



[2022] JMSC. Civ 28

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**CIVIL DIVISION**

**CLAIM NO. SU2020CV01635**

**IN THE MATTER of the Constitution of Jamaica,  
Charter of Fundamental Rights and Freedoms  
2011**

**AND**

**IN THE MATTER of the Constabulary Force Act**

<b>BETWEEN</b>	<b>PATRAE ROWE and TAMECA THOMAS on behalf of THE MEMBERS OF THE JAMAICA POLICE FEDERATION</b>	<b>1<sup>ST</sup> CLAIMANT</b>
<b>AND</b>	<b>DORIS STEWART</b>	<b>2<sup>ND</sup> CLAIMANT</b>
<b>AND</b>	<b>MINISTRY OF FINANCE AND PUBLIC SERVICE</b>	<b>1<sup>ST</sup> DEFENDANT</b>
<b>AND</b>	<b>MINISTRY OF NATIONAL SECURITY</b>	<b>2<sup>ND</sup> DEFENANT</b>
<b>AND</b>	<b>COMMISSIONER OF POLICE</b>	<b>3<sup>RD</sup> DEFENDANT</b>
<b>AND</b>	<b>ATTORNEY GENERAL</b>	<b>4<sup>TH</sup> DEFENDANT</b>

**IN CHAMBERS**

Jaqueline –Samuels Brown, Q.C and Keisha Spence, Attorneys-at-Law for the Claimants.

Althea Jarrett Q.C. Attorney-at-Law instructed by the Director of State of Proceedings for the Defendants.

February 2, 2022 and March 4, 2022

**Amendments to a Fixed Date Claim close to the trial date; CPR 20.4 and the exercise of the court's discretion, the considerations to be made when granting an amendment; the scope of declaratory relief; whether declaratory relief is executory.**

MASTER STEPHANY ORR

- [1] The claimants are members of the Jamaica Police Federation, a statutory body established by the Constabulary Force Act with responsibility to represent members of the Constabulary Force in relation to all matters affecting their general welfare. They bring this claim as nominal claimants and as representatives of the federation.
- [2] Representatives of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants negotiated and signed the Heads of Agreement (HOA) which form the subject of this claim. The 4<sup>th</sup> Defendant is joined pursuant to the Crown Proceedings Act.
- [3] By Fixed Date Claim filed on May 22, 2020, the claimants seek to secure the protection of the Constitution and to give effect to the law and contracts entered into for the protection and advancement of the welfare of members of the Jamaica Constabulary Force. They therefore seek the court's interpretation and pronouncements in relation to:
- (i) the contractual agreements between the parties
  - (ii) the application of the quantum merit principle to the terms and conditions of their employment
  - (ii) the application of constitutional protections to the issues arising out of their entitlement to equity before the law, equitable and humane treatment and protection of property.
- [4] They seek several declarations and orders as follows:
- i. A Declaration that the Heads of Agreement entered into between the Jamaica Police Federation and the Ministries of National

Security and Finance on behalf of the Government on the 11<sup>th</sup> September 2008 for the contract period April 1, 2008 to March 31, 2010, on the 10<sup>th</sup> of November 2015 for the period April 1, 2015 to March 31, 2017, and on December 14, 2018 for the period April 1, 2017 to March 31, 2019 is binding on the Government.

- ii. A Declaration that the Heads of Agreement entered into between the Jamaica Police Federation and the Ministries of National Security and Finance on behalf of the Government on the 11<sup>th</sup> September 2008 for the contract period April 1, 2008 to March 31, 2010, on the 10<sup>th</sup> of November 2015 for the period April 1, 2015 to March 31, 2017, and on December 14, 2018 for the period April 1, 2017 to March 31, 2019 jointly and/or severally constitute a binding contract and/or contracts between the parties
- iii. A Declaration that the Heads of Agreement entered into between the Jamaica Police Federation and the Ministries of National Security and Finance on behalf of the Government on the 11<sup>th</sup> September 2008 for the contract period April 1, 2008 to March 31, 2010, on the 10<sup>th</sup> of November 2015 for the period April 1, 2015 to March 31, 2017, and on December 14, 2018 for the period April 1, 2017 to March 31, 2019 creates contractual obligations on the Government to make payment of salaries to members of the Jamaica Constabulary Force for work done in excess of forty (hours) each week at a minimum rate of one and a half (1 ½ ) times basic salary for the period April 1, 2008 – March 31, 2019 and thereafter until and unless otherwise replaced by other agreement between the parties.
- iv. A Declaration that the Heads of Agreement entered into between the Jamaica Police Federation and the Ministries of National Security and Finance on behalf of the Government on the 11<sup>th</sup> September 2008 for the contract period April 1, 2008 to March 31, 2010, on the 10<sup>th</sup> of November 2015 for the period April 1, 2015 to March 31, 2017, and on December 14, 2018 for the period April 1, 2017 to March 31, 2019 created a legitimate expectation and/or legitimate expectations by members of the Jamaica Constabulary Force that they are entitled to payment for work done in excess of 40 hours per week at the rate stipulated and/or provided for by the laws of Jamaica.

