



[2017] JMSC Civ. 135

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

**IN CIVIL DIVISION**

**CLAIM NO. 2011 HCV 03633**

<b>BETWEEN</b>	<b>RAYMOND SAMUELS</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>CHEVRON CARIBBEAN SRL</b>	<b>DEFENDANT</b>

**IN OPEN COURT**

Christopher Honeywell and Jamelia Simpson instructed by Christopher O. Honeywell & Co for the Claimant

Maurice Manning and Sherry Ann McGregor instructed by Nunes, Scholefield, DeLeon & Co for the Defendant

Heard: 15<sup>th</sup> March, 2017, 11<sup>th</sup> April, 2017, 19<sup>th</sup> – 21<sup>st</sup> April, 2017, 1<sup>st</sup> May, 2017

Delivered: 29<sup>th</sup> September, 2017

**Contract – Breach of Contract –Section 2 (1)(a) and (b) Employment (Termination and Redundancy Payments) Regulations 1974 – Calculation of Redundancy Payment– What is considered Normal Wages – Implied contractual terms**

**BERTRAM LINTON, J**

**BACKGROUND**

- [1] Raymond Samuels was employed to the Chevron Caribbean SRL (hereinafter called Chevron Jamaica) as a Lubricant Engineer in 1994. In 1999, he was promoted to the position of District Sales Manager and consequently accepted international assignments to Russia, United States Virgin Islands, Bahamas and Barbados.

- [2] While on assignment in Barbados, Mr. Samuels was asked to undertake several additional tasks which included acting as a Chairman and President of Chevron Eastern Caribbean SRL. As a District Sales Manager, Mr. Samuels' gross monthly salary with allowances totalled two million two hundred and thirty-three thousand one hundred and eighty-one dollars and seventy-four cents (\$2,233,181.74). Each international assignment came with its own contract; the terms of which always stipulated that Mr. Samuels was, for all intents and purposes, a Jamaican employee. As such, he was always paid in Jamaican dollars.
- [3] Mr. Samuels' services were terminated by way of redundancy on the 26<sup>th</sup> April, 2011. He has said that several components of his final month's salary were withheld by Chevron Jamaica. He also claimed that his redundancy payment was not properly calculated as the company failed to apply the enhanced severance package to which, he says, he is entitled. Further, he is now seeking to be compensated for all the additional roles he played as District Sales Manager for Barbados as these tasks were not part of his job description.
- [4] Mr. Samuels has now brought an action against Chevron Jamaica in an effort to recover all outstanding payments.

#### **PRELIMINARY APPLICATION BY CLAIMANT**

- [5] On the 24<sup>th</sup> March, 2017, the claimant made an application asking the court to grant the following orders:
1. *The claimant be permitted to re-open his examination in chief to adduce evidence in respect of his lease agreement for premises situated at Millennium Heights, Saint Thomas, Barbados pursuant to Regulation 29.1 and 29.8(2) of the Civil Procedure Rules and the inherent jurisdiction of the court;*
  2. *The claimant be permitted to re-open his examination in chief to adduce evidence as to the basis for, and the calculation of reasonable payment for the additional posts under which he worked for the Defendant;*
  3. *That the time limited herein for the filing of the witness statements be extended to permit the claimant to file a further statement or revise statement in terms of Exhibit RS-2 in his affidavit dated the 23<sup>rd</sup> March, 2017; and*

4. *That the defendant be permitted time to respond to the contents of the said statement.*

