



[2025] JMSC Civ 128

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. SU2023CV04177

| | | |
|----------------|--------------------------------------|-------------------------|
| BETWEEN | SANDRA GRAHAM | CLAIMANT |
| AND | CAROL PALMER | FIRST DEFENDANT |
| AND | THE PUBLIC SERVICE COMMISSION | SECOND DEFENDANT |

IN OPEN COURT

Mr. Hugh Wildman and Mr. Shemar Bryan instructed by Hugh Wildman & Company for the Claimant

Ms. Lisa White instructed by the Director of State Proceedings for the First and Second Defendants

Heard: February 14, & October 10, 2025

JUDICIAL REVIEW – Role of the Governor General in removal of public officers under section 125 of the Constitution – Abolition of Post – Re-Organisation and Restructuring of Ministry to create new Ministry – Public Officer to be separated if not redeployed – Whether the Public Service Commission should afford a hearing before recommending separation to the Governor General

Jamaica (Constitution) Order in Council, 1962, section 125,

WINT-BLAIR J

[1] This is an application for Judicial Review by the claimant, a public officer, who seeks various declarations, including an order of certiorari, concerning her separation from the post of Principal Director of Corporate Services in the Ministry

of Science, Energy, Telecommunication and Transport. The separation resulted from the abolition of the post due to the reorganisation and restructuring of that Ministry to facilitate the creation of a new Ministry.

[2] The claimant filed a Fixed Date Claim Form¹, seeking the following reliefs:

1. A Declaration that the decision of the Defendants to separate the Claimant from the Public Service on the ground of reorganisation and or redundancy is procedurally improper, as the said decision is in breach of section 125 of the Constitution of Jamaica.
2. A Declaration that the decision of the Defendants to separate the Claimant from the Public Service on the ground of reorganisation and or redundancy is in breach of section 125(3) of the Constitution of Jamaica, rendering the said decision illegal, null and void and of no effect.
3. A Declaration that the decision of the Defendants to separate the Claimant from the Public Service on the ground of reorganisation and or redundancy is irrational, as the said decision is based on false allegations made against the Claimant by purported anonymous persons, whom the Claimant is not aware of and whom the Claimant was not afforded the opportunity to confront.
4. An order of certiorari quashing the decision of the Defendants to separate the Claimant from Public Service on the ground of reorganisation and or redundancy.
5. Costs to be cost in the Claim.
6. Such further and other relief as this Honourable Court thinks fit.

The Parties

[3] The claimant was the Principal Director of Corporate Services at the Ministry of Science, Energy, Telecommunication and Transport and has served for over 22 years in the public service. During that time, she also served as press secretary to two former Prime Ministers of Jamaica.

¹ Filed on February 16, 2024

- [4] The first defendant is the Permanent Secretary of the Ministry of Science, Energy, Telecommunications, and Transport (“PS”), who oversees the Ministry’s operations and served as the claimant's immediate supervisor.
- [5] The second defendant is a body established under section 124 of the Constitution of Jamaica. It is responsible, inter alia, for advising the Governor-General on disciplinary control, appointments to, and removals from, the Public Service.

The Claimant’s case

- [6] In 2020, the claimant received an anonymous letter through the first defendant. This letter accused the claimant of misconduct as a public officer. She stated that she was unaware of these accusations and considered them scandalous.
- [7] Regarding the anonymous letters, one states that the claimant threatened staff, mentioning her “badman relative and friends in high places.” The first defendant was the only person the claimant had confided in about the 1970s state of emergency and its impact on her family. Her cousin, who was living with them, had an illegal weapon, but they were unaware of it. The first defendant is the only person who knows the extent of the claimant's network and frequently relied on her to contact senior officials for the Ministry of Science, Energy, and Technology or to benefit herself. Based on this, the claimant concludes that these anonymous letters may be associated with the first defendant.
- [8] On July 31, 2023, she received a copy of this letter, along with another anonymous letter accusing her of despising the Minister and attempting to undermine the PS. The second letter also contained a threat, which she later reported to the police. That day, she wrote to the first defendant, firmly denying all allegations in these anonymous letters.
- [9] On August 2, 2023, the claimant wrote again to the PS concerning the anonymous letters. The claimant requested that the police be involved in a full investigation to

protect her safety. The PS replied on August 8, 2023, confirming that the claimant had permission to report the issue to the police.

- [10] On August 9, 2023, the claimant sent a letter to Senior Superintendent of Police Marlon Nesbeth, requesting an investigation into the anonymous letters and threats to her life. She gave a statement to the police and obtained a receipt.
- [11] On September 5, 2023, the claimant received a letter from the first defendant informing her that the position she held was not intended to be on the establishment of the new Ministry of Science, Energy, Telecommunication and Transport (MSETT). At a staff meeting held at the Ministry on July 31, 2023, the first defendant, and chair of the meeting, said: *"If a Minister and a civil servant cannot work together, then it is the civil servant who should leave because the Minister is an elected representative, so staff members may want to consider that as you go."*
- [12] The claimant found the first defendant's statement quite curious since there was no disagreement between her and the Minister, making the statement seem irrelevant to her. She also contacted the Integrity Commission to report concerns about her employment, especially worried that the proposed restructuring could negatively impact her.
- [13] On September 5, 2023, the first defendant wrote to the claimant, informing her that she would be redeployed within the public service. If redeployment was unsuccessful, the matter would be referred to the second defendant for a decision on whether to separate her from the public service by way of redundancy, given the reorganisation.
- [14] On October 25, 2023 and November 8, 2023, respectively, the claimant wrote to the first defendant and to Mrs Jacqueline Mendez of the Public Service Commission ("PSC"), complaining about breaches of the restructuring process and its application to her. Copies of said letters were sent to the Financial Secretary and the Solicitor General by way of email.

