THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civil Appeal No. P-129 of 2020

Claim No. CV2019-00970

BETWEEN

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Appellant/Defendant

AND

AKILI CHARLES

Respondent/Claimant

Panel:

Justice of Appeal Gillian Lucky

Justice of Appeal Mira Dean-Armorer

Justice of Appeal Maria Wilson

Appearances:

Mr. K Garcia and Ms. M. Belmar instructed by S. Dass on behalf of the Appellant/Defendant

Mr. A. Ramlogan S.C. leads Ms. R. Rambhajan and Mr. A. Pariagsingh, instructed by Mr. G Saroop on behalf of the Respondent/Claimant

DATE DELIVERED: July 15, 2021

I have read the judgment of Dean-Armorer JA and I agree with it.

G. Lucky

Justice of Appeal

I have read the judgment of Dean-Armorer JA and I agree with it.

M. Wilson

Justice of Appeal

JUDGMENT

Delivered by Dean-Armorer J.A

Introduction

1. In this appeal, the Attorney-General of Trinidad and Tobago seeks to set aside the Orders of Ramcharan J (the Judge) on the ground that the decision of the Judge fell outside of the case as "pleaded" by the Respondent, Mr. Akili Charles.
2. The central finding of the Judge was that Mr. Charles suffered a contravention of his right to the protection of the law as enshrined at section 4(b) of ***the Constitution***. In

his view, the contravention was wrought by the failure of the Judicial and Legal Service Commission (JLSC) to ascertain the status of matters, which had been assigned to the former Chief Magistrate, before her elevation to the High Court Bench.

3. The main issue which engaged our attention was, therefore, whether the Claimant had sufficiently averred that there had been any default on the part of the JLSC, so as to provide the Attorney-General with adequate notice of the case which had to be answered.

4. Although we held that the concept of "pleading" was not pertinent to administrative law claims, we nonetheless held that the Claimant carried an obligation, by the ***CPR*** and by the broader rules of natural justice, adequately to set out his case.

5. It was our view that there was no allegation, against the JLSC as an arm of the State. The Judge's finding was therefore extraneous to the case before him and we hold that he was plainly wrong.

Disposition

6. (i) The Appeal is allowed.

   (ii) The Orders made by the Judge are set aside.

   (iii) The Claim is dismissed.

Background

7. On December 5, 2010, Akili Charles was charged with the murder of Russel Antoine at the Central Police Station, St. Vincent Street POS. He was charged along with 5 other persons.

8. Mr. Charles was remanded in custody and the hearing of a Preliminary Enquiry began before the then Chief Magistrate Marcia Ayers-Caesar, on January 16, 2012.

9. The Preliminary Enquiry was heard at various intervals over a 5-year period. Some 62 witness statements were filed and legal arguments were heard on behalf of the Defence. When the Preliminary Enquiry was close to completion, but still part-heard, the Chief Magistrate was promoted to hold the office of Puisne Judge.

10. The Preliminary Enquiry against Akili Charles, and those co-accused with him, was one of 53 part-heards which were left by the former Chief Magistrate, upon her elevation to the High-Court Bench.

11. The discovery of the part-heard matters led to a public outcry with, families of prisoners engaging in violent protests. Eventually, the debacle culminated on April 27, 2017, with the resignation of the former Chief Magistrate from the High Court bench. The events surrounding her resignation have been the subject of on-going proceedings before the High Court. Those proceedings were not relevant to the claim at first instance and they are not relevant to this appeal.

12. Following the resignation of the Chief Magistrate, however, a number of the part heard matters were called before Her Worship, Maria Busby-Earle-Caddle, on June 1, 2017. The parties were informed that their matters would be tried *de novo*.

13. Mr. Charles through his attorney-at-law objected strenuously to a *de novo* hearing. When his objection failed, Mr. Charles instituted judicial review proceedings, challenging the order of the Acting Chief Magistrate. Leave to apply for judicial review was granted on December 4, 2017 by Rampersad J.

14. Before the substantive application for judicial review could be heard however, the Attorney General filed an interpretation summons seeking the Court's guidance as to whether matters, which had been part heard before the former Chief Magistrate, should be heard *de novo*. The interpretation summons was assigned to the docket of Gobin J.

15. In the wake of the interpretation summons, Rampersad J transferred the judicial review application to Gobin J, who was then seized of two related matters.

