

THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN THE CIVIL DIVISION

Judgment Book

CLAIM NO. HCV 1334 OF 2006

CORAM: THE HONOURABLE MRS. JUSTICE MARVA MCINTOSH
THE HONOURABLE MR. JUSTICE MARSH
THE HONOURABLE MRS. JUSTICE NORMA MCINTOSH

IN THE MATTER of Registration of Titles Act

AND

IN THE MATTER of the Executive Agencies Act

AND

IN THE MATTER of the Public Service Regulations
1961

AND

IN THE MATTER of Part 56 of Civil Procedure
Rules 2002

BETWEEN ALFRED MCPHERSON APPLICANT
AND THE MINISTER OF LAND AND ENVIRONMENT RESPONDENT

Dennis Morrison, Q.C. and Miss Terry Ann Lawson instructed by Dunn Cox for the Applicant.

Michael Hylton, Q.C. and Miss Tasha Manley instructed by the Director of State Proceedings for the Respondent.

Heard January 29, 30, 31 and July 11, 2007

M. MCINTOSH, J:

The Claim

An advertisement placed by the National Land Agency (NLA) established by the Executives Agencies Act in the "Gleaner", was responded to by Alfred McPherson, the Applicant in this matter who applied for the position of Director, Land Titles, Land Titles Division.

The Applicant having responded to the advertisement for Director, Land Titles, attended interviews for the position and at the third interview for that position was made aware that the position had dual functions i.e. that of the Director and the Registrar of Titles. He states that at this interview Mrs. Elizabeth Stair, the Chief Executive Officer for the National Land Agency invited him to accept the post of Director. A letter of appointment dated July 7, 2003 from Mrs. Stair was sent to him captioned "Post of Director, Land Titles" "I am pleased to advise that you are being offered employment in the National Land Agency to fill the captioned post in the Land Titles Division, 93 Hanover Street, Kingston.

In this regard, I am attaching three (3) copies of your Contract of Employment, which outlines your terms and conditions of employment. Kindly advise if you are willing to accept this offer, by signing and returning the three (3) copies of the Contract. Also, please indicate the date on which you will assume duties.

Yours sincerely,
Elizabeth Stair
Chief Executive Officer"

On the 21st July 2003 the Applicant accepted the post of Director. The contract was executed by himself and the CEO on behalf of the NLA and was for a period of three (3) years. Renewal was not automatic and clause (IV) provided that;

"The employee will be required to observe and apply the standard of conduct of public officers as outlined in the Public Service Regulations 1961 and Financial Regulations in so far as the are applicable and the Human Resource Manual of the Agency."

In addition the contract contained clauses which provided for the employee to sign the Declaration under the Official Secrets Act.

Remuneration and Benefits:

Salary \$3M per annum

Motor car allowance \$341,220.00 (no mileage payable) etcetera.

By warrant of the Governor General on the 21st July 2003, the Applicant was appointed Registrar of Titles pursuant to Section 54 of the Registration of Titles Act (the RTA) and the Applicant resigned the instrument of appointment of the Governor General.

The Jamaica Gazette Extraordinary dated Monday July 21, 2003 published the appointment of Mr. Alfred McPherson as Director, Land Titles/Registrar of Titles in the National Land Agency with effect from July 21, 2003.

The Applicant contends this appointment to the post of Registrar of Titles under the Warrant of the Governor General is to an established post under and by virtue of the Civil Service Establishment Act which entitles the holder of the office to all the rights, privileges protection and rules, and subject to the regulations governing the Civil Service in Jamaica and by virtue of the appointment by the Governor General of Jamaica. The individual holding the established post of Registrar becomes a civil servant and is subject to all the regulations governing the administration of civil servants including but not limited to the Public Service Regulations 1961.

The Respondent claims that there were two advertisements, one setting out the dual positions of Director of NLA and Registrar of Titles and a second (which is the advertisement the Applicant states he responded to) which omitted the position of Registrar of Titles and mentioned only the post of Director, Land Titles Land Titles Division.

The Claimant states that within a month of this appointment his relationship with the CEO became strained largely because of her efforts to control his statutory authority as Registrar in circumstances where neither the Registration of Titles Act nor the Executive Agencies Act entitled the CEO to control and direct the functions of the Registrar.

Examples of the actions of the CEO which demonstrated that she had misrepresented the nature of her powers and which caused an exchange of numerous memoranda between the Claimant and the CEO were set out in the Applicant's affidavit and included:

- (1) attempts by the CEO to remove the management of records and documents from the Claimants (as Registrar of Titles) control.
- (2) altering reporting relationships within the Titles office
- (3) removing officers from the positions within the Titles Office.
- (4) appointing officers in replacement of those removed and
- (5) reducing the number of staff within the Titles Office.

The Applicant regarded those actions as undermining his position as Registrar of Titles and preventing him from effectively and efficiently performing his statutory obligations. The memoranda referred to by the Applicant were exhibited to his affidavit. Efforts were made by him to resolve these conflicts by seeking the opinion of the Solicitor General as regards the role of his office under the RTA. The Solicitor General responded to the Applicant in terms which supported the Applicant's contention that the CEO under the Executive Agency Act (EAA) did not have legal authority to carry out statutory duties and responsibilities which are the functions of the Registration under the RTA.

In spite of this opinion the impasse between the CEO and the Applicant continued.

Issues were raised by the Applicant with a number of organizations all to no avail and on the 25th January 2006, the Applicant received a letter from the NLA signed by the CEO terminating his contract of employment with effect from January 26, 2006.

No reasons for this termination were stated in the letter which also stated that the Governor General had been requested to revoke the appointment of the Applicant as Registrar and the usual repercussions on termination followed.

The Applicant's attorneys-at-law immediately contacted the NLA notifying them that the termination as Director in the NLA did not affect his appointment under the seal of the Governor General as Registrar and contended that his position as Registrar survived his termination as Director, until such time as it is revoked by the Governor General.

The Solicitor General responded and conceded that distinction between the positions of Director and Registrar and that the termination of the contract as Director was not equivalent to a revocation of the appointment as Registrar.

At midday on January 26, 2006 the Applicant received a document of revocation of his appointment as Registrar to take effect from the same date as his termination as Director. The Applicant contends that as regards the purported "revocation" of his appointment as Registrar he received no notice of any charges against him or hearing into the conduct of his duties as Registrar and he was not given an opportunity to be heard on the matter of this purported revocation of his appointment under the Public Service Regulations 1961 or under any law. In short, the Applicant's complaint on this application relates to the process

adopted to terminate his employment. Further the Applicant is of the view that the revocation of his appointment as Registrar upon the advice of the Minister of Land and Environment is in breach of the principles of natural justice and of the Public Service Regulations 1961 as well as a breach of his legitimate expectation that his appointment to the important public office of Registrar of Titles would not be terminated without there having been a hearing into such charges as may have been in the CEO's and/or the Minister's contemplation before the Public Service Commission.

In a report published in the "Daily Gleaner" of January 27, 2006 reference was made to the Minister of Land and Environment alleging "inefficiency" on the Claimant's part as the reason for his termination as Director and Registrar and this was not denied by the Minister and the Applicant contends that he has never been accused by the Minister, the CEO or anyone of inefficiency nor was it cited in his letter of dismissal as being the reason for his dismissal.

The issues to be determined are:

1. Does the Applicant's employment relate both the Applicant's employment as Director, Land Titles in the NLA and to his appointment as Registrar of Titles, or did it relate only to the post of Director/Land Titles.
2. Is the procedure for termination under the Public Service Regulations applicable to a person employed on a fixed term contract to an established civil service post (i.e. a contract civil servant)
3. Does the public law concept of legitimate expectation apply in circumstances where the relationship is governed by private contract.

The Applicant contends that the position of Registrar of Titles was at all material times, an established post under the Civil Service Establishment Act and the holder of such a post was entitled to all its privileges and protections afforded to officers in the Public Service of Jamaica. He held dual appointments under contract as Director, Land Titles and by virtue of appointment by the Governor General as Registrar. Further, the Applicant had a legitimate expectation that the procedures prescribed by the PSR would be adhered to by the NLA and the Respondent in relation to revocation of his appointment as Registrar. When a citizen is induced by a decision maker to expect that he will be dealt with in a certain way in respect of matters which affect his interest such expectation will arise. In support of his argument

reference was made to *DESMITH, WOOLF AND JOWELL, JUDICIAL REVIEW OF ADMINISTRATIVE ACTION, 5TH EDITION paragraphs 8 -037 -8-066* and also the case of *ROBINSON V ATTORNEY GENERAL AND OTHERS SCCA 16/2003* delivered 8, November 2006.

In the instant case, this expectation derived from the terms of the Applicant's contract which expressly imported for certain purposes the provisions of the PSR, the fact of the Applicant's appointment as Registrar pursuant to Section 4 of the Registrar of Titles Act and the provisions of the Civil Service Establishment Act as well as the provisions of the National Land Agency Human Resource Manual.

Finally, the Applicant contends that the Public Services Regulation is specifically preserved by Section 2(2) of the Constitution of Jamaica and regulates the administration of the Civil Service in Jamaica. Part V of the PSR makes provision for disciplinary proceedings and particularly that provision in regulation 33 which purports that

“An officer in respect of whom a disciplinary enquiry is to be held shall be entitled, without charge to him to receive copies of or to be allowed access to any documentary evidence relied on for the purpose of the enquiry....”

Regulation 43 sets out the procedure by which an officer may be dismissed and requires that the officer should be notified in writing of the charge against him, be given an opportunity to respond in writing, and have the right to be represented before any committee appointed by the PSC to enquire into the charge against him.

There is no dispute that any of these procedures was followed and in fact, the Respondent maintains that he was not obliged to do so. The Applicant regards this failure as a clear breach of the PSR in respect of the revocation of the Applicant's appointment as Registrar as the Respondent ought to have complied with the provisions of the PSR and reference was made to the case of *LLOYD v MCMAHON [1987] AC 725, 702-5*.

In addition to this, the Applicant is of the view that the fact that the Respondent advised the Governor General that the Applicant's appointment should be revoked is a further breach of the PSR as Regulation 43(2)(i) provides that the power to recommend

dismissal of a civil servant is that of the PSC after consideration of the report produced by the committee appointed to conduct an enquiry into the charges against the civil servant.

