

IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE

CLAIM NO. CV 141 OF 2023

BETWEEN:

SAMUEL LUNGOLE AWICH

Claimant

and

THE ATTORNEY GENERAL OF BELIZE

Defendant

Appearances:

Mr. Kileru Awich for the Claimant

Ms. Samantha Matute and Mr. Stanley Grinage for the Defendant

2024: May 30;

June 20.

REQUEST FOR DEFAULT JUDGMENT - NOTICE TO STRIKE OUT STATEMENT OF CLAIM - APPLICATION FOR EXTENSION OF TIME TO FILE DEFENCE

JUDGMENT

[1] **NABIE, J.:** Before this court is a request for default judgment filed by the claimant on 1st September 2023, because the time for the defendant to file and serve a defence has expired and no defence or counterclaim was served on him, further, no monies have been paid in settlement of the claim. The request for judgment was accompanied by an affidavit of the claimant which certifies that no defence and counterclaim was served on him and the time for doing so had expired on 21st

August 2023. He also exhibited an affidavit of service sworn to by a process server Errol Jones.

- [2] The defendant has filed an application dated 5th September 2023 to –
- (i) strike out the claimant's amended claim form and amended amended statement of case, which failed to have a Certificate of Truth as required by **CPR 3.12(4)(a)** and that the claim is an abuse of process; or
 - (ii) in the alternative an order extending the time for filing and serving its defence to the claim.
- [3] The claimant's request to enter judgment is denied. The claimant's amended claim form and amended amended statement of case are struck out for being an abuse of process. Accordingly, there is no need to rule on the defendant's application for an extension of time to file a defence.

Background

- [4] The claimant filed his claim form and statement of case on 3rd February 2023. The Social Security Board had also been named as a defendant. On the 12th day of July 2023 the claimant discontinued the matter as against the Social Security Board. On the 13th July 2023, the claimant then filed an amended claim form and an amended statement of case. On the said 13th July 2023 he also filed an amended amended statement of case. This amended claim form and the amended statement of case were served on 21st July 2023 on the defendant
- [5] In his amended claim form and amended amended statement of case, the claimant, a retired Justice of Appeal of Belize, claims that the Government of Belize has failed to pay him severance pay under the **Labour Act**. He is seeking inter alia:
- (i) A Declaration that the claimant is entitled to severance payments in accordance with section 183 and 184 of the **Labour Act**.
 - (ii) An Order directing the defendant to pay the claimant severance in the sum of \$79,583.33 being severance due to the claimant under sections 183 and 184 of the **Labour Act**.

- [6] The defendant acknowledged the claim and indicated an intention to defend. This was filed on 1st August 2023. With the defence becoming due on 26th August 2023, the defendant sought an extension of time on 31st August 2023. The claimant refused to agree to same and filed its request for judgment in default on 1st September 2023. Thereafter, on 5th September 2023 the defendant filed his application to strike out the amended claim form and amended statement of case and in the alternative, sought an extension of time to file its defence from the court.
- [7] On 13th September 2023 the claimant filed a notice of opposition to the defendant's application with an affidavit in support.
- [8] On 23rd October 2023 written submissions on the applications were provided. Thereafter the parties were asked to file further affidavits and to address on the issue of the applicability of the Labour Act to the office of judge (Chief Justice, Justice of Appeal and Justice of the Supreme Court).

Issues

- [9] The relevant issues before this Court are as follows:
- (i) Whether the claimant can obtain a judgment in default?
 - (ii) Whether the claim can be struck out for failing to have a certificate of truth?
 - (iii) Whether the claim is an abuse of process and ought to be struck out?
 - (iv) Whether the defendant should be granted an extension of time to file its defence?

Request for Judgment in Default

[10] **CPR 12.3** provides as follows regarding the instances where permission is required to obtain a default judgment:

- “12.3** (1) A claimant who wishes to obtain a default judgment on any claim which is –
- (a) a claim against the Crown or in any relevant enactment relating to Crown immunity; or
 - (b) a claim against a minor or patient as defined in Rule 2.4;
- must obtain the court’s permission.
- (2) A claimant who wishes to obtain judgment in default of acknowledgment of service against a diplomatic agent who enjoys immunity from civil jurisdiction by virtue of any relevant enactment relating to diplomatic privileges must obtain the court’s permission.
- (3) An application under paragraph (1) or (2) must be supported by evidence on affidavit.”

