JMSC 2012 Civ. 143

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2011 HCV 0084

BETWEEN	**CANDINE ANDERSON**	**CLAIMANT**
A N D	**THE ATTORNEY GENERAL OF JAMAICA**	**DEFENDANT**

Alethia Whyte for Defendant/Applicant instructed by Director of State Proceedings.

Catherine Minto for Defendant/Respondent instructed by Nunes, Scholefield, DeLeon & Company.

IN CHAMBERS

HEARD FEBRUARY 10 & 17, 2012

CORAM: ANDERSON, K. (J.)

[1] An Interlocutory Application of the Defendant has come before this Court for determination, upon a further Amended Notice of Application for Court Orders which was filed on February 8, 2012. In that Amended Application, the Defendant has sought three reliefs, being as follows:

(i). The Defendant be granted leave to withdraw the admission as to liability made in the Acknowledgement of Service of Claim Form dated the 10th of March, 2011; and

(ii). The judgment on admission dated the 8th of April, 2011, be set aside and

(iii). The time for the filing and serving of the Defence be extended until August 2, 2011, and the Defence filed and served on August 2, 2011 be allowed to stand.

There are four grounds upon which the Applicant was seeking these Orders, but upon hearing the Defendant's Amended Application, this Court permitted one further ground to be added thereto, so as to thereby have enabled the grounds upon which the Orders were being sought, to be as follows:-

(1) The delay in the filing of the Defence was not deliberate and was not inordinately long; and

(2) The admission as to liability in the Defendant's Acknowledgment of Service of Claim Form was made in error; and

(3) The Judgment on admission as entered against the Defendant was irregularly obtained, as it failed to satisfy Rule 14.8 (1) (c) (i) of the Civil Procedure Rules (hereinafter referred to as 'the C.P.R.') and

(4) The granting of the Orders sought will not prejudice the Claimant and an Order for costs will be sufficient in the circumstances.

(5) The issue to which the application to withdrew relates, is a triable issue and one on which the defence has a reasonable prospect of success.

[2] During the course of the hearing of the Defendant's Amended Application, Ms. Minto conceded, correctly to my mind, that if the Judgment on admission as was obtained by the Claimant against the Defendant, was irregularly obtained, then that Judgment must, of necessity, be set aside. In this regard of course, separate considerations must be taken into account by this Court, from those considerations which pertain to whether or not the Defendant ought to be permitted to withdraw its admission as made in the Acknowledgment of Service of Claim Form which the Defendant filed as its first document in response to the Claimant's Claim. For the purposes of this adjudication, I will address the issue of whether or not the Judgment on admission was irregularly obtained, because if that be so, then this Court need go no further in addressing the other legal issues vis –a –vis the admission itself. Before commencing that exercise however, I must make it clear at the onset that it is not the entirety of the Judgment on admission which the Defendant is actually seeking to have be set aside at this

time, although, truth be told, the further Amended Application for Court Orders as filed by the Defendant, by no means makes this clear. Instead, it is by means of the Affidavit evidence as filed by the Defendant in support of his Amended Application, along with the written and oral submissions made to this Court by the Defendant's Counsel, in respect of this particular matter, which instead, makes this clear.

[3] In order to understand the precise nature of the admission which the Defendant now seeks this Court's leave to retract and/or to have as the Judgment based thereon, be set aside, it is first necessary to consider the overall nature of the Claimant's Claim as against the Defendant. This Claim was begun by means of Claim Form and was filed arising out of a very tragic occurrence which took place in relation to the Claimant and several other persons at the Armadale Juvenile Correctional Centre at Alexandria, Saint Ann on May 22, 2009, wherein a fire engulfed that facility on that fateful day and caused the loss of lives, serious burn and other injuries and also economic loss, both to Jamaica and to the individuals who either worked or were resident at that facility, at the material time. The Claimant was a juvenile at the material time, who had been resident at that facility and a consequence, suffered severe burn injuries. Arising from same, she instituted her Claim against the Defendant seeking Damages for Negligence and/or Breach of Statutory Duty and Aggravated damages and/or Compensation pursuant to the provisions of section 25 of the Jamaica (Constitution) Order in Council, 1962 and/or The Bill of Rights arising from the manner in which the Claimant was treated and confined at the Armadale Juvenile Correctional facility and which contributed to or led to the fire on May 22, 2009.' The Claimant also sought by means of her Claim, interest, costs and such further and/or other relief as this Honourable Court deems just.