Even if the Applicant is not entitled to refer to the PSR, the rules of natural justice required that the Applicant be notified formally of the factors that informed the decision to seek the revocation of the appointment for example, Mr. Trevor Shaw's report dated 17/11/05 on the Applicant which was sent to the Permanent Secretary and which was never shown to be Applicant. According to the Applicant's evidence, he, the Applicant, saw it for the first time during the course of these proceedings.

A number of authorities was cited in support of the Applicant's arguments among them: *MALLOCH V ABERDEEN CORPORATION 1971 2 ALL ER 1280 REGINA V EAST BERKSHIRE HEALTH AUTHORITY ex parte WALSH [1985] 1 QB 153.*

The Applicant contends that in the instant case the elementary principles of fairness required at the very least that the Applicant be advised of the considerations which weighed with the authorities in deciding to terminate his contract and to recommend the revocation of his appointment as Registrar, and in the circumstances, required that the Applicant be afforded a hearing to enable him to respond to those charges.

The Respondent argues that the Applicant was employed to the post of Director, Land Titles in the National Land Agency by contract dated 7th July 2003. Under the contract the employment was for a period of three (3) years commencing March 21, 2003 but the contract provided that this employment could be terminated by either party giving to the other, 3 months notice or by the NLA paying to the applicant 3 months salary in lieu of notice.

The Applicant was appointed Registrar of Titles with effect from July 21, 2003 by Instrument of Appointment issued by the Governor General.

There is no dispute that working relationships between the CEO and other persons in the NLA and the Applicant deteriorated to the extent that the efficient functioning of the Agency was seriously affected.

By letter dated January 25, 2006, the NLA terminated the Applicant's contract of employment, paid him three (3) months salary in lieu of notice and by Instrument of Revocation also dated January 25, 2006, the Governor General on the advice of the Minister

of Land & Environment (the Minister with responsibilities for the NLA) revoked the Applicant's appointment as Registrar of Titles with effect from January 25, 2006.

The Respondent argues that the Applicant's contract of employment covered both his administrative post of Director, Land Titles in the National Land Agency and his appointment as Registrar of Titles and contended that the evidence in support of this included

1. The contents of the advertisements for the post
2. The policy implemented by the government to modernize the public sector.
3. The discussions which took place between the parties prior to the execution of the contract.
4. The terms of the contract
5. The subsequent conduct of the parties.

The Respondent submits that the Applicant inadvertently misled the court in paragraph 4 of his first affidavit when he stated that he applied for the position of Director, Land Titles in response to an advertisement in the Daily Gleaner and exhibited to his affidavit a copy of the advertisement which bears no date and mentions only the post of Director, Land Titles. The Respondent refers to paragraph 2 of the Applicant's third affidavit in which he stated, "I at no time saw the advertisement referred to as "the first advertisement" which stated that "the Director will hold the statutory post of Registrar of Titles" and submits that that could not be accurate. In effect, the Applicant's insistence that he responded to the advertisement in which the Respondent made no reference to the post of Registrar of Titles, maintaining that he applied for the post of Director, accepted an offer for that post and contracted for that post *AND NO OTHER* and further that he was "made aware that the position had dual functions, namely, that of the Director and that of Registrar" only at the third interview which he had, is not correct.

The evidence is that an advertisement was placed in the Gleaner on 8th December 2002 which invited applications by Friday 24th January 2003, a second advertisement was published in February 2003 and invited applications by 21st March 2003. The Applicant in his evidence stated that he applied in late 2002. It follows therefore that he must have been responding to the first advertisement, which he claims not to have seen, and not to the 2nd advertisement which was not published until February 2003.

It is clearly stated in the first advertisement that "the Director will hold the statutory post of Registrar of Titles."

The affidavit of Mr. George Briggs described in detail the government's modernization policy in particular the conversion of certain departments mainly the office of the Registrar of Titles into executive agencies. The Executive Agencies Act was passed in 2001 and the National Land Agency was one of the first executive agencies created. The office of the Registrar of Titles was now part of the National Land Agency.

The Respondent contends that the Applicant having applied for and contracted for the position of Director of Land Titles in the National Agency ought to have known and realized that the post included the position of Registrar and the contract applied to that position as well, although the Applicant stated that he was not aware that the position had dual functions until the third interview and he accepted only the post of Director. This argument, the Respondent contends, is not credible. The Respondent referred to Mrs. Stair's Affidavit which details the procedure which was followed during the interview process and which makes it clear that all the Applicants for that post must have been aware from the very outset that the position of Director would involve performing the duties of Registrar of Titles. This has not been denied or contradicted by the Applicant.

In addition to this, the Applicant's contract of employment referred to a "job description or profile" and he agreed to undertake the duties and exercise the powers outlined in this job description and profile which document referred to the functions of the Registrar of Titles under the Registration of Titles Act.

This document according to Mrs. Stair's affidavit was attached to the Applicant's contract but this was denied by the Applicant who claims to have seen it for the very first time when he saw it attached to Mrs. Stair's affidavit.

The Applicant in presenting his case exhibited and relied on the Jamaica Gazette dated July 21, 2003 which stated that he was appointed to the post of "Director, Land Titles/Registrar of Titles in the National Land Agency." This referred to one post and there is no evidence that there was any separation of the functions or the powers of Director of Land

Titles and of Registrar of Titles. There was no separate remuneration for the two functions. The contract was the only document which related to the employment of the Applicant and he did not challenge the fact that it related to both positions until his contract was terminated.

The contract entered into by the Applicant was an ordinary contract of service between the Applicant and the Government of Jamaica and the Applicant is subject to the terms and conditions of that contract.

It is the argument of the Respondent that where a contract of employment provides for a means of termination for example by a notice, there is no right to be heard before termination and in support of this argument referred to the case of *RIDGE v BALDWIN* [1963] 2 ALL ER 66 in which Lord Reid discussed the three (3) classes into which cases of dismissal fell (at page 71 of judgment).

“So I shall deal first with cases of dismissal. These appear to fall into three clauses, dismissal of a servant by his master, dismissal from an office held during pleasure, and dismissal from an office where there must be some thing against a man to warrant his dismissal.”

The Respondent argues that the Applicant’s complaint was that his appointment as Registrar could not be revoked without him being accorded a hearing. Since the occupier of the post of Registrar is a civil servant all the Public Service Regulations and other regulations governing the administration of civil servants including those relating to termination are applicable to him.

The Respondent pointed out that the Public Service Regulations were made in 1961, but were expressly saved by Section 2(2) of the Order in Council which created the Constitution. Section 124 of the Constitution established the present Public Service Commission and the Regulations were amended in 1963 to bring it in line with the Constitution.

By Section 125 of the Constitution, powers to appoint, remove and exercise disciplinary control over public officers vested in the Governor General acting on the advice of the Commission and the Regulations set out in detail the processes to be followed by the

Commission. Section 127 of the Constitution provides that the Governor General may delegate powers under Section 125 to "such authority or public officer as may be specified."

On March 19, 2001 in keeping with Section 127 the powers of the Governor General to appoint, remove or discipline any officers in the National Land Agency (except for the CEO) were delegated to the CEO.

The Applicant's argument that the power remained vested in the Commission is clearly incorrect.

The Applicant was not appointed according to the procedure set out in Regulations 14 to 20 and in many other respects, the Applicant's terms of employment as set out in his contract differed from those of the ordinary civil servant, for example he was entitled to the payment of a gratuity amounting to 25% of his basic salary, he was eligible to participate in a performance incentive scheme and his leave entitlement was different from that of a civil servant. He has not complained of those terms in his contract.

The Applicant's contract provided the procedure in respect of "termination for cause" and makes three (3) references to the NLA's Human Resource Manual which contains a detailed disciplinary procedure which differs from that set out in the Regulations.

If his contention is correct, it would require two different procedures for the termination of the function of Director, Land Titles and Registrar of Titles or it would make it possible for one function to be terminated while the other continued. This would result in rather awkward consequences.

There is no provision or agreement as to remuneration as Registrar of Titles only and therefore if his contract was terminated and he continued to work as Registrar of Titles, the result would be that there would be no remuneration attached to the post of Registrar and none would be paid. In addition, other consequences incapable of any resolution would follow

Contracting parties who agree to termination of employment by notice or pay in lieu of notice cannot contend that termination can only be effected after disciplinary procedure or after a hearing. Where there are statutory or constitutional restrictions on the way in which an appointment can be made then the position would be different in relation to the Registrar of Titles.

The office of the Registrar of Titles is not a constitutional post and there are no statutory or constitutional restrictions on termination.

The Registrar of Titles having been formally appointed by the Governor General such an appointment must be revoked by the Governor General and this could only be effected by an Instrument of Revocation from the Governor General.

Section 4 of the RTA provides for the appointment of the Registrar of Titles but there is no provision in the Act for termination and Section 35 of the Interpretation Act would apply. This section provides that the authority having the power to make an appointment shall also have the power to terminate it.

This would be the basis for the Respondent's submission that the Governor General has to terminate the Applicant's appointment as Registrar of Titles.

Section 32 of the Constitution provides that;

“(2) Where the Governor General is directed to exercise any function on the recommendation of any person or authority he shall exercise that function in accordance with such recommendation.”

with provision governing any reconsidering of that recommendation (which does not arise in this case).

The Governor General must therefore act on the advice of the Cabinet or the relevant Minister and this he did.

The Respondent argues that the Applicant's contention that he had a legitimate expectation that his appointment would not be terminated without there being a hearing is one which should not arise. Since the relationship between the parties is governed by private contract the public law concept of legitimate expectation would not apply. The view expressed by the Applicant that “such an expectation will arise where a citizen is induced by a decision maker to expect that he will be dealt with in a certain way with respect to matters which affect his interest” was adopted by the Respondent who submitted that the Applicant has not shown that he was induced to expect that his position both as Director and as Registrar would be terminated in any way other than that agreed on by him. There is no evidence of such an inducement.

Further, this contract of employment did not expressly incorporate the Public Service Regulations so as to make all their provisions applicable to the employee. The only reference to the Regulations is to be found in that clause of the contract which required the Applicant to "observe and apply the standard of conduct of public officers as authorized in the Public Service Regulations 1961 and the Financial Regulations in so far as they are applicable." The Respondent submitted that it is clear from this provision that all the Regulations are not applicable. In support of this submission the Respondent referred to the case of *ATTORNEY GENERAL V QUINN [1990] 170 CLR 1FC 90/022*

In order to succeed in his claim that his appointment should not have been revoked without a hearing, the Applicant must show that there was such a practice or that a promise was made to that effect.