[11] **CPR 12.5** concerns the necessary requirement for the court office to enter judgment in default:

- “12.5** The court office must enter judgment for failure to defend at the request of the claimant if -
- (a) the claimant proves service of the claim form and statement of claim; or
 - (b) an acknowledgment of service has been filed by the defendant against whom judgment is sought; and
 - (c) the period for filing a defence and any extension agreed by the parties ordered by the court has expired; and
 - (d) the defendant has not -
 - (i) filed a defence to the claim or any part of it (or such defence has been struck out or is deemed to have been struck out under Rule 22.1(6)); or

- (ii) where the only claim is for a specified sum of money, filed or served on the claimant an admission of liability to pay all of the money claimed, together with a request for time to pay it; or
 - (iii) satisfied the claim on which the claimant seeks judgment; and
- (e) the claimant has permission of the court to enter judgment (where necessary).”

[12] According to **CPR 12.7**, a claimant applies for default judgment by filing a request in Form 7.

[13] The request for default judgment (Form 7) is accompanied by an affidavit of the claimant who has set out some of the conditions in **CPR 12.5** for the court office to enter judgment. Also before me is an extension of time application. It does not appear that this is the claimant’s application for permission as required (see **CPR 12.3**). **CPR 12.3 (3)** states that an application under subparagraphs (1) and (2) must be accompanied by an affidavit. This rule is relevant as the defendant is the Crown¹. Further, **CPR 11.6 (1)** provides that the general rule is that an application must be made in writing in Form 6. From the documents filed, it appears that no permission has been sought by the claimant. He has therefore missed the crucial step of seeking the permission of the court as required in **CPR 12.5 (e)**. Further, there is no mention of obtaining the court’s permission in the request or in the claimant’s affidavit. In my view, a formal request to obtain the court’s permission must be provided in order to proceed to request default judgment against the Crown. The claimant has not obtained the court’s permission to enter judgment against the Crown nor has the claimant filed an application to obtain such permission.

¹ Crown Proceedings Act, section 2(2).

[14] It is only after the claimant has obtained the court's permission that the claimant can file the Form 7, with the court order attached, for the purposes of submitting it to the court office. In the circumstances the request for judgment in default is procedurally incorrect and is hereby denied.

Application to Strike Out the Amended Claim Form and Amended Amended Statement of Case

[15] The defendant relies on two grounds to strike out the amended claim form and the amended statement of case:

- (i) that it is not accompanied by a certificate of truth; and
- (ii) that it is an abuse of process.

Certificate of Truth

[16] The CPR states with respect to the Certificate of Truth:

- “3.12** (1) Every statement of case must be verified by a certificate of truth.
- (2) The certificate of truth should be signed by the lay party.
- (3) If it is impracticable for the lay party to sign the certificate required by paragraph (1) it may be given by that person's legal practitioner.
- (4) A certificate of truth given by the legal practitioner must also certify –
- (a) the reasons why it is impractical for the lay party to give the certificate; and
 - (b) that the certificate is given on the party's instructions.

.....

- 3.13** (1) The court may strike out any statement of case which has not been verified by a certificate of truth.”

[17] The amended claim form clearly did not comply with **CPR 3.12**. The certificate of truth by the legal practitioner does not give the reasons why the claimant was unable to give the certificate nor that the certificate was given as per the claimant's instructions.

[18] Where there is an error in procedure, the **CPR** makes provisions on the manner in which it can be dealt with:

“**26.9** (2) An error of procedure or failure to comply with a Rule, practice direction or court order does not invalidate any step taken in the proceeding, unless the court so orders.

(3) Where there has been an error of procedure or failure to comply with a Rule, practice direction, court order or direction, the court may make an order to put matters right.

(4) The court may make such an order on or without an application by a party.”

[19.] The defendant argues firstly that the CPR requires a certificate of truth and the amended claim form does not contain such and as a result of this defect the court is entitled to strike out the claim. The defendant relied on a Court of Appeal decision from Jamaica, **Shakira Dixon v Donald Jackson**². In that case the court refused to strike out the claim and found that the failure to verify the defence was not fatal to the claim and cited rule **26.9**, which identical to the Belize **CPR 26.9(2)**. The claimant had filed a Notice of Opposition to the strike out the application and argued the same issue regarding the error of procedure.

