



[2025] JMSC Civ 66

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

**IN THE CIVIL DIVISION**

**CLAIM NO. 2011HCV04938**

**IN THE MATTER OF AN APPLICATION  
BY DERRICK WILSON FOR AN  
ADMINISTRATIVE ORDER FOR  
JUDICIAL REVIEW**

**AND**

**IN THE MATTER OF THE JAMAICA 4 –  
H CLUBS ACT AND IN THE STAFF  
ORDERS FOR THE PUBLIC SERVICE**

<b>BETWEEN</b>	<b>DERRICK WILSON</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>THE JAMAICA 4-H CLUBS</b>	<b>1<sup>ST</sup> DEFENDANT</b>
<b>AND</b>	<b>ATTORNEY GENERAL OF JAMAICA</b>	<b>2<sup>ND</sup> DEFENDANT</b>

**OPEN COURT**

**Keith Bishop instructed by Bishop & Partners, Attorneys-at-Law for the Claimant  
Tamara Dickens instructed by the Director of State Proceedings for the Defendant**

**Judicial Review – Whether employee of a statutory body with full corporate  
personality is a public officer within section 1 of the Constitution of Jamaica –**

**Whether employee was a ‘person entering the Public Service within section 1.4 of the Staff Orders’ - Legitimate Expectation.**

**January 17, 2019, and May 26, 2025**

**SYKES J**

- [1] Mr Derrick Wilson’s employment with Jamaica 4 –H Clubs’ Board of Management (the Board) was terminated by letter dated February 18, 2011. He wants the court to quash the decision (certiorari) to end his employment and to compel the Board (mandamus) to reemploy him in the position he was in at the time of the termination. He wants damages as well. The claim has failed and these are the reasons.

**The Jamaica 4 – H Clubs**

- [2] The Jamaica 4-H Clubs Act (the Act) creates a body called the Jamaica 4-H Clubs Board of Management (the Board). The legislation provides that the Board’s duty is to ‘promote the education and training of children and young persons with a view to (a) increasing efficiency in farming and home-making; and (b) stimulate interest in rural life; and (c) encourage cultural and civil development and activity’ (section 4 (1)).
- [3] To carry out its mandate rule 10 (1) of the Schedule states that the Board ‘shall be a body corporate having perpetual succession and a common seal with power to hold and dispose of land and other property of whatever kind.’
- [4] Section 14 (1) authorised the Board to ‘appoint and employ at such remuneration and on such terms and conditions as it thinks fit a secretary and such other officers and servants as it thinks necessary for the proper carrying out of the provisions of this Act.’ Section 15 enables the Minister ‘after consultation with the chairman, to give the Board (a) directions of a general character as to the policy to be followed

in the performance of its functions in matters appearing to him to concern the public interest; and (b) directions for the remedying of any serious difficulty or failure in the successful performance of its functions.’ The provision closes with the words ‘and the Board shall give effect to such direction.’ This the context in which Mr Wilson was employed.

### **The employment of Mr Wilson**

[5] Mr Wilson stated that ‘before being employed, I attended an interview and I was apprised by the interviewers and I do very believe that my temporary employment would be in a clear vacancy’ (para 5 of affidavit dated September 11, 2011).

[6] He swore that following ‘the interview, I was given a letter which sets out the terms and conditions of my temporary employment’ (para 6). The Board, by letter dated August 14, 2008, told Mr Wilson that he was temporarily employed as of August 18, 2008, the following

*I have to inform you that you are being offered temporary employment to the position of Centre Manager (SOG/ST4) for a period of one (1) year in the first instance at the Denbigh 4 – H Centre, Clarendon, Jamaica 4 – H Clubs with effect from August 18, 2008 on the following terms and conditions:...*

[7] The letter had the usual terms regarding salary, duty allowance, income tax, statutory deductions and the like.

[8] He was also told that:

*You will be required to serve a probationary period of 3 – 6 months, following which, an evaluation will be done of your performance and conducted, in*

*order to determine your suitability for permanent appointment, **all things being equal*** (emphasis added)

