THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civil Appeal No. P 110 of 2021
Claim No. CV2020-04470

Between

(1) ANCIL FORDE
(2) SLYVAN STEWART
(3) RONALD BRANCH
(4) KIRT PERRY
(5) IAN NASH
(6) JOSEPH SOLOMON
(7) BRENDON DANIEL
(8) LOU ANNE OLLIVIERRE
(9) WINSTON FRANCOIS
(10) ANDERSON GONZALES
(11) NICHOLAS RAMDEEN
(12) STERLYN TAYLOR
(13) TROY BRUNO
(14) DARREN BAPTISTE
(15) VOLLAN FRANCIS
(16) SHAWN COOPER
(17) ANSLIM GEORGE
(18) TEDDY BARRAN
(19) DENISH DURGA
(20) ANSLEM KNOTT
(21) DESMOND DALY
(22) DEXTER PACHECO
(23) ANDREW RAMOUTAR
(24) ROGER RICHARDSON
(25) DEODATH SEEPERSAD
(26) PETE JERRY
(27) LARRY ALEXANDER
(28) ALLISTER JONES
(29) INSHAN TEELUCK

Appellants/Applicants

And

(1) THE COMMISSIONER OF POLICE
(2) PROMOTION ADVISORY BOARD

Respondents

Panel: C. Pemberton J.A.

V. Kokaram J.A.

J. Aboud J.A.

Appearances:

Mr. Kenneth Thompson for the Appellants.

Mr. Justin Phelps instructed by Ms. Chinara Harewood for the Respondents.

Date of Delivery: Wednesday 4 May, 2022

JOINT JUDGMENT

Introduction

1. The prospect of change is always fraught with dissent and difficulty. But change is inevitable as it is the one constant in life. There will be always some who are impacted by change negatively. Some of those choose to do nothing. At the same time, the change for some will produce untold pleasures and fresh new opportunities. Between them are those for whom change is disappointing and frustrating. Some choose to resist that change on the basis that they were wronged. In this case, Mr. Ancil Forde and the other named Appellants[1] ("the Appellants") have chosen to bring their grievances to the court by asking for the decision of the Commissioner of Police ("COP") and the Promotion Advisory Board ("PAB")[2] to be quashed, along with other consequential orders.

2. The main complaint by the Appellants all of whom are Sergeants vying to be

[1] The Notice of Appeal named the 1st, 3rd, 4th, 5th, 6th, 7th, 9th, 11th, 13th, 16th, 18th, 19th, 23rd and 27th Applicants in the application for leave dated 21st December 2020 in the court below as the Appellants.
[2] The Respondents

promoted for the post of Inspector, is that in 2020 the PAB introduced a system of awarding proportionate points ("the proportionate points system ("PPS")) to assess their competency in the Examination component of their assessment for promotion when they should have been awarded the full marks applicable. The Examination component in their assessment carries a maximum score of 35. They contend that based on a settled practice once they had passed the qualifying examination, they should be awarded the full score of 35 and not a proportionate score based on the PPS.

3. The PAB, however, contends that to do so will render the concept of a maximum score meaningless and rob the exercise of recruitment of its competitive purpose to select the right person. In that context, the applicant's score under the examination component will be calculated based on the score achieved on the examination as a proportion of the maximum score of 35 that can be awarded for this aspect of the assessment. If the Appellants' contention is true then despite a Sergeant scoring 50 or 100 on the qualifying examination, they both will receive a maximum score of 35. According to the PAB, however, the PPS will reflect the difference in those scores and by parity of reasoning, the applicant's ability and competence as a proportion of 35.

4. The two main decisions that have been challenged all relate to the promotional exercise stemming from the introduction of this PPS system, not only is the challenge in relation to that decision made by the Departmental Order 141 of 2020 ("2020 DO") but also to the decision in relation to the publication of the Order of Merit list ("OML") based on that assessment.[3]

[3] The decisions that were the subject of the challenge in the Applicants' application for leave were identified in paragraph 3 of the decision of the trial judge as follows:

> "(a) The decision made by COP and/or PAB on or about 28th September 2020 whereby they introduced a proportionate points system for awarding points to Sergeants for the Examination Component of the assessment process for promotion to the next higher office of Inspector in the TTPS.