[20] I have considered the submissions of both parties and I also bear in mind that the claim form filed did comply with the rule and this is an amended claim form. The amended claim form is still required to be in compliance with **CPR 3.12**. This error of procedure can be put right by the court by virtue of **CPR 26.9**. In the circumstances I refuse the application to strike out the claim on this ground.

² Civil Appeal 120/2005 (Jamaica).

Abuse of Process

[21] Where there is an abuse of process, those proceedings are such that the process of the court is not being fairly or honestly used but is employed for some ulterior or improper purpose or in an improper way. In the case of **Attorney General v Jones** [1990] 1 WLR 859; at page 865 c Lord Donaldson stated:

“The power to restrain someone from commencing or continuing legal proceedings is no doubt a drastic restriction of his civil rights, and is still a restriction if it is subject to the grant of leave by a High Court judge. But there must come a time when it is right to exercise that power for at least two reasons. First, the opponents who are harassed by the worry and expense of vexatious litigation are entitled to protection; secondly the resources of the judicial system are barely sufficient to afford justice without unreasonable delay to those who do have genuine grievances...”

[22] In the Court of Appeal decision of the **Attorney General of Trinidad and Tobago v. Universal Projects Limited**, Jamadar JA referred to **The Grand Hotel (SA) PTY Ltd v DAC & Others** [2000] SASC 272 (14 August 2000),³ at paragraphs 24 to 27, where Bleby J of the Supreme Court of South Australia, explained as follows:

“24 The application also relies on Rule 46.18. That confers a power on the Court to strike out a pleading in a number of specified circumstances or a pleading which ‘is otherwise an abuse of the process of the court’. The plaintiff argues that neither the summons setting out the relief claimed nor the affidavits constitute pleadings for the purpose of that rule, and that the Court is therefore powerless to accede to the application. The only other power to strike out an affidavit is contained in Rule 83, but that only extends to scandalous, irrelevant or otherwise oppressive matters. That is not alleged in this case.

25 Where, as in this case, the Court has directed, as a matter of convenience, that the matter should proceed on affidavits rather than pleadings, it would be odd if there were no power, in an appropriate case, to strike out part of a claim merely because there were no pleadings as such. However, I do not consider it necessary to rule on whether Rule 46.18 is available for that purpose. Although it is not referred to in the Council’s summons, the Court has an inherent jurisdiction, recognised in Rule 3.01, to dismiss proceedings which disclose no cause of action or which are frivolous, vexatious or an abuse of the process of the Court. The power is reflected to a large extent in Rule 3.04(e), which enables the court to ‘strike

³ This case was cited by the Court of Appeal of Trinidad and Tobago in **The Attorney General of Trinidad and Tobago v. Universal Projects Limited Civil Appeal No. 104 of 2009** per Jamadar JA.

out or dismiss any step in a proceeding which is vexatious, frivolous or an abuse of the process of the court'. In my opinion, that power is sufficiently wide and flexible to enable the court to entertain the Council's application.

26 I respectfully agree with Olsson J in the State Bank Case Ruling (Unreported, 27 March 1997), Judgment No S6111, that without intending to be exhaustive, the categories of proceedings which may be described as an abuse of process include any one or more of the following:

- (a) proceedings which involve a deception on the court, or are fictitious or constitute a mere sham;
- (b) proceedings where the process of the court is not being fairly or honestly used but is employed for some ulterior or improper purpose or in an improper way;
- (c) proceedings which are manifestly groundless or without foundation or which serve no useful purpose;
- (d) multiple or successive proceedings which cause or are likely to cause improper vexation or oppression.

As Olsson J did in that case, I respectfully adopt what Cross J said of a similar power in New South Wales in *Brimson v Rocla Concrete Pipes Ltd* (1982) 2 NSWLR 937 at 944:

'Where the court is asked to reject a plaintiff's case, either under its statutory rules or its inherent jurisdiction, the fundamental principle is that prima facie a plaintiff is entitled to have his case come to trial; and applications to deprive him of that right will succeed only in the clearest of cases. True, the court will not look merely at the suggested weakness of the plaintiff's case but - though to a less extent - at the suggested strength of the defendant's case; and, true, forensic argument and subsequent judicial reflection are not necessarily inconsistent with a firm conclusion that the cause of action should not be allowed to proceed. But fatal defects in the plaintiff's case must be very clear before the court will intervene in this fashion.'