Finally the Respondent referred to *R v DR. A. BINGER, NJ VAUGHN, AND SCIENTIFIC RESEARCH COUNCIL ex parte' CHARLES BOBO SQUIRE [1985] 21 JLR 118* in support of his argument.

In this case the Jamaican Court of Appeal examined the extent to which the rules of natural justice are applicable to the master and servant relationship. Carey J.A. after examining the authorities said.

".....the principle of natural justice cannot be involved where the relationship, albeit one of master and servant, is governed wholly by terms and conditions agreed between the parties. A dismissal wrongfully made would fall to be res law remedies...."

In addition the Respondent referred to the following authorities to support his argument.

1. *THE ATTORNEY GENERAL OF HONG KONG V N G YUENG SHIU [1983] 2 WLR*
2. *COUNCIL OF CIVIL SERVICE UNIONS (C.C.S.U.) V MINISTER FOR THE CIVIL SERVICE [1985] 1 AC374*

3. *DOUGNATHI & RAJKUMAR V KENNETH LALLA AND OTHERS Privy Council Appeal No 1 of 2001*, Trinidad and Tobago delivered 29.11.01
4. *LACKSTON ROBINSON V THE ATTORNEY GENERAL ET AL*, delivered November 8, 2006

Finally, the Respondent submitted that the Applicant, a qualified attorney-at-law, after making application for the post of Director, Land Titles/Registrar of Titles and attending and participating in interviews with the C.E.O. of the National Land Agency, accepted the position and entered into a contract of employment. This contract set out the terms of his employment, including among other things, his entitlement to remuneration, leave benefits and the method of termination. The contract applied to both his employment to the post of Director, Land Titles and to his appointment as Registrar of Titles. It was clear as to the procedure for termination and the NLA acted correctly when it terminated the Applicant in accordance with the contractual provisions as it was under no statutory or other restrictions as to the grounds on which it could dismiss the Applicant.

The Court finds the following on a balance of probabilities that

- (a) The Applicant was aware that his contract of employment related to both the post of Director Land Titles and to his appointment as Registrar of Titles, therefore, the method of termination agreed in the contract related to both positions and the appointment as Registrar of Titles could not in these circumstances be terminated pursuant to the procedure set out in the Public Service Regulations for the holders of permanent posts in the Civil Service.
The revocation of the appointment as Registrar of Titles did not require a hearing and the Minister was not obliged nor did he err in not convening one.
- (b) The contract entered into by the Applicant was an ordinary contract of service which created an entirely contractual relationship between the Applicant and the Government of Jamaica. The Applicant is subject to the terms and conditions of that contract which was clear as to

the procedure for termination and there is no right to be heard before termination.

- (c) The Public Service Regulations 1961 were expressly saved by Section 2 (2) of the Order in Council which created the constitution. Section 124 of the Constitution established the present Public Service Commission and the Regulations were amended in 1963 to bring them in line with the Constitution.
- (d) The provisions of section 125 and 127 of the Constitution were applied and the Applicant was not appointed pursuant to the procedure set out in the Regulations. His contract differed from those of "ordinary" civil servant and the Applicant did not raise any issues as to the terms of his contract.

This contract refers in part to the National Land Agency's Human Resource Manual which document contains details of the disciplinary procedure to be followed and this is different from the procedure in the Regulations.

- (e) The Applicant's employment as Director, Land Titles required that he carry out the functions of the Registrar of Titles. In effect, there was one contract for carrying out both duties. The termination of the Director, Land Titles position would result in the termination of the Registrar of Titles position. It would be inconvenient if not impossible for a different procedure to be required for the termination of each function nor would it be feasible for one to be terminated while the other continued.
- (f) The Applicant had no basis for having a legitimate expectation that there would be a hearing in this case. The Registrar of Titles post is not a Constitutional post and there are no constitutional restrictions on termination.

There is no evidence that the Applicant was induced to expect that his position as Director, Land Titles/Registrar of Titles would be terminated in any way other than the manner agreed on by him that is, the terms of the contract.

The Applicant has not demonstrated that there was a practice to accord a hearing to contracted civil servants or that a promise was made to him to that effect.

For the reasons set out above, the Applicant's claim fails. The Order of Certiorari and the Declaration sought by the Applicant, are refused.

Marsh J.,

Having successfully sought leave to apply for Judicial Review on June 13, 2006, the Applicant, by Fixed Date Claim Form, sought the following reliefs:-

- (i) An order for Certiorari to quash the decision of the Respondent to recommend that the Applicant's appointment as Registrar of Titles be revoked.
- (ii) A declaration that procedure established by the Public Service Regulations 1961, the Civil Service Establishment Act and the rules of natural justice were not complied with by the Respondent in the decision making process with respect to the making of the said recommendation.
- (iii) Further the Applicant seeks damages and costs.

The Applicant was employed to the post of Director, Land Titles in the Office of the National Land Agency (the N.L.A.), for a three year period beginning on July 21, 2003.

A term of this contract was that it could be terminated by either party giving to the other three months notice or alternatively by the National Land Agency paying three months salary in lieu of notice to the Applicant. The Applicant was also appointed Registrar of Titles by the Governor General's instrument of appointment dated September 18, 2003, effective from July 21, 2003.

Evidence

The material facts as outlined in the Applicant's affidavits with the attached exhibits run as follows:-

The Applicant, by a contract dated the 7th June, 2003, accepted the post of Director, Land Titles in the Natural Land Agency (hereafter referred to as the N.L.A.).

He was to be so engaged for a period of three (3) years beginning on July 21, 2003. Should termination of the said position become necessary, the Contract set out a provision for termination: either party should give a notice of three months to the other. The N.L.A. could also terminate Applicant's employment by paying him the sum of three months' salary in place of Notice.

The Applicant was also appointed Registrar of Titles with effect from July 21, 2003.

On January 25, 2006 the N.L.A terminated the Applicant's contract of employment and also by an instrument of revocation, of equal date, and on the advice of the Minister of Land and the Environment (he being the relevant Minister) the Governor General revoked the Applicant's appointment as Registrar of Titles with effect from January 25, 2006.

The Applicant in a Fixed Date Claim form dated June 19, 2006, sought an Order for Certiorari to quash the decision of the Minister of Land and Environment to recommend the revocation of his appointment as Registrar of Titles.

Further, he also sought a declaration that the procedure established by the Public Service Regulations of 1961, the Public service Establishment Act, and the rules of natural justice were not complied with by the Respondent in the decision making process with respect to the said recommendation. The Applicant further sought damages and costs.

The C.E.O. of the N.L.A is Elizabeth Stair. The relationship between Applicant and Elizabeth Stair was inharmonious, to say the least. This arose out of Mrs. Stair's (according to the Applicant's perception) "efforts to control statutory authority as Registrar in circumstances where she was not entitled so to do."

Mrs. Stair attributed the less than harmonious relationship between Applicant and herself to the fact that the Applicant was uncooperative and resistant to changes designed to improve the efficiency and performance of the Land Titles division. The working relationship between Mrs. Stair and the Applicant became as she puts it "untenable".

The evidence relied upon by both parties differ very slightly and in ways which should not be reasons for any great dispute.

The Applicant's complaint relates to the process adopted and not to the conclusions arrived at by others. He contended, inter alia, that his appointment as Registrar of Titles could only be terminated by the procedure set out in the Public Service Regulations relevant to those employees of the Public Service of Jamaica who were holders of permanent posts in the Civil Service.

Since the Minister failed to comply with the procedure mentioned above, and had not given the Applicant a hearing, the revocation of Applicant's appointment as Registrar of Titles was wrong and the decision should be quashed.

The mutually identified issues which arose on this application appear to be:-

- (i). Did the applicant's Contract of employment embrace both his appointment as Registrar of Titles and Director or was it solely related to the post of Director, Land Titles.
- (ii) Whether the procedure for termination under the Civil Service Regulations applied to someone who is employed on a contract for a fixed term in an established post in the Civil Service.
- (iii) Whether the concept of legitimate expectation applies in a situation where the relationship between Applicant and his employer is governed by a private contract.

I would add for my own part that also arising is the following issue

- (iv) Whether the Rules of Natural Justice were breached.

**First Issue -
Nature of the Contract of Employment Entered Into by Applicant**

It is clear that the position for which the Applicant applied was Director, Land Titles. The offer letter to the Applicant also referred to the position as "Director, Land Titles."

The Applicant has admitted that his application for the position was made in late 2002, consequent on an advertisement in the Gleaner. From the evidence disclosed, there were in effect two advertisements related to the position on December 8, 2002 and in February 2003, respectively.

The advertisement of December 8, 2002, invited applications for the position to be submitted by January 24, 2003. The advertisement of February, 2003 invited all persons applying to submit their applications by March 21, 2003.

The Applicant has admitted in evidence that his application was submitted in late 2002. Hence the conclusion that his application was in response to the first advertisement, is irresistible.

The first advertisement, a copy of which has been exhibited, stated among other things--

“The Director will hold the Statutory Post of Registrar of Titles and will be responsible for the administration of the Registrar of Titles Act and The Registration (Strata Titles) Act.”

It is instructive that the only other advertisement re the post of “Director Land Titles” was that of February 2003, which omitted to refer to the position of Registrar of Titles as referred to above.

The Applicant was less than frank therefore to say, as he did in paragraph 5 of his affidavit sworn to on March 31, 2006 that,

“At the third interview for the said position, I was made aware that the position has dual functions..... However at that time, the Chief Executive Officer (C.E.O) of the N.L.A. Mrs. Elizabeth Stair invited me to accept the post of Director, and I accepted the offer.”

He admitted that he became aware of the dual nature of the position in the third interview. Even, if this were the truth, (and it is not here accepted that it is), he was aware before he accepted the position of the dual nature of the post.

The Applicant's contention that he accepted an additional post for which he had not applied, solely on the invitation of Mrs. Stair, the National Land Agency's C.E.O is an invention and totally rejected.

That there was a delay between the date Applicant's appointment as Director, Land Titles and the appointment of Registrar of Titles is undeniable. However, it is perhaps readily explained by the fact, as Applicant himself stated, that the incumbent in the post of Registrar of Titles was yet to demit office.

