[2017]JMSC Civ.127

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN CIVIL DIVISION

CLAIM NO. 2013HCV02167

BETWEEN	**DR. SANDRA WILLIAMS-PHILLIPS**	**CLAIMANT**
AND	**SOUTH EAST REGIONAL HEALTH AUTHORITY**	**1ST DEFENDANT**
AND	**THE ATTORNEY GENERAL**	**2ND DEFENDANT**

Dr. Sandra Williams-Phillips appears in person.

Mrs. Shawn Wilkinson and Ms. Tamara Dickens, instructed by the Director of State Proceedings for the defendants.

Heard: 6th July, 2017 & 18th September, 2017.

Employment Law – Wrongful dismissal – Claimant's employment terminated without notice - Salary in lieu of notice tendered - Whether contract of employment terminated in breach of its terms.

EVAN BROWN, J

Introduction

[1] Dr. Sandra Williams-Phillips was employed on contract by the South East Regional Health Authority (the Authority) as a Consultant at the Bustamante Hospital For Children. Her employment took effect on the 3rd August, 2009. The Schedule to her contract of employment contains a clause for the termination of

engagement between the parties. By virtue of that clause the contract of employment was terminable at the instance of either party, either on the giving of one month's notice in writing or the payment of one month's salary in lieu of notice.

[2] The Authority terminated the contract of employment with effect from the 20th January, 2010. The requisite payment in lieu was tendered and accepted. Aggrieved by the manner of her termination, Dr. Williams-Phillips brought this claim seeking, inter alia, damages for wrongful dismissal. Having reviewed the evidence and considered the submissions, I give judgment for the defendants.

Background

[3] The manner of termination of the contract was set out in clause 11 of the contract of employment. Clause 11 appears below:

> *11. (i) The Authority may at any time terminate the engagement of Dr. Williams-Phillips on giving her one (1) month's notice in writing, or paying to her one (1) month's salary in lieu of notice.*
>
> *(ii) Dr. Williams-Phillips may at any time terminate her engagement on giving to the Authority one (1) month's notice in writing, or on paying to the Authority one (1) month's salary in lieu of notice.*
>
> *(iii) If Dr. Williams-Phillips terminates his (sic) engagement otherwise than in accordance with subsection ii of this Agreement, she shall be liable to pay to the Authority as liquidated damages, two (2) months' salary.`*

[4] The Authority advised Dr. Williams-Phillips of the termination of the contract of employment by letter dated the 18th January, 2010. The termination of the contract of employment was made effective 20th January, 2010. In that letter, the Authority cited clause 11(i) of the contract of employment as justification for its action. The letter also contained an itemization of her gross terminal payments, which all amounted to $620,546.18. She subsequently received a cheque from the authority dated 19th January, 2010, with payments for $455,644.61, after statutory deductions were applied.

Case for the claimant

[5] Dr. Williams-Phillips was a Consultant Paediatric, Adolescent and Adult Congenital Cardiologist and Consultant Paediatrician. She has numerous accolades in the medical field and has been a medical doctor for over thirty-five (35) years.

[6] She was employed by the Authority in 2009 after she had made improvements to the waiting periods in the Echocardiogram clinics and the database and organisation of the Cardiology Clinic. The Authority, she said, disagreed with her that she was wrongfully dismissed, yet they did not interpret her contract in accordance with the ***Labour Relations and Industrial Disputes Act*** and other laws of Jamaica as stipulated in contract.

[7] The circumstances of her dismissal were that on the 19th January, 2010, she received a telephone call from the then CEO of the Hospital. She was informed that her employment was terminated with immediate effect, and that she was to leave the Hospital's compound immediately. She subsequently received the letter of dismissal from the Half-Way-Tree Post Office.

[8] That incident followed her advice to the then Senior Medical Officer about cardiac children that were labelled "Inoperable". A plan was devised, she said, wherein those children would be placed on the November 2009 mission list for cardiac surgery to be a priority. She was however denied the opportunity to perform the cardiac catheterisation on those children before they were placed on that mission list.

Case for the defendant

[9] Dr. Williams-Phillips' contract of employment contained various clause. At the time of the employment, she both accepted and signed that contract along with a representative from the authority. Among those clauses, was the provision at clause 11(i) which makes provision for her employment to be terminated with one month's notice or payment in lieu of notice.

[10] On 18th January, 2010, the then acting Regional Director of the Authority wrote to Dr. Williams-Phillips advising her that her employment was terminated with immediate effect pursuant to clause 11(i). She received notice payment in the form of a cheque dated 19th January, 2010.