- v. A Declaration that the members of the Jamaica Constabulary Force are entitled to payment for work done in excess of 40 hours per week in accordance with the laws of Jamaica.
- vi. A Declaration that the members of the Jamaica Constabulary Force are entitled to payment for work done in excess of (sic) on a quantum meruit basis.
- vii. A Declaration that all salaries due and payable and which remain unpaid due and owing to the claimants and other members of the Jamaica Constabulary Force pursuant to the Heads of Agreement entered into between the Jamaica Police Federation and the Ministries of National Security and Finance on behalf of the Government on the 11<sup>th</sup> September 2008 for the contract period April 1, 2008 to March 31, 2010, on the 10<sup>th</sup> of November 2015 for the period April 1, 2015 to March 31, 2017, and on December 14, 2018 for the period April 1, 2017 to March 31, 2019, constitute property to which claimants are entitled under the Charter of Rights of the Constitution.
- viii. A Declaration that all salaries due and payable and which remain unpaid due and owing to the claimants and other members of the Jamaica Constabulary Force pursuant to the Heads of Agreement entered into between the Jamaica Police Federation and the Ministries of National Security and Finance on behalf of the Government on the 11<sup>th</sup> September 2008 for the contract period April 1, 2008 to March 31, 2010, on the 10<sup>th</sup> of November 2015 for the period April 1, 2015 to March 31, 2017, and on December 14, 2018 for the period April 1, 2017 to March 31, 2019, constitute property to which claimants are entitled under the Charter of Rights of the Constitution and is to be paid pursuant to the terms of the said Heads of Agreement.
- ix. A Declaration that all salaries due and payable and which remain unpaid due and owing to the claimants and other members of the Jamaica Constabulary Force and that interest is payable at the rate that is payable on Government of Jamaica bonds.
- x. A Declaration that the actions of the Government through its servants and/or agents and/or employees amounts to an unlawful deprivation of property of the claimants and other members of the Jamaica Constabulary Force, without adequate or any compensation therefor.

- xi. A Declaration that the actions of the Government and/or its servants and/or its agents is in breach of the Heads of Agreement entered into between the Jamaica Police Federation and the Ministries of National Security and Finance on behalf of the Government on the 11<sup>th</sup> September 2008 for the contract period April 1, 2008 to March 31, 2010, on the 10<sup>th</sup> of November 2015 for the period April 1, 2015 to March 31, 2017, and on December 14, 2018 for the period April 1, 2017 to March 31, 2019 and is in contravention of the Charter of Rights of Constitution.
- xii. A Declaration that the failure to compensate the claimants and other members of the Constabulary Force for work done in excess of forty hours per week at rate stipulated by the laws of Jamaica is and/or amounts to unfair and/or discriminatory and/or unequal treatment in breach of the rights guaranteed to them by the Charter of Rights of the Constitution.
- xiii. A Declaration that the Office of the Commissioner of Police is in breach of his statutory duty in failing to implement a structure and/or system to facilitate and/or enable members of the Jamaica Constabulary Force being compensated for hours worked in excess of the forty (40) hour work week at a minimum rate of one and half times basic salary and/or such rate as is reasonable.
- xiv. A Declaration that there is now a system in place and which is managed by the Office of the Commissioner of Police which constituted a structure and/or system to facilitate and/or enable members of the Jamaica Constabulary Force being compensated for hours worked in excess of the forty (40) hour work week at a minimum rate of one and half times basic salary and/or such rate as is reasonable.
- xv. A Declaration that the Office of the Commissioner of Police is in breach of his statutory duty in failing to implement a structure and/or system to facilitate and/or enable members of the Jamaica Constabulary Force being compensated for hours worked in excess of the forty (40) hour work week at a minimum rate of one and half times basic salary and/or such rate as is reasonable.
- xvi. An Order that the members of the Jamaica Constabulary Force be paid a sum representing salary due to them for work done in

excess of forty (40) hours per week as and from April 1, 2008 in accordance with the laws of Jamaica.