27 I refer also to what Dixon J said in *Dey v Victorian Railways Commissioners* (1949) 78 CLR 62 at 91:

'The application is really made to the inherent jurisdiction of the court to stop the abuse of its process when it is employed for groundless claims. The principles upon which that jurisdiction is exercisable are well settled. A case must be very clear indeed to justify the summary intervention of the court to prevent a plaintiff

submitting his case for determination in the appointed manner by the court with or without a jury. The fact that a transaction is intricate may not disentitle the court to examine a cause of action alleged to grow out of it for the purpose of seeing whether the proceeding amounts to an abuse of process or is vexatious. But once it appears that there is a real question to be determined whether of fact or law and that the rights of the parties depend upon it, then it is not competent for the court to dismiss the action as frivolous and vexatious and an abuse of process.”

- [23] The defendant in his submissions relies substantially on the second limb of its application to strike out the claim. The application is supported by the affidavits of Alea Gomez and Israel Alpuche. A draft defence is also annexed.
- [24] The thrust of the defendant’s argument is that the Labour Act/ section 183 of the Labour Act⁴ does not apply to the claimant as the claimant held office as a Judge, Acting Chief Justice and retired as a Justice of Appeal (Judge). The court was asked to consider the overriding objective and the interest of justice to resolve the issue at this juncture in order to save time and expense.
- [25] The defendant argues that the claimant has no reasonable prospect of success as the Labour Act does not govern the claimant’s employment regarding terms and conditions of service with the government of Belize. It is his position that the judicial

⁴ The Labour Act section 183-(1) Where a worker who has been continuously employed by an employer for a period of, (a) five to ten years and, (i) his employment is terminated by the employer; or (ii) the worker retires on or after attaining the age of sixty years or on medical grounds, that worker shall be paid a severance pay of one week’s wages in respect of each complete year of service; or (b) over ten years and his employment is (i) terminated by the employer for reasons, which do not amount to a dismissal. (ii) abandoned by the worker pursuant to section 41 of this Act; (iii) contracted for a definite period and the employment is terminated on the expiration of such period and the contract either makes no provision for or makes less favourable provisions for severance pay; or (iv) ended because the worker retires on or after attaining the age of sixty years or on medical grounds, that worker shall be paid a severance pay of two weeks’ wages in respect of each complete year of service.

(2) A worker with a minimum of ten years’ continuous service who resigns his employment shall be eligible for a gratuity equal to severance pay computed in accordance with this section.

(3) Notwithstanding subsection (1)(b) of this section, where an employee has completed over ten years of continuous employment, the severance pay shall be computed as follows:

- (i) for the period served before 31st day of December, 2011, at the rate of one week’s pay for each complete year of service ; and
- (ii) for the period served after the 31st day of December, 2011, at the rate of two weeks’ pay for each complete year of service

appointments are regulated by the Constitution of Belize. Further, the claimant is unable to rely on selected sections of the Labour Act for his benefit. The Attorney General further submitted that the claimant has been paid all the monies owed under the contracts with the Government of Belize as a judge. The defendant views the claim as an abuse of process and submits it should be struck out on these grounds.

[26] The defendant filed the affidavit of Ms. Elisa Montalvo, the Solicitor General, on 27th May 2024 in support of the strike out application. She deposes inter alia that the Constitution of Belize governs the appointment of Judges and their conditions of service. The provisions of the Constitution afford Judges protection from executive pressures and influences and these provisions are entrenched provisions of the Constitution. Further, as the Constitution contains the procedure about how a judge can be appointed and removed, it is only reasonable that the Constitution governs a judge's condition of service.

[27] The appointment of persons to the offices of Chief Justice and Justices of the Supreme Court are to be found in section 97 of the Constitution.⁵ A justice of the Supreme Court shall hold office until he attains the age of sixty five years.⁶ The procedure to remove a justice is contained in subsections (3) to (8) of Section 98 of the Constitution. A Justice of Appeal is appointed pursuant to section 101 of the Constitution and tenure and removal from office under section 102 of the Constitution. The power to remove these office holders vests in the Governor General upon receiving advice from the Belize Advisory Council.