5. The challenge to these decisions was mounted on the grounds of frustration of their legitimate expectation that their names will be higher on the OML thereby increasing their chances of promotion using the 2016 regime; that the processes under the 2020 regime frustrated those expectations and in addition was a breach of natural justice in that they had no notice of the change and that lack of notice rendered the decision unreasonable, unfair, ultra vires, null and void. The Appellants questioned whether the Trinidad and Tobago Police Force ("TTPS") adopted the right procedure in selecting the right persons for the rank of Inspector in its promotional exercise conducted in 2020 by the PAB and whether the life of the OML should be "capped" at two years.

6. The main issue facing the trial judge was: whether the Appellants presented an arguable case to go forward for judicial review?

7. The trial judge dismissed the application for leave having found that there was no legitimate expectation to an award of the full 35 marks regardless of the score obtained on the qualifying examination, that the introduction of the PPS was not unlawful, that the Appellants were reasonably notified of any changes and there was no basis to hold the PAB to any practice of not capping the OML.

8. The Judicial Review Act Chap 7:08[4] and the Civil Proceeding Rules 1998

(b) The decision of the PAB whereby it compiled an Order of Merit List following an assessment of Sergeants of the TTPS for promotion to the office of Inspector pursuant to Regulation 20 of the Police Service Regulations 2007, partly on the basis of awarding candidates proportionate points for the Examination Component of the assessment process.
(c) The decision of the CoP made on or about 15 December 2020 whereby he published the aforesaid Order of Merit List on or about 15 December 2020, thereby preventing Applicants from examining the same with a view to ascertaining whether their names were correctly placed thereon.
(d) The decision of the CoP capping the life of the aforesaid Order of Merit List at two years.
(e) The decision of the PAB and/or the CoP made on or about 28 September 2020 whereby they introduced without due notice changes to the structure of the Interview Component of the assessment process."

[4] Section 6 of the Judicial Review Act states:

("CPR")[5] provide for a two-stage approach on claims for judicial review, the leave stage and the stage at which the claim is heard. At the leave stage, which was the stage in this case, the main test is that the applicant has presented an arguable ground of review having a reasonable prospect of success. The arguability of the case is to be culled from the evidence by way of affidavit before the trial judge. This application is usually heard without notice to the other side.

9. The trial judge as part of his case management powers may invite, as he did in this case, the prospective respondent to the hearing and may make such orders and give such directions as may assist on the application. Essentially, at this stage though, the court is concerned with whether the strength and quality of an applicant's evidence supports an arguable case. It is expected, and it is part of the necessity of fairness, that once the respondent is invited, if there are differences of fact or law upon which the case will turn, that leave is **usually** granted. This is because there are arguments to be determined and the requirement of a good arguable case will be satisfied.

10. It is **not** expected that an applicant will not be given the opportunity to put its side to the court. There is no need for an applicant to make an application to advance rebuttal evidence unless it is so patent that the respondent's affidavit evidence raises no question that the applicant's case is bad. There are instances of divergences of evidence that make this point poignantly, for instance the departmental orders mentioned in the respondent's affidavits that were not exhibited.

"6. (1) No application for judicial review shall be made unless leave of the Court has been obtained in accordance with Rules of Court.
(2) The Court shall not grant such leave unless it considers that the applicant has a sufficient interest in the matter to which the application relates.

[5] Rule 56.3 (1) CPR provides:

"(1) No application for judicial review may be made unless the court gives leave."

11. In this case, the Appellants pointed to some issues, which we think should have been put to argument and on that basis, the trial judge was plainly wrong[6] not to grant leave or at least hear these Appellants. On that ground, the appeal succeeds.

Factual and Statutory Background

12. Some factual and statutory background is necessary to understand the context of this appeal. The Appellants are the 1st, 3rd, 4th, 5th, 6th, 7th, 9th, 11th, 13th, 16th, 18th, 19th, 23rd and 27th Applicants in the application for leave dated 21st December 2020 in the court below. They are Sergeants in the TTPS and are officers of the Second Division of the TTPS created by section 7 of the Police Service Act Chap 15:01. The highest rank in the Second Division is Inspector, the rank which these Appellants sought promotion to and which was the next higher rank for them.

