



COURT OF APPEAL
Public Building West,
King Street, Kingston
Telephone# (876) 633-7201
Email registry@courtofappeal.gov.jm
Website www.courtofappeal.gov.jm

**NOTICE TO PARTIES OF THE COURT'S
MEMORANDUM OF REASONS FOR JUDGMENT/DECISION**

SUPREME COURT CIVIL APPEAL NO 29/2018

BETWEEN FRED CAMPBELL APPELLANT
AND THE ATTORNEY GENERAL RESPONDENT

TAKE NOTICE that this matter was heard by the Hon Mrs Justice McDonald-Bishop JA, the Hon Miss Justice Simmons JA and the Hon Mr Justice Brown JA on the 6th day of March 2023, with Curtis Cochrane for the appellant and Miss Faith Hall instructed by the Director of State Proceedings for the respondent.

TAKE FURTHER NOTICE that the court's memorandum of reasons as delivered orally in open court by Simmons JA is as follows:

[1] This is an appeal against the judgment of Jackson-Haisley J delivered on 23 February 2018, whereby judgment was entered in favour of the respondent, the then defendant.

[2] Mr Fred Campbell ('the appellant') was formerly employed to the Ministry of Justice ('the Ministry') as a project manager under a contract that was slated to last for three years commencing 3 May 2011. The contract was terminated without cause seven months prior to its expiration and he was paid one month's salary in lieu of notice in accordance with the "Termination" clause contained in the contract as well as the requisite gratuity.

[3] The appellant, who was dissatisfied, filed a claim in the Supreme Court for damages for breach of contract in which he averred that he was entitled to three months' notice pay in accordance with Circular No 15, dated 8 May 2012, issued by the Ministry of Finance and Planning. The circular, which is intitled "Fixed-Term Contract Officers Policy Guidelines", superseded those contained in Circular No 11 that is dated 23 September 1997. Both circulars provide for three months' notice where either party wishes to terminate a contract of three or more years. The appellant claimed the additional sums that would have been due to him had he been given three months' pay in lieu of notice. He also claimed salary and upkeep allowance for the unexpired period of the contract.

[4] The appellant who was dissatisfied with the learned judge's decision, filed a notice of appeal on 29 March 2018, challenging the following findings of fact:

1. That the evidence of the defendant's sole witness was more credible than that given by the appellant; and
2. That Circular No 11 was not applicable in the interpretation of the contract.

[5] The appellant also challenged the finding of law that there had been no breach of contract.

[6] At the commencement of the hearing of the appeal, counsel for the appellant sought and was permitted to abandon grounds a, b, c, d and f of the grounds of appeal. The sole remaining ground (ground e) is that:

The learned judge erred in not finding that Circular No 11 was applicable to the interpretation of the contract and that the Permanent Secretary in the Ministry of Justice had a duty to ensure that guideline 5 "Termination" was applied to the appellant's contract.

[7] Mr Cochrane argued that based on **Aeden Earle v National Water Commission ('Aeden Earle v NWC')** [2014] JMSC Civ. 69, the Ministry was

expected to abide by the terms in Circular No 11. He submitted that the terms of the circular were incorporated into the contract and the Ministry by failing to act in accordance with those terms, breached the said contract.

[8] Miss Hall, on behalf of the respondent, submitted that the learned judge was correct and that **Aeden Earle v NWC** did not assist the appellant's case. She argued that, based on that case, the terms of the circular could only be incorporated into the contract if something had occurred that was not expressly provided for in the contract. She stated that that was not the case in this matter, as the contract dealt with termination. Pertaining to the claim for aggravated and exemplary damages, counsel stated that the claim should not be considered by this court as there was no claim for those remedies in the court below. It was also submitted that there was no basis for such an award.

[9] Having considered the evidence, the reasons for judgment of the learned judge and the submissions of both counsel, we conclude that the learned judge was correct when she found that the provision of the circular dealing with termination was not incorporated into the contract. The contract expressly provided for the payment of one month's salary in lieu of notice and the respondent complied with that provision. This is evidenced by the letter of termination dated 31 October 2013. In addition, we note that the appellant was paid a gratuity although the contract was terminated prior to the completion date. He was entitled to no further payments.

[10] There was freedom of contract and there was no breach of contract as the learned judge rightly found. In **Printing and Numerical Registering Co v Sampson** (1875) LR 19 Eq 462, Sir G Jessel, MR stated at page 465:

“[I]f there is one thing which more than another public policy requires it is that men of full age and competent understanding shall have the utmost liberty of contracting, and that their contracts when entered into freely and voluntarily shall be held sacred and shall be enforced by Courts of justice. Therefore, you

have this paramount public policy to consider - that you are not lightly to interfere with this freedom of contract.”

[11] In the circumstances, we make the following orders:

1. The appeal is dismissed.
2. Costs are awarded to the respondent to be agreed or taxed.