[2026] JMSC Civ 19

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. SU2021CV01073

BETWEEN	**ISLAND (JAMAICA) LIMITED**	**CLAIMANT**
AND	**THE INDUSTRIAL DISPUTES TRIBUNAL**	**DEFENDANT**

IN CHAMBERS

Mr Matthew Royal instructed by Myers Fletcher & Gordon for the Claimant

Ms Faith Hall, the Director of State Proceedings for the Defendant

Heard: November 28, 2025 & January 19, 2026

Civil Procedure ─ Application by the defendant to vary court orders for remittance to the IDT

WINT- BLAIR J

The Application

[1] This matter concerns the defendant's application to vary the court orders made by the Honourable Mrs Justice S. Wint-Blair ("Wint-Blair J") on November 28 2024. The applicant seeks the following orders:

1. Order No. 2 of the Orders made by the Honourable Mrs Justice Wint-Blair on November 28, 2024, be varied to add as follows:

   "The matter is remitted to the Industrial Disputes Tribunal (IDT) to revisit compensation to Tameka Elliott in Dispute No. 31/2019 in accordance with paragraph 56 of the judgment herein."

2. Costs of this Application to be costs in the claim.

3. Such further or other relief as the Court deems just in the circumstances.

[2] The grounds on which the applicant is seeking the orders are as follows:

i. Pursuant to Rule 26(1)(7) of the CPR, the Court is empowered to vary its order

ii. By Fixed Date Claim Form filed on April 9, 2021 the Claimant herein sought an order of certiorari to quash the award of compensation made by the Respondent on December 21, 2020 in Dispute No. 31/2019 between Island (Jamaica) Limited and Ms. Tameka Elliott.

iii. The Honourable Mrs. Justice Wint-Blair delivered judgment on the Fixed Date Claim Form on November 28, 2024 and granted the order of certiorari in favour of the Claimant.

iv. The finding of the IDT of unjustifiable dismissal was not challenged and given the learned judge's findings at paragraphs 54 to 56 of the judgment, it is appropriate to remit the issue of compensation to the IDT for review.

v. The Court is not functus as the Order has not yet been perfected and the learned Judge therefore has the power to vary her Orders.

vi. The grant of the orders sought is in keeping with the overriding objective of the Civil Procedure Rules in dealing with cases justly.

Evidence

[3] Mr Jamaiq Charles gave evidence for the claimant that the award of the Industrial Disputes Tribunal ("IDT"), the subject of the claim herein, was made by a panel comprised of the Hon. Mrs Justice M. Cole-Smith (Retd.), Mrs Jacqueline Irons, J.P., and Mrs Chelsie Shellie-Vernon.

[4] It was reported in the Jamaica Observer, circulated on March 16, 2025, in an article by Ms. Tamoy Ashman, entitled "Late judge Marjorie Cole Smith remembered for humility, fairness" (the "Article"), that Mrs. Justice M. Cole-Smith died earlier this year and that her life was celebrated on March 15, 2025, at a ceremony attended by prominent members of the legal fraternity.

[5] In the event this matter is remitted to the IDT as prayed for by the defendant, the claimant will not consent to the late Chairman of the panel being replaced, since it would be prejudiced by having the matter considered by a person who was not

part of the panel which considered the matter originally, heard the evidence, and had the opportunity to observe the demeanour of the witnesses appearing before the IDT.

[6] Should the matter be begun de novo, which is required by the IDT's enabling legislation, the claimant will be prejudiced by re-litigating the dispute nine years after Ms. Elliott's termination, as memories of salient facts have faded, impairing fair assessment by a new panel. It will also face costs with no opportunity to recover them from the original proceedings, even if successful in a new hearing.

[7] Moreover, the defendant, by way of its Notice and Grounds of Appeal filed on January 9, 2025, has formally appealed the judgment delivered by Wint-Blair J on November 28, 2024, and is seeking similar orders from the Court of Appeal as those sought in the instant application.[1]

[8] Mr Dimitri Mitchell gave evidence for the defendants that by way of Fixed Date Claim Form filed on April 9, 2021, the claimant sought an order of certiorari to quash the award of compensation to the defendant on December 21, 2020, in Dispute No. 31/2019 between the claimant and Ms Tameka Elliott. The defendant's finding that Ms Elliott was unjustifiably dismissed was not challenged.

[9] The Honourable Mrs Justice Wint-Blair delivered judgment on the Fixed Date Claim Form on November 28, 2024 and granted the order of certiorari in favour of the Claimant.