Claimant's Submissions

[11] Dr. Sandra Williams-Phillips made submissions on her own behalf. She placed reliance on ***Lindon Brown v Jamaica Flour Mills Ltd***, Claim No. CL 2000/B199, *unreported,* delivered 15th December, 2005, for the definitions of wrongful dismissal. Wrongful dismissal is a breach of contract of employment relating to the expiration of the term of the employee's engagement.

[12] An employee is entitled to sue for wrongful dismissal when: (1) The employee has been engaged for a fixed period, or for a period terminable by notice and dismissed either before the expiration of that fixed period or without the requisite notice, as the case may be, and (2) his dismissal must have been wrongful, that is, without sufficient cause to permit his employer to dismiss him summarily.

[13] Also, Dr. Williams-Phillips continued, where the contract of employment: (1) limits the grounds of dismissing an employee, or (2) makes dismissal of the employee subject to a condition in the contract, those limitations or conditions must be observed. Where the employee is dismissed outside of those conditions and limitations then that procedure amounts to wrongful dismissal.

[14] She argued that due process must be followed by the 1st defendant, South East Regional Health Authority, when the decision to terminate her employment was taken. No due process was followed in her dismissal, and neither was she given the requisite notice under the contract of employment or given payment in lieu of it.

[15] She also cited ***Calvin Cameron v Security Administration*** [2013] JMSC Civ 95, to make the submission that the claim for wrongful dismissal flows from a

breach of contract. Where the contract contains a termination clause, the procedure outline therein must be followed.

[16] Again, Dr. Williams-Phillips then made the submission that wrongful dismissal cannot be established where payment has been made in lieu of notice. For that point, she relied on the cases of ***Fuller v Revere Jamaica Alumina Ltd*** (1980) 31 WIR 304, and ***Cocoa Industry Board v Cocoa Farms Development Company Limited, et al,*** Appeal no 38 of 1992, delivered 31st May, 1993.

[17] She made the argument that due process was not followed in dismissing her from her post as Part VI, section 20 of the ***Labour Relations Code*** was not observed. She posited that the recommendations made under that section at (i) and (v) were not done. Specifically, that her matter was not dealt with in writing, and she did not have recourse to the Ministry of Labour and employment conciliation services.

[18] She sought to place reliance on ***National Commercial Bank Jamaica Ltd v The Industrial Disputes Tribunal & Peter Jennings*** [2016] JMCA Civ 24, paragraph 2, which says:

> *It will be sufficient to say that the IDT, after a hearing before it, found that NCB's termination of its employment of Mr. Peter Jennings was unjustified. As a consequence it ordered that he be re-instated in his employment or be paid compensation for a particular period.*

She repeated her submission that she was neither given the requisite notice under the contract, nor paid in lieu of the contractual termination notice period.

[19] Dr. Williams-Phillips further contended that she was summarily dismissed with immediate effect from 19th January, 2010. Her summary dismissal by the South East Regional Heath Authority was effected by way of a letter dated 18th January, 2010. She was also advised of that decision by way of telephone.

[20] She cited ***Rudolph Jackson v Guardian Life Limited,*** Claim No. 2005 HCV 00253, delivered 28th March, 2008, page 9 which states:

> *There is no pleading or evidence which substantiates an assertion that Mr. Jackson was excluded from all Guardian Life's premises thus making the termination, in effect a summary dismissal.*

In relying on that portion of the judgment, she submitted that her termination amounted to summary dismissal.

[21] Dr. Williams-Phillips relied on the headnote of ***Fuller v Revere Jamaica Alumina Ltd****, supra,* which reads:

> *Where the plaintiff in an action for wrongful dismissal seeks damages in the nature of general damages, or damages for the loss of pension benefit or a redundancy payment, these items must be expressly pleaded and proved to the satisfaction of the court.*

She submitted that the letter of termination on the 18th January, 2010 severed her employment relationship with the defendants. She contended that she was excluded from entering the Bustamante Hospital for Children, and she was forcibly removed upon her entrance.

[22] The court, she concluded, has the power to order the Industrial Dispute Tribunal to hear a matter. She argued that since she was wrongfully and summarily dismissed, this matter fell within section 12 of the ***Labour Relations and Industrial Disputes Act***.

[23] Specifically, it fell within section 12(5)(c)(i) where the Industrial Dispute Tribunal may, where the worker chooses, reinstate him with such payment of wages as the Tribunal may determine. Dr. Williams-Phillips posited that, based on the nature of this matter, there is a high possibility that she will be reinstated if the court referred the matter to the Industrial Dispute Tribunal.