- xvii. An Order that the systems now in place at the Ministries of National Security and Finance and/or such other Government institutions be utilized for calculating actual hours worked by members of the Jamaica Constabulary Force in excess of forty (40) hours per week and that the said members of the Jamaica Constabulary Force be paid for such excess hours at the rate of time and a half over and above their basis salaries from the date of this judgment.
- xviii. An Order that the systems now in place at the Ministries of National Security and Finance and/or such other Government institutions be utilized for calculating actual hours worked by members of the Jamaica Constabulary Force in excess of forty (40) hours per week and that the said members of the Jamaica Constabulary Force be paid salaries for such excess hours at the rate of time and a half over and above their basis salaries retroactively to 2008, save and except for the years 2012-2015.
- xix. An Order that a system be immediately put in place to capture the actual hours worked by members of the Jamaica Constabulary Force in excess of forty (40) hours per week and that the said members of the Jamaica Constabulary Force be paid salaries for such excess hours at the rate of time and a half over and above the basic salaries as of the date of this judgment.
- xx. An Order that a system be immediately put in place to capture the actual hours worked by members of the Jamaica Constabulary Force in excess of forty (40) hours per week and that the said members of the Jamaica Constabulary Force be paid salaries for such excess hours at the rate of time and a half over and above the basic salaries retroactively to April 1, 2008 save except for the years 2012 – 2015.
- xxi. An Order that the members of the Jamaica Constabulary Force be paid a sum representing salary due to them for work done in excess of forty (40) hours per week as and from April 1, 2008 in accordance with the laws of Jamaica.
- xxii. An Order that the members of the Jamaica Constabulary Force be paid a sum representing salary due to them for work done in

excess of forty (40) hours per week as and from April 1, 2008 pursuant to the Agreement entered into between the Jamaica Police Federation and Government of Jamaica.

xxiii. An Order that the members of the Jamaica Constabulary Force be paid a sum representing salary due to them for work done in excess of forty (40) hours per week as and from April 1, 2008 on a quantum meruit basis.

xxiv. Costs

xxv. Any other Order as this Honourable Court deems fit.

[5] By Notice of Application filed on December 21, 2021, the Claimants seek an order to amend their Fixed Date Claim to include the following orders:

*(a) In the alternative, a Declaration that since 2008 and continuing, the Ministry of National Security and the Office of the Commissioner of Police have had an obligation in law to implement and utilize the necessary software/technology to accurately capture the working hours of the claimant and other members of the Jamaica Constabulary Force.*

*(b) A Declaration that the Ministry of National Security and the Office of the Commissioner of Police must with immediate effect implement and utilize software/technology to accurately and consistently capture the working hours of the claimant and the other members of the Jamaica Constabulary Force.*

[6] Both parties filed written submissions which I will summarize briefly.

### **THE CLAIMANT'S SUBMISSIONS**

[7] On behalf of the Claimants, Mrs. Samuels-Brown, QC relied on the court's powers under CPR 20.4 and the overriding objective of dealing with cases justly to explain the court's authority to amend a party's statement of case.