13. By virtue of section 123A of the Constitution of Trinidad and Tobago, the COP is vested with disciplinary control over the TTPS. This section provides:

> "1) Subject to section 123(1), the Commissioner of Police shall have the complete power to manage the Police Service and is required to ensure that the human, financial and material resources available to the Service

[6] In **The Attorney General of Trinidad and Tobago v Miguel Regis** Civil Appeal No.79 of 2011 it was noted:

> "11. The law as to the reversal by a Court of Appeal in Trinidad and Tobago of an order made by a trial judge trial judge in the exercise of his discretion is well-established. The appellate court will generally only interfere if it can be shown that the trial judge trial judge was plainly wrong. Thus, we may say that unless it can be demonstrated, for example, that the trial judge disregarded or ignored or failed to take sufficient account of relevant considerations or regarded and took into account irrelevant considerations or that the decision is so unreasonable or against the weight of the evidence or cannot be supported having regard to the evidence or that the trial judge omitted to apply or misapplied some relevant legal principle or that the decision is otherwise fundamentally wrong, the Court of Appeal will not generally interfere with the exercise of a court's discretion."

are used in an efficient and effective manner.

2) The Commissioner of Police shall have the power to —

(a) appoint persons to hold or act in an office in the Police Service, other than an officer referred to in section 123(1)*(a)*, including the power to make appointments on promotion and to confirm appointments;

(b) transfer any police officer; and

(c) remove from office and exercise disciplinary control over police officers, other than an officer referred to in section 123(1)*(a)…"*

14. Promotions in the Second Division are governed by Regulation 20 of the Police Service Regulations. This regulation provides:

"20. (1) Subject to sub regulation (2), the Promotion Advisory Board shall interview—

(a) an officer who has passed the qualifying examination for promotion and is recommended for promotion by the officer in charge of his Division or Branch;

(b) an officer who was allocated fifty or more points at the previous interview; and

(c) an officer who is eligible under sub regulation (3).

(2) An officer shall not be interviewed by the Board unless he has been allocated forty or more points by the Board based on the criteria, other than the interview, listed in sub regulation (5).

(3) Subject to sub regulation (2), an officer who is allocated less than

sixty points is eligible to be interviewed at the next sitting of the Board.

(4) Every officer considered for promotion shall be rated according to the criteria specified in sub regulation (5) and each officer who is allocated sixty or more points shall be placed on an Order of Merit List.

(5) The criteria mentioned in sub regulation (4) shall be as follows:

	Maximum Points
Performance appraisal	40
Interview	25
Examination mark	**35**

(6) The Board shall submit the Order of Merit List to the Commissioner, who shall cause it to be published in a Departmental Order."

15. Promotion to the rank of Inspector is provided for in section 20 of the Police Service Act:

"20 (1) To be eligible for promotion to the rank of Corporal through to Inspector, a police officer from the rank of Constable through to Sergeant is required to pass a qualifying examination.

(2) In considering the suitability for promotion of a police officer from the rank of Constable through to Sergeant, the Board shall conduct an interview and take into account the criteria prescribed.

(3) In considering the suitability for promotion of a police officer from the rank of Constable through to Sergeant, the Commissioner shall take into account the criteria prescribed."

16. In 2020 there were several vacancies in the rank of Inspector and the

Appellants submitted themselves to the promotional assessment process.

17. Before 2016, the only examination which Sergeants who did not possess a pass in English Language at GCE or CXC were required to pass was the English Language examination. However, by DO No. 78 of 2016 dated 15th June 2016 ("the 2016 DO"), another examination for the promotion to Inspector was introduced, Business Communication, with a pass mark for each component at 50 marks.

18. The process for the promotion of Sergeants to the position of Inspector therefore began in 2016 with the introduction of a Business Communications examination in 2016 pursuant to the said 2016 DO.

19. Between 2016 and 2020, the Appellants sat the Business Communication examination. Of the Appellants, most of them wrote the examination in 2016. Others wrote the examination in 2018 and 2020 including two who were in fact repeating the examination. For those who wrote the examination, they all received their score for the Business Communications examination. The Appellants depose that they were all awaiting the other part of the promotional process based on the 2016 DO. This comprised an interview and a review of their staff reports. That did not come in 2016, 2017, 2018 or 2019. There appeared to be a breakdown in the system or at least a break from the "regular" which needed to be explained. This is not disputed.

20. There was nothing in the intervening years that prepared them for any changes to the regime. There was no communication, official or otherwise from the decision makers as to the differences that were coming.

21. On 28th September 2020 candidates vying for promotion to the rank of Inspector attended a briefing at the Police Administration Building Edward Street, Port of Spain, where they were informed that they would be awarded points for Examination in proportion to the marks they obtained in the

Business Communications examination. This was contained in the 2020 DO dated 21st September 2020.

22. According to Ms. Joanna Woodroffe-King[7], this 2020 DO was circulated on the TTPS Portal. During a forum the officers were briefed on the assessment criteria and presented material that would aid them in preparing for their interview. Officers were permitted to ask questions to clarify the process.

