

IN THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No: CV2023-04039

BETWEEN

NEXGEN PATHOLOGY SERVICES LIMITED

CLAIMANT

AND

DARCEUIL DUNCAN

DEFENDANT

Before: The Hon. Mr. Justice Westmin R.A. James

Date: 30th April 2025

Appearances: Mr Surendra Ramkissoon and Mr Larry Mooteeram, Attorneys-at-Law for the Claimant

Ms Nneka Warner, Attorney-at-Law for the Defendant

JUDGMENT

Background

1. This case concerns a dispute between Nexgen Pathology Services Limited (“the Claimant”) and Darceuil Duncan (“the Defendant”) regarding an alleged breach of contract. The central issue is whether the Defendant breached her employment agreement by failing to work for a stipulated period after the Claimant funded her course of study, or whether the Claimant breached the contract, resulting in the Defendant’s resignation.
2. The Defendant was employed part-time by the Claimant as a Medical Laboratory Assistant. During the course of her employment, the Claimant paid for her participation in a Gynaecology Cytology programme, which amounted to \$6,050.00 United States Dollars. Completion of the course required the Defendant to attend classes in St. Kitts for approximately two months. The Claimant also paid the Defendant a stipend of \$5,000.00 per month for those two months.
3. Upon successful completion of the programme, the Defendant returned to Trinidad and resumed duties with the Claimant. However, some weeks after resuming work, an

incident occurred between the Defendant and her supervisor, Dr. Kemba Abdul-Hakim. As a result of that incident, the Defendant resigned immediately.

4. The Claimant contends that the Defendant breached her employment contract, which allegedly included a clause requiring her to work for a minimum period upon completion of any course funded by the Claimant. Consequently, by Claim Form and Statement of Case filed on 3rd November 2023, the Claimant seeks the following reliefs:
 1. A declaration that the Defendant breached her contract of employment;
 2. Damages for breach of contract;
 3. Payment of the sum of TTD \$76,095.63;
 4. Interest;
 5. Costs; and
 6. Such further or other relief as the Court may deem just.
5. By Amended Defence and Counterclaim filed on 11th April 2024, the Defendant admitted that the Claimant paid for the course but denied any obligation to repay the sum claimed. She asserts that repayment was not a term of her employment contract. In the alternative, if such a term existed, she argues that she was constructively dismissed and therefore not in breach of any agreement.
6. The Defendant also counterclaimed for the following reliefs:
 1. Special damages in the sum of TTD \$40,000.00 for arrears of salary from August 2023 to the date of judgment, calculated at \$5,000.00 per month for eight months;
 2. Damages for constructive dismissal;
 3. Interest;
 4. Costs; and
 5. Such further or other relief as the Court deems fit.
7. By Reply to Defence and Counterclaim filed on 24th May 2024, the Claimant denied all allegations relating to an unsafe working environment and described the Defendant's claim of fearing physical assault as fictitious.

Breach of contract

8. The Claimant accepted that the Defendant was an employee of the Claimant and that the Claimant had paid for the Defendant's participation in a Gynaecology Cytology training programme. In cross-examination, the Defendant acknowledged that, similar to GATE sponsorship, where financial support for education is given, some form of return was expected. She agreed that, having received payment for her training, she understood that she was expected to remain in the Claimant's employment. However, the Defendant contended that there was no express obligation to work for a specific

period following the completion of the training or to repay the costs incurred by the Claimant.