[10] He avers that it is appropriate for the matter to be remitted to the IDT for it to revisit the award of compensation to Ms Elliott, given the Court’s findings at paragraphs

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[1] JQC-2

54 to 56 of the judgment. The defendant therefore, seeks a variation of the learned judge's orders to add to Order No. 2 the following words:

> *"The matter is remitted to the Industrial Disputes Tribunal (IDT) to revisit compensation to Tameka Elliott in Dispute No. 31/2019 in accordance with paragraph 56 of the judgment herein."*

[11] The learned Judge has not yet perfected her Orders, and the Court is therefore not functus. Therefore, the Judge has the power to vary her Orders.

Submissions

[12] Counsel for the claimant relied on Rule 56.16(2)(b) of the Civil Procedure Rules, 2002 ("CPR") and **Sinclair Riche & Temperly v Heard**[2] to submit that this Court has the broad discretion to remit a matter to the court of first instance, having considered factors such as proportionality, the passage of time, bias or partiality, a totally flawed decision, whether there will be a 'second bite at the cherry', and professionalism.

[13] Regarding proportionality, it is submitted that section 8(4) of the Labour Relations and Industrial Disputes Act would require the IDT to rehear the matter de novo in light of the passing of the Chairman of the panel. The cost-benefit of the proceedings does not justify remitting it to be heard before a newly constituted panel. The maximum award available to Ms Elliott would be 1 month's compensation (see paragraph 12 of the claimant's submissions filed January 26, 2024). Rehashing the dispute before the IDT is likely to result in legal fees and expenses exceeding the likely potential award, making it wasteful for the orders to be made.

[14] There is no evidence from Ms Elliot as to whether she is prepared to rehash the dispute before the IDT. Counsel relied on **Milex Security Service Limited v Industrial Disputes Tribunal and Wesley Gordon**[3] to submit that the burden of

[2] [2004] IRLR 763, paras. 45- 46
[3] [2019] JMSC Civ 53

contentious proceedings, notwithstanding its potential benefits, limited though they may be in this present case, should not be foisted upon a party on the application of a non-party/the decision maker, without representation from the

party standing to benefit, that she is prepared to endure the process a second time. There is no indication that Ms Elliott will be prepared to engage in a hearing of the dispute for the potential upside of 1/12th of the sum previously awarded.

[15] Regarding passage of time, it is submitted that, concerning the tribunal's ability to recall the matter and have the benefit of its notes, this is no longer possible. The Chairman of the panel has passed away, and the law requires that a new panel be convened. Time and its eventualities have therefore undermined the possibility of benefiting from recall and notes. The claimant, also a corporate party, relies on the memory of its officers to provide viva voce evidence. Since the genesis of this dispute is a dismissal that occurred in September 2016, there is also a material risk that, by the time any remitted hearings commence, the memories of the witnesses will have faded, making any assessment of their credibility and reliability inherently unsafe.

[16] Counsel further submits that in determining the dispute, the IDT adopted a totally flawed approach. The learning gleaned from paragraph 56 of the judgment was urged upon the Court during the closing submissions of the parties. All the submissions concerning the limitation of the tribunal's remedial powers when dealing with a fixed-term contract, arising from the **Clayton Powell v The IDT et al**[4] decision, and the principle of mitigation of loss were advanced before the IDT, and had been improperly considered when it delivered its award.

[17] It is submitted that any confidence in the tribunal getting it right on a second opportunity is undermined by the fact that they were previously guided in terms of the correct principles and approach, which they overlooked and, thereby, adopted an incorrect approach in determining it. The IDT has made a decision which this

[4] [2014] JMSC Civ. 196

Honourable Court has determined is unlawful. Relying on **Heard**, it is submitted that the principles captured by the Court at paragraph 56 of its judgment were advanced before the IDT, but shown scant regard, if any at all, in its award.

[18] There is no new material or principle arising from the judgment which this Court may say provides the IDT with matters for its fresh and full consideration. A rehearing in these circumstances may only present the Tribunal with a second bite at the cherry; an opportunity to defend its earlier conclusion with fuller or more plausible reasoning.

[19] Further, counsel submits that the standards of professionalism regarding the conduct of administrative tribunals, in the face of challenges to their decisions, have evolved to deplore adversarial participation in litigation by those bodies. Relying on **The Special Tribunal v The Estate Police Association**[5] it is submitted that it is patent that in these proceedings, the defendant Tribunal has aligned itself with the interests of Ms Elliott in defending the award made in her favour, and has participated in the litigation in an adversarial way (made evident by its asking this Court for a further opportunity to, perhaps, justify its award to Ms Elliott).