- [15]** On November 9, 2023, the claimant received a letter from the Solicitor General, Mrs Marlene Aldred, inquiring whether the claimant was prepared to withdraw the complaint made against the PS. On November 14, 2023, the claimant responded to Mrs Aldred in the negative.
- [16]** On November 10, 2023, the claimant received a letter from the PSC, signed by Mrs Jacqueline Mendez, informing her of the proposed separation from the public service, effective January 1, 2024. The claimant was advised that she had five days to show cause why she should not be separated from the public service.
- [17]** On November 21, 2023, the claimant replied to that letter, indicating that five days were insufficient for the response. On November 27, 2023, the claimant's attorney-at-law wrote a letter to the PSC opposing the proposed separation from the public service and suggesting that the claimant be allowed to serve in another position of comparable standing within the public service. There was no response.
- [18]** The claimant cited a Performance Evaluation Report from the PS, which was the personal evaluation of the PS, showing that she was regarded as an outstanding performer. To support the evaluation, the claimant also submitted two letters from the PS, dated March 23, 2020, and May 19, 2020, respectively, in which the PS recognised her for the excellent leadership skills demonstrated during the course of her employment.
- [19]** The claimant also relies on a letter dated October 4, 2023, from Michelle Muir, Chief Technical Director, instructing the claimant to report all HR matters to the Services Commission. Ms Muir's letter was written three days after the post was first advertised. Ms Muir was the Senior Director of Corporate Services (SEG5). Before the restructuring, Ms Muir was junior to the claimant and was appointed to this new position by the PS, who had delegated authority for human resources. Ms Muir's elevation was unusual; as new recruitments typically take around six months to complete. There was apparent haste in appointing Ms Muir to the role, as she was placed in the position at least three days after the advertisement, effectively

excluding the claimant from consideration. The claimant is highly qualified and should have been considered for the position that was eventually given to Ms Muir.

- [20] This further supports the claimant's argument that neither the PS, who would be aware of all the positions within the new structure, nor the PSC, consulted the claimant about a possible redeployment within the public service. The claimant also relies on emails from Ms Barclay, the Information Commissioner, who requested the assignment of the claimant, which the PSC refused.

The Defendants' case

- [21] Ms Deidre Latibeaudiere, in her affidavit for the defendants, averred that, in her role as Senior Director of Human Resource Management and Development, she was aware of staff deployments at the Ministry. The claimant was redeployed to the Ministry of Agriculture, Fisheries and Mining, starting April 2, 2024, as Principal Director of Corporate Services. She reports to the PS of the Ministry and has been working there for some time.
- [22] Mrs Carol Palmer, the first defendant herein, gave evidence that she was assigned to the Ministry of Science, Energy, and Technology (MSET) in February 2019. When MSETT was established on May 24, 2023, she was appointed as its Permanent Secretary. She serves as the Accounting Officer for MSETT, with delegated authority from the Governor-General, as specified in the Instrument of Delegation.
- [23] On May 22, 2023, the Prime Minister announced a Cabinet reorganisation. The Ministries of Transport and Mining (MTM) and Science, Energy and Technology (MSET) were dissolved. Responsibility for Transport was transferred to the newly created ministry, called MSETT, which was established by Gazette Notice.
- [24] As part of establishing the new ministry, a new structure needed to be put in place. The aim was to create a unified ministry, where possible, by integrating members of the former MSET and MTM and having them operate as a single, cohesive unit.

- [25]** This was the PS's first experience leading a ministry through such a reorganisation. She consulted the organisational development officer from the former MTM, as the role at the former MSET was vacant. With the officer's guidance, they created and submitted a proposal to the Ministry of Finance and the Public Service for the most effective structure for the new ministry.
- [26]** Several meetings were held with the staff of the former MSET and MTM to inform and update them on the process, including:
- a) The creation of the new structure.
 - b) The Office of the Services Commission (OSC) would take responsibility for staff not included in the new structure; staff were informed that the OSC would handle their redeployment, and if unsuccessful, it would recommend to the Public Service Commission, and subsequently to the Governor General, that they be made redundant on the grounds of reorganisation.
 - c) The role of the Permanent Secretary vis-à-vis the Supernumerary Permanent Secretary, Dr Alwin Hales, JP.
 - d) The expectations of staff during the transition process and beyond.
- [27]** Staff members were invited to pose questions, and former MSET personnel had the chance to get their questions answered by the Minister and PS. It is acknowledged that staff meetings were held to discuss the transition process, but it is not true that any statements made during these meetings targeted any individual staff member or the claimant specifically.
- [28]** The anonymous letters that Mrs Palmer received did not influence her assessment of the claimant and were not considered in any of the recommendations regarding the new structure for MSETT. The anonymous letters were shared with the claimant in the interest of transparency, to allow the claimant the opportunity to respond, should she so choose, and to inform her of the comments being made about her.

- [29]** Once the claimant expressed safety concerns based on the letter received in July 2023, she was advised to report the matter to the police. The claimant did not inform Ms Palmer whether she had reported it as advised, nor did she provide Ms Palmer with a copy of the investigation's findings to assist the ministry in taking further measures to protect her.
- [30]** In September 2023, the initial version of the MSETT structure was approved. Alongside managing the Transport portfolio, MSETT was also responsible for completing the winding-up process of the National Energy Solutions Limited ("NESOL").
- [31]** Recognising the increased responsibilities for transportation and security- such as managing commercial security contracts at MSETT's Maxfield Avenue site and the former NESOL on Washington Boulevard, a larger administrative team, an extended portfolio of properties including Trafalgar Road, Maxfield Avenue, and Washington Boulevard, and overseeing about ten tenants at the PCJ Resource Centre—a higher position was proposed for the Corporate Services Director: Chief Technical Director (CTD).
- [32]** The claimant's assertion in her letter dated September 13, 2023, that she did not want a Corporate Services Division with such an extensive span of control is refuted. The PS averred that she had always intended to establish a Corporate Services Division. As the creation of MSETT involved a broader span of control, a higher position was proposed for approval by the MOFPS. In the previous MSET and MTM structures, the roles of Corporate Services Director were at different levels: GMG/SEG 6, Principal Director, and GMG/SEG 5, Senior Director, respectively.
- [33]** Consequently, when suggesting the structure of the new Ministry, instead of simply upgrading one post and leaving the other unchanged—which could have created inequity or resulted in the holder of one position having insufficient responsibilities while the holder of the more senior position undertook the necessary duties—a

new post of Chief Technical Director was proposed to the Ministry of Finance and the Public Service to promote transparency. This position was open to applications from any suitably qualified person.