- [6] The court refused the claimant's application as well as leave to appeal and had promised to give its reasons in writing along with this judgment. This promise has now been fulfilled; the reasons being outlined below.
- [7] The Court of Appeal only disturbs a discretion exercised in the lower court if that exercise of their discretion is not applied judicially. They are not mandated, and do not in fact, substitute their view on the variables or the evidence presented in the exercise of the discretion.
- [8] The issues raised on the application are part and parcel of the case to be decided. That is what quantum, if any additional, is due to the claimant based on certain issues raised as to the salary and emoluments of the claimant.
- [9] Having put the issue of the re-opening of the examination in chief before the court, the court has viewed it in one light and that can be addressed if necessary at the end of the case. It is not a do or die situation for the claimant. The Court of Appeal indeed has the discretion on appeal (if it becomes necessary) to assess the issue of the application, examine the refusal as a part of the substantive appeal and make rulings necessary to deal with the matter.
- [10] The issues on appeal may be stated as decided and this may include the ruling on the application. The overriding objective here is in favor of continuing with the trial to its outcome and having the matter dealt with.
- [11] I also feel that bearing in mind the time factor and the need to have the court use its resources in a frugal way, it is not in the best interest of the court to have the matter stayed for an indefinite period of time so as to wait on a hearing on the interlocutory issue. This would more severely prejudice the defendant rather than the applicant.
- [12] Therefore, leave to appeal is refused.

## SUBMISSIONS

### A. *The Claimant's Case*

#### (1) Calculation of Final Month's Salary

- [13] Counsel Mr. Honeywell argued that the calculation of his client's final month's salary is incorrect in view of the fact that the allowances which he would have normally received were not included.
- [14] It is agreed that Mr. Samuels was made redundant as of April 2011 and it is also agreed that he returned to Jamaica at the end of March 2011. However, Mr Samuels contends that his last position was District Sales Manager for Barbados and Eastern Caribbean South. Based on that, he has said that there were no legal arrangements in place to tie him to Jamaica. As such, he ought to receive full pay including allowances for the month of April 2011.
- [15] He further argued that his relocation to Jamaica at the end of March 2011 was a mere change in his geographical location. This, he argued, did not affect the terms of his contract and would not mean that he reverted to a different contract of employment.
- [16] Therefore, he contended that the defendant ought to pay him \$2,233,181.74 as payment for April 2011.

#### (2) Redundancy Payment Calculation

- [17] The claimant's arguments in relation to the redundancy payment is two-fold. His first contention is that he is entitled to 4-weeks salary for each year of service to Chevron Jamaica while his second contention is that his normal salary ought to include the allowances he would have received while he was on assignment in Barbados.

#### (a) *Enhanced Severance Package*

- [18] In 2006, Mr. Samuels was informed that the company was restructuring in order to facilitate a merger but was assured that all employee benefits would remain. He contends that at the time, he was concerned about the enhanced severance package and so consulted the company attorney Mr. Seifart who assured him that the package would remain as part of the employee benefit. It was on this basis that he accepted the offer made to him in 2007.
- [19] Further, Mr. Samuels said that up to 2010 he was aware of Chevron Jamaica employees receiving the enhanced severance package as part of their redundancy package. This would mean that enhanced severance was still a part of Jamaican employee service contracts.
- [20] Mr. Samuels has said that employees of Chevron Eastern Caribbean are entitled to enhanced severance and so Chevron Jamaica ought to, based on fairness, offer the same severance package to Jamaican employees.
- [21] Counsel Mr Honeywell asked the court to consider section 2 (1) (a) and (b) of the Employment (Termination and Redundancy payments) Regulations which sets out how the multiplicand is to be calculated for a redundancy payment. Mr Honeywell determined that much of the court's consideration will rest on the definition of "*normal wages*."
- [22] In light of the section highlighted, counsel argued that the over base allowances of goods and service supplement, housing and utilities allowance, home leave and location premium were to be included in Mr Samuels "*normal wages*" in keeping with the definition in the regulations.
- [23] Reliance was placed on the case of ***Doreen Thomas and other v Bank of Nova Scotia*** Claim number 2003 HCV 02141 delivered May 8, 2009 to make the point that employers often divide employee salaries into allowances as a tax strategy. This compares to Mr. Samuels' situation as his pay was divided into different allowances. As such, he argued that the over base allowances were delineated in that manner out of convenience to the company's tax strategy. To buttress this

argument, he pointed to Chevron's Tax Equalization Policy which stipulated that employees are expected to cooperate with the company in order to reduce the tax cost of the assignment.