16. On January 4, 2019, Gobin J ruled on the interpretation summons. She expressed sympathy and outrage at the suffering of the prisoners. Justice Gobin also deprecated the circumstances which led to the need for so many part-heards to be left unfinished. Nonetheless, Gobin J ruled that the part- heard preliminary enquiries were properly to be heard *de novo.*

17. Gobin J also dismissed Mr. Charles' application for judicial review. Gobin J nonetheless voiced great indignation at the plight of Mr. Charles. She noted the prejudice, which Mr. Charles suffered including his obligation to pay retainer fees to his attorney-at-law a second time. She described the mandate for him to "*start over"* as "*oppressive.".* Gobin J described the event as "*a travesty of Justice"* and a "*colossal misstep."*[1]

18. Mr. Charles, now confronted with fresh preliminary enquiry proceedings, attempted to retain Mr. Wayne Sturge, the attorney-at-law, who had represented him at the abortive first preliminary enquiry. Mr. Sturge's fee was $150,000.00.

19. Mr. Charles unable to muster the required funds instructed attorney-at-law Ganesh Saroop to write to the Attorney-General requesting that the State cover the cost of his representation. When the Attorney-General refused this request, Mr. Charles filed the Constitutional Motion, which was heard by Justice Ramcharan, the appeal from whose Orders, at present engages our attention.

20. Following the institution of the Constitutional Motion, Mr. Saroop approached Mr. Sturge on behalf Mr. Charles and undertook to pay for Mr. Charles' representation should damages be awarded in his favour.[2]

21. Mr. Sturge accepted the retainer without prejudice to the undertaking of Mr. Charles, as communicated through attorney-at-law Mr. Saroop. The former indicated that he

[1] See CV 2017-3190, ***A.G. v. the JLSC and ors.*** the judgment of Gobin J at paragraphs 30 and 31
[2] See the Affidavit of Ganesh Saroop filed on the 9th April, 2019

knew that the second preliminary enquiry was not occasioned by any fault of Mr. Charles.

22. The second preliminary enquiry was completed in 2019. The charges against Mr. Charles were dismissed following a no-case submission which was made by Mr. Sturge.

23. Mr. Charles filed his claim for Constitutional relief on March 7, 2019. This date is significant because it fell between the Order of Gobin J on January 4, 2019, that the preliminary enquiry should be heard *de novo* and the actual hearing of the second preliminary enquiry.

24. Mr. Charles sought this relief:

    a. *A declaration that the Claimant's constitutional rights as guaranteed by sections 4(b), 5(2)(c) and 5(2) (h) have been breached;*

    b. *An order that monetary compensation including vindicatory damages be paid to the Claimant by the Defendant for the breach of his constitutional rights;*

    c. *An order directing the Defendants to pay the Claimant's legal costs of and occasioned by the Second Fresh PI for Counsel of his choice;*

    d. *Costs to be assessed; and*

e. Such further and/or other relief as the Honorable Court may deem fit in the circumstances of the case."

25. By his grounds, Mr. Charles supplied particulars of prejudice, which he had suffered, including the allegation that, by reason of his incarceration and the attendant inability to earn an income, he had been financially ruined. He contended further that notwithstanding his financial ruin, the *de novo* order, required him to secure legal representation at the second preliminary enquiry. For this purpose, his attorney's fee was $150,000.00.

26. Mr. Charles, in his grounds, specified how deplorable the prison conditions were and relied on the judgment of Gobin J in CV 3178- 2004 ***Edgehill v Carlo Mc Honey*** to describe the prison conditions as inhumane and degrading. He relied on the words of Gobin J that there had been *a "colossal misstep".*

27. As part of his claim for constitutional relief, Mr. Charles sought the State's assistance in bearing the cost of legal representation in the second preliminary enquiry. He formulated his contention in this way:

"35. Having regard to the novelty and complexity of the circumstances surrounding the Claimant's charge of murder, he is seeking an order that the State bear the cost of his legal representation for the second P.I. for counsel of his choice…."