9. In her answers to the Court, the Defendant admitted that she regarded herself as being bound by the Claimant's workplace policies. When asked whether she familiarised herself with those policies, she stated that she acquainted herself with the standard operating procedures. She further admitted that she did not believe she could resign from the company at any time following the training, thereby acknowledging some perceived restriction on her ability to leave.
10. Based on her acknowledgment that she was bound by company policies, the Court finds that the Employee Investment Program (EIP) Policy Guidelines formed part of the Defendant's terms and conditions of employment and were therefore incorporated into her contract of employment.
11. The relevant portions of the EIP Policy Guidelines, specifically clauses 13 and 14, are provided as follows:

"13. Employees who have been granted benefits under the program shall, upon completion of the course of study, continue in the employment of NGP for a minimum length of time according to the amount sponsored by NGP as follows:

- | | |
|------------------------------|-------------|
| a. Under \$20,000.00 | - 12 months |
| b. Between \$20,001-\$30,000 | - 18 months |
| c. Between \$30,001-\$45,000 | - 24 months |
| d. Between \$45,001-\$60,000 | - 36 months |

14. PROVIDED, HOWEVER that any such Employee, whose employment with NGP is terminated, otherwise than by reason of illness or permanent disability, before expiration of the duration stated in section 13, shall repay to NGP all monies paid to or on behalf of the Employee under the program."

12. Although the Claimant stated that the Defendant did not satisfy one of the eligibility criteria under the Policy—namely, that the employee must be a permanent staff member with at least two years of continuous service—it is evident from the evidence that this requirement was waived in the Defendant's case.
13. The waiver of that eligibility criterion does not negate the incorporation of the Policy into the Defendant's contract of employment. The Court therefore finds that the Defendant's contractual obligations included a requirement to remain employed with the Claimant for a defined period after completing the sponsored training, based on the value of that sponsorship.
14. In this case, the Claimant expended USD \$6,050 (equivalent to TTD \$41,019 based on an exchange rate of USD \$1 = TTD \$6.78) for the cost of the training. While the

Defendant was in St. Kitts for two months, she also received a stipend of TTD \$10,000.00. The total sum invested in the Defendant's training was therefore significant, placing her in the highest tier under the Policy, which required a minimum of 36 months' post-training service.

15. Even if the Court is incorrect in finding that the EIP Policy formed part of the Defendant's contractual terms, it is clear from the evidence that the Defendant understood she was required to remain with the Claimant for some time following the training. The Court finds that in such circumstances, a reasonable term of continued employment would be implied, and the Defendant's resignation shortly after completing the training was not within a reasonable period.
16. The Defendant's resignation before the expiration of the 36-month service requirement therefore constituted a breach of contract.

Constructive Dismissal

17. The principle of the common law regarding constructive dismissal is that: constructive dismissal is termination of a contract of employment by an employee because his employer has shown that he does not intend to be bound by some essential term of the contract, including the implied term of mutual trust and confidence —see ***Western Excavating (ECC) Ltd v Sharp*** [1978] QB 761.
18. **Halsbury's Laws of England Volume 41A (2021), paras 1087-1509** 1. Nature of a Contract of Employment(1) Employment under Contract(iii) Employer's Obligations and Liabilities f. Duty to Treat Employee with Respect and Exercise Discretion Rationally 49. Implied term of trust and respect. f. Duty to Treat Employee with Respect and Exercise Discretion Rationally

49. Implied term of trust and respect.

In a contract of employment, there is an implied term that the employer will not, without reasonable and proper cause, conduct himself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee. The term can, in appropriate circumstances, impose positive obligations on the employer.

The kinds of behaviour which may breach the term of trust and respect are in each case a question of fact for the tribunal, and entirely variable, but may include:

- (1) undermining the self-esteem and dignity of the employee;
- (2) abusive and false accusations;
- (3) failure to tell an employee of complaints made against him;
- (4) intolerable behaviour and bad language;
- (5) unwarranted docking of pay;
- (6) attaching unreasonable conditions to remuneration;
- (7) persistent attempts to vary conditions of employment;

- (8) capricious refusal to offer the same terms to a single employee as are offered to the rest of the workforce, whether by way of variation or by way of a new contract;
- (9) failure to notify an employee on maternity leave of a vacancy for which she believed she was suitable;
- (10) failure to give the employee necessary support;
- (11) failure to follow established procedures;
- (12) failure to take seriously a complaint of sexual harassment;
- (13) seducing the employee;
- (14) sudden withdrawal of an ex gratia loan by the employer;
- (15) persistent failure to make a reasonable adjustment in breach of discrimination legislation.