- [24] Counsel also said that the over base payments were not genuine figures as they do not represent any actual costs. As such, allowances such as home leave and housing and utilities allowance were not allowances in the true sense and meaning of the word.
- [25] These over base payments were made to the claimant for the entire period as District Sales Manager. As such, all payments made to him were part and parcel of his "*normal wages*." Therefore, it was submitted that Mr Samuels' over base payments should be considered as a part of his "*normal wages*" for the purposes of his redundancy calculation.

(3) Compensation for Additional Tasks

- [26] The claimant has argued that while he was employed as a District Sales Manager in Barbados, he had to take on additional responsibilities for the company. He assumed directorial and executive positions in eight corporations owned and controlled by Chevron Eastern Caribbean. It was his contention that he went over and beyond what was required of him as a District Sales Manager and this opened him up to civil and criminal liability. He also argued that he had to work on weekends and allocate additional time to properly manage the additional responsibilities.
- [27] It was further submitted that Mr. Samuels made several requests to be compensated but his efforts were futile. Now that he has resigned, counsel argued that there is an implied term in every contract for service which dictates that fair remuneration ought to be paid for services rendered. He has asked the court to exercise its discretion to grant fair remuneration for the additional responsibilities Mr Samuels was made to undertake. Counsel relied on the case of **Way v Latilla** 1937 3 AllER 759.

[28] In light of his submissions, counsel asked the court to grant Mr. Samuels between 22% - 24% of his overall salary as remuneration for his additional responsibilities.

(4) Pension Calculations

[29] Mr Samuels withdrew his claim for pension entitlement.

B. *The Defendant's Case*

(1) Calculation of Final Month's Salary

[30] Counsel for the defendant submitted that Mr. Samuels' assignment in Barbados ended on March 31, 2011. As such, he was repatriated to Jamaica in April 2011. During this final month, Mr. Samuels did no work for or on behalf of the Barbados company. It is on this basis that counsel argued that none of the over base allowances applicable to overseas assignments were to be applied to his salary for April 2011. Since Mr. Samuels worked in Jamaica for the month of April, he would not have been entitled to goods and services supplement, housing and utilities allowance, home leave allowance and location premium as those were tied to his assignment in Barbados

[31] It was further argued that Mr. Samuels understood that he would not have been entitled to these allowances as he readily accepted in cross examination that over base allowances were paid only when an employee was on assignment.

(2) Redundancy Payment Calculation

(a) *Enhanced Severance Package*

[32] The defendant denied that the claimant was entitled to the enhanced severance package. Mr. Manning countered the claimant's assertions of entitlement to the severance package by virtue of the fact that:

- i. He was assured in a verbal conversation had with the company's legal counsel Armin Seifart that his contract would include enhanced severance;

- ii. Employees of Chevron Eastern Caribbean and Chevron West Indies Limited are entitled to this benefit; and
  - iii. Some employees of Chevron Jamaica received this package prior to 2010.
- [33] Firstly, the defendant submitted that the claimant has brought no evidence to support the fact that he had a conversation with Mr. Seifart regarding the inclusion of the severance package as part of his employment contract. Counsel argued that Mr. Samuels did not raise the matter of his enhanced severance benefit in any of his correspondence between himself and the defendant even as they had discussions regarding his redundancy between 2010 and 2011. Furthermore, Mr. Samuels made no attempts to have Mr. Seifart accept or refute this allegation even though he was working with the company at the time Mr. Samuels was being made redundant.
- [34] Secondly, counsel argued that the defendant's obligation to provide the enhanced severance package to Mr. Samuels must be determined in contract. Therefore, the basis for the claimant's argument that Chevron Eastern Caribbean and Chevron West Indies employees are entitled to enhanced severance so therefore Jamaican employees should also be entitled, is not a basis in law that the court can recognize.
- [35] Finally, it was submitted that the claimant gave no conclusive evidence that the defendant provided enhanced severance to its employees after 2010 or before he was made redundant. Mr. Manning contended that Mr. Samuels gave no evidence that enhanced severance was granted automatically to Jamaican employees over a substantial period of time. Therefore, the claimant could not indicate any right which he had to receive enhanced severance and thus was not entitled to it.