- [34]** The claimant no longer holds the position of Principal Director of Corporate Services following the reorganisation. Currently, there are no vacancies for the position of Chief Technical Director or Director of Corporate Services at MSETT.
- [35]** There was no breach in the restructuring process. The claim of a breach of section 11 of the Labour Relations and Industrial Disputes Act is denied. Section 11 addresses industrial disputes, which do not apply to changes in the Ministry's structure.
- [36]** The claimant was aware of the new MSETT structure, redeployment efforts, and potential separation since 5 September 2023. The five-day notice given to her to show cause by the PSC was adequate for her to respond, and the second defendant sincerely attempted to redeploy the claimant and the other eighteen impacted officers.
- [37]** Section 125 of the Constitution does not protect the claimant from removal. The claimant's separation did not result from poor performance; rather, it resulted from the abolition of the post of Principal Director, Corporate Services, in the establishment of the MSETT. The claimant was afforded the opportunity to respond to the changes even though the Government retains organisational authority over any restructuring. The claimant was not targeted as she was not the only affected officer, resulting from the changes.
- [38]** Mrs Jacqueline Mendez, Chief Personnel Officer, averred that she is the head of the Office of the Services Commissions (OSC), which is the Secretariat for four (4) Commissions, The Public Service Commission, The Police Service Commission, The Judicial Service Commission and The Local Government Services Commission. Under Regulation 5 of the Public Service Regulations, the Chief

Personnel Officer is responsible for implementing the decisions of the PSC and is generally responsible for all matters related to the Commission's functions.

- [39]** Mrs Mendez averred that no information regarding the anonymous letters was submitted to the OSC, and therefore, could not have been considered in the deliberations for deployment or separation from the Public Service.
- [40]** The first defendant's letter, dated September 5, 2023, informed the claimant that the Principal Director of Corporate Services had been excluded from the new MSETT structure due to reorganisation. This change also affected eighteen other public officers, so the claimant was not singled out or treated unfairly.
- [41]** On November 10, 2023, the OSC informed the PSC by way of letter that it had begun efforts to redeploy all affected officers within the public service. On the same day, the claimant received a letter signed by Mrs Jacqueline Mendez, notifying her of her separation from the public service effective January 1, 2024, if redeployment attempts were unsuccessful.
- [42]** There was no breach of the restructuring process, and the alleged breach of Section 11 of the Labour Relations and Industrial Disputes Act is denied. Section 11 concerns industrial disputes, not the Ministry's restructuring. The claimant was informed about the new MSETT structure and the possibility of redeployment or separation as early as September 5, 2023. Good faith efforts to redeploy the claimant and other officers included notifications to various agencies. Despite these efforts, the claimant was not redeployed.
- [43]** Section 125 of the Constitution does not shield the claimant from being separated from public service. It authorises the Governor General, upon advice from the PSC, to appoint or dismiss public officers. The claimant's separation was not due to poor performance but because the new MSETT structure no longer included the post of Principal Director, Corporate Services. The restructuring of MSETT, along with the subsequent attempts at redeployment and separation, were lawful under Section 125 of the Jamaican Constitution and local employment laws. The claimant was

given a chance to respond to the proposed separation, affirming her right to be heard, despite the government's authority to change its organisational structure. Additionally, the change in MSETT's structure did not solely target or affect her.

- [44] Minute 213 exhibited before this Court indicates that, at a meeting held on November 24, 2023, the PSC considered the submission dated November 10, 2023, regarding the redeployment and separation of eighteen officers previously assigned to the former Ministry of Science, Energy, and Technology and the Ministry of Transport and Mining. These officers were all affected by the creation of the new Ministry of Science, Energy, Telecommunications, and Transport. The PSC agreed to recommend that the officers who had not been redeployed be separated on the grounds of the abolition of their posts.

Submissions

- [45] Counsel for the claimant argues that removing her from public service violated her rights under section 125 of the Jamaican Constitution, which guarantees fairness and a hearing by an impartial tribunal before termination, and that the defendants breached these principles.
- [46] He relied on **Deborah Patrick-Gardner v Jacqueline Mendez & The Public Service Commission**², to submit that such a decision in respect of a public officer is a judicial act that requires a fair hearing. As well as **McLaughlin v Governor of the Cayman Islands**³, in which the Privy Council stated that retiring a public officer without a hearing breaches natural justice, rendering the decision null and void; therefore, the officer remains in office. In **Deborah Patrick-Gardner**, the Full Court applied the principles from **McLaughlin**, finding that the PSC's decision to retire her without a hearing violated her constitutional rights under section 125(1).

² [2016] JMSC Civ 121

³ [2007] UKPC 50

This rendered the decision illegal and ineffective. The instant claimant was similarly denied a fair hearing under section 125(1).

- [47] The claimant deserved fair treatment, including timely information about her non-retention so that she could respond and make representations. The five-day response was insufficient; she needed more time to consult with the PSC and propose alternatives for her continued employment, which was unjustly denied. All correspondence to the claimant only outlined their stance on her employment and the possibilities for redeployment within the public service. She was not invited to suggest career options and was merely listed for redeployment.
- [48] The claimant received a letter dated November 10, 2023, signed by Mrs Jacqueline Mendez, notifying her of her separation from the Public Service, effective January 1, 2024. In **Arthurine Webb v Donovan Stanberry**,⁴ Mrs Webb was informed that she would be retired from the public service on the grounds of reorganisation. She was retired, and a stay was granted pending trial. G. Fraser, J (as she then was), in her judgment, endorsed the reasoning in **Gardner** and emphasised that there should be a line of consistency and that **Gardner** was the law. These principles were established in the cases of **Thomas v AG** and **Lackston Robinson**. These cases clearly indicate that principles of natural justice must be observed before removing a public officer.
- [49] It was submitted that the facts of this case align with those in the **Gardner** case, in that the claimant was reinstated to the public service. Ms Webb remains in the public service, but only because the court intervened. The first defendant is bound by the decision of the PSC, and a finding should be made against her in her capacity as the PS. She recommended the removal of the claimant and considered the anonymous letters, which were irrelevant considerations.