Submissions of the defendants

[24] Mrs. Shawn Wilkinson submitted for the defendants that Dr. Williams-Phillips' employment was terminated pursuant to clause 11(i) of the contract of employment. She received the letter of termination dated 18th January, 2010, and she also received the one month's notice pay on the termination of her employment.

[25] On this basis, her claim for wrongful dismissal cannot be maintained. Mrs. Wilkinson relied on the case of ***Calvin v Cameron v Security Administrators Limited*** [2013] JMSC Civ 95, paragraph 2, which says: "...the common law provides remedies for the dismissal of a person from employment, in breach of contract. Such remedies may be granted, most typically, on a claim for damages for wrongful dismissal."

[26] Counsel again submitted, in further reliance on ***Calvin v Cameron v Security Administrators Limited***, supra, at paragraph 9, that the Authority was entitled to terminate the claimant's employment without giving any reason. This can be done provided that the requisite notice or payment in lieu of notice was given to Dr. Williams-Phillips. If no notice payment was made, then wrongful dismissal would have arisen. That payment, however, was made to her.

[27] Mrs. Wilkinson then submitted that the Authority takes no issue with Dr. Williams-Phillips' contention that the contract must be interpreted in accordance with the ***Labour Relations and Industrial Disputes Act***. However, counsel posited, the proper forum for any issue regarding this statute is the Industrial Disputes Tribunal.

[28] Mrs. Wilkinson contended that Dr. Williams-Phillips' bald assertion that the court has the power to order the Industrial Dispute Tribunal to hear a matter is erroneous. This power does not exist and the relevant statute sets out the manner in which a matter may be referred to it. Counsel relied on section 11 of the ***Labour Relations and Industrial Disputes Act*** to make the submission that it is relevant Minister who is empowered to make such referrals and not the court.

Issue

[29] The sole issue for my determination is whether the 1st defendant breached the contract of employment when it terminated the contract between itself and the claimant and tendered one month's salary in lieu of notice to the claimant.

The applicable law and analysis

[30] ***Halsbury's Laws of England*** v. 16 4th ed. At para. 451, defines wrongful dismissal as follows (applied in ***Lindon Brown v Jamaica Flour Mills*** unreported SC claim no. CL 2000/b199 dated December 15, 2006):

> *"A wrongful dismissal is a dismissal in breach of the relevant provision in the contract of employment relating to the expiration of the term for which the employee is engaged. To entitle the employee to sue for damages two conditions must normally be fulfilled, namely:*
>
> *1. The employee must have been engaged for a fixed period or a period terminable by notice and dismissed either before the expiration of that fixed period or without the requisite notice, as the case may be; and*
>
> *2. His dismissal must have been wrongful, i.e. to say without sufficient cause to permit his employer to dismiss him summarily.*
>
> *In addition, there may be cases where the contract of employment limits the grounds upon which the employee may be dismissed subject to a contractual condition of observing a particular procedure, in which case it may be argued that, on a proper construction of the contract, a dismissal for any extraneous reason or without observance of the procedure is a wrongful dismissal."*

[31] A claim for wrongful dismissal is characteristically one for a breach of contract. In essence, it is a breach of the stipulation in the contract of employment which speaks to how the contract of employment may be brought to an end. So that, if the contract is for a fixed term and the employer dismissed the employee before the expiration of the stated term, the employee would have a claim for wrongful dismissal. Similarly, if the contract is for a term, terminable by notice, and the employer terminates the employment either without notice or with an abbreviated period of notice, a claim would be maintainable. If the termination offends the limiting grounds for dismissal, a claim for wrongful dismissal arises: ***Mc Celland v Northern Ireland General Health Services Board*** [1957] 2 All ER 129, 1 WLR 594. There are other circumstances in which a claim for wrongful dismissal may arise. The list is not exhaustive. In this regard, see ***Selwyn's Law of Employment*** 11th ed. para. 16.11.

[32] The breach of the contract of employment where the employer dismisses the employee in disregard of the provisions material to termination, must be

contrasted with the situation where the contract makes provision for dismissal upon the payment of a sum in lieu of notice. In ***Abrahams v Performing Rights Society*** [1995] IRLR 486, at page 491, Lord Hutchinson accepted Lord Browne-Wilkinson's analysis of the phrase "payment in lieu of notice" in ***Delaney v Staple*** [1992] IRLR 91, at page 92. ***Delaney v Staple*** was considered and applied in ***Brendan Courtney Bain v The University of the West Indies*** [2017] JMFC FULL 1, at paragraphs 169-170 (***Bain v The UWI***).