[4] It is the Defendant's admission as to liability in respect of the Claimant's Claim for constitutional relief, pursuant to either Section 25 of the Constitution of Jamaica and/or pursuant to the Bill of Rights, that the Defendant contends he

should now be permitted to withdraw, or alternatively, that the Judgment based on that admission ought now to be set aside by this Court. The Defendant has further contended that he has a good Defence to this aspect of the overall Claim, since the Claimant's Claim as pleaded does not entitle her to the constitutional redress which she is seeking and in addition, the Claimant has available to her, adequate alternative means of redress and is thereby precluded from obtaining constitutional redress, as if this assertion is correct, then Section 25 (2) of the Jamaica Constitution expressly so precludes. It should be noted that section 19 (4) of the Charter of Rights, whilst not expressly precluding the obtaining by an Application of constitutional redress on this ground, nevertheless entitles this Court to decline to exercise its powers and instead, remit the matter to the appropriate Court, tribunal or authority, if it is satisfied that adequate means of redress for the contravention alleged are available to the person concerned under any other law. Thus, whereas under section 25 (2) – the former law, relief must be declined where adequate alternative means of redress exist, this is not so under the law at present - Section 19 (4) of the Charter of Rights. Thus, this Court has discretion as to whether to grant or refuse relief in circumstances wherein, adequate alternative means of redress exist in relation to an Applicant's Claim for Constitutional redress.

[5] In the Defendant's Acknowledgement of Service of Claim Form, the Defendant responded, in answer to the question. 'Do you intend to defend the Claim?' 'Yes (as to quantum).' The next question on that document, as was answered by the Defendant, was 'Do you admit the whole of the Claim?' 'No.' The very next question on that document was – 'Do you admit any part of the Claim? 'Yes (as to liability).' Thus, the Defendant made it very clear, in his Acknowledgement of Service of Claim Form, that he was not disputing liability in any respect, as regards the Claim which was served on him by the Claimant. The only dispute as between the Claimant and the Defendant was to be as regards the quantum of damages, as this was the only aspect of the Claim that the Defendant had, at least at that time, intended to defend against. The Defendant

has filed three (3) affidavits in support of his further Amended Application as set out above. All of those Affidavits have been deposed to by the sole counsel, who appeared before this Court in Chambers, upon the Defendant's further Amended Application and who in fact, advocated on the Defendant's behalf in that regard. These Affidavits were filed respectively, on June 2, 2011 and December 7, 2011 and February 8, 2012. There was a fourth Affidavit filed by the Applicant which although related indirectly to the matter at hand, was filed in response to an Affidavit of Ms. Catherine Minto, arising from the Claimant's earlier heard and determined Application to bring the hearing date of the Defendant's present application forward. As this Affidavit is at best, only marginally if at all relevant to the specific matter which is now at hand, I will refer to the same no further in this Judgment.

I will refer, initially, to the first of these three Affidavits, in the next paragraph of this Judgment. Interestingly enough, the Defendant's Original Notice of Application for Court Orders which was filed on June 3, 2011, had only sought permission for the Defendant to be granted leave to file and serve her Defence out of time. In the grounds of that original Application, there was stated as follows:-

> **'The Defendant is not disputing liability but wishes to be heard on the question of damages!'** (Emphasis mine).

