

**The Republic of Trinidad and Tobago**

**IN THE COURT OF APPEAL**

**Civil Appeal No. P209 of 2024  
Claim No. CV 2020 – 03813**

**Between**

**THE CHIEF OF DEFENCE STAFF**

**And**

**DEVON EDWARDS**

**Appellant**

**Respondent**

**PANEL:**

**R. BOODOOSINGH C.J.  
BEREAUX J.A.**

**Date of delivery: 17<sup>th</sup> December 2025**

**APPEARANCES:**

**C. Findley for the appellant instructed by K. Mathew  
R. Simon for the respondent instructed by D. Mitchell**

I have read in draft the judgment of Bereaux JA, I agree and have nothing to add.

**Ronnie Boodoosingh  
Chief Justice**

## **JUDGMENT**

### **Delivered by Bereaux JA**

- (1) This is an appeal from an order of Charles J, delivered on 24<sup>th</sup> June 2024 dismissing the appellant's application to set aside the grant of permission to the respondent to apply for judicial review. The appellant has sought to set aside that order of dismissal in this appeal and has renewed his application to set aside leave. The broad question in the appeal is whether Charles J was plainly wrong to have granted permission to file for judicial review.

### ***Background***

- (2) The appellant is the Chief of Defence Staff of the Trinidad and Tobago Defence Force (TTDF). I shall refer to him as the appellant. The respondent, Devon Edwards, is a soldier in the TTDF. On 1<sup>st</sup> December 2020, Charles J granted the respondent permission to file for judicial review for certiorari to quash the Trinidad and Tobago TTDF's discharge of the respondent on the 14<sup>th</sup> May, 2014. He was discharged after being charged with criminal offences. His discharge was pursuant to a "zero tolerance" policy of the Defence Force in regard to its members being charged with criminal offences. The respondent also sought mandamus to compel the TTDF to immediately re-engage and roster him for duty with the preservation of his status quo in terms of rank, seniority and service at the time of his discharge, as well as declarations challenging the power of the Chief of Defence Staff to refuse to re-engage and roster after the decision of Aboud J. in the High Court action CV 2018-01724.

- (3) CV 2018-01724 was a High Court action brought by Mr. Edwards alleging various breaches of his constitutional rights by the “zero tolerance” discharge. The relief sought are set out in full at paragraph 7(iv) of judgment of Charles J. Other than reliefs (i) and (ii), the other four remedies sought, were constitutional relief. On 3<sup>rd</sup> June 2020 Aboud J (as he then was) found that respondent’s discharge “*pursuant to the application and enforcement of a “zero tolerance” policy, on the grounds that his services were no longer required [was], unlawful, unfair, unreasonable, ultra vires the Defence Force Act Chap: 14:01 and is therefore unlawful, null, void and of no effect*”. Aboud J. granted declarations that the respondent’s constitutional rights to natural justice, equality before the law, the protection of the law and his right to be presumed innocent, had been infringed. He awarded \$10,000.00 “*general damages*” for the inconvenience caused by the unlawful implementation of the policy and \$5,000.00 in exemplary damages.
- (4) After the appellant, by letter on 2<sup>nd</sup> September, 2020, refused to roster him for duty, the respondent then sought and was granted permission by Charles J to seek judicial review of the appellant’s refusal to roster him for duty after Aboud J had found his discharge illegal. The appellant in turn brought this application to set aside the grant of leave and to strike out the respondent’s claim as abuse of process pursuant to Part 26.2 (1) (b) and Part 26.1 (1) (k) of the **Civil Proceedings Rules 1998 (as amended)**.
- (5) In his application to set aside, the appellant contended that the respondent was guilty of non-disclosure in his ex-parte application for permission to apply for judicial review as well as abuse of process. The purported non-disclosure was the respondent’s failure to inform the court that the issue of reinstatement had been canvassed and refused before Aboud J. The abuse of process was the respondent’s failure to pursue all of the reliefs available to him by including all in the first action. He also contended that the respondent was guilty of undue delay in bringing this judicial review application and this has caused hardship and hindered proper administration.