- [9] Do note that the appointment letter used the words 'temporary employment' and the expression 'all things being equal.'
- [10] The letter advised that '[y]our are required to do a medical examination as to your mental and physical fitness for the job.' Mr Wilson was to provide a medical report and a police record.
- [11] The letter stated that the Public Service Regulations 1961, the Financial Administration and Audit Act, the Jamaica 4-H Clubs Personnel Policy and the Staff Orders of the Public Service 2004 were part of his contract.
- [12] Mr Wilson was evaluated for the period September 2008 to December 2009. The evaluation noted deficiencies but concluded that he performed well. Before the evaluation, in September 2009, he was assigned additional duties. These additional duties were 'to carry out the functions of Centre Manager at the Vernamfield 4 – H Centre, in addition to your regular duties and responsibilities at the Denbigh 4 – Centre (sic).'
- [13] The Board advised him by letter dated June 15, 2010, that there was a reclassification of the Centre Manager's position and he would be paid a new salary at the first point on the SOG/ST6 salary scale.
- [14] By letter dated July 8, 2010, Mr Wilson was advised that he had not provided the medical report and police record. Ominously, the letter stated that he was to '**be informed that apart from the availability of a vacant position along with your satisfactory performance and conduct**, the above information [medical report and police record] also inches (sic) on consideration for your permanent appointment with the organization' (emphasis added). The final sentence in this

letter said '[k]indly provide this office with these important documents by **August 3, 2010**' (dated in bold in original). Clearly, Mr Wilson had not provided the medical report and police record since his initial employment in August 2008.

- [15] It is to be noted that in this letter of July 8, 2010, the Board clearly indicated that a vacant position would be a necessary precondition for any appointment to a permanent position. There is no evidence that Mr Wilson disputed this assertion and even if he did, the absence of a vacancy would clearly preclude any appointment.

### **The letter that started the rolling ball**

- [16] The Board advised Mr Wilson in another letter dated February 18, 2011 that 'your period of temporary employment is extended to **August 3, 2011**, and that all other terms and conditions remain the same' (bold in original). The second sentence in the letter was devastating: *'Your temporary employment relates to a position which is not vacant and hinges on the expiration of our School Garden Project which officially ends August 4, 2011.'* The medical report and police record were provided and this February 18, 2011, letter acknowledged that fact.
- [17] This letter galvanised Mr Wilson. He wrote a two-and-a-half-page-single-spaced-font-size-10 response. In summary, he was saying that his original temporary appointment did not indicate that there was no vacancy and that his engagement temporarily was consistent with the Staff Orders. He added that since his performance evaluation was satisfactory, the position being vacant, and that a temporary appointment should not exceed six (6) months he had a legitimate expectation that he would have been appointed to the post.
- [18] He adds that he did not have any opportunity to make any representations before the February 18, 2011, letter.

## Resolution

- [19] Mr Wilson is proceeding on the premise that he is a public servant in the civil service. This is not the case. This issue was treated with by the Court of Appeal in **Eugennie Ebanks v Betting Gaming and Lotteries Commission** SCCA 97 of 2003 (delivered December 20, 2005). The provisions in question under that legislation and the principle established in that case are sufficiently similar to be applied here. Karl Harrison JA held at page 14 that the terms public servant and public officer must mean someone employed in the civil service in the strict sense of the word. The expressions would not apply to someone employed to a statutory body. His Lordship pointed out that under section 125 of the Constitution of Jamaica a person can only be appointed to a public office by the Governor General acting on the advice of the Public Service Commission. Mr Wilson's appointment in 2008 was not an appointment in the public service as contemplated by the Constitution.
- [20] As the outstanding Carberry JA indicated in **R v Binger, Vaughn and Scientific Research Council, ex parte Chris Bobo Squire** (1984) 21 JLR 118, 125 I the fact that statutory corporation may be subject to some measure of control by the Government through a minister does not make it a department of Government. Such a body has 'a life of its own intended to operate like any other corporation or company, liable to be sued like anyone else' and '[t]hough it has public elements [it is not to be regarded] as being akin to a Government department or operating in the public law field.' From this dictum Hazel Harris JA (Ag) concluded, in **Eugennie** at page 32 that '[i]t follows that the respondent, not being a department of government, its employees could not be recognised as having the rank of public servants.'