Thus, it is not surprising that in the first of the Defendant's three Affidavits in support, Ms. Whyte deponed as follows:- '**On March 11, 2011, an Acknowledgment of Service of Claim Form was filed and served on behalf of the Defendant which indicated an intention to defend the Claim as to quantum and an admission of the Claim as to liability. A copy of this Acknowledgment of Service of Claim From is exhibited hereto and marked "AW1" for identification."** (Emphasis mine). This is important because it concerns the issue of the Defendant's delay in seeking to set aside its admission as to liability. The Defendant in his Acknowledgment of Service of Claim Form, has specified therein that he received the Claim Form and Particulars of Claim herein, on February 24, 2011. The Acknowledgment of Service was filed by the

Defendant on March 11, 2011. The Original Application as filed was only for an extension of time within which to file a Defence and in that Application, the Defendant was still wholly admitting liability with respect to the entirety of the Claim as was filed. That original Application was filed on June 2, 2011 and the Affidavit in Support thereof as has been referred and quoted from above, was also filed on June 2, 2011. It is not precisely known by this Court as to when the Defendant come to the realization that he had, as certainly is now one of the Defendant's allegations which is before this Court for consideration, made an error as to its admission as to liability in respect of the entirety of the Claim. What is clear however, is that it was not until December 7, 2011, that the Defendant filed her Amended Notice of Application for Court Orders and that Ms. Alethia Whyte – Counsel for the Defendant herein, deposed to the second of three (3) Affidavits filed by the Defendant in support. It was not until that Amended Application and Affidavit in Support were filed by the Defendant, that it became clear to this Court, that the Defendant was no longer admitting liability as to the whole of the Claim, but instead was then contending that the Defendant had made the admission as to liability, certainly insofar as the Claimant's Claim for constitutional redress is concerned, 'in error.' Clearly therefore, it was certainly not before December 7, 2011, that the Claimant's Attorneys for the purposes of the present Claim and thus, by extension, the Claimant would have become aware that the Defendant was then so contending. It is important to note at this juncture that neither has there been any reason offered as to why such an 'error' (as alleged by the Defendant) occurred, nor as to why it took as long as it did (nearly nine (9) months), to have recognized that it had made such error.

[6] By then (December 7, 2011) though, the Claimant had significantly moved on, in seeking to bring Court proceedings in respect of her Claim, to a conclusion. In that regard, the Claimant had, on April 8, 2011, filed a Request for entry of Judgment on admission, against the Defendant, pursuant to Rules 14.1, 14.8 and 16.3 of the Civil Procedure Rules. The Claimant contended, in that Request, that Judgment on admission should be entered as against the

Defendant, bearing in mind that the Acknowledgement of Service filed by her, had admitted liability. This was certainly a course of action which was appropriate in the circumstances, for the Claimant to have taken, bearing in mind the relevant provisions of Jamaica's Civil Procedure Rules in that regard. **Rule 14.1 (3) thereof, provides that – 'A Defendant may admit the whole or part of a Claim for money by filing an acknowledgment of service containing the admission. Rule 14.1 (4) (c) provides that – 'The Defendant may do this in accordance with the following rules – (c) rule 14.8 (admission of whole of Claim for unspecified sum of money).** This Court concludes that the Defendant did in fact, in his Acknowledgment of Service admit to liability to pay the whole of the Claim. What the Defendant made no admission to, was the quantum of damages that would inevitably have to be assessed by this Court, arising from the Defendant's admission as to liability in respect of the whole of the Claim. This follows, to mind, as a matter of inexorable logic, arising from the Defendant's admission in his Acknowledgement of Service of Claim Form, that the part of the Claim which the Defendant was therein admitting to, was as to liability. Whilst it is true that the Defendant stated therein that he did not admit to the whole of the Claim, it nonetheless only stated in the same, that he intended to defend the Claim, **'as to quantum.'** (Emphasis mine) and that the 'part of the Claim' which it admitted to, was as to liability. This must be so, bearing in mind that a Request for Judgment on admission, pursuant to Rule 14.1 (4) read along with Rule 14.8, does not entitle the party that obtains such Judgment on admission, to thereby obtain, by that means alone, any specific sum as damages. It is the Registrar who will enter the Judgment on admission, once the prerequisite requirements for such as specified in Rules 14.1 (4) and 14.8, have been met. **Rule 14.8 (4) provides that 'Judgment will be for an amount to be decided and costs.'** Thus, the damages aspect of the Claim which the Defendant had clearly indicated in its Acknowledgment of Service of Claim Form that he intended to contest, could still be contested by the Defendant at the assessment of damages hearing. How then could it be that if there is a non-admission as to the whole of the Claim, with such non-admission being only as to

