



[2023] JMSC Civ. 213

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN CIVIL DIVISION
CLAIM NO. SU2023CV01256**

**BETWEEN WILFRED RATTIGAN CLAIMANT
(On behalf of Himself and Jamaicans
In the Diaspora and Jamaica)**

**A N D SENATOR THE HONOURABLE
KAMINA JOHNSON SMITH 1ST RESPONDENT**

**A N D MINISTRY OF FOREIGN
AFFAIRS AND FOREIGN TRADE
OF JAMAICA 2ND RESPONDENT**

**A N D MINISTRY OF FINANCE AND
THE PUBLIC SERVICE 3RD RESPONDENT**

IN CHAMBERS

**Ms. Sophia Bryan instructed by Boss Law for the Claimant/Respondent
Mr. Ransford Braham K.C. with Ms. Anna Gracie and Mr. Chukwuemeka Cameron
instructed by Brahamlegal for the 1st Respondent
Ms. Lisa White (Deputy Solicitor General) instructed by the Director of State
Proceedings for the 2nd and 3rd Respondents**

HEARD: October 26, 2023 and November 8, 2023

Civil Practice and Procedure – Applications to Strike Out Claim – Application to Strike Out Claim Started by Fixed Date Claim Form – Whether Striking out is Appropriate – Whether or not Claimant has Standing to Bring the Claim – Whether or Not the Claimant Can Bring this Action in a Representative Capacity – Whether or not that Capacity has Been Established – Whether or Not Claimant is the Appropriate Party to Seek the Relief Claimed – Whether or not Claimant has Demonstrated that His Substantive Rights were or are about to be Breached by the actions of the Defendants to Entitle him to Declaratory Relief – Whether or not the Claimant Has Disclosed Reasonable Grounds for Bringing the Claim as Filed.

STAPLE J (Ag)

BACKGROUND

- [1] In or around April of 2022, the 1st Respondent, Senator the Honourable Kamina Johnson Smith, the Minister of Foreign Affairs and Foreign Trade, was presented as Jamaica's candidate for the August post of Secretary General of the Commonwealth of Nations.
- [2] History will record the result of that campaign. However, what followed was a political firestorm surrounding the candidacy of the 1st Respondent and how her campaign was funded.
- [3] Into this web of intrigue stepped the Claimant/Respondent. He has filed the present action, in his words, on behalf of himself and Jamaicans in the Diaspora and Jamaica itself. What is it that Mr. Rattigan seeks by this claim?
- a) **A declaration that the 1st and 2nd Respondents failed to comply with statutory and administrative regulations governing a gift/donation in the amount of Ninety-Nine Thousand United States Dollars (USD \$99,000.00)**

provided by “corporate Jamaica” for the benefit of the 1st Respondent and, by extent, the Jamaican Government.

- b) A declaration that the 3rd Respondent failed to take appropriate action to compel the 1st and 2nd Respondents to comply with the applicable statutory and administrative regulations.
- c) A declaration that the 1st Respondent failed to file a disclosure with the Integrity Commission regarding a gift/donation she received that did not fall within the filing exceptions and is obliged to file disclosure with the Integrity Commission concerning the gift of USD \$99,000.00 received from donors.
- d) A declaration that the 1st Respondent failed to file a disclosure with the Integrity Commission regarding a USD \$99,000.00 gift/donation she received from “corporate Jamaica” in the form of consulting services.
- e) A declaration that as a beneficiary of a USD \$99,000.00 gift/donation from “corporate Jamaica” the 1st Respondent should have declared this sum to the Tax Administration of Jamaica and paid appropriate taxes thereon.

[4] There was an immediate broadside from the Respondents to this Claim. The 1st Respondent and the 2nd and 3rd Respondents (together) have sought to have it struck out.

[5] The 1st Respondent’s Application seeks the following:

- a) A Declaration that the Court has no jurisdiction to hear the claim.
- b) In the alternative, a declaration that the Court will not exercise jurisdiction to hear the claim.
- c) Further, an order striking out the claim.

[6] The 2nd and 3rd Respondents’ Application is much more straightforward: we want the claim struck out.

[7] It cannot be stressed enough that this Ruling is a determination of these legal issues concerning jurisdiction/standing and the striking out of the claim. It is not

proposed to delve into the merits of the substantive issues raised beyond what is necessary to determine the Applications before the Court.