⁴ [2019] JMSC Civ 100

- [50] The claimant also argues that the PSC violated her rights under section 125(3) of the Constitution by removing her from the public service in breach of her right to have her case considered by the Privy Council by way of referral from the Governor General. This provides an independent ground to challenge her dismissal. She is entitled to invoke section 125(3) after the Governor General notifies the claimant of her right to have the matter referred to the Privy Council. The defendant's counsel admitted to a procedural mistake, similar to those in cases such as **Lackston Robinson, Gardner, and Webb**. Therefore, the claimant seeks and is entitled to the declarations and a grant of a writ of certiorari.
- [51] The PSC is the relevant authority, as the Governor General only makes decisions when advised by the PSC. In such cases, the Governor General acts on the recommendation, and not independently. In **The Minister of Foreign Affairs, Trade and Industry v Vehicles & Supplies and Northern Industrial Garage Limited**,⁵ the Privy Council defined judicial review as civil proceedings and stated that the Attorney General should be joined. However, this is not relevant in the current context.
- [52] Ms Graham was not given fair notice; the letter of September 5, 2023, was too vague to meet the standards of constitutional fairness. Specific, detailed notification is essential for an effective response, especially when livelihoods are at stake. Five days' notice was inadequate, amounting to no real opportunity. The claim has therefore been made out against the defendants.
- [53] Counsel for the defendant emphasised that neither defendant is the decision-maker, which is essential in judicial review. The decision-maker should be the party before the court, as is the law laid down in **Vehicles and Supplies Ltd**, as at both

⁵ (1991)4 All ER 65

the leave stage and trial, the language used refers to the defendants' decisions without mentioning judicial review.

- [54]** The challenge concerns the defendants' alleged decision to include the PS; however, this was not the basis for the grant of leave. The claimant did not claim this nor include it in her statement of case. The law requires the court to consider the decision-maker, not a participant in the decision-making process. Neither defendant made the decision to separate the claimant from the PSC. Section 125(1) states that the Governor General has jurisdiction for the removal of public officers. The evidence shows that the Governor General made the decision, communicated by the PSC on his behalf; however, the PSC did not make the decision in this case regarding the claimant's removal.
- [55]** Counsel argued that there was no unreasonableness or impropriety in the decision to separate the claimant under the circumstances. The issue of the anonymous letters did not form part of the decision regarding whether the claimant should have been separated. These are irrelevant considerations not connected to the decision and could not be properly attributed to the defendants.
- [56]** The claimant was not targeted for separation as eighteen other public officers faced the same circumstances with the abolition of their posts to take effect by January 2024, failing redeployment. The assertions of bad faith or intent to target the claimant are unsupported by the evidence. Additionally, the affidavit of Mrs Jacqueline Mendez states that the post held by the claimant no longer exists and that the letters complained of by Mrs Graham were never submitted, so they could not have been considered.
- [57]** The evidence given by Mrs Palmer that several meetings were held with the staff of the former MSET and MTM, respectively, to advise them of and update them on the process was not challenged. This was before September 2023. By letter dated September 5, 2023, the claimant was advised that her post would not have been

included in the new Ministry of Science, Energy, Telecommunications, and Transport (MSETT). The Prime Minister made the decision in May 2023.

[58] All the paragraphs of Ms Palmer's affidavit are significant because the circumstances and timeline suggest that it was not a hasty decision. This distinguishes this case from **Gardner**, **McLaughlin**, and **Webb**, as the factual circumstances demonstrate that those decisions were made hastily without the claimants being given a proper chance to respond. In this case, all staff were informed before the individual letters were sent out. It cannot be credibly argued that this claimant was separated due to a vendetta or bad faith.

[59] Section 125 requires the Governor-General to act on the advice of the PSC. It has been alleged that there was no opportunity given for a fair hearing. Paragraph 14 of the grounds states that:

"The Claimant maintains that she has been deprived of a fair hearing by the Defendants and in particular the 2nd Defendant in proposing to remove the Claimant from the Public Service without giving the Claimant an opportunity to make worthwhile suggestions to remain in the Public Service."

[60] It has been argued that the time given for the claimant's response was insufficient. The defendant maintains that the PS informed the claimant as early as September 5, 2023, that her post would not be included in the establishment of the new ministry. The claimant was aware of the planned change well before the letter from Mrs Mendez and was not restricted to the five days specified therein. She also knew that the OSC was actively seeking to redeploy those affected. It cannot reasonably be claimed that she was treated unfairly.

[61] According to the claimant's affidavit, it is evident that she was informed early, in September 2023, by a letter from the PS that the post she held was not part of the establishment. Exhibits SG-10a and 10b show that the claimant wrote to both the PS and Chief Personnel Officer ("CPO") after receiving that letter; she also sent further correspondence in October.

- [62]** Exhibit SG-13 demonstrates that the CPO issued a formal advisory to Ms Graham, and this was not their first. Exhibit SG-15 is a letter from Mr Wildman to the CPO in November 2023. Between September and November 2023, the claimant was given ample time to respond to the proposed change. It is inaccurate to assert that the claimant did not have an opportunity to discuss the proposed separation with the Ministry or the OSC.
- [63]** What has been pleaded is that no opportunity was given to the claimant to respond, whereas what has been submitted is that the five days she received were insufficient to do so. Based on the chronology, there was ample opportunity, and the claimant had adequate notice. The PS contacted the officers to consider redeploying those interested, which would have included the claimant. Each affected officer had the authority to make an election for redeployment or separation from the service.
- [64]** A merger of two ministries resulted in the loss of some posts. The eighteen individuals affected, including the claimant, were duly informed. They were subsequently asked to submit their curricula vitae, and the PS engaged the OSC to assist with their redeployment, forwarding their CVs to other ministries for consideration. In this situation, as with the claimant, if redeployment was unsuccessful, they remained eligible for redundancy payments in accordance with our employment laws. Of these eighteen individuals, twelve were not reassigned, and one declined redeployment. Mrs Graham was among those not redeployed at that time.
- [65]** In line with due process, the OSC notified all eighteen officers in writing that their potential separation from the Public Service was being considered due to the abolition of post. These officers were asked to provide reasons why they should not be separated and were informed that if suitable positions were found before January 1, 2024, their separation process could be avoided.