A series of actions by an employer or a series of incidents may cumulatively amount to a breach of the implied term of trust and confidence, even though each individual act or incident, perhaps trivial in itself, may not.

19. It is now clear that the employer's conduct referred to must amount to a breach of the contract of employment; the mere fact that the employer has acted unreasonably is not sufficient.

20. In such a case, it is very fact sensitive: See *Sandy Lane Hotel Company Ltd v Brigitte Laurayne* (2013) 81 WIR 75 at 78 [para 2].

21. So, what were the facts that were proved or did not prove that breach?

22. By letter of resignation dated 22nd August 2023 the Defendant resigned from the Claimant. Her letter of resignation stated:

"Please accept this letter as my formal notice of resignation from Nexgen Pathology effective 23rd August 2023. The aforementioned action has become necessary due to an incident which occurred today in which Dr Kemba Abdul-Hakim physically cornered me in my office in an attempt to have a physical altercation.

I would like to extend a heartfelt thank you to Nexgen Pathology for the work experience and opportunities for growth.

Unfortunately, **I would not be able to facilitate a month's notice due to the unsafe environment.**

Thank you. Very much for the opportunity to work here." Emphasis mine

23. The Claimant Amended Defence stated "Following an altercation with the Defendant's new supervisor, Dr Kemba Abdul-Hakim, the Defendant believed that the situation was going to escalate to physical assault and was fearful since there was no other employee in that part of the building at the time. The Defendant denies that she claimed physical assault on her person and denies that such resignation was in breach of any contract."

24. The pleadings went on to describe the incident and the Defence also pleaded:

“The Defendant states that her decision to abruptly resign was due to the aggressive unreasonable actions of an employee of the Claimant and her genuine fear of being physically assaulted. The Defendant states further that the fact that she would have been required to report to and work closely with the said employee, who was her supervisor, was also an important factor in the decision to resign. Immediately following the incident, the Defendant sought legal advice before tending her resignation. The Claimant’s disinterest and/or inability and/or unwillingness to address the issue constrained the Defendant to immediately cease working for the Claimant to preserve her physical and emotional wellbeing. The Defendant contends that it was unreasonable to require the Defendant to continue to work under those circumstances, so that even if there was such a contract as the Employee Investment Progress Policy Guidelines as claimed by the Claimant (which the Defendant does not admit) the Defendant’s sudden departure was justified and therefore would not have constituted a breach.”

25. The Defendant in her pleadings also admitted that the Claimant’s CEO, Dr. Wesley Greaves called her via cell phone and undertook to conduct an in-depth investigation of the allegations of the Defendant.
26. 26. The Defendant counterclaimed that the aggressive behaviour, verbal abuse, and treatment inflicted upon her on 22nd August 2023 by Dr. Kemba Abdul-Hakim, her direct supervisor, was humiliating and demoralizing at best. The Defendant was fearful of being assaulted by the said Dr. Kemba Abdul-Hakim and saw no other option but to leave the compound immediately.
27. The Defendant further pleaded that the Defendant avers that the inaction and the general conduct of Dr. Wesley Greaves, a core member of the Claimant Company, following her complaint of the events that occurred on 22nd August 2023, was unreasonable. It created a volatile work environment, and the Defendant saw no other option but to cease to report for work thereafter. The Defendant avers that Dr. Greaves’ inaction and general conduct was intolerable and amounted to a fundamental breach of the Defendant’s employment.
28. The Claimant’s witness statement details this incident. The Claimant’s evidence was that on 22nd August 2023, Dr. Kemba Abdul-Hakim summoned the Defendant to the office early on that morning and expressed extreme annoyance at the fact that the Defendant had not provided her with certain document. The Defendant stated that in an attempted to diffuse the situation, she accepted wrong and apologised for the failure on her part. She said however, Dr. Abdul-Hakim continued to berate and angrily shout at her. She said that Dr. Abdul-Hakim’s reaction seemed out of proportion to her for something that she knew could have easily been remedied in a short space of time. She said when her continued shouting became unbearable, she raised her hands, asked her for 10 minutes and left Dr. Abdul-Hakim’s office to go to her cubicle.