- [8] I will go into the grounds for the 2 sets of applications as part of the discussion phase of this Ruling as I am of the view that it makes for much easier reading than the usual method of listing out everything only to rehash it later on.
- [9] The Court, on the 29th May 2023, made orders, for (among other things) written submissions and authorities to be filed and exchanged by the parties on or before September 29, 2023. The Court has seen compliance with this order from the Respondents and only on the 20th October 2023 did the Claimant comply with the Court Order. Indeed, the Claimant filed further Affidavits way outside of the time given him to respond (the 23rd June 2023).
- [10] As a general comment, litigants and lawyers who represent them should be aware that the Court's patience with non-compliance with its rules, orders and practice directions has now worn thin. The days of great forbearance and indulgence have come to an abrupt end. Forewarned is forearmed.

BROAD ISSUES TO BE DETERMINED

- [11] The essential issue to be determined on this application is whether or not this claim can be sustained by the Claimant. All three Respondents have raised a large number of grounds upon which they assert that the Claim should be dismissed.
- [12] They largely centre around the legal arguments that:
- a) the Claimant has no standing to bring the claim;**
 - b) the relief sought by the Claimant, even if he had standing, could not be granted by the Court as the proper procedure to get such relief has not been followed or in any event, adequate relief exists in other entities to resolve the issue(s) raised by the Claimant.**
 - c) Further, there is no evidence to support the granting of the declarations sought in the claim;**

d) The matters complained of are non-justiciable as they would involve decisions of the Cabinet of Jamaica in relation to matters of foreign policy and foreign relations; and

[13] The Court had not seen any filed submissions from the Claimant (as previously ordered by the Court) until the morning of the commencement of the hearing when it asked the Claimant's counsel to write down her submissions on paper, scan and email them to the Court and the other parties so that the matter could proceed as scheduled.

[14] It is exceedingly important that the relief being sought, as outlined above, **always** be borne in mind when reviewing the submissions in this matter. For the question the Court is being asked to answer surrounds the relief/orders requested of the Court.

ORAL SUBMISSIONS FROM THE PARTIES

[15] The written submissions were supplemented by oral arguments at the hearing.

1st Respondent

[16] Mr. Braham highlighted paragraphs 12 where he summarized the relief being sought by Mr. Rattigan. His submission is that the Court would have to be satisfied that Mr. Rattigan, a private citizen, is entitled to bring a claim for such relief.

[17] He highlighted paragraph 16 of the Affidavit of Mr. Rattigan sworn on the 12th April 2023. He contends that the Claimant is arguing that the 1st Respondent received the money in an official capacity. This suggests that the Claimant is asking for a remedy in administrative law.

[18] The principles regarding the granting of declarations are the same whether it is a private law remedy or a public law remedy. The Claimant must establish some legal right which he seeks to protect by the declaration. He pointed to the case of

*Lennox Hines v Electoral Commission of Jamaica et al*¹. He also cited the decision of *Legal Officers' Staff Association et al v The AG et al*² in support of this position. McDonald-Bishop J (as she then was) stated, inter alia, that the declarations sought by a Claimant must resolve a real difficulty with which the Claimant or Applicant is faced.

[19] He also raised a very strong argument that the evidence to support the granting of the relief prayed was simply non-existent.

The 2nd and 3rd Respondents

[20] Ms. White essentially relied on the submissions of Mr. Braham in relation to the position that Mr. Rattigan has not established any justiciable rights as highlighted in paragraphs 16-18 above.

[21] Ms. White also pointed out that there is no evidence from Mr. Rattigan that there have been any breaches committed from his affidavit in a similar argument to those raised by Mr. Braham.

[22] On the face of his pleadings, Ms. White contended, Mr. Rattigan has established no cause of action.

The Claimant

[23] Ms. Bryan says that the claim was being brought under the **Access to Information Act** and the **Financial Audit and Administration Act**. She submitted that the Affidavits in Support of the Application have shown Access to Information Requests concerning the issue of the gift. But none of the Ministries have been in

¹ [2015] JMFC Civ 90 paras 29, 32 and 36.

² [2015] JMFC FC 3 at para 162 by McDonald-Bishop J (as she then was).

a position to give information pursuant to those requests concerning the gift of USD \$99,000.00.

[24] She further submitted that the essence of the declaration is about transparency and accountability and sought to argue that perhaps the Claim itself could be amended to reflect this as this was the “intention behind the claim”. Counsel conceded that the relief as currently prayed is “accusatory” in nature, but the essence of the claim or what it was intended to be was inquisitorial.