23. The promotion assessment process for the Appellants concluded on 10th December 2020. On 15th December 2020, the COP published the OML dated 15th December 2020.

24. By DO No. 175 dated 16th December 2020 the COP promoted to the rank of Inspector the first 91 sergeants whose name appeared on the OML.

Test for Leave to Apply for Judicial Review

25. The test to determine whether to grant the application for leave is that the court must be satisfied that there is an arguable ground for judicial review having a realistic prospect of success and not subject to a discretionary bar such as delay or an alternative remedy.[8] See **Satnarine-Sharma v Browne-Antoine & Ors** [2006] UKPC 57.

26. Realistic prospect of success of a ground of review is not a high threshold but is contextual "and cannot be divorced from the nature of the challenge which is raised by the litigant".[9] More recently, in **The Attorney General of Trinidad and Tobago v Ayers-Caeser** [2019] UKPC 44, Lord Sales also noted that this

[7] Affidavit of Joanna Woodruffe-King, Management and Human Resources Consultant, filed 4th January 2021
[8] **Satnarine-Sharma v Browne-Antoine & Ors** [2006] UKPC 57, paragraph 14 (4)
[9] **Steve Ferguson and Ishwar Galbaransingh v The Attorney General of Trinidad and Tobago** Civil Appeal No 207 of 2010 paragraph 3

threshold for the grant of leave to apply for judicial review is low:

> "2….Wider questions of the public interest may have some bearing on whether leave should be granted, but the Board considers that if a court were confident at the leave stage that the legal position was entirely clear and to the effect that the claim could not succeed, it would usually be appropriate for the court to dispose of the matter at that stage."

27. In **Steve Ferguson and Ishwar Galbaransingh v The Attorney General of Trinidad and Tobago** Civil Appeal No 207 of 2010 Kangaloo J.A. noted:

> "5…..the court must not lightly refuse a litigant permission to apply for judicial review. It must only be in wholly unmeritorious cases which are patently unarguable (barring issues of delay and alternative remedies) that the courts should exercise its discretion in refusing to grant leave."

28. While the trial judge correctly referred to the relevant authorities, it appears that he erred in his approach in placing a burden on the applicant to "provide strong evidence"[10] to demonstrate that their grounds have a reasonable prospect of success. Strong grounds and arguability as treated in **The Attorney General of Trinidad and Tobago v Ayers-Caeser** are two different tests. It also appears that the trial judge was of the view that this application was "wholly unmeritorious" when in fact there were arguable issues to be interrogated.

Arguable Grounds

29. The parties accept that in 2016 the qualifying examination of Business Communication was introduced for the first time. However, the Appellants assert that the prevailing practice was that those who sat that examination will be awarded full 35 marks on assessment regardless of their passing grade. There was a clear accepted representation that full marks are awarded to

[10] See paragraph 30 of the trial judge's decision

officers once they have passed the English examination. The question legitimately arose when the Business examination was introduced in 2016 for the first time, whether the PAB will assess Sergeants by also awarding the full 35 marks once they passed the Business examination or what other system will be used. This was only clarified in 2020.

30. Insofar as the 2020 DO may have introduced in writing for the first time the PPS system, (which also acknowledged the past practice of awarding the full 35 marks for officers passing the English component), the question that arises is whether it was unfair and illegitimate for the PAB to now introduce the PPS after officers sat the Business examination previously without clarification of the manner in which their grades will be taken into account. This coupled with the accepted fact that officers passing an English examination will receive the full 35 marks simply begs the question, will that principle also apply to the Sergeants who unlike other officers will have to sit the Business examination. In other words, without any further clarification, are they entitled to treat their having passed the Business component as parity to the practice with the English examination? Conversely, is there any logical differentiation between the two examinations, one requiring a PPS system and the other a full award for bar minimum effort? This requires further examination.

31. The statutory regime provides only for the award of a maximum score and therefore provides for a measure of discretion on the PAB as to how that discretion is to be exercised. It must be excised lawfully, reasonably and fairly. The trial judge was wrong to suggest that it was a discretion to be exercised as the PAB saw fit.

32. A PPS system has not been shown to be unreasonable. However, questions of unfairness arise when the PPS now explained in 2020 is sought to be applied to those who sat examinations prior to that date in the state of uncertainty that existed between 2016 and 2020. The Appellants' case was that it was

unfair either to (a) introduce it for the first time in 2020 or (b) defy a settled practice.