- [8] Relying on **Caricom Investments Limited et al v National Commercial Bank Limited**<sup>1</sup> and **The Attorney General v Abigale Brown (bnf Affia Scott)**<sup>2</sup> she sought to make the point that a party should be at liberty to put forward its entire and best case; and where the other party can be compensated in costs for any damages suffered as a result of a late application being granted, there is a powerful case to be made out that justice indicates that the amendment should be permitted.
- [9] Counsel submitted further that the amendments raise no new issues of law or facts, as the facts on which the amendments are based are already before the court. They are already included in the affidavits filed in support of the Fixed Date Claim and are reflected in the Declarations and Orders already included in the Fixed Date claim although not explicitly stated.
- [10] These amendments counsel said, seek only to allow the claimants to put forth their entire case and more precisely seek all the declarations which the affidavit evidence supports, thereby allowing the just disposal of the proceedings.
- [11] She also submitted that the proposed amendments will not in any way prejudice the defendants or disadvantage them, as all the factual information on which the amendments are sought is already before the court.
- [12] In further submissions filed, on behalf of the claimants it was submitted that when reliefs are prayed for in a claim, the court may treat them as cumulative or as sought in the alternative and hence grant some or all of the reliefs sought. It was also submitted that these are matters for the court to treat with at trial when there is a full review of the evidence and the law.
- [13] In relation to the proposed amendments, it was submitted that while aspects of the proposed amendments are in some respects referenced in the extant declarations

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<sup>1</sup> [2020] JMCA Civ 15

<sup>2</sup> [2021] JMCA Civ 50



before the court, they are not the same. Further, the interpretation to be placed on the proposed amendments, and the implications for the parties are for the discretion of the trial court and should not be excluded at this stage.

[14] Mrs. Samuels-Brown, QC accepted that the amendments were being sought very close to the trial date of April 4 and 5 2022, before the Full Court, but relied on the dictum of Lord Pearce in *Rondel v Worsley*<sup>3</sup> where he said that:

[15] “Where there appears to be good faith and a genuine case the court will allow extensive amendments almost up to the twelfth hour in order that the substance of a matter may fairly be tried. But when a party changes his story to meet difficulties, that fact is one of the matters to be taken into account.”

[16] In their brief submissions on amendment (b), relying on this court’s decision in **St. George Jackson et al v The Attorney General**,<sup>4</sup> counsel submitted that one purpose which a declaratory order serves is that further reliefs may be sought contemporaneously or in later proceedings for the enforcement of any declaratory relief granted.

[17] The effect of amendment (b) they submitted is to put an onus on the statutory body to act, to take appropriate steps to secure the welfare of the claimants, failing which executory orders may follow. Therefore, what the claimants seek, is a declaration that they are entitled to payment for hours worked and accurately captured with immediate effect, the reasonable time for the implementation for such a system having passed/expired. It was further submitted that, despite the mandatory language of the declaration being sought, it remains an application for declaratory relief.

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<sup>3</sup> [1967]3 All ER 993,1017

<sup>4</sup> Unreported 2009HCV02775 decided August 4, 2010

## THE DEFENDANT'S SUBMISSIONS

- [18] Ms. Jarrett, Q.C, opposed the application on the basis that there was no utility in granting the first declaration. She agreed with Mrs. Samuels-Brown, Q.C that the proposed amendments are already incorporated in the relief sought and therefore add nothing new to the claim. She argued however, that the amendment is not needed in order to determine the real issues in dispute between the parties.
- [19] Counsel submitted that the foremost consideration for granting an amendment to a statement of case as outlined by McDonald- Bishop, JA as she then was in **Jamaica Redevelopment Foundation Inc v Clive Banton and Sadie Banton**<sup>5</sup> (and which was recently endorsed in **Jucie Beef Limited (trading as Juci Patties) v Yenneke Kid**<sup>6</sup> ) is whether the amendment is needed to determine the real issues in dispute.
- [20] As the first proposed declaration is already incorporated in the remedies being sought in the existing claim, this proposed amendment she said, would add nothing new to the claimant's claim.
- [21] Counsel further submitted that the courts had more recently departed from the principle that a party should be permitted to amend his statement of case as long as the opposing party could be compensated with costs. She relied on the decisions in **Jamaica Redevelopment Foundation Inc v Clive Banton and Sadie Banton**<sup>7</sup> and **Jucie Beef Limited (trading as Juci Patties) v Yenneke Kid**<sup>8</sup>, particularly the dictum of McDonald-Bishop, JA as she then was in Jamaica

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<sup>5</sup> [2019] JMCA Civ 12

<sup>6</sup> [2021] JMCA Civ 29

<sup>7</sup> Supra 5

<sup>8</sup> Supra 6

Redevelopment where she outlined the considerations a court should have when considering an application to amend a statement of case.