[20] Such practices undermine the professionalism of quasi-judicial bodies like the IDT and damage any perception of impartiality in this case. As a result, it is argued that this Court may confidently refuse the orders sought as it cannot conclude that the IDT can properly consider the matter in light of the professionalism standards mandated by law. Additionally, it cannot be claimed that the IDT remains impartial toward the claimant, given its alignment with Ms. Elliott's interests by taking an adversarial stance in the litigation.

[21] Counsel for the defendant submits that this Court has the jurisdiction to vary its own orders pursuant to Rule 26.1(7) of the CPR, which provides that a power of

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[5] [2024] UKPC 13

the court under these Rules to make an order includes a power to vary or revoke that order.

[22] Counsel relied on **Gloria Chung et al v Michael Chung & Anor**[6] to submit that 26.1(7) is not specific as to whether the power can be invoked after the Orders have been perfected, or whether it can be invoked only before the Order is perfected by the Court. Rule 26.1(7) does not limit the Court's wide-ranging case management powers to vary an order even after it has been perfected, as in the present case. In appropriate circumstances, the Court could vary the Orders, bearing in mind the overriding objective to deal with cases justly.

[23] **Belgravia Development Company Limited v Jaleel Handal and Another**[7] was also relied on to submit that the Court ought to examine the various factors in its determination as to whether or not this case is one in which it is proper to exercise its discretion.

[24] In the instant case, it is undisputed that the court is not functus, as the order has not yet been perfected, and thus it has the power to vary its orders. Furthermore, the uncontroverted fact is that the IDT's finding of unjustifiable dismissal was not challenged in the application for judicial review. This means the finding remains despite the court granting the order to quash the compensation awarded. The effect of quashing the award for compensation is that, as it stands now, there is no compensation to the aggrieved employee. However, since the ruling that the dismissal was unjustifiable remains unchallenged, the aggrieved employee is entitled to an award under the provisions of section 12(5)(c) of the Labour Relations and Industrial Disputes Act. The Act does not contemplate the finding of unjustifiable dismissal without making an award of some form of compensation and/or reinstatement. It is submitted that the variation sought is a consequential order flowing from the court's order quashing the award of compensation.

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[6] [2018] JMSC Civ. 44
[7] (2023) JMSC Civ 129

[25] Further, given the court's findings in paragraphs 54 to 56 of the written judgment, an appropriate consequential order is that the issue of compensation be remitted to the IDT for determination anew. If the order for variation is not granted, the aggrieved employee would be left without a complete remedy, which would not do justice between the parties.

Issue

[26] What is the legal effect of varying court orders in circumstances where an appeal has already been filed challenging them.

[27] The defendant did not raise the significant fact in its evidence in support of the application that it has lodged an appeal with the Court of Appeal; it was the claimant who did so in its affidavit from Jamaiq Charles. The defendant filed this application to vary court orders on December 12, 2024 and subsequently filed its Notice of Appeal on January 9, 2025.

[28] On appeal, the appellant requests that the court overturn Wint-Blair J's decision and that they be awarded costs. The grounds for this appeal are as follows:

1. The learned judge erred in fact and/or in law in quashing the award of compensation made by the Respondent on December 21, 2020 in Dispute No. 31/2019 and failed to appreciate the wide discretion that is conferred on the Industrial Disputes Tribunal ("IDT") to arrive at its award.

2. The learned Judge erred in fact and/ or in law by finding that the Respondent had not shown that there was no consideration by the IDT of all the relevant factors.

3. The learned Judge erred in fact and/or in law in quashing the award of compensation made by the Respondent on December 21, 2020 in Dispute No. 31/2019 in circumstances where the Respondent did not challenge the IDT's finding that Ms. Tameka Elliott was unjustifiably dismissed and was out of a job for approximately one (1) month.

4. The learned judge erred in fact and/or law in quashing the award, of compensation in light of her finding of all the factors that the IDT took into account in arriving at the award of twelve (12) months' salary to Ms. Elliott on a contract that had approximately one (1) year and ten months remaining (post - dismissal).

5. The learned judge erred in fact and/ or law in its finding that the IDT failed to take all relevant considerations into account which rendered the award irrational, given her finding at paragraph 53 of the judgment of all the factors that the IDT took into account in arriving at its award of compensation to. Ms. Elliott.