quantum of damages, but not in any respect whatsoever as to liability, insofar as any aspect of the overall Claim is concerned, that in such circumstances, the Registrar could not enter a Judgment on admission which must, of necessity relate only to **liability in respect of the whole of the Claim?** If it were to be understood otherwise, then why would it be that whereas it is the Registrar who must enter Judgment on admission as to liability to pay the whole of Claim for an unspecified sum of money, it is the Court that must thereafter, go about the task of assessing damages, in the course of which task, the Defendant will be entitled to play an active role, at least insofar as the cross-examination of witnesses and the making of submissions to the Court as to quantum of damages is concerned? See on this – Rexford Blagrove and Metropolitan Management Transport Holdings Ltd, and Lloyd Hutchinson – Supreme Court Civil Appeal No. 111 of 2005 -Motion No. 6/2006. In the circumstances, I must reject this contention as placed before me by the Defendant's counsel, that the Judgment which was entered by the Registrar was irregular as application for the entry of same and by extension, a Judgment on admission, could not lawfully have been entered in the particular circumstances of this particular case, pursuant to the provisions of Rule 14.8 of the Civil Procedure Rules.

[7] This however, is not the end of the matter, insofar as the issue of whether or not the Judgment on admission as entered in respect of this Claim, against the Defendant, on April 8, 2011 and which was made known to the Defendant by means of the service thereof, on her, on June 23, 2011, should be set aside. This is because this Court had asked of the Claimant's counsel, whether or not the Claim for constitutional redress could have been properly brought before this Court by means of a Claim Form. To this question, the Claimant's counsel answered 'Yes' and referred this Court to aspects of the Jamaican Court of Appeal's Judgment in the case of **Doris Fuller v Attorney General case (1988) 35 J.L.R. 525** and also, to the **Constitutional Redress Rules (1963)**. The Defendant advanced no response to this Court in answer to the question which had been posed by this Court, to the Claimant's counsel in that regard. It is thus

now left to this Court to answer the question as to whether the Claimant's Claim for Constitutional redress as made pursuant to the provisions of Section 25 of the Jamaican Constitution or alternatively, Section 19 (4) of the Charter of Rights could have been initiated by Claim Form and following on that, whether the Judgment on admission, as was obtained by the Claimant, based wholly on proceedings begun by Claim Form, would or would not, insofar as the aspect of the Claim for constitutional redress is concerned, be a regular or an irregular Judgment. In order to answer this question, this Court must pay careful regard to the provisions of Section 25 of the Constitution of Jamaica, which were replaced **ipassima verba** by the provisions of **Section 19 (3) of the Charter of Fundamental Rights and Freedoms** (hereinafter referred to as "the Charter") **Section 19 (3) of the Charter, provides as follows:**

> **'Parliament may make provision, or may authorize the making of provision, with respect to the practice and procedure of any court for the purposes of this section and may confer on that court such powers, or may authorize the conferment thereon of such powers, in addition to those conferred by this section as may appear to be necessary or desirable for the purpose of enabling that court more effectively to exercise the jurisdiction conferred upon it by this section.'**