28. It is therefore clear that the Claim before Ramcharan J focused sharply on the State's refusal to pay the Claimant's legal fees. Their refusal was described as *"unfair and oppressive and in breach of the fundamental principles of justice and the rule of law."*

The Judgment

29. Having heard the Claim, as outlined above, the Judge made the following Orders:

> *"a. The Court declares that the Claimant's right to the protection of the law as guaranteed by section 4(b) of the Constitution was breached by the Defendant.*
>
> *b. That the Defendant to pay the Claimant compensatory damages assessed in the sum of $150,000.00 and vindicatory damages assessed in the sum $125,000.00.*
>
> *c. The Defendant to pay the Claimant's costs of the Claim certified fit for one senior and junior counsel to be assessed by a Registrar if not agreed."*

30. As to the right of the Claimant to retain an attorney-at law of his choice, the Judge held that there was nothing to suggest that the Claimant was restricted in his right to choose his attorney-at-law. Accordingly, the Judge refused relief on the ground of section 5(2) (c) (ii) of the ***Constitution.***

31. The Judge also refused relief under section 5 (2) (h)[3]. He took into account the Claimant's contention that there was no procedure in place to facilitate remanded prisoners, when they have to face a rehearing. Having stated that he was unsure what the Claimant had in mind, the Judge proceeded to refuse relief.

32. There was no appeal by the Claimant against the Judge's findings on sections 5(2) (c) (ii) and 5 (2) (h)[4].

33. The Judge proceeded to consider the claim under section 4(b)[5]. He listed and analyzed authorities in respect of the protection of the law and stated that he was required *"to consider in broad terms whether the Claimant has been treated "fairly" by the State in the circumstances…."*[6]

34. At paragraph 47[7], however, the Judge deviated from the earlier part of his ***Reasons.*** He trained his attack on the JLSC, finding that the Commission had done nothing to ascertain the status of part-heard matters before the Chief Magistrate before her elevation to the High Court.[8]

35. This view was repeated with emphasis at paragraph 48. Once again, without identifying the JLSC, the Judge repeated that the breach only occurred because of the

[3] Of the ***Constitution***
[4] Ibid.
[5] Ibid.
[6] See para 44 of the Judge's reasons
[7] Paragraph 47 of the Reasons
[8] See paragraph 47 of the Judge's reasons

fault of an arm of the State in failing to ensure that proper measures were put in place for part-heard matters before the Chief Magistrate demitted office.[9]

36. Presumably, on the basis of his finding at paragraph 47, the Judge held at paragraph 48, that the Claimant had suffered a breach of the protection of the law. He then proceeded to award compensation and vindicatory damages.

Submissions

Submissions of the Appellant

37. In the course of perusing the submissions on behalf of the Attorney-General, we have observed that the affidavits filed in opposition to the Claim had little more than submissions of law. We would wish to point out that affidavits are written evidence and should not contain a legal arguments or submissions. If affidavits contain submissions, they are susceptible to being struck out as improper. See ***Gleeson v Wipple*** [1977] 3 All E.R. 54 per Megarry,V.C.

38. Nevertheless, Mr. Garcia submitted in the main, that the Judge had strayed outside of the pleaded case in deciding that there had been default on the part of the JLSC, as an arm of the State.

[9] See paragraph 48 of the ***Reasons***

39. According to Mr. Garcia, the claim at first instance was solely predicated on the refusal of the State to pay the legal fees of Mr. Charles and therefore the question of fault on the part of the JLSC did not arise.

Submissions on behalf of Mr. Charles

40. Mr. Ramlogan submitted that it was simply incorrect to say that the Claim was predicated on the State's refusal to pay legal fees for the second preliminary enquiry. Rather, according to Mr. Ramlogan, the Claim was predicated on an assertion of the State's culpability which gave rise to the need for the second preliminary enquiry and that as a result of that culpability, the State ought to pay the legal cost of the second P.I. Mr. Ramlogan argued that this exactly was the finding of the Judge.

41. Mr. Ramlogan argued that the Attorney-General had failed to distinguish between the relief sought by Mr. Charles and the reason why such relief was sought.

42. In his submission, it was impossible for the State, in whatever emanation, to deny the wrongdoing to Mr. Charles. Senior Counsel contended further that it was obvious that it was quite wrong for the Chief Magistrate to be elevated without proper provisions being made for her part-heards.

43. In response to this submission, the Court enquired whether Mr. Ramlogan was presenting a *res ipsa loquitur* type submission. Senior Counsel responded affirmatively to this query.