(b) *Over Based Allowance Inclusion*

- [36] The defendant submitted that the over based allowances which formed part of the claimant's compensation package ought not to be included when calculating his

redundancy payment. Although Mr. Samuels claims that the housing and utilities allowance, goods and service supplement, location premium and home leave allowance were delineated as a tax avoidance strategy, the defendant submits otherwise. Defence counsel argued that the claimant's pay slips reflect that taxes were deducted from the allowances and so the claimant's assertions of an elaborate tax strategy is erroneous.

- [37] Each over base allowance was applied in accordance with the International Resident Assignment Terms and Conditions. In keeping with this document:
- a) Goods and Service Supplement is applied to counter the difference between goods and services in the host country versus that of the home country. This allowance varies based on currency fluctuations and costs surveys and is calculated having regard to salary grade and family status. The defendant says that this allowance is not intended to be an enhancement to salary but to essentially subsidize living cost in the host country.
  - b) Housing and Utilities Allowance is applied so as to subsidize the cost of housing and utilities in the host country. Again, it is determined having regard to the employee's family status and salary grade. Where the host country is able to, they provide actual housing and utilities.
  - c) Location Premium is an incentive for accepting the international assignment.
  - d) Home Leave allowance is an annual amount applied to the employees' salary so that he can maintain family ties in his home country. To this end, Chevron provides the equivalent of air fare for the employee and his family to travel home. This allowance is applied whether or not the Mr. Samuels takes home leave.

Having regard to the particular purpose of each allowance, counsel for the defendant argued that they were specific to the international assignment accepted. As such, they could not properly be considered as a part of his normal wages because they were not payments made based on his performance on the job. It was submitted that the fluctuation of these allowances, their applicability based on family size and the fact that they were paid only on an overseas assignment meant that they could not be normal wages.

- [38] Thirdly, it was submitted that Mr Samuels' claim that he was able to make a profit from his housing and utilities allowance does not prove that this allowance is to be considered as part of his normal wages. Counsel argued that Mr. Samuels did not provide the court with enough information for a determination to be made as to whether he made a profit or a loss.
- [39] Therefore, it was submitted that Mr. Samuels' redundancy payment was calculated in accordance with the Employment (Termination and Redundancy Payments) Act which stipulates that he is entitled to two weeks' pay for every year of service up to ten years and thereafter three weeks' pay.

### (3) Compensation for Additional Tasks

- [40] In relation to the additional roles which Mr. Samuels assumed in the affiliate companies of Chevron Eastern Caribbean, counsel argued that Mr. Samuels signed resignation letters which detailed that:

*“...I confirm that I have no claim or right of action whatsoever against the Company whether for damages, compensation for loss of office or otherwise, and that the Company is in no way obligated or indebted to me.”*

As such, he has no right with regards to his claim for compensation for his additional responsibilities.

- [41] Furthermore, it was submitted that Mr. Samuels did not provide details of the tasks he was asked to undertake which he claims is outside his responsibilities as a District Sales Manager. Mr. Samuels provided no evidence to show what amount

of remuneration he ought to receive for these additional tasks. To this end counsel argued that the court could not be asked to embark upon a guessing exercise so as to determine what amount he ought to receive if any.

(4) Pension Calculation

[42] The defendant argued that Mr. Samuels' base salary is his pensionable salary. Since Mr. Samuels was a member of the Chevron Employee Benefit Plan, he was bound by the provisions of the Trust Deeds and Rules. These rules provide that pensionable salary is "*exclusive of any special consideration such as bonus payments, overtime, allowances or other extra compensation.*" It is submitted that Mr Samuels is bound by this rule and as such is not entitled to have his pensionable salary include his allowances.

**ISSUES**

[43] The issues for the court to consider are:

- a. Should Mr. Samuels' final salary include all the allowances he would have been paid while on assignment?
- b. How should Mr Samuels' redundancy payment be calculated?
- c. Can Mr. Samuels be compensated for additional roles he played in Chevron Eastern Caribbean SRL while on assignment in Barbados?
- d. Is Mr. Samuels entitled to receive compensation for pension contributions using his base salary as well as his allowances.