[28] The claimant argued in his submissions in response that the defendant's application to strike out the claim ought to be dismissed because section 183 of the Labour Act is not inconsistent with the Constitution and therefore the claim is not an abuse of process. It was further stated that none of the various sections of the Constitution deals with severance payments and that the Constitution does not exclude the

⁵ "97(1) The Chief Justice shall be appointed by the Governor General, acting in accordance with the advice of the Prime Minister given after consultation with the Leader of the Opposition.

97(2) Justices of the Supreme Court other than the Chief Justice shall be appointed by the Governor General, acting in accordance with the advice of the Judicial and Legal Service Commission and with the concurrence of the Prime Minister given after consultation with the Leader of the Opposition".

⁶ Section 98(1) of the Constitution.

operation of the Labour Act from offices established under the Constitution including the offices which he held namely Judge of the Supreme Court, Acting of Chief Justice and Justice of Appeal.

[29] Further, the claimant highlighted that in his pleadings, the claim was one for breach of statutory duty by the defendant to pay the severance to him. He further submitted that the claim is not one for breach of contract. He further argues that the defendant's position that the claim was an abuse of process was itself misconceived as according to the Crown, all sums had been paid to the claimant from his employment contracts. The claimant went on to say that breach of a statutory duty was in fact a tort and attracted exemplary and aggravated damages. Lastly, he averred that the sums owed on the employment contracts are separate and apart from the breach of statutory duty under the Labour Act.

[30] The claimant filed a further affidavit on 23rd May 2024 which exhibited some of his instruments of appointments and several contracts. The parties to these contracts were the claimant and the Government of Belize. These various contracts set out terms and conditions of claimant's employment as a Judge in Belize.

[31] The **Labour Act** provides in section 2 the following definitions:

“‘Contract of employment’ or ‘contract of service’ means any agreement between an employer and a worker, whether expressed or implied, oral or written, for a definite or indefinite period by which the worker works under the authority and directions of the employer even if not under his supervision, in return for remuneration fixed according to the hours of work or at piece or task rate, and includes a contract of apprenticeship or probation;

‘employer’ means any person, firm, corporation, company, or body of persons who or which has entered into an agreement or contract to employ any worker;

‘worker’ or ‘employee’ means a person who has entered into or works under a contract with an employer under a contract of employment.”

[32] The Labour Act establishes the industrial relations regime for employers and employees/workers. These are provisions for the protection of workers and regulation of employment issues such a maternity, domestic servants, wages, work

times, grievance procedures and safety. I do not accept the submission by the claimant that because the Labour Act is not inconsistent with the Constitution that the provisions of the Labour Act apply to offices established under the Constitution. If section 183 were to apply then it can be argued that all of the Labour Act applies to judges of the Senior Courts of Belize. It is my view that the Labour Act excludes certain types of employment such as public officers as industrial relations and salaries and allowances are dealt with under Part 9 and Part 12 respectively in the Public Services Regulations (PSR) made pursuant to the Constitution.

[33] The claimant submits that a judge is to be considered a “worker” or “employee” under the Labour Act to benefit from the severance payment provided for in section 183. When questioned the counsel for the claimant admitted that persons who perform managerial functions do not fall under the purview of the Labour Act. The definition of “contract of employment” is critical to the present matter. It speaks of the worker/ employee being **“under the authority and direction of the employer even if not under his supervision”**. The employer of a judge is the Government of Belize.

[34] Under the Labour Act a worker/employee is under the authority and direction of the employer. Accordingly, for the Labour Act to apply to judges, the judges would be under the authority and direction of the Government of Belize. This provision is certainly contrary to the protections afforded to judges under the Constitution with regard to appointments to and removal from office. Independence of the judiciary is core to a sovereign democratic state. Judges in Belize are subject to a code of ethics to carry out their functions in an independent and impartial manner. Such a provision cannot be applicable to a judicial officer. In my view this brings the issue of the applicability of the Labour Act to an end.