Issues

44. It was clear, from the submissions on behalf of the parties that the appeal required an examination of the Claim at first instance. The core issue was whether in the Claim at first instance, there had been any averment of fault on the part of the JLSC and as a secondary question, whether that fault gave rise to a breach of the protection of the law.[10]

45. If there was no such averment, then the question arises as to whether the Judge was entitled, without seeking the views of the parties, to make a determination on an issue that did not form part of the case before him and in so far as he did make such a determination, whether he was plainly wrong to do so.

46. An ancillary issue arose as to the propriety of vindicatory damages in this claim and as to whether the quantum of compensation, as awarded by the Judge was appropriate.

47. In relation to the issues outlined above, we have set out the relevant law, before entering our discussion on this matter.

Law

48. ***The Constitution***:

[10] Section 4(b) of the ***Constitution.***

The Claim at first instance was built on sections 4(b) and 5(2) (e) and (h) of the ***Constitution***. These sections provide:

> *"4. It is hereby recognised and declared that in Trinidad and Tobago there have existed and shall continue to exist, without discrimination by reason of race, origin, colour, religion or sex, the following fundamental human rights and freedoms, namely:*
>
> *(b) the right of the individual to equality before the law and the protection of the law…."*
>
> *5. (2) Without prejudice to subsection (1), but subject to this Chapter and to section 54, Parliament may not—*
>
> *(c) deprive a person who has been arrested or detained—*
>
> *(ii) of the right to retain and instruct without delay a legal adviser of his own choice and to hold communication with him;*
>
> *(h) deprive a person of the right to such procedural provisions as are necessary for the purpose of giving effect and protection to the aforesaid rights and freedoms"*

Section 4(b)

49. In his ***Reasons,*** the Judge set out a comprehensive account of the development of the right to the protection of the law up to the present time. As reflected in his ***Reasons***, the right to the protection of the law has undergone substantial development over the years. The first authoritative pronouncement may be found in ***McCLeod v AG***[11]***,*** where Lord Diplock equated the protection of the law to access to justice. Over the years, one finds a gradual expansion of the right. So that in 2019, the Privy Council, in ***Jamaicans for Justice v Police Service Commission*** [12] **,** further expanded the meaning of the right, in the context of the Constitution of Jamaica. In that case, Lady Hale had this to say:

> *"The Board is also disposed to accept that the right to equality before the law like the right to equal protection of the law affords every person protection against irrationality unreasonableness, fundamental unfairness or the arbitrary exercise of power…."*

50. The right to the protection of the law is therefore broad and expansive. It provides protection against State action, which is arbitrary, unreasonable and unfair. The right

[11] Mc Cleod v AG PC 24 of 1982
[12] Jamaicans for Justice v Police Service Commission [2019] UKPC 12

is still evolving and this Court is reluctant, in this appeal, to establish boundaries on the right.

The Pleading Issue

51. Under ***CPR***,[13] a Claimant may commence proceedings under Part 8, by filing a claim form and statement of case. The filing of the claim form and statement of case triggers a process which culminates in a hearing before a Judge of the High Court in the First Case Management Conference.

52. Where proceedings have been instituted under Part 8, the Claimant is required by Part 8.6 (1) to include on the claim form or in his statement of case a short statement of all the facts on which he relies.[14]

53. Part 8.6 is widely recognized as the re-incarnation of the pre-CPR rule, which precludes litigants from leading evidence of material facts, in respect of which there has been no pleading. Classically, the absence of a pleading has meant the kiss of death for such evidence and even under ***CPR***, the absence of pleadings has resulted in pre-trial striking out of evidence.

[13] Civil Proceedings Rules 1998 (as amended)
[14] See CPR Part 8.6

54. All proceedings however, are not commenced under Part 8. Specified types of claims, are instituted as Fixed Date Claims, where litigants are given a date of hearing and the regime of the first case management conference does not apply.