- [66] It has not been argued that the claimant was unaware of the intended changes or that it affected all eighteen officers. There are several items of correspondence in evidence, and in each one, Mrs Graham's name is listed for consideration. If the court is persuaded that there was any onus on the part of the government, it has been discharged.
- [67] In relation to the amount of time being insufficient, notwithstanding the timeline indicated by the OSC, the claimant still had the opportunity and did respond more than 5 days after the letter was sent to that office. The approval of the Governor General was given on December 18, 2023.
- [68] The submission that the government is required to redeploy all affected employees bears significance for all employers. Caution should be exercised with this line of reasoning, as it may be construed to imply that affected employees possess the right to demand redeployment. The evidence indicates that efforts have been made to redeploy all eighteen officers; however, there is neither a duty nor an obligation on the government to do so if a suitable position cannot be identified. The government continued its efforts toward redeployment, and the claimant secured employment in another ministry elsewhere; therefore, there was no necessity for an injunction.
- [69] The affidavit of Ms Lattibeaudiere attests that, from April 2, 2024, the claimant has been working at the Ministry of Agriculture, Fisheries, and Mining. Following the commencement of this matter, the government continued to seek the redeployment of the claimant, which was subsequently carried out. Therefore, if an onus was found, it has now been discharged. The exhibits confirm the fact of the redeployment. Reasonable attempts were made to redeploy Ms Graham and all other officers affected. Eventually, the claimant was redeployed, and there was no outright breach of section 125.
- [70] Juxtaposing **Gardner** and **McLaughlin** with the present matter, it is evident that they did not have the opportunity to be heard, nor was sufficient time afforded to

them to respond. The decisions in those cases were hastily imposed upon them. In **Gardner**, the factual circumstances are distinguishable. In **McLaughlin**, it was alleged that she lacked the requisite skills for a transfer, and the basis for this was his salary level, which was deemed inappropriate. In the current case, time was afforded and opportunities were provided, including the benefit of legal counsel; moreover, the defendants did not act with malice. An assessment was conducted to determine the feasibility of the claimant's redeployment. The actions of the OSC were therefore reasonable.

- [71] In response to a question from the bench about the words "just cause" in the letter to the claimant, it was argued that "just cause" was an unfortunate choice of words and was not meant as a disciplinary term, nor did it impose an onus on the public officers to do anything. Mrs Mendez received information from the PS and sought suitable positions for the officers. Notably, the evidence shows the OSC anticipated receiving the claimant's views in the process.
- [72] The claimant relies on emails from Ms Barclay, the Information Commissioner, who requested the assignment of the claimant, which the second defendant turned down⁶. Section 4 of the Data Protection Act provides that the Information Commissioner is a body corporate, not an office within the central government. The CPO stated in her correspondence before this court that "*Regrettably, this office is unable to support the request as Mrs Graham remains an officer of the Central Government until she is redeployed or otherwise.*" The CPO reached out to entities within the central government.
- [73] It was submitted that the post was abolished; therefore, there was no breach of section 125(1). Concerning section 125(3), counsel acknowledged that the OSC failed to comply with a procedural requirement, as the claimant was not informed that she was entitled to request that the matter be referred to the local Privy

⁶ Exhibited SG-22

Council. An examination of the relevant section indicates that it is the aggrieved worker who must initiate the process for referral to the Privy Council. Counsel relied on the **Carltona** principle to submit that the OSC should have informed Ms Graham that she could appeal to the Privy Council. However, there was no outward breach of section 125(3).

- [74] From November 2023 and before the PSC submitted its correspondence to the Governor General in December 2023, the claimant corresponded not only with the PS and the OSC but also through her legal representative, who communicated directly with the OSC. It was incumbent upon the claimant to have requested the referral to the Privy Council, irrespective of whether the OSC advised her to do so. Such a referral is not automatic; rather, it is at the officer's discretion. Given the circumstances, the claimant ought to have submitted the request but failed to do so.
- [75] Although the OSC admittedly missed a procedural step, the post no longer existed at this point. When the claimant received the letter from Ms Mendez, the post had already been abolished, and the redeployment remained in effect. Based on Exhibit JM-1, it is clear that all eighteen public officers were similarly impacted. At its meeting on November 24, 2023, the PSC reviewed and approved the recommendation to separate the officers who had not been redeployed due to the abolition of their posts. However, the Gazette Notice dated May 24, 2023, did not mention the impact of this abolition on the establishment.
- [76] Unlike **Webb**, appropriate communication was made with the claimant. There was no delay on the part of the ministry to advise the claimant that she was affected, as the PS could not act without getting the Ministry of Finance's approval.
- [77] The third declaration sought cannot be granted because the allegation of which the claimant complains did not form part of the decision based on the affidavit of Ms Mendez or Ms Palmer. There was no malice towards the claimant. The abolition of the post resulted from this new ministry.

[78] Regarding the fourth order sought, the claimant had the alternative remedy of going to the Privy Council, which is an appropriate remedy under the Constitution, before seeking leave to apply for judicial review; therefore, neither the declarations sought nor the order of certiorari should be granted.

Issues

[79] The issues for determination in this claim are:

- i. Whether the claimant was entitled to an opportunity to be heard before the abolition of her post
- ii. Whether the procedure laid down under section 125 of the Constitution was breached.
- iii. Whether the claimant should be granted any of the relief sought

Discussion

[80] The process of judicial review is the basis on which courts exercise supervisory jurisdiction over inferior bodies or tribunals that exercise judicial or quasi-judicial functions or make administrative decisions affecting the public. It is trite that judicial review is concerned only with the decision-making process of a tribunal, not with the decision itself.

[81] Lord Hailsham of St. Marylebone L.C. expressed in **Chief Constable of the North Wales Police v Evans**⁷ that the purpose is to ensure that the individual receives fair treatment and not to ensure that the authority which is authorised by law to decide for itself reaches a conclusion which is correct in the eyes of the court, he

⁷ [1982] 1 WLR 1155 at page 1161a

also identified the scope and purpose of judicial review proceedings and stated as follows at page 1160F-G:

“But it is important to remember in every case that the purpose of the remedies is to ensure that the individual is given fair treatment by the authority to which he has been subjected and that it is no part of that purpose to substitute the opinion of the judiciary or of individual judges for that of the authority constituted by law to decide the matters in question. The function of the court is to see that lawful authority is not abused by unfair treatment and not to attempt itself the task entrusted to that authority by the law.”

[82] Lord Diplock in **Council of Civil Service Unions v Minister for the Civil Service** (**‘CCSU’**),⁸ discussed the principle of judicial review in relation to decision making powers and spoke to three heads: illegality, irrationality and procedural impropriety:

“By illegality’ as a ground for judicial review, I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is, par excellence, a justiciable question to be decided, in the event of dispute, by those persons, the judges, by whom the judicial power of the state is exercisable.