[22] In relation to the second amendment sought, Ms. Jarrett, Q.C. submitted that this amendment was bound to fail on the merits as it did not meet two fundamental criteria for declaratory relief.

[23] Declaratory remedies she submitted are declaratory of rights, and are not executory. They do not order any action by a party. A declaration cannot therefore mandate that the defendants “...*must with immediate effect implement and utilize software/technology to accurately and consistently capture the working hours of the claimant and the other members of the Jamaica Constabulary Force.*”

[24] She relied on the earlier decision of this court in **St. George Johnson et al v Joel Betty and The Attorney General**<sup>9</sup> where the court adopted the definition used in Zamir and Woolf, *The Declaratory Judgment* (1993)<sup>2nd</sup> Edition which explained the remedy this way:

*“a declaratory judgment is a formal statement by a court pronouncing upon the existence or nonexistence of a legal state of affairs. It is to be contrasted with an executory, in other words coercive judgment which can be enforced by the courts.”*

[25] Counsel further submitted that it was clear that the second proposed amendment seeks to do that which the authorities make clear that a declaration cannot do. A declaration cannot be coercive and cannot order action by a party.

[26] She concluded by submitting that this amendment is bound to fail on the merits and adds nothing new to the claim and is already incorporated in the existing relief sought by way of orders 19(xix) and 20(xx) of the Fixed Date Claim.

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<sup>9</sup> Supra 4

## ANALYSIS

[27] Rule 20.1 of the CPR allows a party to amend his statement of case at any time before the case management conference. The parties in this case have already had a case management conference and are almost at trial. Rule 20.4(2) allows a party to amend his statement of case after the case management conference with the permission of the court.

[28] The rules are silent on the guiding principles a court should have in the exercise of this discretion to amend a statement of case, save the restrictions imposed on amendments after the limitation period has expired. This discretion must therefore be exercised in keeping with the overriding objective and the case law that has developed.

[29] While the earlier case law as relied on by counsel for the claimants emphasised the importance of allowing a party to put his best case forward, the accepted approach is as outlined in *Savings and Investment Bank Limited v Fincken*<sup>10</sup> and said that:

*“...the older view that amendments should be allowed as of right if they could be compensated in costs without injustice had made way for a view which paid greater regard to all the circumstances which are now summed up in the overriding objective.”*

[30] This approach was accepted by the court in *Caricom Investments Limited v National Commercial Bank*<sup>11</sup>, where Brooks, JA (as he then was) said that:

*“Even before the advent of the CPR, courts had moved away from the strict principle that amendments may be allowed as long as the other party may be compensated by an award of costs.”*

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<sup>10</sup> [2003] EWCA Civ 1630; [2004] 1 All ER 1125

<sup>11</sup> *Supra* 1

- [31]** The several cases from the Court of Appeal which consider applications to amend a statement of case and as relied on by both counsel, confirm this view.
- [32]** The civil procedure rules establish a time-table or track for cases to proceed from commencement to determination. The rules provide that a party can amend his statement of case at any time before case management. This reflects the acceptance of the principle that a party is at liberty to put his best case before the court as amendments may become necessary due to human error or where facts change. In a claim for damages for personal injury, a claimant may need to amend his statement of case where his injuries worsen while he awaits a determination of his claim.
- [33]** The case management conference is usually the parties' first encounter with a Judge/Master. It is also the first stage at which the parties and the court are required to, together narrow the issues in dispute. Where a trial is deemed necessary for the determination of the issues between the parties, the court sets a timetable for trial. At this stage the parties are expected to have the statement of case which they intend to proceed on at trial before the court.
- [34]** This is because the case management orders are made on the basis that each party's statement of case reflects the case that must be met at trial. These statements of case will also dictate the documents that each party will likely disclose. They will also be the basis of any applications that either party will need to make as the claim progresses.
- [35]** Amendments after the case management conference likely require the court's permission because of the effect the amendments may have on several factors: the ability of the parties to comply with the case management orders, their ability to keep any scheduled trial date, the costs to other parties who may have already complied with case management orders, the need for further applications and the effect on the efficient administration of justice; (and this would include other litigants).