[33] According to Lord Browne-Wilkinson:

> *"The phrase "payment in lieu of notice" is not a term of art. It is commonly used to describe many types of payment the legal analysis of which differs. Without attempting to give an exhaustive list, the following are the principal categories.*
>
> *(1) An employer gives proper notice of termination to his employee, tells the employee that he need not work until the termination date and gives him wages attributable to the notice period in a lump sum. In this case (commonly called "garden leave") there is no breach of contract by the employer. The employment continues until the expiry of the notice: the lump sum payment is simply advance payment of wages.*
>
> *(2) The contract of employment provides expressly that the employment may be terminated either by notice or, on payment of a sum in lieu of notice, summarily. In such a case if the employer summarily dismisses the employee he is not in breach of contract provided that he makes the payment in lieu. But the payment in lieu is not wages in the ordinary sense since it is not a payment for work to be done under the contract of employment.*
>
> *(3) At the end of the employment, the employer and the employee agree that the employment is terminated forthwith on payment of a sum in lieu of notice. Again, the employer is not in breach of contract by dismissing summarily and the payment in lieu is not strictly wages since it is not remuneration for work done during the continuance of the employment.*
>
> *(4) Without the agreement of the employee, the employer dismisses the employee and tenders a payment in lieu of proper notice. This is by far the most common type of payment in lieu ... The employer is in breach of contract by dismissing the employee without proper notice. However, the summary dismissal is effective to put an end to the employment relationship, whether or not it unilaterally discharges the contract of employment. Since the employment relationship has ended, no further services are to be rendered by the employee under the contract. It follows that the payment in lieu is not a payment of wages in the ordinary sense since it is not a payment for work done under the contract of employment."*

[34] So then, according to the principles enunciated by Lord Browne-Wilkinson at number one to three in ***Delaney v Staples***, there is no breach of contract

because the termination is done according to the agreement between the parties. According to the learned authors of ***Selwyn's Law of Employment*** *op.cit*. 16.2-16.20, even if the employer does not tender the payment in these categories, the dismissal is still not wrongful as the employer would still have been acting within the letter of the contract. The employee's recourse where the payment was not made would be to sue for the sum under the contract as liquidated damages. The employer is in breach of contract in the fourth category, notwithstanding the tendering of the payment in lieu of notice, because there was no agreement to terminate without proper notice. It is in recognition of his liability for a breach of contract that the employer tenders a payment in lieu of notice to pre-empt a claim for damages.

[35] As was said above, the normal remedy for wrongful dismissal is a claim for damages. Where the relationship between the employee and employer is one of pure master and servant, generally, the employee would not be entitled to judicial review: ***Thames (Karen) v National Irrigation Commission Limited*** [2015] JMCA Civ 43, at paragraphs 39-59. In the rare case, however, judicial review may be available where there is either no private law remedy or that remedy would be wholly insufficient: ***R v Chief Constable of Merseyside Police ex parte Calverley*** [1986] QB 424; [1986] 1 All ER 257. In the instant case the remedy sought is damages.

[36] The general rule is that damages are compensatory. That is, the purpose of an award in damages is to put the innocent party in the position he would have been in, so far as money can do it, had the contract been performed according to its obligations. According to ***McGregor on Damages*** 18th edition para 28-002:

> *"The measure of damages for wrongful dismissal is prima facie the amount the claimant would have earned had the contract of employment continued according to contract subject to a deduction in respect of any amount accruing from any other employment which the claimant, in minimising damages, either had obtained or should reasonably have obtained. The rule has crystallised anomalously in this form. It is not the general rule of the contract price less the market value of the claimant's services that applies; instead the prima facie measure of damages is the contract price, which is all the claimant need show. This is then subject to mitigation by the claimant who is obliged to place his*

services on the market, but the onus here is on the defendant to show that the claimant has or should have obtained an alternative employment."

[37] Put another way, the damages to which the employee becomes entitled is the equivalent of the salary or wages he would have earned under the contract from the date of termination until the end of the contract. Where the employer has the right to terminate the contract upon the giving of notice, the notice period becomes the starting point for the assessment of damages. In the case of a fixed term contract, under which the employer has the right to terminate before the end of the contract, the damages to which a claimant becomes entitled will be confined to the notice period: ***British Guiana Credit Corporation v Clement Hugh Da Silva*** [1965] 1 WLR 248 (***BGCD v Da Silva***).