55. One such genre is the claim in Administrative Law under Part 56. This part encompasses judicial review and constitutional proceedings. Part 56 does not contain a provision analogous to Part 8.6(1)[15]. However, Part 56.7 (4) prescribes the contents of the affidavit in these terms:

> *"Part 56.7(4)-*
>
> *(4) The affidavit must state—*
>
> *(a) the name, address and description of the claimant and the defendant;*
>
> *(b) the nature of the relief sought identifying—*
>
> *(i) any interim relief sought; and*
>
> *(ii) whether the claimant seeks damages, restitution or recovery of a sum due or alleged to be due, setting out the facts on which such claim is based and, where practicable, specifying the amount of any money claimed;*

[15] Part 8.6(1) CPR

(c) in the case of a claim under s. 14(1) of the Constitution, the provision of the Constitution which the claimant alleges has been, is being or is likely to be breached;

(d) the grounds on which such relief is sought;

(e) the facts on which the claim is based;

(f) the claimant's address for service; and

(g) the names and addresses of all defendants to the claim."

56. Accordingly, a litigant who approaches the Court for relief under s. 14 of ***the Constitution***, must state in his affidavit, the grounds upon which relief is sought and the facts upon which the claim is based.

57. Historically, the affidavit was seen as distinct from pleadings, since the former constituted evidence.[16] Nevertheless, under ***CPR***, one finds that the affidavit performs the function of pleadings in that it is required by Part 56.7 (4) to set out the grounds upon which relief is sought and the facts on which relief is based.[17]

58. Part 56.7 (4) is formulated in mandatory terms, "*The affidavit **must** state….*" (Emphasis mine)[18]. One looks therefore to the affidavit to ascertain the case which has

[16] See the words of de la Bastide CJ in Civ App 165 of 1990 ***AG v M&M Brokers*** at page 11, where de la Bastide had this to say: "Mr. Clarke relied on the case of ***An Application by Nixon Mungro and Others.*** HCA #2386 of 1987 in which Mr. Justice Ibrahim sitting at that time as a Judge of first instance held that where there were no pleadings in a case the affidavits took the place of pleadings… I must express my respectful disagreement with that proposition…..evidence whether in written or oral form is not subject to the technical rules applicable pleadings.

[17] See CPR Part 56. 7 (4)

[18] Ibid.

to be answered. The rationale for this rule, as for the more stringent Part 8.6 rule, is to provide the opposing side with notice of the case which has to be answered. It is a rule embedded in the requirements of natural justice and accordingly, it will be unfair for a Judge to decide a claim on the basis of material that was not set out in the affidavit.

Analysis

59. The Attorney-General seeks to have the decision of Ramcharan J set aside on the ground that he was plainly wrong. Their principal contention is that the Judge's finding of unfairness on the part of the JLSC had not been "pleaded".

60. Mr. Ramlogan, on behalf of Mr. Charles, as Respondent argued that constitutional proceedings are not subject to the rigours associated with ordinary Writ actions. Senior Counsel referred to unidentified Privy Council decisions where their Lordships granted relief which had not been sought.

61. Mr. Ramlogan conceded that the Judge had deviated from his earlier reasoning at paragraph 47, but contended that the outrage expressed at paragraph 47 was *obiter*. According to Mr. Ramlogan, the fundamental question was whether Mr. Charles had been treated unfairly by an arm of the State. It mattered not whether there had been proof, or for that matter, evidence that the JLSC was at fault.

62. In answer to questions from the appellate panel, Mr. Ramlogan accepted that he was relying on a public law strain of *res ipsa loquitur*, a concept properly belonging to the law of tort. The facts spoke for themselves. Mr. Ramlogan painted the picture of an accused person who , after having endured 5 years of being remanded in custody, was being subjected to fresh preliminary enquiry proceedings. This according to Senior Counsel was not due to his fault, but to a colossal misstep by an arm of the State.

63. Under ***CPR***, Claimants under section 14 of the ***Constitution*** do not fall under the rigours of Part 8.6(1) ***CPR.*** Nonetheless, those who allege a breach of their fundamental rights are required to comply with Part 56.7(4)[19]. Their affidavits are required to set out the grounds upon which relief is sought and the facts on which the claim is based. The principle is apt that he who alleges must prove.[20]

64. An examination of the affidavit of Akili Charles as filed on March 7, 2019, confirms that there was neither an allegation nor evidence concerning the JLSC. It was therefore bewildering why the Judge trained his attack on the JLSC, when he said these words at para 47:

> "*….what I do find disturbing is that whatever said or not said by the then Chief Magistrate, there was nothing done by the JLSC to ascertain what was the status of the matters before the Chief Magistrate and measures put in place to*

[19] Part 56.7(4) CPR
[20] See AG v Aleem Mohammed (1985) 36 WIR 359 at 367

ensure that no part heard matter would have been negatively affected by the Chief Magistrate's demission from office and elevation to the High Court. There was nothing preventing the swearing in of the Chief Magistrate being put off until her part heard matters were completed. I find that this was a duty that the JLSC had, and has, when persons are appointed a judge of the High Court from positions of judicial officer within the ambit of the JLSC (masters, magistrates, registrars)."