- [36] This may explain the present approach of the courts, where they accept that a party has a right to put his best case forward before the court, however, particularly after the case management conference, this must be balanced against other factors in order to deal with cases justly. Hence the need to secure the court's permission.
- [37] McDonald-Bishop, JA ( as she then was) in *Jamaican Redevelopment Foundation Inc. v Clive and Sadie Banton*<sup>12</sup> gives a comprehensive outline of the factors that a court should consider in the exercise of its discretion. While she gave the dissenting judgment in *Caricom Investments Limited*, she agreed and accepted her brother Brooks, JA's reasoning as to the factors the court should consider before granting an order to amend a statement of case. Counsel sought to distinguish *Caricom Investments Limited*, on the basis that in that case the court was asked to consider an application to amend a statement of case where a retrial had been ordered, nevertheless, the principles that the court must consider remain the same.
- [38] Straw, JA delivered the judgment on behalf of the court in **Juci Beef Limited (Trading as Juci Patties) v Yenneke Kidd**<sup>13</sup> relied on by the Defendants. This judgment was post both *Caricom Investments* and *Jamaican Redevelopment Foundation Inc.*
- [39] She held that while in principle, dealing with a case justly will mean that amendments should be allowed to enable the real matters in controversy between the parties to be determined; she also pointed to the recent rulings of that court and expressed that there has been an expansive understanding of the factors that are to guide a court in its deliberations as to whether to allow an amendment.

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<sup>12</sup> Supra 5

<sup>13</sup> Supra 6

[40] In *Jamaican Redevelopment Foundation Inc. v. McDonald-Bishop*, JA (as she then was) outlined the material principles a court treating with an application for permission to amend a statement of case should consider which can be summarized as follows:

- i. Whether the proposed amendment is needed in order to determine the real issues in dispute as between the parties (and this is the foremost consideration).
- ii. Any likely prejudice to other parties where the amendment is granted
- iii. The need for efficient administration of justice and ensuring that both the court's resources and the litigant's resources are not wasted.
- iv. The jurisdiction to amend a statement of case is now governed by the overriding objective, the older authorities which speak to amendments being allowed as of right once a party can be compensated by costs, has made way for a view expressed in the later cases which has greater regard to all the circumstances.
- v. The timing/lateness of the amendment and the need to ensure that the court's approach to late amendments is not radically different to its approach to enforcing compliance with other procedures or rules generally.
- vi. The onus lies on a party seeking to make a very late amendment to justify it not only in relation to his claim but also in relation to other parties to the litigation and other litigants with cases before the court.
- vii. Applications for permission to amend must necessarily now turn on the particular facts of each case and no hard and fast rules are possible. The outcome of an application to amend will therefore depend on a fact based assessment of the various relevant considerations. Decided cases can only illustrate the way in which the courts discretion is exercised.
- viii. The court will only allow amendments if it has a reasonable prospect of success as the interest of justice would not be advanced by amendments that are bound to fail.

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<sup>1414</sup> *Supra* 5 at paragraph

**[41]** In considering the claimant's application, I have considered the following factors which arise on the particular facts of this claim

- (i) the necessity for the proposed amendments and the interest of justice;
- (ii) any likely prejudice to the defendants;
- (iii) the timing of the application to amend and any effect it will have on the parties' ability to keep their trial date
- (iv) the effect of the amendment on other litigants
- (v) the overriding objective of dealing with cases justly

**[42]** McDonald-Bishop, JA (as she then was) also said that in considering an application to amend a statement of case, "the foremost consideration is whether the proposed amendment is needed in order to determine the real issues in dispute between the parties in light of all the relevant circumstances"

**[43]** As the amendment seeks to add both a Declaration and an Order I will deal with each amendment separately.

#### **Amendment (a)**

**[44]** In relation to both amendments counsel for the claimants has submitted that the proposed amendments will allow the claimants to put forward their entire case or more precisely to seek all the declarations which the affidavit evidence supports.

**[45]** I have considered the submissions filed on behalf of the parties to better appreciate the claimants' need for the amendment. The claimants in their declarations have sought relief on the basis of their Constitutional rights in that to deprive them of the overtime payment is to withhold their property. They also say that the Heads of Agreement signed by representatives of both Ministries create contractual obligations. They also rely on the equitable remedy of quantum meruit. They also submit that the Commissioner of Police has a statutory obligation to ensure that payment of their overtime benefit was made. They rely on section 3(2) of the Constabulary Force Act, and submit that under the Act the Commissioner of Police has sole operational command and superintendence of the Constabulary Force.