29. She then stated in her witness statement that while walking to her cubicle, she called Dr. De Mills on her mobile phone. However, very shortly after she entered her cubicle, while on the phone with Dr. De Mills, Dr. Abdul-Hakim violently flung open the door to her cubicle and walked towards her while angrily shouting. She said that Dr. Abdul-Hakim's expression and body language caused her to be fearful that she might become physically violent, so she retreated to the corner of the cubicle with her hands raised and her cell phone in her hand. She said she had blurted to Dr. Abdul-Hakim that she had asked for 10 minutes and that she was on the phone with Dr. De Mills. She said Dr. Abdul-Hakim immediately halted where she stood, ceased shouting, and stormed out of her cubicle.
30. She then stated in her witness statement that she felt very threatened as there was no one else near their location, and she was afraid to stay in that area with Dr. Abdul-Hakim, so she hurriedly grabbed her belongings and left the building. She said in her haste, she left some of her personal items in the office and called another employee on the phone and asked her to retrieve them.
31. She gave evidence that she drove home. On that day, she said she called Dr. Greaves and told him of the events of that morning. She said that Dr. Greaves did not give her any assurance that he would investigate the matter or that he would ensure a safer work environment. She said she was not asked to submit an incident report or accounting in writing. She said she was never informed that an investigation would be initiated or that it was completed. She said that during the conversation and exchange messages, his only response was that her work duties were to be completed.
32. She said that after that call with Dr. Greaves, she sought legal advice and immediately issued her letter of resignation. The Defendant also stated in her witness statement that her decision to abruptly resign was due to the aggressive, unreasonable actions of an employee of the Claimant, Dr. Abdul-Hakim, and her genuine fear of being physically assaulted. She said that the fact that the company gave no assurances of addressing the issue and that she would have to report to and work closely with the said Dr. Abdul-Hakim was also an important factor in her decision to resign. She said that the only recourse to preserve her physical and emotional well-being was to immediately cease working for the Claimant company.
33. In cross examination the Defendant admitted that she was also employed with John Haynes Kidney Foundation. She admitted that she was to provide a roster to the Claimant and it was important. She admitted that Dr. Abdul-Hakim did not threaten her nor did she physically assault her.
34. She said she chose to leave instead of escalating it because there was no HR department. She denied that Dr. Abdul-Hakim deescalated the incident when she left and said that Dr. Abdul-Hakim left when she screamed. She said that Dr. Abdul-Hakim had assisted her in the past with making an official complaint of an employee at John Haynes. She said that she called Dr. De Mills instead of addressing concerns with Dr. Greaves because Dr. De Mills has deescalated matters between her Dr. Abdul-Hakim

and in the past. When put to her that she never sought resolution of the matter she said that she spoke to Dr. Greaves.