**LAW AND ANALYSIS**

[44] I have given careful thought to all the submissions presented and all the arguments and case law as cited, I have no intention of reiterating them here in detail but will refer to them as is necessary to explain my reasoning and decision in this matter. I will analyse each issue in turn.

(1) Final Salary

- [45] In the case of ***The North Eastern Railway Company v Hastings*** [1900] AC 260 it was said that:

*... The words of a written instrument must be construed according to their natural meaning, and it appears to me that no amount of acting by the parties can alter or qualify words which are plain and unambiguous.*

*So far as I am aware, no principle has ever been more universally or rigorously insisted upon than that written instruments, if they are plain and unambiguous, must be construed according to the plain and unambiguous language of the instrument itself.”*

- [46] In Chitty on Contracts it is said that:

*“Every contract is to be construed with reference to its object and the whole of its terms and accordingly, the whole context must be considered in endeavouring to collect the intention of the parties, even though the immediate object of enquiry is the meaning of an isolated word or clause.”* (30<sup>th</sup> ed. Vol. 1 page 848)

- [47] The court’s determination of this issue hinges on the interpretation and construction of the terms of Mr. Samuels’ employment to Chevron Jamaica and his expatriate agreement. Much of the court’s consideration will go into determining why the allowances were not paid to Mr Samuels when he returned to Jamaica.
- [48] Based on the evidence, Mr Samuels’ expatriate assignment ended in March 2011. As such, he returned to Jamaica in April 2011 to what he describes as his “*substantive position*.” Mr Samuels told the court that “*goods and services supplement was not received if not overseas*.” Similarly, he said that the “*housing and utilities allowance was not received if I am not holding the expatriate assignment*.” He also said that “*home leave allowance was not received if not overseas*.” His understanding of these allowances are in keeping with the International Resident Assignment Terms and Conditions. Though this document represents the Bahamas contract, it is agreed that its terms and conditions are similar, if not the same, as those for the Barbados assignment.
- [49] It is clear that Mr. Samuels understood that the outstanding allowances were only to be paid to him while he was overseas on assignment. Therefore, there is no

difficulty for the court to find that these allowances would not have been payable to him while in Jamaica for the simple fact that he was no longer on assignment.

- [50] In view of this, the court finds that Mr Samuels is not entitled to payment of allowances for April 2011 as he repatriated to Jamaica.

(2) Redundancy Payment

- [51] ***The Employment (Termination and Redundancy Payments) Regulations, 1974*** defines normal wages as follows:

2. (1) *In these Regulations, unless the context otherwise requires-*

*"normal wages" means, in relation to any employee, the remuneration regularly paid to him by his employer as wages or commission, and includes any amounts regularly so paid by way of bonus as part of such remuneration but does not include -*

*(a) any overtime wages; or*

*(b) any premium or special allowance paid -*

*(i) in consideration of the times at which, or the conditions subject to which, or the circumstances in which, he works in the course of the performance of his duties; or,*

*(ii) in consideration of any inconvenience suffered or likely to be suffered by him in the course of the performance of his duties;*

- [52] In the case of ***Albion Automotive Ltd v Walker [2002] EWCA Civ. 94***, the court had to determine whether an enhanced redundancy package was an implied contractual term. In so doing Peter Gibson LJ considered:

*"(a) whether the policy was drawn to the attention of employees;*

*(b) whether it was followed without exception for a substantial period;*

*(c) the number of occasions on which it was followed;*

*(d) whether payments were made automatically;*

*(e) whether the nature of communication of the policy supported the inference that the employers intended to be contractually bound;*

*(f) whether the policy was adopted by agreement;*

(g) whether employees had a reasonable expectation that the enhanced payment would be made;

(h) whether terms were incorporated in a written agreement;

(i) whether the terms were consistently applied."