33. Counsel for the Respondents sought, like the trial judge, to state that both **Wendell Lucas v The Commissioner of Police**[11] and **Ricardo Morris and Ors v The Commissioner of Police and Anor**[12] were not applicable to this case. The facts are not the same. The main issue deliberated upon was the decision maker's duty to give notice of the change. On that issue, the learning is clear and there is no need for this court to depart from it. These authorities, to our mind, buttress the Appellants' case for at least the grant of leave to apply to the court to review the decision makers' decision. To that extent, the trial judge's reasoning and decision are plainly wrong.

34. To say, as the Respondents have contended, that other Applicants repeated their examinations to better their scores is not enough. Where is the evidence that this was the intention of those who re-sat the examination? Did any of the Appellants depose to this? Were these officers affected by the decision not entitled to be given a chance to comment on this? To us, to use this as a basis to assess whether the Appellants presented a good arguable case is risky. To that extent therefore, the trial judge's basis for his decision is flawed. In any event, and further to this, there was no requirement in the 2020 regime that those who wrote the 2016 examination were expected to re-sit the examination nor was it produced anywhere that that option could have been exercised liberally.

35. In any event, it is indeed arguable that the Appellants, based on the facts above, presented sufficient evidence to support the ground of an arguable case based on a legitimate expectation. Counsel for the Appellants' argument based on the non-retroactivity of these policies as decided in these courts in

[11] CV 2013-00355
[12] CV 2016- 02527

Francis Chattie v Commissioner of Police[13] by Rajkumar J.A sealed this issue. The case on this ground is arguable.

36. In 2020, a new regime was born by way of the 2020 DO. The Appellants were not informed of the proposed changes prior to them being made and certainly not prior to the examinations written in 2016 and 2018. They were not prepared in any way as to what to expect. They were visited simply with the procedures, rules and decision-making processes. To our mind, for example, one option available to deal with this situation fairly may have been to have those who wrote the examination prior to 2020 "grandfathered" in and then use the interview and staff reports as the other filtering stages. To lock the Appellants out may offend the rules of procedural fairness, a recognized component of their right to natural justice and the concomitant decision makers' obligation to observe those rules. Thus, a clear basis of review exists on this ground.

37. The calculation of the marks in the 2020 DO did not appear to be clear and deserved some form of explanation. It is not apparent how the deponent, Ms. Woodroffe-King, came to the conclusions that she did. The Appellants should have been given the opportunity to challenge this at the review stage. We do not think that it was open to the trial judge to decide definitively on those issues at this stage.

38. Further, the Respondents' evidence did not give the trial judge the evidential basis to make some of his findings. At paragraph 6 of the affidavit of Ms. Woodruffe-King, while it was widely known that since 2016 the qualifying examination was Business, it was not widely known that a PPS system would be used. At paragraph 7 it was not made clear in Departmental Orders 211 of 2007 ("DO 211") and 213 of 2007 ("DO 213") that examination scores will be

[13] CA Civ S377/2017

calculated based on the officer's mark based on a PPS.[14] Officers did have a legitimate expectation to be awarded a full 35 marks once they passed the qualification examination of English.

39. In paragraph 8 of Ms. Woodruffe-King's affidavit, her statement that there "has always been" a PPS in the examination component deserves further interrogation. The attempt to introduce a PPS in DO 211 was amended and removed by DO 213 and was the subject of the **Morris** and **Lucas** litigation. Further the 2020 DO states clearly that the PPS "with immediate effect", that is for the first time, is being introduced. Paragraph 9 of her affidavit appears to be inconsistent with the Respondents' own statement in the 2020 DO. Paragraphs 10 and 11 are general statements which were issues of fact to be determined. Paragraph 12 appears to be inconsistent with the PAB's acknowledgment of the settled practice of awarding full marks in English once officers attain a pass. These matters at best need to be clarified or investigated at a full hearing.

40. From all appearances, it seems as though these Appellants were locked out at the early stage of expressing and advancing their case for judicial review. The following as we see it are the grounds of what can be considered of a good arguable case to move forward:

    a. Legitimate expectation, again bearing some shades of procedural fairness.

    b. Lack of notice or explanation of the process from the decision makers prior to their introduction in 2020 which frustrated the Appellants' rights to procedural fairness in terms of hearing their voices, thereby infringing their right to be heard, an integral ingredient of the rules of natural justice. Their chances of promotion were severely affected,

[14] DO 213 amended DO 211 and banished the PPS

which brings them into the class of persons provided for by section 5 of the Judicial Review Act, which provides as follows:

> "5(2) The Court may, on an application for judicial review, grant relief in accordance with this Act—
>
> (a) to **a person whose interests are adversely affected by a decision**;.."