I accept and do hold that the holder of the Post of Director, Land Titles in the new National Land Agency, would also hold the post of Registrar of Titles, pursuant to the Executive Agency Act.

It is patently clear to me, and as it must have been, to the applicant that the contract made a single provision for salary.

Applicant has exhibited -

- (a) Offer letter, and the
- (b) Contract of Employment

However, under the caption "DUTIES", the following appears:-

"The Employee shall

- (a) undertake such duties and exercise such powers as outlined in the Job description and/or Profile issued.....”

It is incredulous that the Applicant would have received the exhibited offer letter and the Contract of Employment without the job description mentioned therein. The importance of this document would be obvious to anyone, especially to an Attorney at Law. If he had, then it would be expected that there would be some evidence from him, that he made efforts to have that omission remedied. There is no such evidence and I am minded to accept that of Mrs. Stair, the C.E.O. that it did form part of the documentation sent to Applicant.

It was submitted that the appointment of the Applicant under the Governor General’s Warrant under the Broad Seal, and the post of Registrar of Titles, was quite separate and apart from Applicant’s appointment as Director, Land Titles.

His appointment by the Governor General to the post, made him, the Applicant by operation of law “a civil servant and thereby subject to the relevant regulations governing the administration of the Civil Service.”

Further, the learned Queen’s Counsel submitted that the Applicant held dual appointments under contract as Director, Land Titles and as Registrar of titles, appointed under the broad Seal of the Governor General.

There is no distinction therefore between “Contract Officer” and an appointed Civil Servant as was made out by the then Chief Technical Director and head of the Public Sector Reform Unit in the Cabinet Office of the Government of Jamaica, Mr. George Briggs, in his affidavit.

It is, on the evidence before me, abundantly clear that not only did the contract relate to and cover both positions, but also that the Applicant was well aware of this before he accepted the offer with all its terms.

Issue Two - The procedure for Termination under the Public Service

Regulations – is it applicable to someone in the Applicant's situation in the instant case.

The Applicant was firmly of the view that since the position of Registrar of Titles is one of the offices specified in the Civil Service Employment (General) Order 2003, as officer of the Public Service, the Applicant is holder of an established post under and by virtue of the Civil Service Establishment Act. Consequently the Applicant was subject to the rules and regulations which govern the Civil Service.

The procedure which should apply in case of the termination of employment of the Applicant should be that provided in the Public Service Regulations.

The Applicant's appointment had to be revoked by the Governor General acting on the advice of the Public Service Commission.

The correct method of revocation of the Applicant's employment as Registrar of Titles was not followed and the termination of Applicant's employment was therefore wrong in law.

Learned Queen's Counsel further submitted that Section 33 of Part v of the Public Service Regulations provides the most important provision for present purposes. It reads;-

“An officer when a disciplinary enquiry is to be heard shall be entitled without charge to receive copies of or to be allowed access to any documentary evidence relied on for the purpose of the enquiry.”

Section 43 prescribes the procedure whereby an officer may be dismissed.

The fact that it was the Respondent who advised the Governor General that the Applicant's appointment was to be terminated, was another breach of the provisions of the Public Service Regulations (P.S.R.) Section 42(4)(1) of the PSC provides that the power to recommend dismissal of a civil servant is with the Public Service Commission.

In Counter to these submissions, the Solicitor General, for the Respondents submitted that the relationship between the Applicant and the Government of Jamaica was purely contractual. This was an ordinary contract or service. The Applicant was therefore subject to the terms and conditions in said contract of employment. The relevant term of this contract re 'Termination' provided as follows.

“Either party may terminate this agreement by giving to the other three months notice in writing or by the National Land Agency paying to the Employee three months salary in lieu of notice

Since the method of termination is provided for in the Contract, there is no right to be heard prior to termination. He bolstered his argument by reference to

Ridge v. Baldwin (1963) 2 all E.R. 66, at p. 73 Lord Reid referred to the three categories of cases of dismissal. He said-

“I shall deal first with cases of dismissal. There appear to fall into three classes, dismissal of a servant by his master, dismissal from an office held during pleasure and dismissal from an office above there is something against a man to warrant his dismissal. The law relating to Master and Servant is not in doubt. There cannot be specific performance of a contract of service, and the master can terminate the contract of service with his servant at any time and for any reason or for none So the question in a case of pure master and servant does not at all depend on whether the master has heard the servant in his own defence. It depends upon whether the facts emerging at trial, prove breach of contract. But this kind of case can resemble dismissal from an office where the body employing the man is under some statutory or other restriction as to the kind of contract which it can make with its servant, or the grounds on which it can dismiss them.”

Further the Solicitor General stated that the contract in question is clear as to the procedure of termination to be adopted. There was no statutory or other restrictions as to the grounds on which the N.L.A could dismiss the Applicant and he was dismissed in accordance with the provisions of the contract.

It is my view that the Applicant’s appointment to the post he occupied at National Land Agency, only became possible under Staff Order 1.9.5 which speaks to “Fixed term appointments” defined as “a contractual arrangement for the performance of specific functions for a predetermined period under terms and conditions specified under contract.” The National Land Agency was established in 2001.

The Applicant cannot successfully claim that his appointment was in accordance with the procedure for appointment set out in the Public Service Regulations 1961. His selection was not supervised by the Public Service Commission as required by Regulation 15 of Part III of the Public Service Regulations. His contract had several features which distinguished his employment from that of the average or "ordinary civil servant." He was contractually due the payment of a gratuity, and was entitled to participate in a performance incentive scheme. It is clear that he makes no quarrel with the termination of his employment as Director, Land Titles and kept the money paid him in lieu of notice. His application for relief on the Fixed Date Claim Form related exclusively to matters relating to the appointment as Registrar of Titles.

The two positions held by Applicant prior to his dismissal were so inextricably bound that it would surely be nonsense to have one terminated in one way, according to the contract and the other in another way and perhaps at another time.

The Governor-General, had made the appointment of the Applicant to the post of Registrar of Titles, in accordance with Section 32 of the Constitution.

Section 32 -1 of the Constitution provides:

1. "The Governor General shall act in accordance with the advice of the Cabinet or a Minister acting under the general authority of the Cabinet in the exercise of his functions, other than --

- (a) any function which is expressed (in whatever terms) to be exercisable by him at or in accordance with the recommendation or advise of, or with the concurrence of, or after consultation with any person or authority other than the Cabinet, and
 - (b) any function which is expressed (in whatever terms) to be exercisable by him in his discretion.
2. Where the Governor General is directed to exercise any function on the recommendation of any person or authority, he shall exercise that function in accordance with such recommendation.

He may refer the recommendation for reconsideration from whence such recommendation came.

How is the appointment of the Applicant to the post of Registrar of Titles to be terminated?

If he was not appointed as provided by the Public Service Regulations, earlier mentioned, how could he now claim to be covered by the procedure of termination prescribed in the Regulations?

Applicant was employed on a fixed term contract as per the Staff Order 1.9.5.

I agree with the Respondent's contention that as a person on a fixed term contract of Employment, the Applicant could not shelter under the provisions of the Public Service Regulations, save for these conditions and terms of the regulations which were specially made terms of his contract.

Issue Three - Application of a legitimate expectation that the Applicant would be entitled to rely on the procedure for

termination of employment prescribed by the Public Service Regulations.

Legitimate Expectations:

Learned Queen's Counsel also urged that even if the Court was of the view that the Applicant was not entitled to the protection of the Public Service Regulations, in the alternative, the Applicant had a legitimate expectation that the N.L.A would adhere to the prescribed procedures in relation to the revocation of his appointment as Registrar of Titles.

This expectation, he continued, was prompted by and arose from

- (a) the conduct of the N.L.A;
- (b) the provisions of the Civil Service Establishment Act
- (c) Section 4 of the Registration of Titles Act and
- (d) Implied representations to be found in the Human Resource Manual of the N.L.A.

Such an expectation arises where a citizen was induced by a decision maker to expect that he will be dealt with in a certain way in respect of certain matters which affect his interest. With this formulation of the law, the Solicitor General was in total agreement and so adopted it. The Applicant relied upon the text *Desmith, Woolf & Jowell Judicial Review of Judicial Action, 5th Edition* at paras. 8 -037-8-066 and the judgment of *Smith J. A. in Robinson vs. Attorney General and others SCCA no. 16 of 2003* delivered on 8th November, 2006.

The Solicitor General, although agreeing with Applicant's formulation of the law, submitted that the Applicant had not shown that he was induced to expect that his position (both as Director and as Registrar) would be terminated in any way other than the manner agreed on by him. There was no evidence of any inducement. Further, in view of the contractual nature of the relationship between the Applicant and the N.L.A., he could not reasonably have had a legitimate expectation that there would be a hearing in the instant case.

The only reference in the contract to provisions of the Public Service Regulations is at page one paragraph (iv). There the relevant clause informed the Applicant "to observe and apply the standard of conduct of public officers as outlined in the Public Service Regulations, 1961 and the Financial Regulations in so far as they are applicable." Emphasis supplied.

The Contract also required that Applicant comply with the provisions of the Human Resource Manual of the N.L.A. I therefore find untenable the Applicant's contention that there was any evidence to cause him to have a legitimate expectation that the provisions of the Public Service Regulations would apply to him.

The Solicitor General cited the case of *The Attorney General (N.S.W.) v. Quin (1990) 170 CLR 1 F.C. 90/022* and referred to the observation of Mason C.J. This ran thus:

It is the presence of a legitimate expectation which conditions the existence of a Claimant's right to procedural fairness and the corresponding duty of the decision maker to observe

*procedural fairness in the treatment of the Claimant's case
..... a legitimate expectation may be created by the giving
of assurances the existence of a regular practice
the consequence of denial of the benefit to which the
expectation relates or the satisfaction of statutory conditions.
The list is not exhaustive but provides indications of the kind
of factors which a Court will take into account in deciding
whether or not an expectation is legitimate."*

Learned Queen's Counsel, in reference to the abovementioned case and observation of Mason C.J. pointed out that an important statement by the learned judge had been omitted. This statement was that the content of the duty to observe procedural fairness to which a legitimate expectation may give rise "is dependent on the circumstances of the particular case." The judgment was also supportive of the proposition that the concept of the legitimate expectation denotes "expectation which go beyond enforceable legal rights."

The Applicant has not, in the circumstances of the instant case, satisfied me that he has a legitimate expectation as he has claimed.