- [53] Further, in ***Quinn v Calder Industrial Materials*** [1996] IRLR 126, Lord Coulsfield recognised that there is more than one type of implied term. In relation to terms which are implied by custom and practice, he said:

*"The question whether there is an implied term in the present case is really a different way of putting the question of what terms the parties have actually agreed. In order to answer that question, it is necessary to consider the whole circumstances of the formation of the contract and the parties' acting before, and, even, after, the contract, to gather what terms they had actually agreed."*

- [54] He continued to say that:

*"...the question is not whether the period for which a policy has been followed is 'substantial' in some abstract sense, but whether, in relation to the other circumstances, it is sufficient to support the inference that that policy has achieved the status of a contractual term. Again, with regard to communication, the question seems to us to be not so much whether the policy has been made or become known directly to the employees or through intermediaries, but whether the circumstances in which it was made or has become known support the inference that the employers intended to become contractually bound by it."*

- [55] It is agreed Mr Samuels is entitled to a redundancy payment. As such, the only matter for the court's determination is how the payment is to be calculated. In doing so, the court has to consider:

- a) Whether Mr Samuels is entitled to Enhanced Severance; and
- b) Whether his allowances can be considered part of his normal wages

(a) *Enhanced Severance Entitlement*

- [56] The enhanced severance package as offered by Chevron is that upon redundancy, an employee is entitled to 4-weeks' salary for every year of employment to the company. Mr Samuels' evidence is that after restructuring, the company offered new contracts to its employees. He says that at this time he sought clarity from Mr Seifart to ensure that this particular severance package was a continued benefit

offered to employees. Though he says that he would have signed the new contract anyway, he placed reliance on the ability to utilize this benefit when weighing his options before determining that redundancy was the intended route.

[57] The problem with this argument is that the court did not have the benefit of any evidence to substantiate this interaction. There is no proof that Mr Samuels was indeed given such a guarantee and further there is no indication that he made any representations to Mr Seifart at the time he was made redundant. The court finds it very curious that:

- i. Mr Samuels had multiple conversations with Chevron Jamaica personnel regarding this redundancy, even going as far as seeking clarity as to how it would be calculated but made no objections when he was told that Jamaican Law would prevail.
- ii. Mr Samuels in no way sought to have his assurance with Mr. Seifart as part of his written contract. Based on my assessment of him as a witness, Mr Samuels seemed very intelligent. Therefore, his acceptance of his "*verbal assurance*" from Mr Seifart of a term which was very important to him is very strange.

[58] On a balance of probabilities, I find that there is no proof that enhanced severance was a continued benefit after 2007.

[59] There is also the matter of whether the court would accept that granting enhanced severance was a continued course of dealings between Chevron Jamaica and its employees so much so that Mr Samuels had a legitimate expectation that he would receive such a benefit too. In keeping with the authority of *Quinn*, the court has noted that in the case at bar:

- i. There is no indication that the enhanced severance package was a policy drawn to the attention of the employees in general;

- ii. The court was not given sufficient evidence to show that enhanced severance was a policy followed without exception for a substantial period or the number of occasions which it was given to employees;
- iii. There was also no evidence to suggest that the enhanced severance package was used automatically to compute Jamaican employee redundancy payments;
- iv. There was no evidence of any course of dealing which would enable Mr Samuels to have a reasonable expectation of receiving enhanced severance; and
- v. There is no contractual reference which makes enhanced severance a term in a written agreement between Mr Samuels and Chevron Jamaica.

[60] The unfortunate reality is that Mr Samuels gave no concrete evidence that granting enhanced severance package was a normal course of dealings between Chevron Jamaica and its employees. Therefore, the court cannot find that enhanced severance is an implied contractual term in Mr Samuels' contract. As such, I agree with counsel for the defendant that in the absence of a continued course of dealing, the claimant would have to show that he has a right in contract. Since he did not do so, the court finds that he is not entitled to enhanced severance.

[61] Therefore, I find that the method of calculating Mr Samuels is as set out in the Employment (Termination and Redundancy Payments) Act.

(b) *Whether Over Base Allowances Are Normal Wages*

[62] Whether the allowances of goods and service supplement, housing and utilities allowance, location premium and home leave are part of Mr Samuels' normal wages requires careful examination of each allowance.