### **The Judges’ Decision**

(6) On 24 June 2024, Charles J dismissed the appellant's application. She found that the respondent had met the threshold required for judicial review. The judge found that:

- (i) The [respondent] never sought reinstatement as a relief in that previous matter. The record is clear that the claimant was successful in CV2018-01724 and was granted constitutional relief, inter alia, in the form of a declaration that his discharge was unconstitutional. The issue of reinstatement was raised by the [appellant] in that matter as being relevant to the issue of compensation. In doing so, the [appellant] sought to argue that the [respondent] was not eligible for reinstatement since his period of incarceration meant that he was not "ready, willing and able to serve" at the material times. But this issue was not central to the constitutionality of the claimant's discharge. It was not pleaded or sought by the [respondent], nor was it decided upon by the judge. In those circumstances, the [respondent] had not breached his duty of candour in his application for leave to apply for judicial review.
- (ii) The matter was not res judicata because although the issue was canvassed before Aboud J, there was no final determination.
- (iii) An appeal by the respondent against the decision of Aboud J was neither necessary nor appropriate as an alternative remedy given that the respondent was the successful party before Aboud J. (I have deduced this reasoning from paragraph 32 of the judgment. The judge did not expressly give a reason why the appeal was not appropriate but her conclusion flowed from an acceptance of the respondent's submission to that effect).
- (iv) It is not correct to say that the respondent has no arguable ground for judicial review. The respondent's position is that the effect of Aboud J's order was to render the respondent's discharge null and void such that he remained a member of the TTDF and should have been rostered for duty. The Chief of Defence Staff refused to do so as seen from his letter of 22<sup>nd</sup> September 2020, that "*The Honourable Court in its Order made no statement or gave direction to the effect of*

*mandating the TTDF to reinstate your client*". The respondent in these proceedings is seeking to challenge the decision not to roster or reinstate as communicated in that letter. The claim is arguable.

- (v) There is no delay because the respondent's claim did not arise at the time of discharge but when his constitutional rights were declared to be infringed contingent upon his readiness, willingness and ability to serve.
- (vi) On the evidence, there has been no non-disclosure. The respondent was justified in initiating the claim in the manner that he did.

### **The Appeal**

(7) The appellant contends that the judge's decision cannot be justified in law and is plainly wrong, that she erred in law and was plainly and wholly wrong in finding that the respondent met the test for the grant of leave for judicial review and in finding that the respondent was not guilty of material non-disclosure in these proceedings. The appellant alleges as well that the judge erred in law in finding that the issue of reinstatement was not raised, considered and decided by Aboud J and that:

- (a) She failed to consider the undisputed evidence of Kendra Mark Gordon that Aboud J declined to include an order for reinstatement in his order of 3<sup>rd</sup> June, 2020 in CV2018 – 01724.
- (b) She failed to consider the appellant's submissions in the court below annexed as "K.M.G.2" to the affidavit of Kendra Mark Gordon wherein the appellant stated clearly that the respondent was not entitled to reinstatement as a consequence of a declaration that his dismissal was unconstitutional.
- (c) Was plainly wrong in finding that the issue of reinstatement is not res judicata.
- (d) She failed to consider properly or at all that the plea of res judicata applies to all points of litigation which a party ought to have included as part of a claim.

- (e) Was plainly and wholly wrong in finding that the issue of reinstatement could not have arisen until respondent's constitutional rights were declared and ought to be the subject of separate proceedings.

### **The threshold of arguability**

- (8) In **Sharma v Brown-Antoine (2006) 69 WIR 379, 387-388** Lord Bingham on this issue stated:

*“(4)The ordinary rule now is that the court will refuse leave to claim judicial review unless 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: R v Legal Aid Board, Ex p Hughes (1992) 5 Admin LR 623, 628; Fordham, Judicial Review Handbook, 4th ed (2004), p 426. But arguability cannot be judged without reference to the nature and gravity of the issue to be argued. It is a test which is flexible in its application. As the English Court of Appeal recently said with reference to the civil standard of proof in R(N) v Mental Health Review Tribunal (Northern Region) [2005] EWCA Civ 1605, [2006] QB 468, para 63, in a passage applicable mutatis mutandis to arguability:*