65. It was on the premise of paragraph 47, that the Judge proceeded to hold at paragraph 48, that the fundamental right of Mr. Charles had been contravened. At paragraph 48, the Judge had this to say :

"Therefore, in the very narrow circumstances of this case, I hold that there has been a breach of the Claimant's right to protection of the law under section 4(b) of the Constitution."

66. The Judge was however careful to note the narrow confines of his decision. He continued at paragraph 48 in this way:

"*To be clear, the breach has only occurred because the cause of the second hearing was due to the fault of an arm of the State in not ensuring that proper measures were put in place to ensure that part heard matters before the then*

Chief Magistrate were adequately dealt with before she demitted office and was elevated to the High Court. It would hardly be the case that a person whose matter had to be reheard for another reason such as the death of a magistrate could claim a breach of their right under section 4(b). It is the culpability of the State in this matter which has led to the breach"

67. An examination of the affidavits at first instance suggests that there was no legal or evidential basis for the Judge's words at paragraphs 47 and 48. There was nothing in the Claim, that fixed the JLSC with a duty of enquiry into part-heards left by a Magistrate, and there was no basis for ascertaining the extent of the duty.

68. There was also no evidential basis for asserting that the JLSC defaulted either by omitting to make enquiries of the Chief Magistrate or of any other official who would have been seized of information concerning part-heards. It is therefore unclear what was the source of the Judge's information.

69. It would of course have been a different scenario if allegations had been made in the affidavits at first instance and the State was put on notice as to the allegations against the JLSC. The Attorney-General would have had the opportunity to conduct the necessary investigations and if there was a failure in those circumstances to contradict allegations of default, the Judge may have ruled accordingly. As it stood, however, the

State had no notice whatever of allegations of wrongdoing by the JLSC. The first time that allegations were levelled against the JLSC, was at paragraphs 47 and 48 of the Judge's Reasons.

70. We therefore find the conclusion inescapable that the Judge, in his findings at paragraph 47 and 48, deviated entirely from the case which was before him. This meant that the opposing party had no opportunity to meet or to answer, whatever were the factors which led the Judge to find as he did.

71. For this reason alone, we find that the Judge's decision was plainly wrong and ought to be set aside.

72. We proceed to consider the *res ipsa loquitur* argument. No authority has been cited to support the contention that this concept is operative in administrative law proceedings. Without excluding the possibility that such a concept may be utilized in constitutional proceedings, the Claimant still carries the obligation of compliance with Part 56.7(4).[21] If the facts speak for themselves, the Claimant must so specify as a ground in his affidavit. His having failed to do so means that the *res ipsa loquitur* argument must also fail.

73. We are fully cognizant of the suffering which the Claimant endured. We also accept that it may have been exacerbated by the uncertainty which attended delays caused

[21] Part 56.7(4) CPR

by unnamed and unidentified agents. Mr. Charles, as the Claimant, is required nonetheless to comply with the dictates of the CPR. In so far as no allegation, not even that the facts speak for themselves, was made against the JLSC, by the Claimant, it is our view that the Judge's findings at paragraph 47 and 48 were without any foundation and were therefore plainly wrong.

74. We also find the Judge was plainly wrong to declare that Mr. Charles suffered a contravention of his right to the protection of the law. The facts, of which the Judge was seized, did not establish a contravention of this right. Too many questions were canvassed as to the root cause of the undeniable misfortune which befell Mr. Charles. Engaging in an assessment of those questions would be equivalent to embarking on a journey of speculation and this would be quite wrong.

75. Having regard to our findings above, it is unnecessary to consider the alternative grounds of appeal, in respect of the Judge's award of compensation and vindicatory damages.

76. The appeal is therefore allowed. The Orders of the Judge are set aside and the claim is dismissed.

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M. Dean-Armorer

Justice of Appeal