Parliament has in fact authorized the making of such provisions as referred to in Section 19 (3) of the Charter and before that, Section 25 (2) of the Jamaican Constitution. Such was done by means of the enactment into law, of the **Judicature (Rules of Court) Act (1961)**, which has provided, in **Section 3 (1) thereof, that – 'There is hereby established a Committee to be known as the Rules Committee of the Supreme Court' Section 4 (1) of that Act, also provides that – 'It shall be the function of the Committee to make rules (in this Act referred to as "rules of Court") for the purposes of the Judicature (Appellate Jurisdiction) Act, The Judicature (Supreme Court) (Additional Powers of Registrar) Act, the Justices of the Peace (Appeals) Act, The Indictments Act and any other law or enactment for the time being in force**

relating to or affecting the jurisdiction of the Supreme Court, or the Court of Appeal or any Judge or Officer of such respective Court.' As I understand this provision, since there can be no doubt that Section 19 (3) of the Charter sets out the jurisdiction of Jamaica's Supreme Court as regards Claims for Constitutional Redress pertaining to alleged breaches/violations of a person's constitutional rights, then the Rules Committee would be empowered, by virtue of the aforesaid provisions of Section 4 (1) of the Judicature (Rules of Court) Act to make Rules of Court regulating the practice and procedure to be followed by the Supreme Court of Jamaica whenever a Claim for constitutional redress either made pursuant to Section 25 (2) as previously existed, of the Constitution of Jamaica which provision has been replaced with Section 19 (3) of the Charter – which is worded just as was Section 25, is before the Supreme Court of Jamaica for adjudication. Section 4 (2) (a) of the Judicature (Rules of Court Act) is therefore very relevant and apposite, since that provision specifies as follows;_ **"Rules of Court may make provision for all or any of the following maters – (a) for regulating and prescribing the procedure (including the method of pleading) and the practice to be followed in the Court of Appeal and the Supreme Court respectively in all causes or matters whatsoever in or with respect to which those Courts respectively have for the time being Jurisdiction (including the procedure and practice to be followed in the offices of the Supreme Court, and any matters incidental to or relating to any such procedure or practice, including (but without prejudice to the generality of the foregoing provision) the manner in which, and the time within which, any applications, appeals or references which under any law or enactment may or are to be made to the Court of Appeal or the Supreme court or any Judge of such, respective Court, shall be made."**

[8] I have gone through the provisions of the Charter and the Judicature (Rules of Court) Act, to make it clear that I am of the view that the Civil Procedure Rules which were enacted on September 16, 2002, lawfully regulate the procedure to be followed by this Court in mattes such as concern a Claim for

constitutional redress arising from an alleged human rights violation in relation to someone. The Civil Procedure Rules were enacted as Rules of Court, pursuant to the provisions of Section 4 of the Judicature (Rules of Court) Act. Those Rules came into effect on January 1, 2003 and it was specifically provided for, in the preamble to those Rules, that **'All Rules of Court relating to the procedure in Civil Proceedings in the Supreme Court, save for those relating to insolvency (including winding up of companies and bankruptcy), and matrimonial proceedings are hereby revoked."** The effect of this stipulation, is that the Civil Procedure Rules and in particular the provisions of Part 56 thereof, as pertain to applications for 'relief' under the constitution, have repealed the Judicature (Constitutional Redress) Rules, 1963, which were earlier Rules of Court made under the Judicature (Rules of Court) Act and which pertained to the practice and procedure to be followed before this Court in respect of an Application for Constitutional Redress which may have been made by any person who alleged that the provisions of Sections 14-24 (these being the then existing fundamental rights provisions) inclusive of the Constitution, either had been, or was being, or would likely be contravened in relation to him. Rule 56.9 or the Civil Procedure Rules sets out how an Application for an 'Administrative Order' is to be made. It is in fact, insofar as the Claimant's Claim for Constitutional Redress is concerned, a Claim for an 'Administrative Order' that is being sought by the Claimant. This is so because the Claimant's Application is an Application for relief under the Constitution. As such, when one reads Rule 56.1 (1) along with Rule 56.1(2), it is evident that any Claim for relief under the Constitution is to be termed as an 'application for an administrative order.' It is true that the Claimant, although seeking relief under the Constitution is only now seeking to be awarded damages as compensation from that which she contends has been the violation of her right not to have been subjected to torture, or inhuman or degrading punishment or other treatment. The Civil Procedure Rules addresses just such a situation as this, by providing at **Rule 56.1(4), that, "In addition to or instead of an administrative order the Court may, without requiring the issue of any further proceedings, grant :- (a) an injunction; (b) restitution or**