35. The Defendant further said that she started feeling unsafe with the impromptu meeting in Dr. Abdul-Hakim's office. When asked what in particular made her feel unsafe she said Dr. Abdul-Hakim's raising her voice and when she stood up and making her way around towards her. She said that Dr. Abdul-Hakim did not verbally threaten her in any way. She said that Dr. Abdul-Hakim started shouting when the Defendant asked for 10 minute break. She said that Dr. Abdul-Hakim shouted that you would never do this at John Haynes and this is irresponsible of her. She said she walked out of the office.
36. She said that Dr. Abdul-Hakim flung the door and was shouting, but she could not recall what she was shouting. She said that Dr. Abdul-Hakim's hands were moving about. She said that she screamed, all she asked for was 10 minutes, and Dr. Abdul-Hakim left.
37. Further in cross examination, when asked if Dr. Abdul-Hakim motioned her fist to her, she said no. She said she could not recall if Dr. Abdul-Hakim cursed. She said that Dr. Abdul-Hakim has raised her voice at her several times before, and that was not unusual. She said that there were disagreements with Dr. Abdul-Hakim at times, but not on producing the roster before.
38. When asked what made this disagreement different, she said the gesturing of hands and coming towards her, and following her. When asked if she told Dr. Abdul-Hakim about coming towards her, she said no, but did tell her about shouting by saying "why you shouting?" and told her to leave John Haynes out of it. She admitted that she also was heated. She said that she raised her voice as well in her cubicle.
39. Dr. Abdul-Hakim's evidence was that on 18th August 2023, she stated that she requested from the Defendant a copy of her duty roster for the upcoming week's work with the Claimant. On 22nd August, the Defendant did not provide the roster and she asked the Defendant again for the roster and the Claimant said that she would have the roster ready in 15 minutes. Dr. Abdul-Hakim stated that she informed the Defendant that for the future if she is unable to meet certain deadlines in a timely manner, she needs to communicate. She then said during the conversation she asked the Defendant to provide her with a list of HPV's and pap smears that required review by herself to which the Defendant responded in a very agitated manner that "it was still early in the workday and I didn't access the information yet." She stated that she responded and asked the Defendant to submit the information by 1pm as she had a hectic schedule and the Defendant's delay was keeping her back as well.
40. Dr. Abdul-Hakim said that she informed the Defendant that she has worked in several other places in the past such as John Haynes Foundation and she ought to know that there are standard operating procedures to follow, and that effective communication helps to prevent duplication and delay other persons work. She said the Defendant became visibly upset and irate and remarked very angrily that "you need to leave John

Haynes out of this.” She said the Defendant then proceeded to stand up from her seated position in an aggressive manner and stated that she is “leaving from here yes.”

41. She said she requested the Defendant to continue the conversation in her office. She said that when in her office, the Defendant became increasingly restless, agitated and highly disruptive at the request to schedule her for the week. She stated that the Defendant began rolling her eyes at her and moved away from the desk and started pacing the floor in an erratic manner.
42. She stated that in an attempt to deescalate the situation she inquired into the well-being of the Defendant however she refused to respond. She said she asked several times and the Defendant responded she was ok. She said that the Defendant in response to the last enquiry the Defendant reacted in a hostile manner that “nothing is the matter with me, like you want something to happen to you.” She said the Defendant then proceeded to storm out of the office and return to her desk.
43. She then stated that five minutes later she went to the Defendant’s desk when the Defendant made a call on her cell phone and shouted that she needed a minute and that she was not feeling safe. She said that she reassured the Defendant that she needed to take a minute and collect herself and then they can continue the conversation if need be and the Defendant nodded in approval. She said that she then left the Defendant’s desk and proceeded to the kitchen. She then said that she observed the Defendant packing her belongings and leaving the office and she made no attempt to approach her then.
44. In cross examination Dr. Abdul-Hakim said that she was functioning in her capacity as a direct supervisor of the Defendant dealing with her roster assigning samples. She said that in relation to the incident it was not her responsibility to investigate. In answer to the Court Dr. Abdul-Hakim denied raising her voice to the Defendant, denied threatening the Defendant, denied screaming at the Defendant or attempting to hit the Defendant. When asked why she went to the Defendant’s office after the Defendant left hers, she said she went to find out what was wrong with the Defendant. In further answer to the Court, she said that she submitted a report on the incident to the Claimant on 22nd August 2023.