This cannot be denied.

c. The infraction of the decision maker's duty and obligation to act fairly, in the sense of a failure to observe the rules of natural justice.[15]

41. In the premises, we think that the trial judge was plainly wrong not to grant leave to the Appellants to continue in their quest for judicial review of the Respondents' decision as there was an arguable case on the face of the application. We think as well that the trial judge made an improper order for costs at the leave stage.

42. The general rule is that there is no order as to costs if leave is refused when a court invites the Respondent to be heard at the leave stage. In **Abzal Mohammed v The Police Service Commission** Civ App No. 53 of 2009

[15] Counsel for the Respondent made reference to **R (Gallaher Group Ltd and others) v Competition and Markets Authority** [2018] UKSC 25 where it was noted:

> "[31] Fairness, like equal treatment, can readily be seen as a fundamental principle of democratic society; but not necessarily one directly translatable into a justiciable rule of law. Addition of the word 'conspicuous' does not obviously improve the precision of the concept. Legal rights and remedies are not usually defined by reference to the visibility of the misconduct.
>
> [32] Simple unfairness as such is not a ground for judicial review. This was made clear by Lord Diplock in IRC v National Federation of Self-Employed and Small Businesses Ltd [1981] 2 All ER 93 at 102, [1982] AC 617 at 637: ' judicial review is available only as a remedy for conduct of a public officer or authority which is ultra vires or unlawful, but not for acts done lawfully in the exercise of an administrative discretion which are complained of only as being unfair or unwise" (Emphasis added.)"

Kangaloo J.A. noted at paragraph 31:

> "31. Where it becomes a little more uncertain is when the potential defendant is directed by the Court to be present to assist the Court. This is what happened in this case…Where the Court so directs, it is difficult to saddle the defendant with costs if leave is granted even when the defendant "opposes" the grant of leave. Again, the costs should be reserved to the substantive hearing but **generally they should be the claimant's costs in the cause**. If leave is refused, it is unfair to the claimant to have to pay costs to the proposed defendant. In the first place, the proposed defendant is not yet a party and secondly it was brought to Court, not by the claimant but by the Court itself for assistance. I would think the proposed defendant would again have to bear its own costs."
>
> (Emphasis ours).

Conclusion

43. For these reasons, the appeal is allowed.

44. On the issue of costs, Counsel for the Respondents candidly indicated that they could not resist an order for costs of the appeal for the Appellants. After hearing both counsel, those costs were assessed in the sum of $51,300.00[16] which is reasonable and fair in the circumstances. However, mindful of the direction in **Abzal Mohammed**, as the Respondents were invited to the hearing of the leave application by the trial judge, the appropriate order for costs in the Court below should be the Appellants' costs in the cause.

45. We end by observing that in a case such as this where leave is contested and

[16] Based on $2850.00 x 18 hours.

there is a degree of urgency and some doubt about arguability, a "rolled up" hearing is an effective case management tool that can be employed by the case management judge exercising the wide discretion as to the conduct of the case in furtherance of the overriding objective. In such a hearing the Court will consider first the issue of leave and second the substantive hearing for relief to follow.[17]

46. Further, having regard to what appears to be the trial judge's definitive findings and comments at the hearing of this matter, we also order that the matter be remitted to another trial judge for further hearing.

Order

47. It is hereby ordered:

(i) The appeal is allowed.

(ii) The Appellants being the 1st, 3rd, 4th, 5th, 6th, 7th, 9th, 11th, 13th, 16th, 18th, 19th, 23rd and 27th Applicants in the application for leave dated 21st December 2020 in the High Court are permitted to apply for judicial review of the Respondents' decisions.

(iii) The orders of the trial judge including the order for costs are set aside.

(iv) The trial judge's order for costs is substituted by an order that the costs for the application for leave shall be the Appellants' costs in the cause.

(v) The costs of the appeal shall be paid by the Respondents to the Appellants assessed in the sum of $51,300.00.

[17] This was effectively used in the first instance case of **Joann Bailey-Clarke v The Ombudsman of Trinidad and Tobago and the Public Service Commission** CV2016-01809.

(vi) That the matter be remitted to the High Court to continue before another judge.

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Charmaine Pemberton
Justice of Appeal

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Vasheist Kokaram
Justice of Appeal

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James C Aboud
Justice of Appeal