damages; or (c) an order for the return of any property, real or personal.' Rule 56.9 of the Civil Procedure Rules specifies the manner in which an application for an Administrative Order is to be made and it certainly is not to be made by Claim Form. Instead, a Claim such as the one made by the Claimant herein ought to have been made by means of a Fixed Date Claim Form specifying therein that the Claim is for relief under the constitution in particular, Section 25 (3) thereof – bearing in mind that the Charter would be inapplicable to the matter at hand, as it cannot affect matters which occurred prior to the Charter having become law in Jamaica. In other words, the Charter cannot have retrospective effect. The Charter was signed into law by the Governor General on April 7, 2011 and is instituted as Act No. 12 of 2011. Thus it was not before April 7, 2011, that the provisions of the Charter became part and parcel of the Jamaican Constitution. As has been stated by me in this Judgment, at paragraph 3 above, the incidents and situations in respect of which complaint has been made by the Claimant in her Claim, pertain to matters that had allegedly occurred in relation to her up to no later than May 22, 2009, which is when the Armadale Juvenile Correctional Centre Facility burnt down and resulted in the loss of life, property and also great mental anguish for many, not to mention physical and other injuries to a fairly large number of persons. Thus, the Charter can have no applicability whatsoever to the matter at hand, since as aforementioned, the Charter's provisions ought not to be given, by this Court or any other Court for that matter, retrospective effect.

[9] Apart from the requirement that the Claimant should have brought her Claim for an 'Administrative Order,' before this Court by means of a Fixed Date Claim Form, additionally, an Affidavit in Support thereof, was to have been filed and that Affidavit would have had to have specified certain particulars therein. Of course though, this Court not only notes, but accepts that even where a Fixed Date Claim Form is used to commence proceedings, there are situations in which Particulars of Claim can be filed along with the Fixed Date Claim Form, in place of any Affidavit evidence. However, I am not of the view that the Rules permit

this course to be taken, in a situation wherein the Rules expressly mandates, as is required by **Rule 56.9 (2) of the Civil Procedure Rules that – 'The Claimant must file with the Claim Form evidence on Affidavit.'** I am of the view that this Court has no discretion whatsoever to waive the requirements of Rule 56.9 (2) in that regard. This is so, because those requirements have been expressed in mandatory terms. Whilst this Court does have a discretion in certain circumstances, to waive non-compliance with the Rules of Court by a litigant, this Court ought not and indeed cannot lawfully do so in circumstances wherein the objective of the Rules would be entirely thwarted as a consequence. On this point, see **Dorothy Vendryes and Dr. Richard Keane and Karene Keane – Supreme Court Civil Appeal No. 101/2009, esp. at paragraphs 12, 27 and 34, per Harris J.A.** In addition, if this Court is to be called upon to exercise such a discretion, then proper material in the form of evidence must be placed before this Court, in order to lawfully enable this Court to exercise its discretion in a party's favour. This Court ought not to be expected to exercise its discretion in a party's favour, in a vacuum, or on a whim. See similar points in this regard, as made by the Jamaican Court of Appeal in **Allen v Mesquita Supreme Court Civil Appeal No. 8 of 2011 at paragraphs 14-23, per Harris, J.A.** In any event though, this Court has not been asked by the Claimant to exercise such a discretion. Instead, the Application which is now before this Court is one seeking the withdrawal of a Judgment on admission. I am of the considered opinion that the Judgment obtained by the Claimant in that regard is, in the circumstances, an irregular one and must, of necessity, be set aside – albeit not for any of the reasons as advanced in relation thereto by the Defendant's counsel. I am fortified in my conclusion in that regard by the provisions of **Rule 8.1 (4) of the Civil Procedure Rules which provide that – 'Form 2 (fixed date Claim Form') must be used - …..(e) Whenever its use is required by a rule or practice direction.'** Once again, this is another Rule of Court which has been expressed in mandatory terms and thus, must be followed. It is apparent that in circumstances such as obtained in this case, the Claimant's Claim for damages based on the law of tort, as was properly made (initiated) by means of Claim