Analysis

45. I have reviewed the evidence and considered the relevant law on this matter and I find that the claimant was not constructively dismissed.
46. I do not find that there was a fundamental breach by the employer. The only alleged misconduct was by Dr. Abdul-Hakim, the Defendant's supervisor, and it consisted of verbal expressions of frustration over the Defendant's failure to provide her roster and other requested work-related documents-not physical assault or actual threats. The Defendant admitted under cross-examination that Dr. Abdul-Hakim did not threaten her or assault her, and that she could not recall any specific threatening language. Raising one's voice, expressing criticism, or gesturing emphatically in a workplace,

while perhaps unpleasant, does not rise to the level of a fundamental breach of the contract of employment.

47. The incident, while clearly distressing to the Defendant, was isolated, lasted a short time, and did not involve physical violence or sustained abuse. The Defendant admitted she was also employed at another workplace and had past disagreements with Dr. Abdul-Hakim without resigning suggesting this was not a long-standing or intolerable pattern of conduct.
48. It is also to be noted that the Defendant contributed to the breakdown. The Defendant herself became "heated", raised her voice, and left the initial meeting abruptly. The evidence suggests the interaction became a mutual misunderstanding or clash of personalities rather than workplace bullying or intimidation.
49. I also do not agree that the Claimant took no reasonable steps to address the complaint. The Defendant in pleadings admitted that Dr. Greaves, the Claimant's CEO, called her after the incident and undertook to investigate her allegations. This demonstrates that the employer did not ignore the Defendant's concerns, contrary to her claim of indifference. In fact, this shows a willingness to resolve the matter internally before her resignation. The Defendant, despite claiming fear and distress, did not give the Claimant a reasonable opportunity to investigate or resolve the matter. She resigned the same day, without waiting for any concrete action to be taken.
50. There was also a viable internal resolution path for this situation. The Claimant had a reporting structure involving Dr. Greaves and the ability to escalate issues, even if there was no formal HR department. The Defendant admitted she could and did speak to Dr. Greaves, but her own dissatisfaction with the nature of his response does not equate to a failure by the employer to act reasonably. The absence of a formal HR department does not, in itself, render a workplace unsafe or justify resignation, especially where the CEO is accessible and responsive.
51. Having regard to her decision to resign the same day, without even waiting for the promised investigation or seeking mediation undermines her claim that resignation was her only option. I hold that the Defendant acted disproportionately to the incident and was not constructively dismissed.
52. I therefore will also dismiss the counterclaim.

Quantum

53. The Claimant seeks to recover the cost of the Defendant's training, the stipend paid during the training period, one month's stipend in lieu of notice and the sum of \$20,000.00 for loss of business.
54. It is well-established that damages for breach of contract are compensatory in nature. The underlying principle is to place the innocent party, so far as money can achieve it, in the position they would have been in had the contract been properly performed.

55. The Claimant's EIP Policy which formed part of the Claimant's contract of employment expressly outlines the consequences of an employee failing to complete the required post-training service period. Clause 14 of the policy provides that, in such circumstances, the employee is required to repay all sums expended on or on behalf of them under the programme. In this case, the Defendant received the benefit of specialised training, which has presumably enhanced her earning capacity. To allow her to retain the full benefit of that investment without honouring the service commitment would result in unjust enrichment.
56. However, it is not disputed that the Defendant rendered services to the Claimant for a short period following the completion of her training. As such, the Claimant did derive a limited benefit from the Defendant's partial performance. In the Court's view, the damages recoverable should therefore be reduced proportionately. The Defendant worked for two months out of the thirty-six-month service obligation, representing 1/18 of the agreed period. Accordingly, the Claimant is entitled to recover 17/18 of the total expenditure incurred for the Defendant's training.
57. The Claimant expended USD \$6,050 on the Defendant's training, which amounts to TTD \$41,019 based on an exchange rate of USD \$1 = TTD \$6.78. Additionally, during the two-month training period in St. Kitts, the Defendant received a stipend totalling TTD \$10,000.00. The total sum expended is therefore TTD \$51,019. Applying the 17/18 apportionment, the amount recoverable by the Claimant is TTD \$38,740.17.
58. The Claimant also asserted in its pre-action protocol letter a claim for one month's stipend in lieu of notice. However, this was not specifically pleaded as a breach in the Statement of Case. The only pleaded breach was the Defendant's failure to honour the repayment obligation for the training costs. Accordingly, no award is made under that head of claim.
59. The Claimant further alleged that the Defendant's abrupt departure caused disruption to ongoing laboratory processes, resulting in financial and reputational loss. However, these allegations were vaguely pleaded, and no evidence was adduced by the Claimant to substantiate the alleged disruption or to quantify any resulting loss. The Court therefore holds that this sum is not proven.
60. In the circumstances, the Court finds that the Claimant is entitled to recover the sum of TTD \$38,740.17 as damages for the Defendant's breach of the training repayment obligation.