By irrationality, I mean what can now be succinctly referred to as “Wednesbury unreasonableness” (Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1948] 1 KB 223). It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who has applied his mind to the question to be decided could have arrived at it...

I have described the third head as procedural impropriety rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice.”

⁸ [1985] AC 374 at page 410 F-H

- [83] The balancing and weighing of relevant considerations is primarily a matter for the public authority, not the courts (per Lord Green MR in **Wednesbury**, at page 231; and per Lord Hailsham in **Chief Constable of the North Wales Police** at page 1160 H). However, if there has been an improper exercise of power, it will be regarded as unreasonable, irrational, or an abuse of power.
- [84] The claimant avers that she was unlawfully separated from her stated post and the public service by way of a decision of the PSC contained in a letter dated November 21, 2023. She argues that the PS recommended her separation to the PSC and is also a decision maker by virtue of being a participant in the process. Furthermore, she argues that the defendants' actions are unlawful, as they are in breach of sections 125(1) and 125(3) of the Constitution, as well as the principles of natural justice. It is the claimant who has to prove these assertions.
- [85] It is undisputed that the claimant held the relevant post and that she was never the subject of any disciplinary action; neither is there any evidence or suggestion that she ever performed unsatisfactorily in her post. It is a fact that she received the letter of November 21, 2023, the contents of which form the basis of her complaint to this court. It is that letter from the PSC which the claimant argues contains the decision to abolish her post.
- [86] Chapter IX of the Jamaica (Constitution) Order in Council, 1962, governs employment as a public officer. Sections 124 and 125 of the Constitution establish the PSC and confer upon it the authority over the control and management of the public service and its officers. The question of a hearing is connected with the interpretation of the text of sections 125(3) and (4) of the Constitution and how these sections were applied to the claimant.
- [87] Section 125 of the Constitution addresses the management of the public service and public service officers and prescribes as follows:

“125.- (1) Subject to the provisions of this Constitution, the power to make appointments to public offices and to remove and to exercise disciplinary

control over persons holding or acting in any such offices is hereby vested in the Governor General acting on the advice of the Public Service Commission...

(3) Before the Governor General acts in accordance with the advice of the Public Service Commission that any public officer should be removed or that any penalty should be imposed on him by way of disciplinary control, he shall inform the officer of that advice and if the officer then applies for the case to be referred to the Privy Council, the Governor General shall not act in accordance with the advice but shall refer the case to the Privy Council accordingly:

Provided that the Governor-General, acting on the advice of the Commission, may nevertheless suspend that officer from the exercise of his office pending the determination of the reference to the Privy Council.

(4) Where a reference is made to the Privy Council under the provisions of subsection (3) of this section, the Privy Council shall consider the case and shall advise the Governor General what action should be taken in respect of the officer, and the Governor-General shall then act in accordance with such advice."

Section 125(1) of the Constitution

[88] In accordance with section 125 (1) of the Constitution, the authority to legitimately remove the claimant from her post lies solely with His Excellency the Right Hon. Sir Patrick Allen, the Governor General, appointed pursuant to section 27 of the Constitution. The Governor General acts upon the advice of the PSC. Therefore, the Commission recommends, and it is the Governor-General who is vested with the power to make decisions concerning public officers.

[89] Lord Diplock, in **CCSU**⁹ said in part, at page 408: "*Judicial review...provides the means by which judicial control of administrative action is exercised. The subject matter of every judicial review is a decision made by some person (or body of persons) whom I will call the 'decision-maker' or else a refusal by him to make a decision.*"

⁹ [1985] AC 374

- [90]** The evidence of the approval and signature of the Governor General on Minute 213, exhibited before this Court, shows that the Governor General granted his approval of the PSC's recommendation on December 18, 2023.
- [91]** The claimant has not discharged her burden of refuting the second defendant's affidavit evidence in support of this assertion that this was indeed so. Therefore, there was no evidence to the contrary. The claimant has provided no evidence which contradicts the defendant's argument that the Governor General is, in fact, and law the decision maker and has failed to discharge her evidential burden in this regard.
- [92]** However, I disagree with the defendant's submission that the decision to separate the claimant was made on December 18, 2023, by the Governor General based on the recommendation of the PSC, and not by any of the defendants. Neither the Governor General nor any of these defendants made a decision to separate the claimant. The Governor General approved the recommendation of the PSC and that is the first part of his function. The approval is not the same as the decision to remove a public officer, given the legislative scheme, which is explained below. I therefore find that the decision to separate the claimant did not breach section 125 (1) of the Constitution.
- [93]** The claimant argues that natural justice required giving her enough time to present her case before the PSC, as that body relied on the recommendation of the PS, and this was a key factor in the decision made by the PSC. It was also claimed that the PSC did not provide her with a hearing. These positions are contradictory. I have already found that the PSC was not the decision maker, and therefore, the PS could not have been the decision maker.
- [94]** There was no rule, statutory requirement or expected procedure for the PSC to have afforded a hearing, whether oral or written, before making its recommendation. Nor was the attention of this Court adverted to any such requirement.

[95] To accept this argument would mean that this Court would have to find that there should be a procedure allowing the affected officers to have some input at the Commission stage when the question of separation was first being considered. This raises a question as to whether the procedure taken as a whole was objectively fair, bearing in mind that fairness in any case depends on the particular circumstances. I also bear in mind that Regulation 25 of the Public Service Regulations, which addresses the abolition of posts, does not contain a provision for the affected officer to be allowed to make representations, nor does it prescribe a hearing. Given the statutory scheme, I move on to section 125(3).

Section 125(3) of the Constitution

[96] Concerning section 125(3), both counsel are in agreement that the claimant was not advised of her right to have her case referred to the Privy Council. Mr Wildman submits that this is a breach of the specified right; Ms Whyte submits that it is a procedural misstep as it is the claimant who is to trigger the application of this section by applying for the referral.

[97] There is no evidence before this Court that the Governor General informed the claimant of the right for her case to be referred to the Privy Council or that, despite this, the claimant had nonetheless made an application for the referral of her case.