In his affidavit sworn to on November 6, 2006, the Applicant has deponed that the giving of advice to the Governor General to revoke his appointment as Registrar of Titles without a hearing and without notice of the reasons for seeking a revocation of the appointment, was in breach of the principles of natural justice.

As a further alternative, the learned Queen's Counsel submitted that the rules of natural justice required that the Applicant should be formally notified of the factors informing the decision to seek revocation of the appointment. The Applicant should then be afforded a hearing in respect of the charges against him.

The Applicant relied on the decision of *Ridge v. Baldwin* (1963) 2 All E.R. 66. More particularly, he designated this case as the starting point of the modern law. It emphasized that duty to act in conformity with the rules of natural justice, could in some situations, simply be inferred from a duty to decide what the rights of an individual should be (per Lord Reid). *Malloch v. Aberdeen Cooperation* (1971) 2 All E.R. 1276 was also cited, Lord Wilberforce's comment at page 1293 was robustly cited. The passage reads

The Appellant's challenge to the action taken by the respondent's raises a question, in my opinion of Administrative Law. The respondent's are a public authority; the appellant holds a position fortified by statute. The considerations which determine whether he has been validly removed from that position go beyond the mere contract of employment, though no doubt including it. They are in my opinion to be tested broadly on arguments of public policy and not to be resolved on narrow verbal distinctions. The Appellant is entitled to complain if, whether in procedure or in substance, essential requirements, appropriate to his situation, in the public service under the respondents, have not been observed, and in case of non-observance, to come to the courts for redress."

The Applicant by the framework and context of his employment, had conferred on him 'elementary rights.' See also *Leach v. Governor of Parkhurst Prison* (1988) AC 533. Learned Queen's Counsel further contended that the tendency of the modern authorities is to impose such a duty on public authorities, even where the vehicle of the employment contract has been chosen to carry the perceived perquisites of public policy. The principle has emerged that judicial

review will be available in such case whenever there is a sufficient statutory underpinning of the employment so as to import public law into the relationship.

The Applicant, in circumstances of the instant case, occupied such a position in the relationship between the parties that Respondent was obliged to afford the Applicant the rules of natural justice, which rules clearly apply to the revocation of his appointment as Registrar of titles.

The Solicitor General countered this submission by stating that for the Applicant to succeed in his claim, that his appointment should not have been revoked without a hearing, he must show either that there was such a practice (i.e. to accord a hearing to 'contract civil servants') or that a promise was made to that effect.

For support, he relied on a judgment of the Jamaican Court of Appeal, *R. V. Dr. A. Binger, N. J. Vaughan and Scientific Research Council, ex parte Charles Bobo Squire (1985) 21 JLR 118*.

The Court here examined the contract to which the rules of natural justice are applicable to the Master and Servant relationship. Consequent on this examination, Carey, J.A. observed that –

.... the principles of natural justice cannot be involved, where the relationship, albeit Master and Servant, is governed wholly by terms and conditions agreed between the parties. A dismissal, wrongfully made would fall to res law remedies.....

Also relied on were the following cases -

(a). *Attorney General of Hong Kong v. N. Y. Yueng Shin (1983)*

2 WLR 735,

- (b) *Council of Civil Service Unions v. Minister for the Civil Service (1985) 1 A.C. 374.*
- (c) *Rajkumar v. Lalla et al Privy Council Appeal No. 1 of 2001*
(Trinidad and Tobago, delivered on November 29, 2001)
- (d) *Robinson v. the Attorney General et al (supra)*

I am not in agreement with the submission of learned Queen's Counsel that this is, on the evidence before me, a case in which the rules of natural justice were in any way breached.

The Applicant's rights were contained in his contract of employment and the attached job description. The methods to be employed for termination of his employment were quite clearly set out in the contract. Nothing in the evidence could have led the applicant to expect, nor was he assured that he had any legitimate expectation to expect any different procedure would be employed to the termination of his services under the said contract.

This contract embraced both functions of Director of Land Agency and Registrar of Titles.

For these reasons, I will refuse the Applicant's request for the orders sought in the Fixed Date Claim Form Application for Judicial Review/Administrative Orders dated June 19, 2006.

N. E. MCINTOSH, J.

The National Land Agency (the NLA), is an Executive Agency that was established as a result of the Public Sector Modernization Programme of the Government of Jamaica. It became operational on April 1, 2001 and reports to the Minister of Land and Environment.

The newly created Agency sought for the first time to fill the post of "Director, Land Titles" by way of Advertisements in the Jamaica Gleaner on December 8, 2002 and February 3, 2003. The Advertisement of December 8, 2002, stated that

"The Director will hold the statutory post of Registrar of Titles and will be responsible for the administration of the Registration of Titles Act and the Registration (Strata) Titles Act"

This statement was omitted from the second Advertisement, according to the Respondent's witness and Chief Executive Officer (CEO) of the NLA, Mrs. Elizabeth Stair, in an effort to reduce costs.

The Applicant was one of several persons who responded to the advertisement and, at the end of the selection process, the position was offered to him. Thereafter, a contract of employment was executed by the Applicant and the CEO. That contract was for a period of three (3) years and set out in clear and unambiguous language the terms of his employment, providing, inter alia, a procedure for termination of the contract.

There is a point of disagreement between the parties as to when the Applicant became aware that the position of Director of Land Titles included the position of Registrar of Titles. It is the Applicant's contention that he responded to the second Advertisement (from which the statement concerning the union of the two posts had been omitted) which according to him meant that his application related to the position of Director, Land Titles only. However, in paragraph 4 of his Affidavit sworn to on the 31st of March, 2006, supporting the application now before the court, he averred that he applied for the position in late 2002 and since there was no challenge to the evidence on the Respondent's case that the second advertisement was in February of 2003, the conclusion seems inescapable that the Applicant must have responded to the first advertisement.

Suffice it to say that subsequent to the execution of the contract, the Applicant was appointed by the Governor- General to the post of Registrar of Titles, by warrant under the Broad Seal, in accordance with the provisions of Section 4 of the Registration of Titles Act. The appointment was stated to be effective from the 21st of June, 2003 – the same date that the Applicant assumed his duties as Director, Land Titles.

In paragraphs 9 through 16 of the affidavit referred to earlier, the Applicant gave an account of what he termed the **"impasse between the Registrar of Titles and the CEO"** which indicated that **"within months of my appointment the relationship between the CEO and myself became strained with many disagreements...."** Advice was sought

from the Honourable Solicitor General, the Bar Association became involved and the intervention of the Honourable Prime Minister of the day was sought. The latter had mandated a course of action in an effort to resolve the issues that had arisen between the Applicant and the CEO, but, before that course was pursued, the Applicant received a letter, dated January 25, 2006, from the National Land Agency, signed by its CEO, terminating his employment as Director of Land Titles with effect from the 26th of January, 2006.

The letter advised him that:

“In accordance with the termination clause in your contract of employment dated July 7, 2003, your contract has been terminated with effect from January 26, 2006”

In the letter was enclosed two (2) cheques, one to represent three (3) months salary in lieu of notice and payment for vacation leave which then stood to his credit and the other to represent a gratuity payment for the period July 21, 2003 to July 20, 2005.

The letter further advised that **“The Governor-General has been requested to revoke your appointment as Registrar of Titles.”**

So it was that the Governor-General acting on the advice of the Honourable Minister of Land and Environment revoked the Applicant’s appointment as Registrar of Titles, by **“Instrument of Revocation”**, with effect from January 25, 2006.

This is but a brief summary of the background to the Applicant’s **Fixed Date Claim Form Application For Judicial Review/Administrative Orders** in which he claims against the Respondent the following Orders:

- 1.) **An Order of Certiorari to quash the decision of the Respondent to recommend that the Applicant’s appointment as Registrar of Titles be revoked**
- 2.) **A declaration that procedures established by the Public Service Establishment Act and the rules of natural justice were not complied with by the Respondent in the decision making process with respect to the making of the said recommendation**
- 3.) **Damages**
- 4.) **Costs.**

The Applicant asserted as a ground of the application that the Respondent’s recommendation for the revocation was in breach of the rules of natural justice, the Public Service Regulations, 1961 and the Civil Service Establishment Act.

THE ISSUES

Each party identified three issues as falling to be determined in this application. However, although they capture the essence of the matters for determination, they are expressed in different terms. Below is an attempt to incorporate the two sets of issues:

- 1.) **The scope of the Contract of Employment - whether it related to the Applicant's position as Director of the NLA as well as his position as Registrar of Titles (Registrar)**
- 2.) **The applicable procedure for termination of his position as Registrar – whether it was the procedure as outlined in the contract of employment or the procedure for termination under the Public Service Regulations (PSR) - whether the provisions of the PSR are applicable to a person employed on a fixed term contract to an established civil service post**
- 3.) **The existence of any basis for:**
 - (i) **a legitimate expectation that the Applicant would be entitled to the protection of the provisions of the PSR particularly as it relates to discipline and termination of employment and/or**
 - (ii) **the application of the rules of natural justice.**

THE EVIDENCE

The Applicant relied on three (3) affidavits the first of which was sworn to on March 31, 2006, in support of the Fixed Date Claim Form setting out his account of the circumstances of his employment up to its termination in January, 2006. The second affidavit was sworn to on the 24th of April, 2006, exhibiting the Governor-General's Instrument of Revocation and the third, sworn to on the 6th of November, 2006, was in answer to the affidavits relied on by the Respondent.

Three (3) affidavits were filed in response to the Applicant's claim, one from the CEO of the NLA, Mrs. Elizabeth Stair, sworn to on the 30th of October, 2006, one from the Chief Technical Director and Head of the Public Sector Reform Unit, Mr. George Briggs, also sworn to on the 30th of October, 2006 and one from Mr. Donald Stanberry, Permanent Secretary in the Ministry of Agriculture and Lands, sworn to on October 31, 2006.

The affiants outlined the Government's modernization policy which resulted in the formation of Executive Agencies and the move towards contract officers in the civil service. The circumstances of the Applicant's employment and resulting issues were also addressed. They exhibited several documents attesting to the organization of the NLA and also several items of correspondence relating to the issues between the Applicant and the NLA's CEO. The Applicant had similarly exhibited copies of correspondence and other documents in support of his claim to the orders he seeks. The total effect of all the material provided to the court was to paint with a broad brush the background to the

application but I will confine this review to those aspects of the picture which directly relate to the issues, as formulated.