- [46] The affidavit evidence and the claimants' submissions indeed already reflect the relief claimed as both counsel have submitted.
- [47] Most importantly however, the amendment sought is in the alternative. The claimants are not raising any new issues, but seek to ensure that where any issues which are not pleaded arise at the hearing, relief can be had by virtue of this declaration.
- [48] The amendment will be necessary to determine any issues in dispute which arise at trial, as a result of any possible cross examination or submissions by either counsel. Amendment (a) may allow the trial judges to consider and grant this relief by virtue of this declaration if necessary.
- [49] It could not therefore be said that amendment (a) is not necessary to determine the issues as between the parties.
- [50] In relation to amendment (a), the utility of the amendment must also be considered in light of other factors relevant to the circumstances of this Fixed Date Claim.

## **PREJUDICE**

- [51] Any likely prejudice to the defendants is an important consideration particularly in light of the fast approaching Pre-Trial Review and trial date. In *Caricom Investments Limited*<sup>15</sup> the court accepted that it would be for the respondent to the application to bring any likely non-compensable prejudice to the attention of the court.
- [52] The defendants have not raised the issue of prejudice. Indeed, in opposing the amendment they have argued that it was not necessary as it was already covered in the Fixed Date Claim before the Court and the affidavit evidence. It is therefore

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<sup>15</sup> *Supra* 1 at paragraph [50]

unlikely that they will be prejudiced by the amendment as it does not in any way change the relief sought.

## **THE ADMINISTRATION OF JUSTICE**

**[53]** This Fixed Date Claim is scheduled for hearing before three judges in the Full Court on April 4 and 5, 2022. Before the trial there is also an adjourned Pre Trial Review which is a necessary prerequisite for trial. This is scheduled for March 10, 2022.

**[54]** There is no evidence that in granting this amendment the parties will be precluded from meeting the trial time table. This is also an important consideration, as in furthering the overriding objective the court must consider the time allotted to each claim not only in relation to the case before the court, but also in relation to other litigants before the Full Court or awaiting a date in that court.

**[55]** In all the circumstances, permitting the claimants to amend their statement of claim to include “a declaration that since 2008 and continuing, the Ministry of National Security and the Office of the Commissioner of Police have had an obligation in law to implement and utilize the necessary software/technology to accurately capture the working hours of the claimant and other members of the Jamaica Constabulary Force” is in keeping with the overriding objective of dealing with cases justly.

### **Declaration (b)**

**[56]** In relation to the second amendment sought by the claimants;

*“A Declaration that the Ministry of National Security and the Office of the Commissioner of Police must with immediate effect implement and utilize software/technology to accurately and consistently capture the working hours of the claimant and the other members of the Jamaica Constabulary Force”.*

**[57]** The claimants have submitted that the failure of the defendants to implement a system to accurately capture the working hours of the members of the

Constabulary Force, including the claimants which was agreed under HOA has resulted in the failure of the defendants to pay eligible police officers overtime.

- [58] A Declaration in this regard would no doubt seem to be a necessary complement to the declarations sought by the claimants and their entitlement to overtime pay.
- [59] CPR 8.6 gives the court wide powers to make binding declarations of right whether or not any consequential relief is or could be claimed. There are no limits on the Court's discretion which must therefore be exercised in light of the overriding objective and the limitations placed by common law.
- [60] The authors of Garner's Administrative Law 8<sup>th</sup> Ed at page 312 describe a declaration as "a remedy that has commonly been invoked as a means of judicial control over the acts of the administration."
- [61] There is no sanction built into this remedy. It does not quash or prohibit or order as do the other coercive remedies (certiorari, mandamus, prohibition). It merely declares the legal position of the parties. Indeed, it is the declaratory nature of the remedy that allows it to be available against the Crown.
- [62] In her submissions counsel also referred the court to the decision of Roy Anderson, J (as he then was) in *St George Johnson et al v Joel Betty and The Attorney General*<sup>16</sup>. The learned judge adopted this definition used by Zamir and Woolf

*It has also been defined as a judgment of a court in a civil case which declares the rights, duties or obligations of one or more parties in a dispute, is legally binding, **but does not order any action by a party.** (my emphasis)*

- [63] In *St. George Jackson*<sup>17</sup> the claim was filed by the Island Special Constabulary Force Association (ISCF) with nominal claimants as representatives of the

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<sup>16</sup> Supra 4

association. They too sought declarations in relation to a Heads of Agreement that the association had entered into with the government.