[98] The process outlined in sections 125(3) and (4) is as follows: first, the Governor-General must inform the claimant of the PSC's decision and of her right to refer her matter to the Privy Council. Second, there can be no implementation of the recommendation of the PSC until the claimant has been so advised. (see **Deborah Patrick-Gardner v Mendez and Public Service Commission**¹⁰). In my view, the mandatory language of the text indicates that the Governor-General is required to do so.

¹⁰ 2018] JMFC Full 2

- [99]** Although the PSC provided the claimant with an opportunity for a hearing by asking her to show cause within five days, in my opinion, that was not the stage at which the right to be heard is activated.
- [100]** The right to be heard is established at the stage of the local Privy Council before any decision has been made and imposed upon the claimant. I say this as the response time of five days afforded to the claimant did not remove or diminish the constitutional right to a hearing before the Privy Council. It is before the Privy Council that the claimant ought to have placed any grounds of appeal from the recommendation of the PSC, her affidavits and the exhibits related to her performance and record of service.
- [101]** Pursuant to section 125(4) of the Constitution, the Privy Council, having considered the case, advises the Governor-General, who then acts in accordance with that advice. There is a clear right of audience at the Privy Council stage before the Governor General makes a decision that could be adverse to the interests of the claimant. It is the advice of the Privy Council upon which the Governor-General is constitutionally required to act, and not the recommendation of the PSC. Therefore, the PSC's recommendation was not legally binding on the Governor-General or on the Privy Council. Section 125(3) provides that the Governor-General was not authorised to act on the recommendation of the PSC before referring the case to the Privy Council.
- [102]** This means to my mind that there was no decision in this case. The Governor General did not make a decision as he could not have done so until he had received the advice of the local Privy Council. It is undisputed that he did not advise the claimant that the case could be referred to the Privy Council, and there was no hearing before that body. It stands to reason that the recommendation of the PSC was approved but not implemented, as it could not have been.
- [103]** Correspondence requiring the claimant to "show cause" would not have changed the process, as had she done so, any material submitted to the PSC would have

formed a part of a recommendation which was non-binding on the Governor General (he is only bound by the advice of the Privy Council, as was said before.) Any material the claimant submitted to the PSC could have also been placed before the Privy Council afresh. Therefore, even if it could be said that the PSC stage is the hearing stage (which it is not), the opportunity to be heard before a decision is made is only at the stage of a hearing before the local Privy Council.

[104] The sufficiency of time would have to be based on the standards of fairness expected in these circumstances, given that the Privy Council was entitled to examine the entire case and reach its own conclusion, regardless of what had been presented to the Commission. Based on the foregoing, I find that there was no breach of the requirements of natural justice at the stage of the PSC.

[105] It is undisputed that the Governor General did not inform the claimant of the recommendation made by the PSC or that she was entitled to have her case referred to the Privy Council. However, the claimant has not demonstrated to the court that there was a breach of section 125(3), as she was redeployed.

[106] There was nothing in the claimant's affidavit to indicate what transpired after January 1, 2024. The post was abolished, and the claimant was to be redeployed; however, the Court has no evidence regarding the claimant's status during this period, as attempts were being made to redeploy her. In fact, she was redeployed by April 2024. In this case, as indicated by the PSC, the claimant fell into the category of public officers who would only be separated if she could not be redeployed. The claimant did not adduce evidence that after January 1, 2024, she was no longer a public officer. Consequently, I find that there was no breach of section 125(3) in the sense that the claimant was not advised of her right to have the case referred to the local Privy Council for a hearing because she was not being removed from the public service; she was being redeployed.

[107] The Governor General, while approving the recommendation of the PSC, made no decision and took no steps to indicate to the claimant that she was being separated

from the public service. This was what he would have done had there been an intention to separate her. The fact is, he did not do so, which suggests that the non-referral of the case means the claimant was not to be separated; she was to be redeployed. The claimant was viewed as within the category of officers who would remain in the public service based on the ongoing attempts to redeploy her, and this was realised some four months later.

- [108] In light of the foregoing findings, the claimant cannot succeed in obtaining the declarations sought, as no decision was made to remove her from the public service. Therefore, there was no need to have a hearing. There were eighteen affected public officers whose posts were being abolished; there was the unchallenged evidence of the reorganisation and establishment of a new ministry, and the accepted evidence that the claimant was not targeted for removal. In any event, none of these factors would have been changed after a hearing. The most that could have been achieved was redeployment, which was already being actively sought, despite there being no requirement to do so.
- [109] The third declaration sought, concerns false allegations made against the claimant, which she was not allowed to address. **Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation** outlined three instances in which the court can intervene to set aside the decision of a public administrative body: (1) the defendant took into account factors that ought not to have been taken into account. (2) the defendant failed to take into account factors that ought to have been taken into account. (3) The decision was so unreasonable that no reasonable authority would ever consider imposing it.
- [110] There is no evidence that the anonymous letters had been submitted to the PSC or had formed part of the matters under consideration by the PSC. The claimant herself did not choose to submit them to the PSC when she was afforded five days to respond, meaning she did not place that material before the PSC in order to demonstrate that she was being targeted, as she has asserted in this trial.

- [111] The claimant also did not refute the evidence of Mrs Mendez that the letters were not submitted to the PSC. Therefore, it is unclear on what basis the claimant can state that the PS was able to influence the process by recommending her separation based on the anonymous letters when she relies in this trial on evaluations and glowing letters from the PS, yet also failed to place any of the material involving the PS before the PSC.
- [112] The issue of the anonymous letters did not form part of the decision regarding whether the claimant should have been separated from the service, as they were not before the PSC. These are irrelevant considerations not connected to the decision and could not be said to have been taken into account by the PSC in its recommendation to the Governor General.
- [113] It could not be said that the claimant was targeted for separation, when eighteen other public officers faced the same circumstances due to the abolition of their posts failing redeployment. In any event, the PSC was not the body that is empowered by law to make a decision affecting the claimant's post.
- [114] The claimant was advised that attempts would be made to redeploy her, and these attempts were successful, as she remains employed in the public service. There is no evidence of unreasonableness or impropriety in the decision-making process, based on the evidence presented to this Court, and I so find.
- [115] The instant claim is distinguishable on the facts from that of **Gardner** in that there, the claimant was successfully redeployed within the public service. In **Arthurine Webb**, the claimant applied for judicial review to challenge the decision to retire her on the grounds of reorganisation. The issues before the court included whether the claimant's retirement was carried out lawfully in accordance with section 125 of the Constitution, whether the defendant's decision to retire her was irrational, whether she was entitled to be heard before the decision, and whether she had a legitimate expectation that she would not be retired without compliance with the constitutional procedure. Notably, the claimant was never the subject of any

disciplinary action for behavioural misconduct and neither is there any evidence or suggestion that she was performing unsatisfactorily in her post.