[25] When pressed by the Court as to why no amendment was made by her prior to after she first time the matter was before the Court or even prior to today’s date, counsel really had no reply.

[26] From the authorities filed in support of her response to the Applications by the Respondents, the thrust of Ms. Bryan’s arguments seems to be that even if the filing of his claim for declaratory relief could not be granted, the Court could still deal with it as though it were one for judicial review. All three authorities submitted³, all make the simple point that you can get declaratory relief without applying for judicial review in an appropriate case. However, as will be demonstrated below, Counsel missed the gravamen of the Respondents Applications and none of the cases cited by her have any relevance to the points made by the Respondents.

STRIKING OUT A CLAIM STARTED BY FIXED DATE CLAIM FORM

[27] Claims in the Supreme Court in the civil division are usually initiated in one of two ways; either by the filing of a Claim Form in form 1 (the standard claim form) or a Claim Form in form 2 (the Fixed Date Claim Form). As the name suggests, the

³ *Perry v Commsr of Police et al* [2018] JMSC Civ 39; *Hamilton v Minister of National Security et al* [2015] JMSC Civ 39; and *Bernard-Kilbourne v Board of Management of Maldon Primary School* [2015] JMSC Civ 170

Fixed Date Claim has a date pre-set within it and is appropriate for only certain types of claims as set out in the Civil Procedure Rules⁴.

- [28] Given the unique types of claims that are started by Fixed Date Claim Forms, striking out is not a usual application that is used as a response. But that does not mean that the Court, in an appropriate case, could not strike out a claim started by Fixed Date Claim Form.
- [29] The Court's power to strike out a statement of case that discloses no reasonable ground for bringing an action are found under rule 26.3 (c). The Court may also strike out a case for failure to comply with a rule, order or practice direction in accordance with rule 26.3(a).
- [30] The striking out of a claim is one of the most draconian actions a court may take in relation to the statement of case of a party to a claim. It should therefore be used sparingly and only in the most obvious of cases.
- [31] Borrowing from the dicta of my sister judge Jackson-Haisley J in the case of **Lozane v Beckford**,⁵

"[30] ... in S & T Distributors Limited and S & T Limited v. CIBC Jamaica Limited and Royal & Sun Alliance SCCA 112/04 delivered 31st July, 2007, in which Harris, J.A. stated at page 29: - "The striking out of a claim is a severe measure. The discretionary power to strike must be exercised with extreme caution. A court when considering an application to strike out, is obliged to take into consideration the probable implication of striking out and balance them carefully against the principles as prescribed by the particular cause of action which sought to be struck out. Judicial authorities have shown that the striking out of an action should only be done in plain and obvious cases."

⁴ See Rule 8.1(4) and Part 56 Administrative Claims as examples.

⁵ [2020] JMSC Civ 106 at paras 30 and 31

[31] Similarly, in the case of *Drummond Jackson v British Medical Association and Others* [1970] 1 WLR 688, Lord Pearson opined at page 695 that: - “Over a long period of years it has been firmly established by many authorities that the power to strike out a statement of claim as disclosing no reasonable cause of action is a summary power which should be exercised only in plain and obvious cases.” [my emphasis]”

[32] In deciding whether to strike out a statement of case on the basis that it discloses no reasonable ground for bringing a claim, the court must consider whether or not the Claimant has **pleaded facts supportive of the cause of action he seeks to establish**. So it is not enough for the Claimant to plead the cause of action, there must be a factual basis established on the face of the pleaded case to support the cause of action. There must be a factual basis for going to trial. Lord Hobhouse in *Three Rivers v Governor and Company of the Bank of England (No.3)*⁶ put it quite appropriately,

“161 The Judge’s assignment has to start with the relevant party’s pleaded case but the enquiry does not end there. The allegations may be legally adequate but may have no realistic chance of being proved. On the other hand, the limitations in the allegations pleaded and any lack of particularisation may show that the party’s case is hopeless.”

[33] Before we even get to the facts though, there must also be a valid and cognizable cause of action (the legal basis for bringing a suit) and the person bringing the suit must have legal standing (the legal authority on which a person brings a claim) to bring the claim. If either of these are missing, then the entire claim collapses before we even consider the factual substratum of the claim.