[38] In ***BGCD v Da Silva***, the respondent Da Silva was offered an appointment as General Manager on the appellant corporation at a salary of $11,280.00. The Schedule to his agreement contained the terms relevant to the term of his employment and its termination. First, his engagement was fixed for a period of six years residential service. Secondly, "the Corporation may at any time determine the engagement of the person engaged on giving him twelve months' notice in writing or on paying him six months' salary". Thirdly, "the person engaged may, at any time after the expiration of three months from the commencement of any residential service determine his engagement on giving three months' notice in writing to the Corporation or on paying to the Corporation one month's salary".

[39] In computing the damages to which Da Silva was entitled, the UK Privy Council said he "was from the very beginning of the contract always at the risk that the Corporation could have given him reasonable notice to terminate or pay him salary for that period in lieu". In that event, the claimant "could have received no more than the salary plus other benefits under the contract for the period of the notice, or a payment in lieu". Although the reasonable period of notice was left to the Caribbean Court of Appeal, Lord Donovan opined that a reasonable period of notice was six months.

[40] I come now to the instant case. The claim in its original form (at paragraph one) was one for "damages for wrongful and/or unfair and/or unjustifiable dismissal". In paragraph two of the claim form, the claimant also sought "A declaration that she is to be re-instated in her post as a Consultant Cardiologist with the 1st Defendant at the Bustamante Hospital for Children". Paragraph two and the words "and/or unfair and/or unjustifiable" were ordered struck from the claim form, upon the application of the defendants, before the trial commenced. The claim therefore proceeded for wrongful dismissal.

[41] It is pertinent at this time to make it abundantly clear that the claimant was not dismissed under clause 10 of the Schedule of the agreement between the parties. Clause 10 of the Schedule makes provision for the summary dismissal of the claimant for misconduct. So that, a disciplinary hearing is contemplated pursuant to the preferring of a charge contemplated in the clause. To that end, clause 10 gives the claimant the facility of appeal to the "Disciplinary Committee of the Regional Health Authority Board". There was, however, no activation of any disciplinary procedure against the claimant.

[42] The 2nd defendant's letter of 18th January, 2010 (exhibit 3) to the claimant, made specific reference to clause 11(i) of the Schedule to the claimant's contract of employment. I quote the first paragraph of the letter: "You are hereby advised, subject to the provisions of Item 11(i) of your contract of employment, that your services are terminated with effect from 2010 January 20". If the matter had been left there the 2nd defendant would undoubtedly have been in breach of contract: ***Lindon Brown v Jamaica Flour Mills***, *supra*.

[43] The claimant was employed under a fixed term contract for thirty-six (36) months, commencing on the 3rd August, 2009 (clause 1(i) of the Schedule to the agreement). If the claimant wished to remain in the 1st defendant's employment she was required to give written notice of her intention three months prior to the completion of a tour of service. So that, left to run its natural course, the

claimant's fixed term contract of employment with the 1st defendant would come to an end, by effluxion of time, on or about the 2nd August, 2012.

[44] Therefore, when the 2nd defendant terminated the claimant's employment on the 20th January, 2010 no less than thirty-one (31) months of the thirty-six (36) months fixed term remained. After the passage of just under six (6) months, the 1st defendant terminated its contract of employment with the claimant on the giving of about three (3) days notice. There was, therefore, a prima facie breach of contract in terminating the contract of employment before the expiration of thirty-six (36) months term and without the requisite one month's notice in writing. Each party to the agreement was required to give the other one month's notice in writing if either wished to terminate the engagement with the other.

[45] The giving of notice in writing of the intention to terminate the contract was, however, one of two alternative methods of termination open to each of the parties to the agreement. The second method of termination was the payment of one month's salary in lieu of notice. The phrase "in lieu of", bears the following meanings, among others, "as a substitute for, as an alternative, in place of, instead of, rather than" (see ***Burton's Legal Thesaurus*** fourth edition and ***Black's Law Dictionary*** eighth edition). Taking any one of those meanings, each party had the right to terminate the contract of employment upon the payment of one month's salary instead of giving one month's notice in writing.