The Use of Non-Existent Cases and Misleading the Court

61. The Court is compelled to address a matter of grave concern arising from the Claimant's written submissions—specifically, the citation of non-existent legal authorities (*BWIA v Ramnarine* (TT Industrial Court, 2005); *National Petroleum Marketing Co Ltd v Brewster* (TT 2007); *Horne v KMW* [2000] IRLR 814; *Jones v Manchester Corporation* [1952] 2 QB 852 (relates to medical negligence not employer-

funded training; **London School of Economics v Dr Don** [2016] EAT). These purported cases appeared to support a central proposition advanced by the Claimant: that there existed an implied term in a contract of employment whereby, if an employer pays for training, certain obligations arise. These were the only cases cited in the submissions on this central issue in the case. Had the cases been legitimate, they would have constituted persuasive authority on a significant aspect of the Claimant's case.

62. Upon review, the Court noted that several of the authorities cited in the Claimant's submissions lacked proper citations and bore characteristics inconsistent with valid Industrial Court decisions in Trinidad and Tobago. For example, they were styled as disputes between individuals and companies, despite the fact that only trade unions may appear as parties before the Industrial Court in trade disputes. Moreover, these cases were not included in the Claimant's Bundle of Authorities, despite being heavily relied upon in both the principal and reply submissions.

63. In addition to the cases previously discussed, the Court notes that another authority cited in the submissions **Ishmael v National Insurance Property Development Company Ltd**, TT Industrial Court, 2014; **British West Indian Airways v Hollis** (TT2001) also does not appear to exist. Like the others, it lacks a proper citation, cannot be found in any recognised legal database, and was not included in the Bundle of Authorities.

64. When the Court requested copies of the referenced authorities, Counsel responded via email as follows:

"These cases were found online and I copied and pasted the relevant information, however the site no longer has them listed.

I am attaching a screenshot of the message that keeps coming up each time I type in the cases.

They appear to have been removed and are unpublished outside of the site, therefore I am unable to provide a hard copy.

In the circumstances, I will have no choice at this time but to leave it up to the Honourable Judge to decide the direction from here."

65. This explanation was wholly unsatisfactory to the Court. Legitimate court judgments do not simply disappear from online repositories without a trace. Moreover, the absence of these cases from any recognized legal database raises serious questions as to their authenticity.

66. In response, the Court requested further clarification, specifically: (a) the name of the website from which these cases were sourced; (b) an explanation as to why cases with incomplete or incorrect citations were included; and (c) why Counsel failed to download and include such authorities in the Bundle of Authorities. The Court also specifically inquired whether the cited cases were obtained from an artificial intelligence (AI)-based tool or platform, and whether Counsel had made any effort to verify their accuracy.

67. Counsel later provided a follow-up explanation, attributing the error to a junior research assistant:

"After conducting a thorough investigation with my senior attorney today and speaking to the staff that worked on the document preparation, we discovered that the information was gathered by myself and a junior research assistant who, due to inexperience, sourced several of the cases using Google and Google Scholar without verifying the accuracy of the citations or ensuring that the full judgments were available and properly included in the bundle. Unfortunately, this also resulted in the inclusion of certain citations which were inaccurate, misattributed, or did not correspond to the correct case.