6. The learned Judge erred in fact and/or law in her finding that the IDT's award of compensation was unreasonable.

7. The learned Judge erred in fact and/or in law by quashing the award of compensation in circumstances where the Respondent herein did not assert that the aggrieved worker ought not to be compensated but contended that the aggrieved worker had been excessively compensated.

8. The learned Judge erred in fact and/or in law by importing a common law standard to assess the IDT's award of compensation contrary to the standard of reasonableness which is applicable to the IDT.

9. The learned Judge erred in fact and/or in law in failing to appreciate the purpose for which compensation may be made by the IDT; when determining an industrial dispute.

10. The learned Judge erred in fact and/or in law by determining in paragraph 57 of the judgment that, "the absence of any evidence that it considered parity means it did not subject its decision making to the criterion of reasonableness as directed by Morrison, JA in the case of Branch Developments", essentially implying a fact without any evidential basis to do so.

Discussion

[29] In **Sans Souci Limited v VRL Services Limited**,[8] Lord Sumption explained that, although Courts place great importance on finality in litigation, this rests on the assumption that decisions are made in accordance with natural justice. Where a party has not been heard on matters arising from a judgment, that party has a right to be heard before the order is perfected or a reasonable time has passed. Once that stage has been reached, the Court may still intervene under its inherent jurisdiction, but only in exceptional circumstances. An order will then be varied only where there are special circumstances amounting to a miscarriage of justice.

[8] [2012] UKPC 6 [23]

[30] In **Sarah Brown v Alfred Chambers,**[9] Harris JA stated that, generally, once a judgment or order is finalised, the litigation ends and the court cannot reconsider it, since its jurisdiction is limited to what is stated in the final order. However, in exceptional circumstances, the court may revisit a prior order. The court relied on the case of **Bailey v Marinoff**, where Gibbs J, speaking to the foregoing principles, at page 539, said:

> *"It is a well-settled rule that once an order of a court has been passed and entered or otherwise perfected in a form which correctly expresses the intention with which it was made the court has no jurisdiction to alter it … The rule rests on the obvious principle that it is desirable that there be an end to litigation and on the view that it would be mischievous if there were jurisdiction to rehear a matter decided after a full hearing. However, the rule is not inflexible and there are a number of exceptions to it in addition to those that depend on statutory provisions such as the slip rule found in most rules of court."*

[31] There are no exceptional circumstances in this application. The effect of filing the appeal is that the issue of the correctness of the court's grant of the order of certiorari now falls within the jurisdiction of the appellate court; this is separate from the fact that a notice of appeal does not operate as a stay.

[32] The defendants have filed this application seeking a variation of the orders, proposing that the matter be remitted to the IDT as a consequential order. However, the relief sought here conflicts with the grounds of appeal outlined above, since it is not what is being sought in this application, which is being pursued on appeal.

[33] Requesting a variation proceeds on the premise that the quashing order is valid and operative, while the appeal proceeds on the premise that the quashing order should not have been made at all. The two positions are legally and mutually exclusive.

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[9] [2011] JMCA App 16

[34] Further, a grant of certiorari quashes the IDT's decision, rendering it null and void from the date of the order. The remedy is final unless set aside by the appellate court. The order continues to operate, and because the correctness of the court's orders is under review, the appellate court is the appropriate forum, as any variation of the orders would affect not only the substance of the appeal but also the parties' right to appeal from the orders made at trial.

[35] The claimant wishes to maintain its position, and it has the right to defend the judgment on appeal. The defendant wishes to challenge the correctness of the orders made. The parties have the right to appeal orders under the Constitution and the law. Since no stay has been granted, this court cannot issue an order that affects either party's legal or procedural right to review the orders for correctness.

[36] Moreover, this court cannot vary the orders in a way that affects their intent or substance, especially if such variation modifies or alters the very issues the appellate court must determine, as this is a matter of fairness to both sides.

[37] It is also evident that the grant of the orders sought in this application can itself be challenged on appeal, thereby honouring the principle of finality in litigation in the breach of any order nullifying the overriding objective.

[38] Finally, it is inappropriate to grant orders which are academic and of no practical value (see **Williams v Home Office (No 2)**).[10] Should this court exercise its discretion to vary the orders sought, it would, in effect, be doing so as an academic exercise.

[39] **Orders:**

1. Application refused.
2. Costs to the respondents to be agreed or taxed.

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Wint- Blair, J

[10] [1981] 1 All ER 1211