[116] While **Gardner** argued that her retirement letter was invalid because the Governor General did not issue it, evidence showed that the Governor General had, in fact, approved her retirement on the advice of the PSC, thereby satisfying section 125(1) of the Constitution. However, the Governor General did not directly inform her of the advice to retire her, nor was she clearly notified that retirement, not redeployment, was the outcome, thereby depriving her of the option to appeal to the Privy Council, which was in breach of section 125(3).

[117] The evidence was that the claimant's post was abolished due to the merger of ministries. The claimant's post was one of several posts affected. Efforts to redeploy her were successful. This court, relying on **Associated Provincial Picture Houses Ltd. v Wednesbury Corporation**,¹¹ finds that the claimant's case does not fit within any of the instances enunciated in the **Wednesbury** case. There is no evidence of bias, and there was no removal of the claimant from the public service. Therefore, the decision made is neither irrational nor unreasonable.

[118] The claimant in the case at bar argued that she was denied a hearing; however, while natural justice requires fairness and the right to be heard generally, the circumstances of this case differ from those of **Gardner** and are more akin to those of **Arthurine Webb**. The purported separation in the case at bar arose from a reorganisation and merger of ministries, necessitating the abolition of eighteen posts. The evidence showed that the claimant was aware of the restructuring, attended meetings regarding this, received correspondence about the matter, and was always informed that her redeployment was being sought. It cannot be gainsaid that the claimant was informed that she would only be separated in the absence of successful redeployment. the decision was driven by structural

¹¹ [1948] 1 KB 223

changes rather than any suggestion of misconduct. A reference to the Privy Council or another hearing would not have changed the outcome.

[119] The claimant knew that she was going to be redeployed as early as September 2023, and this position remained consistent throughout the process. She did not refute it and presented no evidence of being adversely affected by the Governor General's approval. In these circumstances, there was no outright breach of section 125(3) despite there being no referral of the matter. The case at bar is distinguishable on its facts in the application of section 125(3) to the claimant, who, as I have said, remained in the public service, in the category of a public officer whose redeployment was being actively sought. On the totality of the evidence and the surrounding circumstances, given the legal framework, it cannot be said that the claimant was treated unfairly.

[120] Finally, the grant of a writ of certiorari is a discretionary remedy. A judicial review court, even if it finds one or all of the allegations proved, may decide that it is not in the interest of justice to grant the orders sought. In the case of **Legal Officers Staff Association and Others v The Attorney General and Others**¹² McDonald-Bishop, J (as she then was), stated at paragraph 148 of her judgment that:

"My starting point is to declare my acceptance of the principles that the discretion to grant judicial review is a wide one. It is also recognised, as demonstrated by the authorities, that the fact that the remedy is discretionary means that a claimant could win on every point and still find that the court refuses a remedy in the exercise of its discretion. In granting the remedy, there are several key factors that fall for determination by a court. For instance, delay (or even where there is no delay), the questions of hardship, prejudice, and what is in the interest of good administration are relevant considerations when one is considering whether judicial review should be granted. A court may still refuse relief if it considers that granting relief would be likely to cause substantial hardship to, or substantially prejudice the rights of, any person or would be detrimental to good administration" ...

¹² [2015] JMFC 3

“...Clive Lewis in Judicial Remedies in Public Law (1992) at page 294, by citing some relevant authorities, made the relevant point under the sub-heading ‘IMPACT ON ADMINISTRATION’ that: “The courts now recognise that the impact on the administration is relevant in the exercise of their remedial jurisdiction. Quashing decisions may impose heavy administrative burdens on the administration, divert resources towards re-opening decisions, and lead to increased and unbudgeted expenditure. Earlier cases took the robust line that the law had to be observed, and the decision invalidated whatever the administrative inconvenience caused. The courts nowadays recognise that such an approach is not always appropriate and not in the wider public interest. The effect on the administrative process is relevant to the courts’ remedial discretion and may prove decisive. This is particularly the case when the challenge is procedural rather than substantive, or if the courts can be certain that the administrator would not reach a different decision even if the original decision were quashed. Judges may differ in the importance they attach to the disruption that quashing a decision will cause.... I conclude that there is ample evidence upon which this court may legitimately find that to grant the claimants the reliefs they seek by way of judicial review would be inimical to good administration and would prove more prejudicial to the government in carrying out its policies in the public interest than it would be to the claimants. If this court were to hold otherwise, then it would be donning the garb of the policymakers and, by so doing, would be intruding on the field of the executive and the legislature, which it ought not to do.”¹³

[121] In a case where the Court has ruled that the claimant was unlawfully retired or removed from public office due to a breach of the procedure in section 125(3) of the Constitution, then the claimant would be entitled to damages. This principle was clearly highlighted in the **Patrick-Gardner** and **McLaughlin** cases. There has been no claim for damages in the instant case, nor was an application for damages made at the leave stage. This suggests that my conclusion that there is no outright breach of section 125(3) is supported by the claimant’s stance in making no complaint in relation to damages.

[122] Neither the first nor the second defendant purported to separate the claimant from her post, and there is no dispute that the law provides that only the Governor-General, acting on the advice of the Privy Council, was empowered to do so. I find

¹³ At Paragraphs 158 and 159

that there was compliance with section 125, and in any event, the duty to carry out the procedure outlined in section 125(3) is for the Governor-General and neither of the defendants. Therefore, there was no failure in this regard by either defendant.

[123] The approach of the Courts has shifted from a rigid application of the law to the facts, as now, consideration is given to the impact of the remedy on the administrative process, which is a factor to be taken into account and is relevant to the exercise of the courts' discretionary power. The grant of a writ of certiorari in this claim would be, in all the circumstances of this claim, detrimental to good administration.

[124] Orders:

1. The orders sought by the claimant in the Fixed Date Claim Form are refused.
2. No order as to costs.

.....

Wint- Blair J