[35] For completeness I will now refer to the remainder of the definition of “contract of employment” - “in return for remuneration fixed according to the hours of work or at piece or task rate and includes a contract of apprenticeship or probation”. A cursory reading of the remainder of the definition renders any applicability to a judicial officer. The terms “hours of work”, “piece or task rate” and “contract of

apprenticeship or probation” could never be in alignment with the duties and functions of a Judge. This signifies a great flaw in the arguments by counsel for the claimant.

[36] The claimant lists six grounds as to why section 183 of the **Labour Act** applies to a judge:

“(1) the constitution would have made express provision to exclude section 183;

(2) severance payments do not breach the constitution;

(3) because an office is created under the constitution does not render all other laws inapplicable;

(4) gratuity does not take into account severance payments;

(5) the claimant meets the requirements for severance payments under section 183 of the Labor Act;

(6) a determination of the applicability of section 183 of the Labour Act does not offend the separation of powers doctrine and the rule of law.”

[37] With respect to these six grounds, I can accept Ground no. (4) that gratuity does not take into account severance payments, but severance payments under the Labour Act do not apply to judges.

[38] It is difficult to understand the claimant’s arguments made in support of Grounds (1) to (3). The claimant expressly submitted that only section 183 of the Labour Act applies to judges. It was not his view that the other provisions of the Labour Act were applicable to judges. This in itself is a flawed argument. The drafters of the Constitution certainly are not expected to provide exclusion clauses in the text of the Constitution in the manner contemplated by the claimant. The basic concept of constitutional supremacy may be a guide to the claimant. The Constitution is the supreme law of the land and all Acts of parliament which are inconsistent with it are void to that extent. The Ground 2 argument that the Labour Act applies to Judges because it is not inconsistent with the Constitution is baseless as the Labour Act does not apply to judges. Certainly, if section 183 of the Labour Act or the Labour Act was to apply to judges then the Act would have expressly stated or it could have

been included in the contract of employment. The vague submission that severance payments are not unconstitutional is a nonstarter. The issue of severance payments to judges can only be an issue if it is provided for in a judge's terms and conditions. There is no evidence of this before the court. The Labour Act is not inconsistent with the Constitution, but a judge is not a worker under the Act. In any event severance payments are also contractual arrangements between an employer and employee which can be quite external to the Labour Act. The claimant also contends that because an office is created under the Constitution does not render all other laws inapplicable. This is another argument which is vague and unclear and not well articulated. These submissions are without foundation, flawed and misguided when taken in context.

[39] I have already shown that Ground 5 has been established as being plainly wrong. The claimant in his submission highlights the wording of the section 183 but negates to consider the interpretation section of the Labour Act. When one considers the definition section it is abundantly clear that this is not applicable to a judge.

[40] With regard to Ground 6, that section 183 does not offend against the separation of powers and the rule of law. While there is no agreed definition of "Rule of Law", there are concepts that are intrinsic to the concept of rule of law such as legal certainty, access to justice, equality rights, and judicial independence all geared towards preventing abuse of power by the state and that laws are followed. Therefore, if one were to apply section 183 to Judges it would be contrary to the rule of law in that it offends against judicial independence. The doctrine of separation of powers implies a separation of the fundamental functions of the legislature, the executive and the judiciary. The trinity of core governmental powers is differentiated and distributed. ⁷Each function is mainly consigned to a distinct, autonomous organ which is unable to "invade the other's province". Again section 183 would also offend the doctrine of separation of powers if a judge was to be under the authority or direction of the Government of Belize.

⁷ Robinson, Bulkan and Saunders, *Fundamentals of Caribbean Constitutional Law*, para 7-003.

[41] It is the Constitution that establishes the offices of judge and justice of appeal and the appointments are made by the Governor General. Unlike other jurisdictions, Belize does not have specific legislation or a public authority dealing with terms and conditions of judges. The claimant in his latest affidavit has exhibited his various instruments of appointment and his contracts with the Government of Belize. These contracts together with the provisions of the Constitution as highlighted aforesaid form his terms and conditions. As I indicated through an examination of the Labour Act, a judge does not fall within the definition of “worker/employee” when it is juxtaposed with the definition of “contract of employment”. These were not the arguments raised by the Crown. The defendant’s submissions were essentially that the office of judge is established under the Constitution. The Constitution makes provision for appointments and removal and provides protection for judges from political and external influences. Further, it was submitted that those provisions are deeply entrenched provisions of the Constitution. As a result, it was only the Constitution that could govern the terms and conditions of a judge. In many respects this position warrants consideration. I agree that those entrenched provisions in the Constitution ensure that there can be an independent and impartial judiciary. Issues regarding judges must be regarded with care as the judiciary is one of the three arms of government and plays a vital role in the rule of law.