- [21] The **Binger** case is particularly striking because the SRC did not file any affidavit evidence. It took its stand on the pure point of law. Carberry JA indicated at page 120 E - F that '[t]he Respondents (sic), the two named fellow employees whose decisions are complained of, and the Council all appeared by the same counsel and – **without filing any reply to the Appellant's** (sic) **affidavit** – have challenged the application on two grounds: (a) that certiorari is not the appropriate remedy and is not available to the applicant, this being a case in the field of private law; and (b) ....' (emphasis added).
- [22] The case of **Charles Ganga-Singh v The Betting and Gaming and Lotteries Commission** Suit No M 156 of 2002 (delivered on January 11, 2005) decided by Mangatal J is a carbon copy of the present except that in that case Mr Ganga-Singh was appointed to the post and thus was permanently employed. Mr Ganga-Singh was subsequently dismissed with immediate effect. He sought judicial review. He sought orders of certiorari and mandamus. He contended that his dismissal was in breach of natural justice and in violation of the Public Service Regulations and Staff Orders. The Commission took a preliminary point that judicial review was inappropriate. That submission was upheld and the application dismissed. Mangatal J relied on the **Ebanks** decision delivered at first instance by Gloria Smith. The Court of Appeal's decision had not yet been delivered at the time of Mangatal J's decision.
- [23] The judicial traffic in these circumstances is all one way: employment by a statutory body, without more, does not transform the employee into a public servant within the meaning of the Constitution of Jamaica and the appointment process set out there.
- [24] The 4-H Clubs here while being funded by the Ministry of Agriculture and Fisheries remains an independent statutory body with its own corporate identity. Mr Wilson

is therefore not a public servant and therefore cannot secure a remedy by judicial review.

- [25]** The fact that the contract referred to the statutes and Public Service Regulations which would govern the contract between Mr Wilson and the Board did not have the power to make him a public servant in law. The contract cannot override the words, legal effect, and legal consequence of an Act of Parliament. The parties, in this case, cannot, by the private law route, negate the effect of legislation.
- [26]** The Board exercised that statutory power under section 14 (1). The evidence is that Mr Wilson's was offered employment by the Board and not the public service. There is no evidence that Mr Wilson was ever a member of the civil service and assigned or seconded to the 4-H Clubs. The evidence is that Mr Wilson's terms of employment were governed solely by those offered by the Board. The reference to the public service staff orders did not have the legal power to transform employment by a statutory corporate body into a civil service one.
- [27]** Since Mr Wilson is not a public servant then the public law remedies of certiorari and mandamus are not open to him. This is the very point decided by Mangatal J: not a public servant, no public law remedies are available. This is sufficient to dispose of the matter. However, Mr Wilson argued other points which will now be addressed.
- [28]** Among the issues raised was whether Mr Wilson had a legitimate expectation that he would be appointed once his assessment was positive and other requirements were met. Assuming Mr Wilson was a public servant his claim under this head would fail because he has not met the legal standard.
- [29]** The doctrine of legitimate expectation, in this case would only arise if a public authority either through representation or established practice fosters an



expectation that is within its power to fulfil. If the claim is based on a representation made then claimant must show that the public authority made a clear, unambiguous promise that is devoid of qualification (**R v Inland Revenue Commissioners Ex p MFK Underwriting Agents Ltd** [1990] 1 WLR 1545, 1569). The court in formulating the principle in this way to meet the circumstances of this case; is aware that the doctrine has moved beyond the usual context of promise or practice and has extended to a policy of consultation or by principles of fairness. The latter two do not arise for consideration in this case.

- [30] Mr Wilson claims that during his interview he was told that his temporary appointment was a step in filling a clear vacancy. There is no other evidence to support this assertion other than Mr Wilson's words. It does not necessarily follow that his word is insufficient but there is no contemporaneous documentation consistent with his assertion. The documentation that exists shows that there was a qualification. There is nothing to suggest that the post to which he was temporarily appointed was vacant. His letter of employment (dated August 14, 2008) did say that he was to serve a probationary period, then he would be evaluated, in order to determine his suitability for permanent employment '**all things being equal**' (emphasis added). This letter is not a clear, unambiguous promise devoid of qualification.
- [31] In addition, Mr Wilson did not provide sufficient details surrounding the interview to determine whether the person who made the promise was of sufficient seniority to make that representation, if made, that of the Board.
- [32] Another problem for Mr Wilson is that even if the promise was made, it could not possibly have been fulfilled because there was no vacancy for him to which he could be appointed. The Board has said that the officer holder would be returning, having been reassigned to carry out duties as the Portland Development Officer

for the period of what was called a National School Garden Project. There is no credible evidence to suggest that the Board's position is factually untrue.