[64] The court granted the first declaration in the amended Fixed Date Claim form which sought the following remedy:

*“A declaration that the Heads of Agreement entered into between the Claimants and the 1<sup>st</sup> Defendant on the 3<sup>rd</sup> of October 2008 for the contract period April 1, 2008 to March 31, 2010 is binding on the parties thereto.”*

[65] The Claimants sought further declarations similar to those which the Claimants in the instant case now ask the court to consider at the trial

“2. *A declaration that the amounts due and payable and which remain unpaid to the members of the Claimant Association under the Heads of Agreement is (sic) properly owed and is to be paid pursuant to the terms of the Heads of Agreement.*

3. *A declaration that the amounts due and owing to the members of the Claimant Association is a debt owed by the Government of Jamaica to the said members of the Claimant Association and interest payable thereon is to be paid at the rate that is paid on Government of Jamaica bonds.”*

[66] It is to be noted that these declarations were refused. The court was of the view “that to make declarations in respect of paragraphs 2 and 3 would go further than is necessary”. He said further that it would require the court to make an award in relation to liability for a breach of contract and for damages to be assessed which was not the remedy sought. He was also of the view that there was no evidence led which would justify the court making a declaration for interest to be paid at the rate of 15% on the monies due to the members of the ISCF.

[67] Later, Mangatal, J (as she then was) examined the enforceability of declaratory relief in **RBTT v YP Seaton and others**<sup>18</sup>. She too explored and relied on the

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<sup>18</sup> Unreported E083/1993 decided Nov 10, 2009

works of Zamir, where at paragraph 19 of her judgment she adopted his statement that:

*“Declaratory judgments are contrasted with executory judgments. In executory judgments the court declares the respective rights of the parties, and then proceeds to order the defendant to act in a certain way, e.g. to pay damages or refrain from interfering with the plaintiff’s rights. This order, if disregarded, may be enforced through official institutions, mainly by execution levied against the defendant’s property or by his imprisonment for contempt of court. **Declaratory judgments, on the other hand, merely proclaim the existence of a legal relationship, and do not contain any order which may be enforced against the defendant.**” (emphasis mine)*

In explaining the effectiveness of declaratory relief she again referenced Zamir and Woolf where at page 3 he said:

*“A declaration made by the court is not a mere opinion devoid of legal effect; the controversy between the parties is thereby determined and becomes res judicata. **Hence, if the defendant subsequently acts contrary to the declaration, his act will be unlawful. The plaintiff may then again resort to the court, this time for damages to compensate him for loss suffered or for a decree to enforce his declared right**” (emphasis mine)*

- [68] The very wording of CPR 8.6 which allows the court to grant a declaration “*whether or not any consequential relief is or could be claimed*”, recognises that the court can only declare the rights of the parties. Consequential relief must be sought to enforce any declaratory relief.
- [69] It follows that where these Claimants succeed on their Fixed Date Claim, should the Defendants act contrary to any of the declarations made by the court, or fail to ensure that they act in accordance with the Claimant’s declared rights; the claimants are at liberty to resort to the court for damages to compensate them for any loss suffered. They would not need to include coercive language in their declaratory relief.
- [70] It therefore means that there would be no utility in granting amendment (b) as it is not enforceable, and the court cannot grant an executory declaration.

**[71]** In the circumstances, the amendment sought at paragraph (b) of the Claimant's notice of application is refused.

**[72]** The order of the court is therefore as follows:

1. The claimants are permitted to amend their Fixed Date Claim to include amendment (a) only.
2. An Amended Fixed Date Claim is to be filed and served on counsel for the defendant by March 7, 2022 at 3pm.
3. The defendants are permitted to file and serve a supplemental affidavit in response to this Amended Fixed Date Claim by March 14, 2022.
4. The costs of this application are in the claim.
5. The claimant's Attorneys-at-Law are to prepare file and serve this order.

Stephany Orr  
Master in Chambers