Form, could not properly have been joined along with the Claimant's Claim for constitutional redress, which should have been made/initiated by means of Fixed Date Claim Form. Instead, these proceedings should have been begun separately, by means of a Claim Form and Fixed Date Claim Form respectively and thereafter, the constitutional redress proceedings as would have been begun by Fixed Date Claim Form could have been converted to Claim Form proceedings and also this Court could have then also requested to consolidate those proceedings with the other Claim Form proceedings wherein the Claimant is seeking damages based on the law of tort. Thus by such means, the same objective could have been achieved by the Claimant, but in a lawful way. As things have turned out however, this is not what transpired and ergo, this Court is of the considered opinion that the Judgment on admission as entered/obtained against the Defendant insofar as the Claimant's Claim for constitutional redress is concerned, was irregularly entered/obtained and must be set aside.

[10] I will end this Judgment by stating that whilst I have given some consideration to the Defendant's Application for withdrawal of her admission, I should state firstly in that regard, that since it was not the entirety of the admission that the Defendant was seeking to withdraw, but instead, only part thereof, this being the admission as to liability in respect of the Claimant's Claim for constitutional redress, then the precise nature of the Application that should have been made to the Court in that regard, is an Application to amend the admission, rather than one to withdraw that admission altogether. Nonetheless, the legal principles applicable as to whether one seeks to withdraw or amend an admission, are the same and Rule 14.1 (6) of the Civil Procedures Rules permits such an Application to be made. Let me state that arising from the determination which I have made, for the reasons set out above, it has not become necessary for me to determine whether or not the Defendant should, at this stage, be permitted to amend her admission and thus, I will not so determine. Suffice it to state though, that bearing in mind the length of the delay in the making by the Defendant of its Application to withdraw its admission and there having been no

reason given for that extensive delay and also bearing in mind the as yet unexplained basis for the error as was allegedly made by the Defendant in having filed and served the unqualified admission as to liability, the Defendant is perhaps fortunate that this Court is of the view that the Judgment which has emanated from the making by the Defendant of such admission, is an irregular one. I will state no more on this point.

[11] In the circumstances, all that now remains for this Court to do, is to either make certain case management Orders in respect of the assessment of damages hearing which is presently scheduled to be held on February 24, 2012, or alternatively, to now vacate the Order scheduling that hearing date, in order that, if the Claimant should wish to do so, she can file a Fixed Date Claim Form seeking constitutional redress/relief. This Court wishes to hear submissions from the parties in that regard, so as to enable it to make an Order in respect thereof that best accords with the interests of Justice.

[12] This Court Orders as follows, after having heard the parties in this regard:-

(i) The Claimant's Claim for constitutional relief, as forms part and parcel of Claim No. 2011 HCV 00844, is hereby struck out.

(ii) Judgment on admission as entered against the Defendant on the 8th day of April, 2011, as regards the Claimant's Claim for constitution redress, is set aside.

(iii) Assessment of damages hearing scheduled for February 24, 2012, is vacated.

(iv) Costs to be costs in the Claim.

(v) Defendant shall file and serve this Order.

(vi) Claimant is hereby granted leave to appeal Orders Nos. 1 and 2 above.

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Honourable Kirk Anderson (J.)