[34] I agree with the authority of *City Properties Limited v New Era Finance Limited*⁷ and the statement of the principle of Batts J at paragraphs 9-11 of the judgment.

⁶ [2003] AC 1 at para 161

⁷ [2013] JMSC Civ 23

[35] As Batts J said, what is required is an examination of the statements of case to ensure that the facts as alleged support the cause of action the Claimant seeks to establish.

[36] In the context of the Fixed Date Claim Form, the statements of case means the Affidavits in support of and in response to the Fixed Date Claim Form as well as any affidavits filed in support of or in response to the Application to strike out.

The Claimant's Standing to Bring the Claim

[37] The first point of contention from the 2nd and 3rd Respondents is that the Claimant has no standing to bring the claim. The 1st Respondent makes essentially the same argument, but goes a bit further in that the 1st Respondent asserts that not only does the Claimant have no standing to bring the claim, the proper statutory bodies and processes were not engaged and this was not the proper tribunal for the redress prescribed by the Statutes.

The Standing to Bring a Claim – Sufficient Legal Interest in the Claim

[38] As the Claimant is seeking administrative relief in the form of Declarations, the Claimant must demonstrate that he has sufficient interest in the matter to bring the claim. He has not, in my view, so done.

[39] The decision of the Full Court in ***Legal Officers Staff Association et al v AG of Jamaica et al***⁸ is particularly instructive when it comes to standing to get declaratory relief.

[40] McDonald-Bishop J (as she then was) at paragraph 162 said as follows:

“The declaratory decree cannot be obtained as of right. It is well established that the grant of declaratory relief is discretionary. The discretion is, however, wide. The court has a general power to make

⁸ N2 at para 162

*declarations although a claim to consequential relief has not been made, or has been abandoned or refused. **However, it is essential that some relief should be sought or a right to some substantive relief established.** The declaration being claimed **must relate to some legal right(s) and must confer some tangible benefit on the claimant:** (Halsbury's (supra), para. 1610)."*

[41] McDonald-Bishop J (as she then was) went on to say in the same paragraph of the judgment that,

*"The authorities have explained that it is of the greatest importance in deciding whether or not discretion should be exercised in favour of granting declaratory relief that the relief should serve some useful purpose. If it does not, it is difficult to see what reason there can be for granting relief. Usefulness does not have to take a material or tangible form; all that is required is that the declaration should **resolve a real difficulty with which the claimant or applicant is faced...**"*

[42] The Court agrees with the submissions of the Respondents and the authorities presented by them. But we start with the Civil Procedure Rules.

[43] The Claimant, in the heading, purports to bring this Claim in a representative capacity. Whom is he representing? He boldly declares himself as representing "Himself and Jamaicans in the Diaspora and Jamaica." Fair enough. However, he has exhibited no authority from any Jamaican in the Diaspora authorising him to bring this claim on their behalf. Nor has he identified which class or group of the Diaspora to which he is referring. The Diaspora is a vast body of people spread over nearly every continent in the world. Yet there is not one line, letter or 50c stamp from anyone giving him authority to represent them.

[44] There is also no authority exhibited to any of his affidavits from any Jamaican in Jamaica. Rule 21.1 of the Civil Procedure Rules clearly states that representative claims can be made by one person for a group of **at least 5 persons with an interest** in the matter. When the rules say an **interest** it means a legal and justiciable interest – that is they have been or are likely to be personally affected by the outcome of the case. In his affidavit filed on the 27th June 2023 at paragraph

19 he mentions only one local Jamaican. Therefore, he is at least 3 people short of the requirement.

[45] Authority for this is gleaned from *Lennox Hines v Electoral Commission of Jamaica et al*⁹ as cited above by Mr. Braham. Quoting from a treatise, Campbell J said at paragraph 32 that, “The Plaintiff in an action for a declaration must establish that he has **immediate personal interest in the subject-matter of the proceedings**. A plaintiff must normally show that his own interest are in some way “**peculiarly affected**” by the **Defendant’s conduct**, but in determining whether the Plaintiff’s interests are sufficiently affected to give him title to sue, the Courts have exercised a wide and not always consistent discretion.”