- [33] Mr Wilson insists that he was never told that his employment depended on the duration of the National School Garden Programme and further that he was never told the position was filled. Assuming without deciding that these representations were made or not disclosed the unassailable fact is that his initial letter of engagement in 2008 did not make or contain any unequivocal representation that he would be appointed to the post even on a satisfactory performance evaluation. The 'all things being equal' phrase undermines any contrary conclusion. The words of the August 14, 2008, letter and the lack of evidence supporting the assertion would scuttle Mr Wilson's efforts to complete successfully his voyage in the ship of legitimate expectation.
- [34] Mr Wilson asked the court to order his reinstatement in the post of Centre Manager. Regrettably, that cannot be done because it assumes (a) he was appointed to a vacant post; and (b) the post is vacant. Mr Wilson was not appointed to the post and could not have been so appointed because it was never vacant. What has just been said also addresses the second point (b). The post is not vacant.
- [35] Mangatal J referred to the Court of Appeal's decision in **Institute of Jamaica v IDT and Coleen Beecher** SCCA 9/2002 (delivered April 2, 2004). In that case the Institute of Jamaica established by legislation dismissed Mrs Beecher. She took her case to the IDT which ruled in her favour, found that her dismissal was unjustifiable, and that she should be reinstated. The tribunal's decision was upheld by the Supreme Court. In the Court of Appeal, the tribunal's decision was reversed. The crucial point, which Mangatal J, noted was that Mrs Beecher's letter of employment explicitly stated that her employment was temporary until ratified by the council of the Institute, and she would be subject to the Staff Orders of the

Public Service. The Court of Appeal found that Ms Beecher's employment was governed by contract and not public law. She was not entitled to a hearing even though the Staff Orders were explicitly incorporated into the contract.

- [36]** Downer JA observed that the Institute was governed by the Institute of Jamaica legislation and under that legislation the entity was authorised to appoint and employ persons necessary to carry out its functions. His Lordship specifically noted that there 'was nothing in the Institute of Jamaica Act which ordained that Mrs Beecher should be given an (sic) hearing before dismissal' (page 23). To reinforce the point that Mrs Beecher was governed by the contract Downer JA said at page 26 that had the IDT properly interpreted the law and the relevant code 'it would have found Mrs Beecher's dismissal was justifiable pursuant to her contract of employment.'
- [37]** Mr Wilson is in no better position than Mrs Beecher. Mr Wilson did not have a right to hearing. His termination was in accordance with his contract. There was no breach of natural justice for the simple reason that such a principle has no application in this case unless the contract or the relevant statute dictated such a course.
- [38]** There is a pleading point there that needs to be addressed. Mr Wilson asked for damages to be assessed in his claim. The affidavit filed in support of the fixed date claim do not allege any damage suffered. The defendant is entitled to know the basis of the claim made against it. This was not provided and therefore the claim cannot be entertained. In any event, there is nothing to suggest that Mr Wilson suffered any loss of any kind because there was no evidence that he was dismissed. What he was told in 2011 is that the National Schools Garden Project may come to an end in August 2011 and the incumbent would return to the post if

that eventuality occurred. He was told this in February which was ample time (6 months) for him to find other employment or make other suitable arrangements.

## **Delay**

- [39] The Board took the point that there was delay in applying for judicial review. The application for judicial review to quash the decision evidenced by February 18, 2011 was made in August 2011. This was outside the three months mandated by the Rule 56 of the Civil Procedure Rules (**Orrrett Bruce Golding and The Attorney General of Jamaica v Portia Simpson Miller** SCCA No 3/2008 (delivered April 11, 2008) (Panton P at page 31).
- [40] It is the case that the right to seek judicial review is activated when the decision is made and not when the decision is communicated or becomes known to the affected person. There is no doubt that Mr Wilson is out of time.
- [41] Resolving this question requires taking into account the current litigation climate. Courts are now encouraging persons to resolve disputes by means other than litigation. Judicial Review is not exempt from this effort. Mr Wilson sought to engage the resolution process by his letter of February 19, 2011. The last sentence in his letter stated: *I am anticipating a speedy clarification and resolution of this situation so as to prevent this matter from being taken to a different level.*
- [42] The Board did not reply until July 21, 2011. The Board's letter did not accommodate any reconciliation other than Mr Wilson demitting office in August 2011.
- [43] In these circumstances, the court took the view that delay in application was not fatal to an application for leave for judicial review and ultimately a judicial review leading to a disposition on the merits. The delay can be attributed to the Board's lack of response to Mr Wilson's plea for clarification.

**Delay in rendering decision**

[44] The inordinate delay in rendering this decision is to be regretted. The records of trial were missing for a long time and reconstituted with the assistance of counsel who appeared in the matter.

[45] It should be noted that the Attorney General was dismissed from the claim earlier in the life of this case.

**Disposition**

[46] The claim is dismissed in its entirety. Each party to bear own costs.