The Essence of the Applicant's Complaint

In sum, his contention is that he applied for, was offered and accepted the post of Director of the NLA only and that the contract he executed related to that post alone. He did not receive a job description and to his knowledge his contract did not relate to the post of Registrar as that was a separate appointment by virtue of which he became a Public Officer, entitled to the protection afforded by the principles of administrative law, particularly in relation to the termination of his appointment. So his entitlement flowed from his status as a Public Officer and not from his contract of employment.

The Instrument of Revocation was wrongly issued because termination of his appointment as Registrar was a matter for the Public Service Commission. The Governor-General had acted as he did on the advice that as the Applicant was no longer Director, Land Titles he could no longer hold the post of Registrar but that was erroneous as his appointment as Registrar and his employment as Director were two distinct acts. He had a legitimate expectation that the PSR would apply to him as Registrar. He was a public servant and as such he had a public law entitlement to due process.

The Respondent's Response to the Complaint

The Respondent challenged the Applicant's contention that he applied for the post of Director, Land Titles only and that he was not provided with the Job Description referred to in his contract of employment. The CEO contended that apart from the advertisement of December, 2002, the interviewing process included clear indications that the functions of Director were to include the functions of Registrar. A written assignment relating to the statutory duties of the Registrar formed part of the process. Further, the Job Description was attached to the contract of employment. The very Gazette Notice which the Applicant exhibited, dated July 21, 2003, clearly showed that the posts were intertwined, referring to his appointment to the post of **"Director, Land Titles/Registrar of Titles in the National Land Agency."**

The Respondent's Attorney-at-Law readily conceded that the holder of the post of Registrar is a Public Officer but argued that the Applicant's position flowed from his contract of employment and not from his status as a Public Officer. He further submitted that the holding of a public office is not what determines the method of termination. In this case it was the contract that determined the method of termination and it provided as follows:

"Either party may terminate this agreement by giving to the other three months notice in writing or by the National Land Agency paying to the Employee, three months salary in lieu of notice

The National Land Agency shall be entitled to terminate this Agreement without notice and without pay in lieu of notice if at any time during the engagement the Employee:

- a) commits any serious misconduct or non-observance of the Agreement**
- b) willfully neglects or refuses to carry out the duties assigned to him under the Agreement**
- c) Is convicted of any criminal offence other than an offence which in the reasonable opinion of the Public Service Commission does not affect his position with the Agency”**

It is to be noted that the Public Service Commission would only become involved where the Agency exercised its right to terminate the contract without notice and without pay in lieu of notice, in the event of a conviction for a criminal offence

ISSUE 1 - The scope of the Contract of Employment - whether it related to the Applicant’s position as Director of the NLA as well as his position as Registrar of Titles.

There can be no dispute that the Contract of Employment executed by the Applicant and the offer letter from the CEO referred to the position only as “Director, Land Titles. Further, it is common ground that there had to be compliance with the requirement of Section 4 of the Registration of Titles Act before the Applicant could undertake the duties of Registrar.

That being said I must immediately express my firm view that the Applicant knew from the outset that with the position of Director of Land Titles came the position of Registrar of Titles. The whole scheme of arrangements for the Agency made that a necessity. He would have known about the dual functions from the December, 2002 advertisement to which he clearly responded and that knowledge would have been confirmed during the interviewing process when, according to the unchallenged evidence of the CEO, he was required to submit a written assignment concerning the duties of Registrar.

The Applicant himself stated that it was not until after the third interview that he was “made aware that the position has dual functions, namely that of Director and that of Registrar” As an Attorney-at-Law, he would therefore have known, before he took up the position of Director, that he had to be appointed Registrar, in order to perform certain of his duties and I reject the submission that “it was during the first week of his employment when he could not sign documents because he was not appointed Registrar that it was decided that he had to be appointed to perform duties under the contract.”

In effect, there were two components to his employment –the main administrative component and the ancillary statutory component. There was one contract covering both components but whereas the CEO was empowered to execute the contract in relation to the administrative component, the statutory component was subject to the formality of an appointment by the Governor- General to the position of Registrar. There was a delay in

complying with the formalities, which may well have been occasioned by the disclosure in the unchallenged evidence of the Applicant that at the time he assumed his duties the last incumbent of the post of Registrar, under the old regime, had not yet demitted office and it is not without significance that his appointment as Registrar was made retroactive to accord with the date he assumed duties as Director.

I am satisfied that it was always intended that the holder of the post of Director was also to hold the ancillary post of Registrar and it was not an afterthought or a matter arising from any discovery of a lacuna in the arrangements for the performance of the functions of Director.

There is merit in the submissions of the learned Solicitor General on behalf of the Respondent, supporting his contention that the contract of employment related to both positions. He pointed out that there was but one provision for salary and that was under the contract. There was never any request from the Applicant that he be separately remunerated for the position of Registrar and in the performance of his duties there was no separation of the powers or functions of Director of Land Titles and Registrar of Titles.

The Job Description clearly included the functions of the Registrar of Titles but, according to the Applicant, he saw it for the first time in these proceedings. On the other hand, the CEO contended that one was attached to his contract of employment. This would of course have been an undeniable indication to him that the contract governed both aspects of his employment.

Under the heading “**DUTIES**” on page 2 of the said contract, it stated, inter alia, that

“The Employee shall

**(a) undertake such duties and exercise such powers as outlined
in the Job Description and/or Profile issued”**

and, it seems reasonable to conclude, on a balance of all the probabilities, that this Applicant, an Attorney-at-Law, in executing this contract, would have ensured that he received something as fundamental to his employment as his job description upon which his duties depended. He was undertaking to discharge those duties. I accept the evidence of the CEO that he received the Job Description with his contract of employment

The thrust of the submissions of Learned Queen’s Counsel was that even if the court were to find that the Applicant, in responding to the advertisement, was applying for two jobs his employment to the posts involved two distinct acts – the execution of the contract of employment as Director and the appointment to the post of Registrar by the Governor-General’s warrant under the Broad Seal. The latter appointment was therefore separate and apart from his employment under the contract and that is what made him a public servant, subject to the provisions of the PSR.

In my view, there is ample evidence to support a finding that the contract related to both positions and it is therefore now necessary to consider whether, as a public servant, termination of his appointment as Registrar was governed by his contract of employment or the provisions of the PSR and whether the latter provisions may be applicable to a person employed on a fixed term contract to an established civil service post.

Issue 2. - The applicable procedure for termination of his position as Registrar – whether it was the procedure as outlined in the contract of employment or the procedure for termination under the Public Service Regulations (PSR)

The Applicant contended that the position of Registrar is an established post under and by virtue of the Civil Service Establishment Act and the Civil Service Establishment (General) Order, 2004 and that the holder of the office becomes a civil servant, entitled to all the rights, privileges, protections and rules and subject to the relevant regulations governing the administration of the civil service. Consequently, as it relates to termination of his position as Registrar, the applicable procedure would be as provided in the PSR.

Submissions

Learned Queen's Counsel submitted that revocation of the Applicant's appointment had to be by the Governor-General, acting on the advice of the Public Service Commission.

He referred to Staff Order 1.9.5 exhibited to the affidavit of George Briggs which states as follows:

“1. 9. 5 Fixed Term Appointment

- (i) A fixed term appointment is a contractual arrangement for the performance of specific functions for a pre-determined period under terms and conditions specified under the contract**
- (ii) Any such contract must be consistent with existing guidelines issued by the appropriate authority”**

and submitted that a contract officer, even though appointed by contract is nevertheless a public officer and, in that context, is entitled to the rights, privileges, protection and rules relevant to a public officer. Therefore the proper procedure was not followed with respect to the revocation of the Applicant's appointment as Registrar

From the Respondent's perspective that Staff Order showed that notwithstanding that the contract officer's employment related to an established civil service position, it was to be governed by the terms and conditions specified in the contract. Therefore, termination of

the Applicant's employment both as Director and as Registrar was properly in accordance with the procedure for termination specified under the contract.

The two positions were so inextricably woven that it could never have been in the contemplation of the parties that one position could have been terminated and the other position could survive that termination. There could never have been two different procedures for termination in the contemplation of the parties. This was an ordinary contract of service and the relationship between the Applicant and the Government of Jamaica was purely contractual.

Conclusions

It is beyond question that the Applicant was not appointed in accordance with the procedure set out in the Public Service Regulations, 1961. In Part III of the Regulations, under the caption "**Appointments, Promotions and Transfers**", regulations 14 to 20 set out the PSR's procedure with regulation 15 providing as follows:

"In order to perform its functions under regulation 14 the Commission shall supervise the selection of persons for admission to the public service....."

There were ample indicators that his employment was governed by the terms and conditions of his contract of employment and not the provisions of the PSR. This Applicant was not interviewed or hired by the Public Service Commission; his terms of employment were different from those of "ordinary civil servants"; his employment was not subject to a probationary period as is the case with ordinary civil servants [regulation 23(1)]; he was entitled to the payment of a gratuity and not to a pension as is the case with permanently appointed civil servants; unlike ordinary civil servants, he was eligible to participate in a performance incentive scheme and his leave entitlement was different.

It is noteworthy that the Applicant recognized that there were differences in the position under his contract of employment from the position of permanently appointed civil servants. In paragraph 18 of his affidavit sworn to on November 6, 2006, responding to the affidavit of George Briggs on the difference between the status and entitlement of a contract officer and an appointed civil servant, he agreed that "the provision of a gratuity in addition to salary of a contract officer is in fact intended to be a benefit payable to such officers in lieu of the entitlement to pension benefits which permanent members of staff of the civil service receive."

He accepted that his employment as Director had been terminated and brought no complaint about that in this application. If a different procedure was to be adopted for termination of the post of Registrar could another Director be employed while he remained in the ancillary position of Registrar with the new Director being required to perform the duties of Registrar? (That this could not be was demonstrated in his own case when he was unable to function as required until the post of Registrar was vacated).

The learned Solicitor General pointed out that inasmuch as the Applicant had accepted three months salary in lieu of notice, as well as a terminal grant and gratuity, as agreed under the contract, if his appointment as Registrar was not revoked along with the termination of his position as Director would he continue to receive a salary attached to the post of Registrar? Clearly it was intended that both positions would terminate at the same time and in accordance with the provisions of the contract.