[42] In the Republic of Trinidad and Tobago, Aboud J. dealt with a matter that concerned the implementation of sabbatical leave for judges in that jurisdiction⁸. In Trinidad and Tobago, the Judicial and Legal Service Commission is the body that recommends to the President on the appointment of judges to the High Court and Court of Appeal. There is a Salaries Review Commission (SRC) that is established to recommend terms and conditions of certain high office holders including the ministers of government, parliamentarians and the judiciary. Aboud J discussed the role of the SRC in achieving the independence of the judiciary at paragraph 45:

⁸ Attorney General v The Law Association of Trinidad and Tobago and the Judges of the Supreme Court Cv. No.2018- 01231.

“The goal of judicial independence is to ensure that justice is done in individual cases and to ensure public confidence in the justice system. The three core characteristics of judicial independence are:

- (a) security of tenure;
- (b) financial security; and
- (c) administrative independence (see *Valente v The Queen* [1985] S.C.R. 673 at p.22 per Le Dain J and *The Commonwealth, Latimer House Guidelines*, Guideline II.

So far as material, the preamble to the Constitution recognizes (at sub-para (d)) ‘that men and institutions remain free only when freedom is founded upon respect for moral and spiritual values and the rule of law’”.

[43] Aboud J. went to say as follows regarding the importance of the terms and conditions of judges:

“To achieve these goals the Judiciary must be insulated from legislative and executive interference. This insulation occurs at several levels. Firstly, Judges are appointed by the President, acting in accordance with the advice of the independent Judicial and Legal Service Commission. They cannot be removed from office except for good and proper reasons. Secondly, they enjoy financial security by the Constitutional guarantee that their salaries and allowances are a charge on the Consolidated Fund. These protections eliminate the influence that the Legislature or the Executive might otherwise exert if they sought to hire judges who would do their bidding or threaten to fire judges who did not.⁹

The Constitution mandates the executive to find the funds to pay for an independent and impartial Judiciary that supervises, and is itself subject to, the rule of law. Among the many costs of providing this service is the payment of judges’ salaries and allowances. These are not static in nature. Over time salary increases become necessary. Now, this is a nettlesome situation. The Executive is very often a party before the civil courts and it is always a party in the criminal courts. Every salary negotiation is an exercise in bargaining and, depending on the balance of power at the time, the negotiators may not be on equal terms. There is no place for influence peddling or curry-favouring in fixing salaries and allowances in a sovereign and constitutional democratic state such as Trinidad and Tobago. It is for this reason the SRC was created. It is designed as a buffer or sieve between the Executive and the Judiciary. It is free to haggle with an office

⁹ Paragraph 48 (supra).

holder or recommend or reject an office holder's proposal. When it does so it is not acting as an agent or an arm of the state. The SRC is itself independent. Its commissioners are appointed by the President after consultation with the Prime Minister and the Leader of the Opposition ..."¹⁰

Conclusion

[44] As I had indicated earlier, the request for default judgment is procedurally incorrect and is denied, but that is rendered nugatory in any event. I am not inclined to dispose of this matter because the Certificate of Truth is not in accordance with the CPR. However, I find that this matter constitutes an abuse of process. Without even a close analysis of the provisions of the Labour Act, it is inconceivable that it could apply to judges. The claims are groundless and I find these proceedings to be frivolous and vexatious. It is also unnecessary for me to rule on the extension of time applications for which I was supplied, with much authority by both parties. This matter although an abuse of process was a novel approach by the claimant. This matter underscores the importance of the separation of powers doctrine. In order for office holders to have certainty, the Government of Belize may consider codification of the terms and conditions of judges which would ensure transparency and equality among office holders.

Disposition

[45] It is hereby ordered:

1. The amended claim form and the amended amended statement of case are struck out.
2. Costs are awarded to the defendant.

**Nadine Nabie
High Court Judge**

¹⁰ Paragraph 49 (supra)