*“... the more serious the allegation or the more serious the consequences if the allegation is proved, the stronger must be the evidence before a court will find the allegation proved on the balance of probabilities. Thus the flexibility of the standard lies not in any adjustment to the degree of probability required for an allegation to be proved (such that a more serious allegation had to be proved to a higher degree of probability), but in the strength or quality of the evidence that will in practice be required for an allegation to be proved on the balance of probabilities.”*

***It is not enough that a case is potentially arguable: an applicant cannot plead potential arguability to “justify the grant of leave to issue proceedings upon a speculative basis which it is hoped the interlocutory processes of the court may strengthen”: Matalulu v Director of Public Prosecutions [2003] 4 LRC 712, 733.”***

### **Discussion and Analysis**

(9) The judge refused to set aside her decision. This is an appeal from that refusal but in considering that refusal, we must consider whether the exercise by Charles J of her discretion to grant permission was plainly wrong. See **Civil Appeal No. 179 of 2011 Miguel Regis v Attorney General**. In **Sharma v Browne- Antoine**, Lord Bingham at page 390 of his judgment, under the rubric “Governing principles” said:

***(6) Where leave to move for judicial review has been granted, the court’s power to set aside the grant of leave will be exercised very sparingly; R v Secretary of State for the Home Department, ex parte Nazir Chinoy (1991) 4 Admin LR 457 at 462. But it will do so if satisfied on inter-partes argument that the leave is one that plainly should not have been granted; ibid.***

(10) The question is then whether the decision to grant permission to file for judicial review was plainly wrong or put another way, “one that plainly should not have been granted”. We are satisfied that Charles J’s decision to grant permission was not plainly wrong. There was a proper basis for her decision. As Lord Bingham noted, the reversal of a judge’s grant of permission to file for judicial review is sparingly done. There must be clear basis for finding that the judge was plainly wrong. I can find no basis for saying she was plainly wrong because:

(i) The judge was entitled to reject the preliminary objections for the reasons she gave.

- (ii) It was perfectly within her discretion to find that the respondent had an arguable case. The bar is not a high bar. The respondent was not required to have to have a winning argument. It is sufficient that the case was arguable.
- (iii) The question of res judicata does not arise because the issue of re-instatement was not canvassed before Aboud J. What was canvassed was illegality of the discharge and the breach of various constitutional rights of the respondent. The reliefs sought in that claim, are fully set out by Charles J in her judgment. She clearly considered them at paragraph 7 (iv). Nowhere is there any claim for re-instatement. Indeed, no such relief was necessary because a finding that the discharge was illegal meant that he remained a member of the Defence Force. Consequently, there was no failure to disclose that re-instatement had been argued and rejected by Aboud J. Aboud J considered re-instatement and rejected it in the course of assessing the compensation due for breach of the rights of the respondent. The issue went to the award of compensation.
- (iv) The question whether the respondent was ready, willing and able to resume duty, arose in the context of re-instatement as a component in the assessment of compensation for the breach of his rights. Because the respondent was then incarcerated and unable to post bail, Aboud J concluded that he was then not able to resume duty. While it is thus correct that Aboud J did consider the issue of reinstatement in the course of the hearing that consideration did not bind Charles J primarily because reinstatement was not sought as a substantive issue by the respondent. In any event, it was unnecessary to seek it formally as a remedy because a finding of illegality by Aboud J would mean that the respondent was always a member of the TTDF and would have remained a member since 2014. Further, that finding could not bind Charles J because his incarceration was due to the fact that he had not been able to post bail and was in respect of a charge of which he had not been convicted and for which he was presumed innocent.

(v) The respondent could not pursue the issue of re-instatement until Aboud J ruled in his favour. That occurred on 3<sup>rd</sup> June 2020. The effect of the finding of illegality meant that the respondent always remained a member of the TTDF.

(vi) The respondent then brought this claim in November 2020, after the appellant by letter of 22<sup>nd</sup> September 2020, refused to formally reinstate and roster him. There was no delay in challenging the failure to roster. To the extent that the appellant contends that he remains a member of the TTDF, that is an arguable contention for judicial review.

(11) For these reasons the appeal is dismissed. The appellant will pay the respondent's costs of the appeal to be assessed by the Registrar in default agreement.

**Nolan Breaux**  
**Justice of Appeal**