[46] The House of Lords in *Gouriet v Union of Post Office Workers*¹⁰ through Lord Wilberforce said,

*“...[T]here is no support in authority for the proposition that declaratory relief can be granted unless the plaintiff, in proper proceedings, in which there is a dispute between the Plaintiff and the Defendant concerning their legal respective rights or liabilities, either asserts a legal right which is denied or threatened, or claims immunity from some claim of the Defendant against him, or claims that the Defendant is infringing or threatens to infringe some public right so as to inflict **special damage** on the Plaintiff.”*

[47] In the same case, Lord Diplock went on to declare that there is no authority in a Court at the suit of a **private individual** to make declarations of public rights as distinct from rights in private law to which the Plaintiff claims to be entitled.

[48] It is interesting to note that the Claimant has only said that he has a legitimate interest to bring this claim as a Jamaican. He has not elaborated on what special damage he has suffered or will suffer as a consequence of any of the alleged breaches by the Respondents. So whilst he might wish to know information

⁹ [2015] JMSC Civ 90

¹⁰ [1977] 3 All ER 70 at page 85

surrounding the money to fund the campaign for Secretary General of the Commonwealth, he has not demonstrated that he has any **legal interest** to ground the claim for the declaratory relief he has sought. No specific right of his to any specific, identifiable, substantive relief to which he was entitled has been asserted.

[49] Indeed, the Full Court in the LOSA case, through the judgment of McDonald-Bishop J (as she then was), came to this very powerful conclusion concerning the declaratory relief being sought:

*“In the light of the relevant law, I conclude that to grant the declarations in the terms proposed by the claimants in the fixed date claim form (or even close thereto) could be misleading in that they would have the effect of giving the impression that the defendants have not justified the breach or frustration of the claimants’ legitimate expectation or that the legitimate expectation has not been overridden. The declarations would not reflect what **is** (emphasis as in passage) the true legal position between the parties and what **are their legal rights** (emphasis as in passage) at the end of the hearing of the instant proceedings, which is the purpose of a declaration.”*

[50] The LOSA case is particularly instructive because the Full Court had determined that whilst the LOSA and their members had a legitimate expectation, the breach of same was justified and thus whatever right they may have had was extinguished. The Claimant has not even asserted a right.

Nor has he demonstrated that any Jamaican or group of Jamaicans has such a legal interest in the relief being sought by him as pleaded and that they have authorised him to bring this claim.

[51] The admonition to bear in mind the relief sought comes is pertinent at this point. The Claimant has not demonstrated that any right of his or any Jamaican (in Jamaica or in the Diaspora) has been substantively affected by the alleged breaches.

Standing Part 2 - There are Statutory Bodies Mandated to Deal with the Issues the Subject of the Claim

[52] The further argument by the Respondents concerning standing is also, in my view, meritorious. The essential argument is that there are other statutory bodies whose purpose it is to investigate and deal with the issues raised by the Claimant and the Claimant is not authorised in law to bring these claims.

[53] Concerning the relief sought in paragraphs 3-5 of the Fixed Date Claim Form, those would be the Integrity Commission (reliefs 3 and 4) and Tax Administration Jamaica (paragraph 5). These agencies have their own statutory mechanism for receiving complaints, investigating and prosecuting any alleged breaches of requirements by private citizens or government entities of their respective duties under the **Integrity Commission Act** and the various revenue statutes (e.g. the **Income Tax Act**).

[54] For completeness, I will set out the various regimes here.

The Integrity Commission Regime

[55] Counsel for the 1st Respondent has helpfully set out the provisions treating with the various statutory regimes in his submissions.

[56] Section 5 of the **Integrity Commission Act** states that the Integrity Commission is a Commission of Parliament and it is a body corporate (meaning it is its own entity capable of suing and being sued in its own name). Section 5(4) makes it pellucid that the Integrity Commission is to (subject to ss. 34(3) and 36(4)) be **ultimately responsible and accountable to Parliament** in relation to all matters relating to the function of the Commissioner etc.

[57] Section 6 extensively sets out the role and functions of the Integrity Commission. The relevant roles for these purposes are:

- (1) To investigate alleged acts of corruption and alleged breaches of the Act [Integrity Commission Act];**
- (2) Prosecute acts of corruption and breaches under the Act;**
- (3) Receive complaints in relation to (among other things) alleged breaches of the Act;**
- (4) Monitor and where necessary investigate the award, implementation and termination of Government Contracts.**

[58] Section 6(3) sets out the limits of the control exercisable over the Integrity Commission. It says as follows:

- (3) In the exercise of its powers and performance of its functions under this Act, the Commission –**
 - (a) Shall not be subject to the direction or control of any other person or authority other than the Court by way of Judicial Review (emphasis mine).**

[59] So to the extent that there is an allegation of a breach of the Integrity Commission Act, there is a statutory mechanism put in place for the receipt of a complaint, investigation and prosecution of such a breach by public officers and public bodies under the purview of the Integrity Commission Act. The entity that is mandated by law to do these things is the Parliament of Jamaica through its Commission, the Integrity Commission.