[46] The following is what the evidence reveals. The agreement or contract of employment provided expressly that the claimant's employment could be terminated either by written notice or on payment of one month's salary in place of notice. The 1st defendant terminated the claimant's service and tendered the payment as it was obligated to do under the contract. The contract of employment, therefore, was terminated in accordance with its stipulation viz. Clause 11. (i). In these circumstances, it would be inaccurate to say the 1st defendant was in breach of the contract between itself and the claimant. The

circumstances here mirror the scenario described by Lord Browne-Wilkinson in his second category in ***Delaney v Staple***, *supra*.

[47] Unless it could be said that the payment the 1st defendant made to the claimant was not the sum contemplated by the contract, there can be no sustainable claim for wrongful dismissal. Indeed, the proper claim would be for liquidated damages and not breach of contract. The claimant accepted under cross-examination that her monthly salary was in the region of $225,183.25. She also agreed that the 1st defendant's letter of termination itemized salary in lieu of notice the very figure of $225,283.25. Finally, the claimant accepted that she received a cheque (exhibit 4) from the 1st defendant in the amount of $455,644.61 which she lodged to her account. The sums in excess of $225,183.25 appear to represent other emoluments due to the claimant. It is therefore clear that a sum representing one month's salary in lieu of written notice was tendered by the 1st defendant and accepted by the claimant in the negotiation of the 1st defendant's cheque.

[48] I cannot, in consequence of that, accept as accurate the claimant's submission that she did not receive the payment in lieu of the written notice. The claimant was correct in submitting that she did not receive the notice contemplated by her contract of employment but, as I endeavoured to demonstrate, that is only half the story. Where, as in the instant case, the contract of employment provides that the contract could be determined by either one month's notice in writing or the payment of one month's salary in lieu of notice, the contract provides for alternative methods of lawful determination. That the employer has elected to exercise one alternative and not the other, cannot, by that token, make his election a breach of contract.

[49] Notwithstanding the fact of the claimant's termination in accordance with clause 11 (i) of the contract of employment, the claimant took issue in her particulars of claim with the manner of her termination. The claimant averred (at paragraph 10) that no reason was given for the termination of her services and that she was not afforded a hearing. The claimant further alleged (at paragraph 11) that it was

"agreed and recommended" that she be reinstated as "the reason for the Claimant's dismissal was due to a personality conflict with a specific Cardiologist". The defendants counter-averred that the claimant's services were lawfully terminated.

[50] Acting as it did, under clause 11 (i) of the contract of employment, the 1st defendant was not obliged to give the claimant any reason for terminating her services. Even if the termination was underlined by a personality conflict, at this stage a matter of speculation, as long as the 1st defendant either gave the claimant one month's notice in writing or paid her one month's salary in lieu of notice, the termination would have been lawful. The dictum of Lord Reid in ***Matlock v Aberdeen Corp*** [1971] 2 All ER 1278, at page 1282, cited with approval in ***Bain v The UWI,*** *supra*, is apposite:

> *"At common law a master is not bound to hear his servant before he dismisses him. He can act unreasonably or capriciously if he so choose but the dismissal is valid. The servant had no remedy unless the dismissal is in breach of contract and then the servant's only remedy is damages for breach of contract."*

[51] In the same vein, the claimant was not entitled to a hearing before the termination of her services under clause 11(i) of the Schedule to the contract of employment. It would have been a completely different matter had the 1st defendant purported to act under clause 10 of the said Schedule which contemplates a dismissal for cause. In this regard, the submission by learned lead counsel for the defendants that this was not a termination for cause cannot be faulted. On the contrary, clause 11 (i) does not contemplate a dismissal for cause. It is merely a convenient and orderly way for either party to the agreement to bring the employment relationship to an end.

[52] As was said by the Privy Council in ***BGCD v Da Silva***, *supra*, from the very beginning of the contract the claimant was always at the risk that the 1st defendant could have given her one month's notice to terminate or pay her salary for that period in lieu. Accepting that the measure of damages is the amount which the claimant would have earned had her employment continued according

to contract (***McGregor on Damages***, *supra*), one month's salary, together with other monthly emoluments, was all the claimant was entitled to upon termination under clause 11(i) of the Schedule. If the 1st defendant had given the claimant one month's notice in writing, the employment relationship would have lawfully ended at the end of the notice period. Having received the one month's notice in writing, the claimant would have been obliged to work during the notice period. The claimant, would, therefore, have earned no more than one month's salary and other emoluments.

[53] So then, the claimant has failed in her bid to establish that the 1st defendant was in breach of contract when it terminated her services. The termination was well within the spirit and letter of her employment contract. Accordingly, I give judgment for the defendants. Costs are awarded to the defendants, to be taxed if not agreed.