Counsel posed the question as to whether the parties could agree to termination by payment of salary in lieu of notice and intend that that would be after a hearing. This would make nonsense of that agreed method of termination.

Further, the Registration of Titles Act provides only for appointment to the post of Registrar by the Governor-General. It makes no provision for termination. Therefore, in accordance with the provisions of section 35 of the Interpretation Act which provides that:

“35. Where by or under any Act a power to make any appointment is conferred, then, unless the contrary intention appears, the authority having power to make the appointment shall also have power to remove, suspend, reappoint or re-instate any person appointed in exercise of the power”

revocation would have had to be by the Governor-General who had made the appointment and that appointment had to have been made in accordance with the provisions of section 32 of the Constitution, as set out below:

“32---(1) The Governor-General shall act in accordance with the advice of the Cabinet or a Minister acting under the general authority of the Cabinet in the exercise of his functions other than ---

- (a) any function which is expressed (in whatever terms) to be exercisable by him on or in accordance with the recommendation or advice of, or with the concurrence of, or after consultation with any person or authority other than the Cabinet; and**
- (a) any function which is expressed (in whatever terms) to be exercisable by him in his discretion.**

(2) Where the Governor-General is directed to exercise any function on the recommendation of any person or authority, he shall exercise that function in accordance with such recommendation:”

(with the proviso that he may refer the recommendation back for reconsideration by the person or authority from whence it came, in his discretion but would be obliged to act on the reconsidered recommendation)

The effect of this section is that the Governor-General would have been obliged to act on the recommendation or advice of the Respondent as the relevant Minister in this case.

Since the Registration of Titles Act is silent as to termination, requiring resort to the Interpretation Act and since there was never any suggestion that his appointment was on the advice of the PSC, the Applicant's submission that termination of his appointment as Registrar was the business of the PSC, in accordance with the PSR, has no merit. Termination could not correctly have moved from the PSC.

An additional factor to be considered is whether, as a public officer, appointed to an established public office for a fixed term as opposed to a permanent appointment, he was entitled to all the rights, privileges, protection and rules afforded to permanently appointed officers in the Public Service. I am in agreement with the submission on behalf of the Respondent that the PSR did not apply to persons on a fixed term contract.

It seems to me that Staff Order 1.9.5 makes the contract of such officers the governing factor and in his case, only certain specific provisions of the PSR were imported into that contract.

But, even if the PSR was not applicable to this Applicant, was he induced to expect that the procedures prescribed by the PSR would be adhered to by the NLA and the Respondent, in relation to the revocation of his appointment as Registrar?

Issue 3 - The existence of any basis for:

- (i) a legitimate expectation that the Applicant would be entitled to the protection of the provisions of the PSR particularly as it relates to discipline and termination of employment and/or**
- (ii) the application of the rules of natural justice.**

Legitimate Expectation

Submissions and Conclusions

The Applicant contended that if the court were to find that he was not entitled to the protection afforded by the PSR by virtue of his status as a public officer then, in the alternative, he would rely on his legitimate expectation that he would be granted a hearing if he were to be dismissed for non-performance or misconduct. (But, was he dismissed for non-performance or misconduct?)

He had a legitimate expectation, he said, that the procedures laid down by the PSR, in particular, the right to a hearing, would have been adhered to before a decision was taken by the Minister or the appropriate body to recommend the revocation of his appointment as Registrar. His expectation was induced by the conduct of the NLA, his status as a public servant, pursuant to section 4 of the Registration of Titles Act, the provisions of the Civil Service Establishment Act and by certain implied representations made in the NLA's Human Resource Manual (described by learned Queen's Counsel, as "the corpus

of the material which would be available to him in terms of what performance was expected of him” and which, in my view, would be “the existing guidelines issued by the appropriate authority” referred to in sub-order (ii) of Staff Order 1.9.5).

It was further submitted that the authorities tended to show that even if one is dealing with a purely contractual situation, depending on the formulation of the contract, with underpinning of statute, elements of public law might be imported into it. When it transpired that the Applicant was unable to perform certain functions as he was not appointed Registrar of Titles, it was then decided to appoint him Registrar in order for him to perform duties under the contract. That, it was submitted, is what underpinned the statutory position that gave him the rights which he is seeking to enforce.

Counsel relied on the judgment of Smith, JA in **Robinson v Daisy Coke and Others -- Supreme Court Civil Appeal No. 16 of 2003**, which, he said, confirmed that a legitimate expectation can give rise to rights that go beyond the private law rights of a party. It also confirmed that the legitimate expectation is founded on a promise or a representation made by the Public Body either expressly or to be implied from the past practice of that Body

In the **Robinson** case, the Court of Appeal found that the Appellant had not established the basis for the legitimate expectation for which he contended. However, in the instant case, it is the Applicant’s contention that the documentary material before the court disclosed several expressed statements which would entitle the Applicant to the legitimate expectation that the PSR would apply to him in the circumstances or alternatively that he would be entitled to a hearing of some sort before his appointment as Registrar of Titles was revoked.

The learned Solicitor General agreed with Queen’s Counsel’s submissions to the effect that a legitimate expectation “**will arise where a citizen is induced by a decision maker to expect that he will be dealt with in a certain way with respect of matters which affect his interest.**” However, he submitted that the Applicant has not shown that he was induced to expect that his position as Registrar as well as Director would be terminated in any way other than the manner agreed on by him. There is no evidence of any such inducement. Further, in view of the contractual relationship between the Applicant and the NLA, he could not reasonably have had a legitimate expectation that there would be a hearing in a case such as this. The public law concept of legitimate expectation does not arise where the relationship between the parties is governed by private contract.

As I see it, the Applicant’s contract of employment did not expressly incorporate the PSR so as to make all of its provisions applicable to him. The only reference to the Regulations is to be found on page one (1) paragraph iv of the contract which contained a clause requiring the Applicant “**to observe and apply the standard of conduct of public officers as outlined in the Public Service Regulations, 1961 and the Financial Regulations, in so far as they are applicable.**”(Emphasis added)

That clause also required compliance with the Human Resource Manual and it is important to note that at page 6 of the Manual, under the heading "**Implementation of Human Resource Policies and Procedures**", it states as follows:

" Employees are required to observe and apply the standard of conduct for Public Officers as outlined in the Public Service Regulations (1961) and the Staff Orders, inasmuch as they are applicable. The policies and procedures described herein are subject to change as deemed advisable and/or necessary." [Emphasis added]

This indicates to me not only that not all the Regulations are applicable but that the Agency retains control of their application and can change them any time they are deemed advisable and/or necessary. In neither case then (neither the terms of the contract nor the Manual) is there support for the Applicant's contention that there was any inducement to ground a legitimate expectation that the provisions of the PSR would be applicable to him.

The Manual was a part of the contractual scheme (indeed the Applicant seems to accept that this was so) and in it detailed provisions were made for dealing, for instance, with cases of gross misconduct (page 239) and sexual harassment (page 244), features unknown to the PSR. It had even set out its own procedure for dealing with termination for cause and did not seek to rely on the PSR. This is a further indication that the Manual offered no inducement to the Applicant that all the provisions of the PSR were incorporated in his contract of employment sufficient to ground a legitimate expectation that he would be dealt with, particularly as it related to termination of his employment, in accordance with the provisions of the PSR.

Citing the case of Attorney General (N.S.W.) v Quin (1990) 170 CLR 1 F.C. the Solicitor General referred to the judgment of Mason, CJ where he had this to say:

"..... a legitimate expectation may be created by the giving of assurances... the existence of a practice... the consequence of denial of a benefit to which the expectation relates... or the satisfaction of statutory conditions. The list is not exhaustive but provides indications of the kinds of factors which a court will take into account in deciding whether or not an expectation is legitimate."

The learned Chief Justice went on to state that **"in the absence of such an expectation there is no corresponding duty to accord fairness."**

Queen's Counsel brought the court's attention to the further observation of the learned Chief Justice that the content of the duty to observe procedural fairness to which a legitimate expectation may give rise is dependent on the circumstances of the particular case and submitted that this case supports the proposition that the concept of the legitimate expectation denotes "expectations which go beyond enforceable legal rights"

However, the Solicitor General submitted and, correctly so, it seems to me, that for the Applicant to succeed in his claim that his appointment should not have been revoked

without a hearing, he must show either that there was such a practice, that is, to accord a hearing to contract civil servants or that an expressed or implied promise was made to him to that effect. He has put nothing before the court from which such a finding could be made. The circumstances in this particular case are not capable of giving rise to the legitimate expectation as contended for by the Applicant.

Application of the Rules of Natural Justice

In paragraph 10 of his affidavit sworn to on November 6, 2006, the Applicant averred as follows:

“That while I accept that my contract as Director Land Titles was terminated.....I maintain my position that the giving of advice to the Governor General to revoke my appointment as Registrar of Titles without a hearing (and indeed without notice to me of the reasons for seeking a revocation of the appointment) was in breach of the principles of natural justice....”

The Authorities

A number of cases were cited by Counsel for both parties. Indeed, two large bundles of authorities were submitted with hardly a repetition. That I am mentioning but a few of them in my review is not intended in any way to be disrespectful to each Counsel's industry as evidenced by the depth of their research. I have simply confined my review to those cases I consider to reflect the main thrust of their submissions and the applicable law.

Learned Queen's Counsel cites the case of **Ridge v Baldwin and others (HL) [1963]- 2 All ER** and submitted that this case puts judicial review in respect to administrative impropriety on its modern footing. He referred particularly to the judgment of Lord Reid at page 71 where, dealing with cases of dismissal, he stated that:

“ ...they appear to fall into three classes, dismissal of a servant by his master, dismissal from an office held during pleasure and dismissal from an office where there must be something against a man to warrant his dismissal.”

He continued:

“The law regarding master and servant is not in doubt. There cannot be specific performance of a contract of service and the master can terminate the contract with his servant at any time and for any reason or for none. But if he does so in a manner not warranted by the contract he must pay damages for breach of contract. So the question in a pure case of master and servant does not at all depend on whether the master has heard the servant in his own defence: it depends on whether the facts emerging at the trial prove breach of contract. But this kind of case can

resemble dismissal from an office where the body employing the man is under some statutory or other restriction as to the kind of contract which it can make with its servants or the grounds on which it can dismiss them.”