[60] The upshot of this is that Mr. Rattigan's remedy, if he has a suspicion that a breach of the Integrity Commission Act was committed by the 1st Respondent, was to make a complaint to the Integrity Commission. It would then be a matter for them to investigate and prosecute **as they see fit**.

[61] There is no evidence from Mr. Rattigan that he made such a complaint and then received a decision from the Integrity Commission concerning such a complaint. It is his duty under s. 37 of the Integrity Commission Act for Mr. Rattigan to make such a complaint either orally or in writing. This complaint is then to be investigated

by the Director of Investigations, who will then prepare a report and submit same to the Director of Corruption Prosecution or the Director of Public Prosecutions for her to determine whether to prosecute. The results of these determinations are to be tabled in Parliament.

[62] If there is a decision to prosecute, the criminal court (either the Parish Court or the Supreme Court (in some instances)) is the venue for the resolution of that matter.

[63] So in the absence of proof of a complaint by Mr. Rattigan or a request for investigation by Parliament under s. 36(1) (which gives authority to the Parliament for the Integrity Commission to investigate an alleged act of corruption) and a decision thereon from the Commission, the Court cannot say that the proper procedure and thus the proper body would have been engaged in relation to the matters raised in paragraphs 3 and 4.

[64] What is clear, is that it certainly isn't the lawful authority of Mr. Rattigan to initiate a civil suit to determine whether a breach has been committed or not.

Tax Administration Jamaica

[65] Section 67 of the **Income Tax Act** imposes a duty on every citizen, **who is liable to pay income tax in respect of any year of assessment**, to present to the Commissioner of Inland Revenue a true and correct return of the whole of their income **from every source** (emphasis mine) for the year of assessment.

[66] Section 72 empowers the **Commissioner** (emphasis mine) to assess every person liable to pay taxes and they may either accept or reject the return filed by the person and the Commissioner may make their own assessment if they reject the return filed. If the Commissioner is of the view that more taxes ought to be paid then the Commissioner may, within the time provided, assess such person such amount or additional amount as should be charged.

[67] Section 80 of the Act empowers a **Collector of Taxes** to bring a civil suit in a Parish Court or the Revenue Court for the recovery of taxes that may be due.

[68] Section 99 goes on to provide that if a person in a return, statement, declaration or particulars submitted under the Income Tax Act **knowingly** makes a false statement or false representation then they can be liable **on conviction on indictment (clearly in a criminal court)** to a fine or imprisonment.

[69] Section 102 of the Income Tax Act sets out the procedure for conducting criminal proceedings for breaching the Act. I will set it out here:

102)(1) Any proceedings for offences under this Act may be taken **in the name of the -Commissioner or such person as he may authorize in writing (emphasis mine).**

(2) Proceedings for offences under this Act may be commenced at any time within six years next after the cause of complaint arose.

[70] So it is clearly a **criminal prosecution in a criminal court** that must be brought **in the name of the Commissioner or such person as he may authorise in writing (emphasis mine).**

[71] In this case, Mr. Rattigan is initiating a civil claim for what he is saying would be a criminal offence by the 1st Respondent. This is the wrong venue and bringing such an action here serves no useful purpose. He has also provided no evidence of any authority in writing given to him by the **Commissioner** to institute these or any other proceedings. Nor has he provided any evidence of a decision made by the Commissioner which could possibly be the subject of judicial review proceedings.

The Relief Sought in Paragraphs 1 and 2

[72] I will set out paragraph 1 of the relief sought to provide context to what I am about to say.

The First and Second Respondents failed to comply with statutory and administrative regulations governing a gift/donation in the amount of Ninety-Nine Thousand United States Dollars (USD \$99,000.00) provided by “Corporate Jamaica” for the benefit of the First Respondent and, by extension, the Government of Jamaica.