Regrettably, due to the hectic case load and legal work at the time, my senior and I admittedly did not thoroughly cross-check all of the citations and sources prior to filing, and I take full responsibility for that oversight. I wish to assure the Honourable Judge that no AI-generated tool or database of that sort was used in the preparation of these materials, as this is not part of our legal practice. The error arose solely from reliance on an open-access source and insufficient supervision of the research process."

68. The Court recognises that errors can and do occur, even at the judicial level, as evidenced by the appellate process. However, the submission of fictitious or unverifiable legal authorities, whether sourced from generative AI tools or carelessly obtained from the internet, constitutes a serious breach of professional responsibility. Attorneys bear an ethical obligation to ensure that all materials submitted to the Court are authentic, properly sourced, and reliable. The Court must be able to place trust in the representations made by Counsel as officers of the Court.

69. The Court acknowledges that digital tools including AI and internet-based platforms, are increasingly common and valuable in legal research; indeed, this Court itself makes use of such tools where appropriate. However, their use must be accompanied by discernment and subjected to rigorous verification. This is because AI-generated content is susceptible to producing what are commonly referred to as "hallucinations": fabricated, yet plausible-sounding outputs that may result from gaps or limitations in the model's underlying data. Legal practitioners must not rely on such tools uncritically. Any information obtained through these means must be independently verified before being presented to the Court.

70. The Court emphasizes that citing non-existent cases, even inadvertently, constitutes a serious abuse of process and professionalism. It risks misleading the Court, prejudicing the opposing party, and eroding public confidence in the administration of justice. Counsel are reminded that the duty of candour to the Court requires that they verify the authenticity of every case cited. If any material has been generated with the assistance of AI or other non-traditional sources, full disclosure to the Court is both appropriate and expected.

71. Irresponsible use of internet sources or generative AI tools undermines not only individual cases but also the credibility of the legal system as a whole. If such conduct is not condemned and appropriately addressed, it could lead to a dangerous erosion of the rule of law.
72. It is regrettable that Counsel failed to observe relevant guidance, including practice directions issued by the Caribbean Court of Justice and lessons from international jurisdictions, where similar conduct has resulted in disciplinary action against legal practitioners. A great exposition of this issue can be seen in ***Mavundla v MEC: Department of Co-Operative Government and Traditional Affairs KwaZulu-Natal and Others*** (7940/2024P) [2025] ZAKZPHC 2 at paragraphs [35]-[51].¹
73. Accordingly, pursuant to section 37(2) of the Legal Profession Act, the Court, albeit reluctantly, is constrained to direct the Registrar of the Supreme Court to refer the matter to the Disciplinary Committee along with the Written Submissions and communications with the Court for investigation and determination as to whether there has been a breach of the Code of Ethics.
74. 74. This case illustrates that expertise in selecting and utilizing research technologies, including those powered by AI, is now essential in modern legal practice. The Court reaffirms that the integrity of the justice system relies on diligence, honesty, and professional accountability. Rest assured: the intelligence of this Court is not artificial.
75. Having regard to the above the Court makes the following orders

[1] Judgment for the Claimant against the Defendant

[2] The Defendant to pay the Claimant damages in the sum of \$38,740.17 with interest at the rate of 2.5% from 22nd August 2023 to 30th April 2025 and thereafter 5% statutory interest until payment.

[3] The Defendant to pay the Claimant legal costs assessed in the sum of \$11,595.00 VAT exclusive.

[4] The counterclaim is dismissed

[5] The Defendant to pay the Claimant prescribed costs assessed in the sum of \$11,500.00 VAT exclusive.

/s/ Westmin James
Westmin R.A. Jame
Judge

¹ <https://www.saflii.org/za/cases/ZAKZPHC/2025/2.pdf>