this court is entitled on an application such as this (essentially a paper application for leave), to look at the record, hear arguments and determine whether the decision of the judge is sustainable. In my opinion it is.

[17] See, **R v. Secretary of State for Employment ex parte Equal Opportunities Commission**, (1995) 1 AC 1, per Lord Keith at page 26 and Lord Browne-Wilkinson at pages 34-36; and **R v. Islington v. Camp** (2004) LGR 58, per Richards J.

JUDGE'S REASONS

Did the trial judge fail to give any reasons for his decision to grant leave to MAC to pursue judicial review proceedings against the President?

39. Harris J. did give reasons for his decision in relation to the leave he granted to review the President's actions. At paragraph 90 of the judgment he identified the two issues raised by MAC in relation to the President. The second, which is the subject of this appeal, he articulated as follows: "... and even after she had written to him ... he failed to consider her position and reinstate her when he had the power to do so". At paragraph 95 he summarised his position on both, holding that the first allegation against the President was not reviewable, but that the second one was. Then at paragraphs 96 to 101 he explained why he considered the second issue - which he described as "a legal one really", to be reviewable. It is therefore simply not arguable to contend that the trial judge did not give any reasons, as advanced by the Appellant. The judgement speaks for itself and clearly demonstrates that Harris J. identified the issues and gave reasons why he thought leave should be granted to review the actions of the President in relation to the second issue raised by MAC against the President.

CONCLUSION

40. This appeal is therefore dismissed. The orders of the trial judge that are challenged are affirmed. The parties will be heard on the question of costs.

41. It is hoped that this matter will be dealt with expeditiously and given priority. A dispute such as this one, between the JLSC and Chief Justice on one hand and a judge of the Supreme Court on the other, can only serve to undermine public trust and confidence in the legitimacy and integrity of the administration of justice, if left unresolved for any length of time. The allegations to be investigated and reviewed therefore need to be determined as soon as possible, as the longer they remain unresolved the longer the

administration of justice remains handicapped by their debatable implications. The public interest demands no less.

Peter Jamadar
Justice of Appeal