- [73] It is not stated what statutory and administrative regulations that the 1st and 2nd Respondents had a duty under and what they breached. Rule 8.8(1)(c) states that when one files a Fixed Date Claim Form, if the claim is made pursuant to an enactment, the name of the enactment must be stated.
- [74] It is, however, stated in the Affidavit in Support at paragraph 6A. It is stated there that the breach is breaching the Ministry of Finance and Planning Circular No. 17 dated June 10, 2013 entitled "Guidelines for the Acceptance of and Accounting for Gifts to the Government" (hereinafter the Guidelines).
- [75] It is not, however, stated whom is to enforce these Guidelines and there is no evidence before the Court that it is Mr. Rattigan that is authorised to enforce them. Indeed, the constituted authority for so doing is the Auditor General of Jamaica. It is that entity that is responsible for the monitoring of compliance with these directives.
- [76] In addition, Mr. Rattigan has produced no evidence that the 1st Respondent is either an accounting officer or an accountable officer as required by the **Financial Administration and Audit Act**. It is these officers that are charged under the FAAA with the duty of accounting for expenditure under the FAAA or any other act pursuant to s. 2 of the FAAA. So it is my finding that it would not be the responsibility of the 1st Respondent to comply with anything.
- [77] So this Court is minded to agree with the submissions of the 1st Respondent in this regard.

Conclusion on Standing

- [78] In this Courts view, Mr. Rattigan has failed to demonstrate, on a balance of probabilities, that he has any sufficient legal interest in the matters the subject of the relief claimed to bring a claim. He has not shown, in any of his affidavits, that he has been or will be materially or specially affected by any of the breaches complained of and that he will be made whole by the declarations sought.

[79] Further, he has not demonstrated, on a balance of probabilities, that he has any authority, from any of the statutory bodies in place to bring this action. Nor has he demonstrated, on the balance of probabilities, that he has tried to use the statutory channels available to him to address whatever concerns he might have concerning the funding of the campaign of the 1st Respondent.

[80] It is my considered view then that Mr. Rattigan has absolutely no standing to bring this claim.

Can the relief sought by the Claimant, even if he had standing, be granted by the Court?

[81] The answer to the question above is plainly no. The Claimant has adduced no evidence on which he can get the relief prayed. There is no evidence adduced that the Respondents have committed any of the breaches he wishes to the Court to declare that they did.

[82] The Claimant has a duty to put forward his entire case and there is nothing before the Court now to substantiate that the 1st Respondent has an obligation to give the disclosure stated in paragraphs 3-5 of the Fixed Date Claim and she failed so to do. It is not for the Claimant to file a claim and then seek the evidence to support the claim after.

[83] McDonald-Bishop J (as she then was) in the landmark Full Court decision of ***Legal Officers Staff Association et al v AG et al***¹¹ said as follows in delivering the judgment on behalf of the Full Court:

*“It has always been said to be an established rule of practice of very long standing that a declaration is a judicial act and ought not to be made on default of pleading, or on admissions of counsel, or by consent, **but only if the court is satisfied by evidence** (emphasis mine). This rule of practice has been justified on various grounds,*

¹¹ [2015] JMFC 3 at para 52

including the ground that declarations of legal rights may affect third parties who are not bound by the declaration.”

- [84] Thus, as I pointed out to Ms. Bryan, even if the Fixed Date Claim had been undefended, because the Claimant seeks declaratory relief, I would have to be satisfied, on his evidence, that he was entitled to the relief sought before I could grant the relief prayed.
- [85] Concerning paragraph 1 there is no evidence that the 1st and 2nd Respondents had a duty to comply with the regulations governing a gift/donation in this particular case as there is no evidence from Mr. Rattigan as to which accounting officer, accountable officer, Chief Executive Officer or head of department from which agency in the Government had such a duty to file the Acceptance of Gift Form **on the facts of this case** such as he has presented. It is my finding on the evidence that when the 1st Respondent was put up as the Government of Jamaica’s candidate for Secretary General of the Commonwealth, there is no evidence that she was then doing it as “Minister of Foreign Affairs and Foreign Trade” or in any capacity as an official of the Government of Jamaica. She was simply, the candidate chosen by the Government of Jamaica (see paragraph 9 of her Affidavit sworn on the 24th May 2023). I accept this evidence as being the truth and it was not contradicted.
- [86] So in those circumstances, the question that arises is which entity would then be responsible for filling out and filing the required form? Mr. Rattigan would have had to do more research and then present the evidence to support the case that it was the 1st and 2nd Respondents.
- [87] Concerning paragraph 2 of the relief sought in the Claim, again, Mr. Rattigan simply has provided no evidence in his Affidavits of what the 3rd Respondent could have or should have done to “compel the 1st and 2nd Respondents to comply with the applicable statutory and administrative regulations”. He has provided no evidence that they did or that they did not do anything as he is asking the Court to find.