[63] Based on the International Resident Assignment Terms and Conditions:

- i. Goods and Services supplement represents the difference in the value of goods and services in the home country versus that of the host. It is normally subject to change at least twice a year and is not '*an enhancement of salary.*' Mr Samuels in his evidence said that this '*allowance seeks to ensure that there is no disadvantage with living overseas.*'
  - ii. Housing and Utilities Allowance is a subsidy provided based on the average cost of housing in the host county and is determined based on family size and pay scale. Mr Samuels agreed that this allowance increased based on family size. It is notable that where the company provides an actual house for the employee to reside, no housing and utilities allowance is given.
  - iii. Home leave is granted so that the employee does not lose family ties. Mr Samuels also agrees that this is influenced by family size.
  - iv. Location premium is an incentive paid for taking an international assignment.
- [64] The allowances were not performance based. On the contrary, they were either an incentive (as in the case of the premium) or depended upon how the assignment itself would affect the standard of Mr Samuels' living and were granted so as not to cause inconvenience to him. Having examined the nature of each allowance the court finds that they are "*premiums or special allowances*", as described in the Regulations and this cannot be included as normal wages.
- [65] Mr Samuels argued that the defendant delineated allowances in his payment package as a tax strategy. He however, provided no evidence to substantiate this claim as based on Mr Samuels' payslip taxes were deducted from the allowances. Therefore, the claimant's reliance on the **Doreen Thomas** case to show that companies use allowances to avoid tax is moot.

[66] Therefore, I find that the goods and services supplement, housing and utilities allowance, location premium and home leave allowance ought not to be considered as normal wages.

(3) Additional Compensation

[67] In order to determine whether Mr Samuels is entitled to compensation for the roles he played in Chevron Eastern Caribbean's eight affiliate company there are a few sub-issues which must be addressed, these being:

- a) Whether the additional tasks are part and parcel of his job as a District Sales Manager; and
- b) Can he recover money for these positions from Chevron Jamaica?

[68] Firstly, it is clear, based on the Position Summary G0-400 document tendered into evidence, that Mr. Samuels' job description in no way entailed him assuming executive and directorial roles in the eight affiliate companies. Therefore, this is not a matter of compensation for work done outside of normal working hours. This is a matter concerning Mr Samuels assuming work that was outside the scope of his contractual arrangement with Chevron Jamaica.

[69] Secondly, based on his own pleadings the roles Mr. Samuels played in the affiliate companies touched and concerned Chevron Eastern Caribbean. This issue is obfuscated by the fact that Mr Samuels is an employee of Chevron Jamaica who, based on all indications, is responsible for his remuneration package. It is Mr Samuels' evidence that his supervisor asked him to take on these roles and though he enquired about remuneration he was not given an answer.

[70] The court is constrained to consider the parties before it, and the problem with Mr Samuels' claim for remuneration is that it should be sought from the company that received a benefit outside of that stipulated in his contract. In other words, Mr Samuels would need to seek compensation from Chevron Eastern Caribbean. Though I will agree that Chevron Jamaica was, at all material times, responsible

for his remuneration package, the tasks he performed were outside the scope of this contract and as such the court is of the view that Mr Samuels ought properly to seek clarity from Chevron Eastern Caribbean.

- [71] There is one other matter which the court must comment on. It was noted that Mr Samuels gave no indication as to what appropriate compensation would be for these additional roles. He merely asked the court to grant him between 22%-24% of his present salary as payment for the work done. However, it seems that he himself embarked upon some amount of guesswork in order to arrive at the percentages submitted as no explanation was given as to how he arrived at same. Furthermore, there was no intricate detail of the tasks he performed for each of the eight affiliate companies. In view of this fact, the court could not grant compensation on a quantum meruit basis because it does not know what exactly Mr Samuels would be compensated for and there is no reference for the court to use to make a just award.
- [72] Therefore, I find that Chevron Jamaica is not liable to pay Mr Samuels for the roles he played in the affiliate companies of Chevron Eastern Caribbean.

(4) Pension

- [73] Since the claimant abandoned his pension claim, I will not deal with this matter.

**ORDERS**

- [74] The court makes the following orders:

1. Judgment for the defendant;
2. Cost to the defendant to be taxed if not agreed.