That case, Lord Reid said, did not fall within the class of master and servant but it is the Respondent’s submission that the instant case does.

In the case of Malloch v Aberdeen Corporation (HL) [1971] 2 All ER it was held that where the status of the employee was governed purely by common law with the employee holding public office during the pleasure of a public authority the employee would not be entitled to a hearing before dismissal.

“The position however was different where.... the common law position had been fortified by statute and additional protection given. In such a case the court should examine the framework and context of the employment to see whether elementary rights were conferred on the employee either expressly or by necessary implication.”

It was the Learned Solicitor General’s submission that this decision made it clear that what the courts look for is a restriction in the statute on the power to terminate. It cannot be said here that the Applicant’s terms of employment were fortified by statute in the sense meant by Lord Wilberforce in Malloch. There were no restrictions on termination. He pointed out that, in fact, the House of Lords had confirmed that in the absence of such restrictions an employee can be dismissed without a hearing and in accordance with the terms of his contract {per Lord Reid and Lord Simon}

Indeed the authorities relied on by the Applicant relating to statutory underpinning showed that when the courts refer to statutory underpinning and fortification, they mean restrictions – statutory or other restrictions as to the kind of contract and the method of termination

In Regina v East Berkshire Health Authority ex parte Walsh (CA) [1985] 1 QB, it was held that where the terms of employment by a public body were controlled by statute its employees might have rights both in public and private law to enforce those terms but a distinction had to be made between an infringement of statutory provisions giving rise to public law rights and those that arose solely from a breach of the contract of employment. The Appellant in this case was held to have been seeking to enforce his private contractual rights under his contract of employment and that was a misuse of the judicial process

Learned Queen’s Counsel submitted that the East Berkshire case is to be distinguished from the instant case as here the Applicant is seeking to enforce his public law rights under the PSR and the general law to be treated fairly. He adopted a passage from the judgment of Lord Mustill in R v Home Secretary ex parte Doody (1994) 1 AC 531 at page 560 in which his Lordship posed and answered the question as to what constituted fairness and included in his answer that fairness will very often require that a person who

may be adversely affected by the decision will have an opportunity to make representations on his own behalf.

He continued by observing that in the instant case the elementary principles of fairness required at the very least that the Applicant be advised of the considerations which weighed with the authorities in deciding to terminate his contract and to recommend the revocation of his appointment as Registrar and that he be afforded a hearing to respond to those charges.

In answer to these submissions the learned Solicitor General highlighted the Respondent's contention that the Applicant's contract was that of a master and servant – a pure contract of service - and he placed particular emphasis on the classification of Lord Reid in **Ridge v Baldwin** (supra), relating to cases where dismissal was from an office where the body employing is under some statutory restriction or provision. Here, there was no statutory or other restriction and this, he said, was what distinguished the Applicant's case from several of the cases cited by learned Queen's Counsel.

The Applicant's claim that his dismissal was performance related was addressed by the Solicitor General's submission that the relevant consideration was not the reason in the sense of the motivation for the termination of his employment but what was the basis relied on by the employer. In this case the employer had three options as a basis for termination and opted for the one requiring the payment of three months salary in lieu of notice. The evidence does not disclose the reasoning of the CEO for concluding that the Applicant's employment was to be terminated (although it is to be noted that there is material which indicates that the relationship between the Applicant and the CEO had broken down considerably and that there were issues relating to the performance of his duties). The decision in **Ridge v Baldwin** (supra) made it clear that an employer may have different choices for dismissal with different consequences. Their Lordships were not saying that since the real reason for dismissal was a breach by the employee then the employer was obliged to use the dismissal procedure applicable to a breach.

In fact, in the **Malloch** case, their Lordships made it clear that if the legal basis for the employment was that of master and servant then the employee had no complaint in law if he was not heard.

“If the basis of his service was such that the relationship of master and servant was established, then, subject to compliance with any statutory requirements and subject to the giving of appropriate notice (or to the making of an appropriate payment in lieu thereof) there could be dismissal for good reason or for bad reason or for no reason at all.” (dissenting judgment of Lord Morris of Borth-Y-Gest – page 1285)

Even in cases where the PSR is applicable, the Solicitor General continued, there are instances where termination does not involve a right to be heard, such as in the case of early retirement

The Jamaican Court of Appeal in **R v Dr. A. Binger, N. J. Vaughn, and Scientific Research Council ex parte Chris Bobo Squire** (1985) 21 JLR 118, had examined the extent to which the rules of natural justice are applicable to the master and servant relationship and Carey JA had then observed that:

“the principles of natural justice cannot be invoked where the relationship, albeit one of master and servant is governed wholly by terms and conditions agreed between the parties. A decision wrongfully made would fall to be res law....”

In my view, that fully described the position between the Applicant and the NLA. The terms and conditions relating to termination were as agreed between the parties. He had agreed that in the event of termination for cause he would get no notice and no pay in lieu of notice and it is in that event that the NLA would have had a duty to act fairly and to afford him an opportunity to be heard. That however was not the method of termination adopted by his employers. I agree with the submission that the principles of natural justice cannot be invoked in the circumstances of this case.

Over-all Review

Exercising his right to reply at the close of the Respondent's case, learned Queen's Counsel referred to the submissions made by the Solicitor General relating to the provisions of sections 125(1) and 127(1) of the Constitution of Jamaica. Those provisions are set out below:

“Section 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.”

“Section 127 (1) The Governor-General acting on the advice of the Public Service Commission, may, by instrument under the Broad Seal, direct that subject to such conditions as may be specified in that instrument, power to make appointments to such offices, being offices to which this section applies as may be so specified and power to remove and power to exercise disciplinary control over person holding or acting in those offices or any of those powers shall, (without prejudice to the exercise of such power by the Governor-General acting on the advice of the Public Service Commission be exercisable by such one or more members of the Public Service Commission or by such other authority or public officer as may be so specified. ”

He submitted that the Delegation of Functions (Public Service) Order 2001, relied on by the Respondent, whereby the Governor-General delegated his powers of appointment,

removal and disciplinary control, in relation to the NLA, to the CEO, pursuant to section 127(1), does not, by its plain language, give the CEO any powers in relation to the post of Registrar – an office which did not even exist within the structure of the NLA as disclosed by the Organizational Chart exhibited to the CEO's affidavit.

Counsel further submitted that once it was thought desirable to achieve the result that the person appointed by the NLA to be Director, Land Titles should be in the position to exercise the statutory functions of Registrar of Titles it was inescapable that in the case both of the Applicant's appointment and removal as Registrar, the Governor –General be requested to exercise his powers under section 4 of the Registration of Titles Act and section 125 (1) of the Constitution, since the CEO plainly had no authority in this regard.

If this submission is correct then it must clearly mean that the Applicant's appointment to the post was flawed because there is no evidence that it was in accordance with section 125(1) of the Constitution. Indeed, all the indications in this hearing are to the effect that his appointment to the position of Registrar moved from the NLA through the Minister with responsibility for the Agency.

I accept that from its inception the Agency was to be the Body responsible for setting up the arrangements for the post of **“Director, Land Titles/ Registrar of Titles in the National Land Agency”** and that section 125 (1) had no relevance in the circumstances of this case. Clearly the learned Solicitor General is correct in that the applicable procedure relating to the statutory component of the post of Director must have been as provided by section 127(1) of the Constitution and the Delegation of Functions (Public Service) Order 2001. The PSC was in no way involved in the Applicant's employment – that Body had no supervisory function as provided for in regulation 15 of the PSR – and the NLA, having terminated his employment as Director, acted properly in recommending to the Minister that the Governor-General be requested to revoke his appointment as Registrar.

The absence of a reference to the position of Registrar from the Organizational Chart has no significance, in my view, because the Director, Land Titles and the Registrar of Titles were one and to that extent the latter post was within the structure of the NLA. However, the delegated functions relating to the NLA did not address the statutory component of the post of Director and required the Governor-General's warrant. That was accomplished in accordance with section 127(1) of the Constitution and there is therefore no basis upon which to interfere with the decision of the Respondent.

The NLA was indeed in uncharted waters and the whole scheme of arrangements may well have needed to be fine-tuned to ensure the smooth transition from the old regime to the new. An indication of this would be the evidence that the incumbent of the post under the old regime was still in the post when the Applicant assumed his duties.

The Applicant must have known that the PSC was not involved in his employment either as Director or as Registrar and that he was dealing only with the NLA with regard to both positions. He made no complaints about receiving only one salary for his dual role. He

didn't claim to be entitled to a pension or any of the rights and privileges to which he now says he is entitled. It was only when the appointment was revoked that he seeks to invoke the rights and entitlements afforded to permanently appointed public officers.

I am unable to agree with the submissions advanced in support of his claim. He was well aware that the post he contracted for included the post of Registrar and he went along with that scheme of arrangement in spite of the absence of a reference to the post of Registrar in his contract and in the offer letter. It seems to me that it is not open to him, when the period under the contract was almost at an end, to place any reliance on the post title in the contract to support any claim that he contracted only for the post of Director.

The Governor-General's appointment was merely an enabling formality to put the Director in a position to perform all the functions which he had agreed and undertaken to perform under the contract of employment. I am in agreement with the submission that although he became a public officer that did not make him subject to the provisions of the PSR and that his employment in relation to both positions was governed by the terms and conditions of his contract of employment.

There was no statutory underpinning in the sense of any restrictions on his employer's right to terminate his employment in accordance with the contract. He could have had no legitimate expectation that the provisions of the PSR as it related to termination would have applied to him. The fact that certain specific provisions of the PSR were imported into his contract of employment could not reasonably be taken as any inducement, promise or representation that the regulations relating particularly to termination would be applicable especially when his contract of employment specifically provided for termination and made no reference to the PSR in that regard. He has failed to show any representation made to him or inducement which could reasonably form the basis for any expectation as contended for by him.

At the end of the day, he has not established any entitlement to a declaration that the procedures laid down in the Public Service Establishment Act were applicable to him or that the NLA breached the principles of natural justice by acting in accordance with the terms of the contract of service relating to termination, with which he had agreed. The principle enunciated by Lord Reid in Ridge v Baldwin (supra), relied on by the Applicant as the modern day authority on judicial review of administrative impropriety, makes it plain that, in the particular circumstances of his case, he was not entitled to be heard.

For all of the above reasons, I would refuse the orders sought by the Applicant in his Fixed Date Claim Form.