- [88]** In all the three affidavits combined, the Claimant has adduced not a shred of evidence to prove that there was non-compliance on the part of any of the entities as alleged. The most he has produced is responses to Access to Information Act requests from 2 entities.
- [89]** These responses mentioned in paragraph 88, with respect, do not amount to proof of non-compliance upon which the Court could act. The Claimant would have had to establish, on evidence, what documentation should have been supplied, to whom and by whom and by when. This certainly is not at all present in his affidavits in relation to the 1st and 2nd Respondents.
- [90]** This very point was all but conceded by Ms. Bryan when asked by the Court about same. She pivoted hastily to say that what the action was really about was trying to get information as opposed to saying that breaches were committed.
- [91]** Concerning the relief sought in paragraphs 3-5, the Claimant is on even worse evidential footing. He has not exhibited or alluded to any documents which would establish a duty under the Integrity Commission Act or the Income Tax Act and a breach of that duty by the 1st Respondent.
- [92]** The evidence presented shows that the 1st Respondent was not acting as a private individual in her candidacy for Secretary General. The principal actor there was the Government of Jamaica who put her forward as its candidate. So the monies would have been given to the Government of Jamaica, for the benefit, not of the 1st Respondent in a private or personal capacity, but of the Government of Jamaica so they could field her as their candidate.
- [93]** In those circumstances, I do not see any reason for her to have been under a duty to file declarations under the Integrity Commission Act or include it in her filings under the Income Tax Act. Nor has the Claimant produced any evidence or argument to suggest that she would have been under such a duty.

- [94] But let us assume that she was so required to do, there is no evidence from the Claimant that she did not. Neither the 1st Respondent's tax returns nor her Integrity Commission filings for the relevant period have been exhibited. No other affidavit(s) from any other witness(es) has/have been presented. Remember, the Claimant must put forward **his entire case** from the start. Rule 8.9(1) of the Civil Procedure Rules says that the Claimant must state all the facts on which they rely. In combination with rule 8.8(2)(a) as highlighted above, this means that the Affidavit in Support of a Fixed Date Claim must contain **evidence of all the facts upon which the Claimant relies** (emphasis mine). There was no indication from Counsel that any other affidavit was outstanding. Indeed, despite his late compliance with the Order for further Affidavits, the Claimant's very late affidavits filed on the 20th October 2023 were considered.
- [95] When the Court asked Counsel about the relief sought in paragraphs 3 – 4, she claimed that what the Claimant would have wanted was information from the Integrity Commission. This is clearly therefore something tantamount to a fishing expedition. The Claimant has produced nothing to say that the 1st Respondent is under any investigation and I make absolutely no finding on the point.
- [96] What is even more disconcerting to the Court is that surely, counsel could not be unaware of section 56 of the **Integrity Commission Act** which prevents the Commission from disclosing anything to do with a matter under investigation before the tabling a report on same in Parliament. So the Court would have had no legal authority to facilitate the breach of statute – which breach is a criminal offence! The Judiciary cannot interfere with the process of Parliament in this way. How counsel could be seeking to invite the Court into this is beyond comprehension.
- [97] A similar position obtains in relation to the relief sought under paragraph 5 which concerns Tax Administration Jamaica. There is no evidence that information was sought from them.

CONCLUSION

[98] It is my considered view that the Claimant does not have the required standing to bring this claim and it should therefore be struck out.

[99] It is also my finding that even if he had standing to bring the claim, there are not sufficient grounds upon which to bring the claim. There is simply, in my view, no evidence of the breaches the Claimant is asking the Court to find that the Respondents committed.

DISPOSITION

- 1 The Claimant's Claim is struck out against the 1st, 2nd and 3rd Respondents.**
- 2 Costs to the 1st, 2nd and 3rd Respondents to be taxed if not agreed.**
- 3 The Attorneys-at-Law for the 1st Respondent shall prepare, file and serve this Order on or before the 17th November 2023 by 4:00 pm.**

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Dale Staple
Puisne Judge (Ag)