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A/M/L/S

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 7/2009

**BEFORE: THE HON. MR. JUSTICE SMITH, J.A.
 THE HON. MR. JUSTICE COOKE, J.A.
 THE HON. MRS. JUSTICE HARRIS, J.A.**

**BETWEEN VANESSA MASON APPELLANT
AND THE UNIVERSITY OF THE WEST INDIES RESPONDENT**

**Ms. Fara Brown instructed by Norman Manley Law School Legal Aid
Clinic for the appellant.**

**Christopher Kelman and Ms. Lisa Russell, instructed by Myers Fletcher
& Gordon for the respondent.**

March 16, 17, 18, and July 2, 2009

SMITH, J.A.

I have read the draft judgments of Cooke and Harris, JJA. I agree with their reasons and conclusions and there is nothing further that I wish to add.

COOKE, J.A.

1. For the purpose of this appeal, correspondence pertaining to the matter sufficiently provides an adequate background. This correspondence I will now reproduce.

"(i) September 30, 2008

Dear Miss Mason

Notice of Complaint

It was brought to my attention that on September 27, 2008 in the afternoon an altercation took place between yourself and Jodi-Ann Grant on Block H Mary Seacole Hall.

During this encounter with Miss Grant it is reported that you stood on the corridor of middle floor H and used several expletives and that generally your language was extremely offensive. Additionally, it was pointed out that there were several visitors on the hall at the time including parents of other residents who were witnesses to your utterances. It was also reported that students from other blocks and also of Block H gathered on the corridors to listen to what was happening.

It is indeed unfortunate that this incident had to be played out the way it did, especially given our belief that all that is required for us to live in this community is the maintenance of 'good manners' as stated in the Charter of Hall Principles and Responsibilities. Nevertheless, when we see where a possible breach of these same Standards has occurred we are obligated to act, in accordance with these core principles. This same Charter also speaks clearly to the fact that students of Mary Seacole Hall should *"not use expletives or make derogatory and inflammatory remarks"*.

The Hall Standards stipulate that "behaviour contrary to accepted norms is subject to disciplinary action".

This serves as official notice that the Disciplinary Committee will meet on October 5, 2008 at 7pm to hear the case. At this hearing you can be represented by a friend. After the completion of this hearing you will be given written notification of the outcome of the hearing. The Hall Standards further

stipulates that upon receipt of this official notice of complaint you are required to respond in writing within three days.

Yours sincerely

Nadeen Spence (Miss)
Student Services and Development Manager".

(ii) October 6, 2008

Miss Vanessa Mason
Block H
Mary Seacole Hall
The University of the West Indies
Mona

Dear Miss Mason

The Hall's Disciplinary Committee met on Sunday, October 5, 2008 in the Conference Room of the Mary Seacole Hall main office to consider the altercation which transpired between yourself and Miss Jodi Ann Grant on Hype Block on Saturday September, 27 2008. According to details of the report, on the morning of the incident both Miss Grant and you got into an argument during which you used language that was profane and offensive. *The Charter of Hall Principles and Responsibilities*, states clearly that students are 'not to use expletives or to make derogatory and inflammatory remarks'

Your behaviour constitutes a serious breach of these standards and therefore the Committee has taken the decision to expel you from the hall effective October 11, 2008.

I would like to point out to you that the decision to ask you to leave is by no means an easy one, but we believe that given the sentiments that you had expressed concerning your feelings of alienation from the hall and the expressions of hostility that you have for members of your Block and the hall in general this

is the only decision which can be taken.

I would like to refer you to your chaplain, Father Shields, because I believe that there are some underlying issues which you had mentioned in our discussions which need to be addressed, but this can only be done when and if you recognize the need for an intervention.

As stated in the "Charter" you have the right to appeal this decision and this can be done in writing to the Director of Student Services and Development within seven (7) days of this decision.

Yours sincerely

Nadeen Spence (Miss)
Student Services and Development Manager

(iii) October 9, 2008

Dr. Thelora Reynolds
Director
Student Services and Development
University of the West Indies
Mona
Kingston 7

Dear Dr. Reynolds

Re: Expulsion of Vanessa Mason from Mary Seacole Hall

We have been consulted by Ms. Vanessa Mason concerning a letter dated October 6, 2008 informing of her expulsion from the Hall for using profanities/expletives and instructing that she vacate the Hall by October 11, 2008. We hereby appeal the expulsion on behalf of Ms Mason on the following grounds, including but not limited to:

1. That she was not afforded sufficient time to prepare and conduct her defence;

2. The disciplinary board was not properly constituted;
3. The student was not treated fairly in the adjudication process;
4. The rules of natural justice have not been adhered to;
5. That sanction is not consistent with the offence.

We also urge that due consideration be given to the welfare of the student and her circumstances as a foreign national. We expect that in light of these circumstances and the fact that an appeal is now pending that Ms. Mason's expulsion from the Hall would be stayed.

Yours sincerely,
Fara Brown (Ms.)
Attorney-at-Law

bc. Mr. Carl Lawrence
Legal Office
c/o Principal's Office
Mona
Kingston 7

(iv) October 30, 2008

Miss Vanessa Mason
Room H21
Mary Seacole Hall
The University of the West Indies

Dear Miss Mason

The Mary Seacole Hall Disciplinary Committee having met on October 7, 2008 to hear the case involving an altercation between yourself and Miss Jodi Ann Grant and having found that you were guilty of misconduct found that you should have been expelled from the hall effective October 10, 2008.

Following this decision and your subsequent appeal it was decided that this decision would be set aside and that the Disciplinary Committee would reconvene to reflect the stipulated composition as outlined by the Charter of Hall Principles and Responsibilities. The Disciplinary Committee will meet to hear the complaint again. The Notice of Complaint states that on Saturday September 27, 2008 in a verbal altercation with another student, Jodi-Ann Grant, you used a number of expletives on the corridor of H block.

Please be advised therefore that the Disciplinary Committee will be convened on November 2, 2008 at 7pm to hear the matter. As is stipulated by the Charter you can respond to this letter in writing within three days of its receipt. If you have to be absent you can be represented by a friend. If you choose not to appear before the Committee the matter will proceed in your absence.

Yours sincerely

Nadeen Spence (Miss)
Student Services and Development Manager

(v) December 5, 2008
Miss Vanessa Mason
Mary Seacole Hall
The University of the West Indies
Mona Campus

Dear Miss Mason:

Re: Expulsion from Mary Seacole Hall

Documents pertaining to the captioned matter were referred to the Campus Legal Officer for advice. The Legal Officer stated that he has examined the allegations in your letter and also the points raised by Miss Fara Brown, Attorney-At-Law, who wrote to me on your behalf.

I note your expressions of breach of specific aspects of the Charter of Hall Principles and Responsibilities. I also note that you did not comply with Appendix B of the said Charter which states that a student in disagreement with the decision of a Disciplinary Committee may, within seven days of the decision "appeal in writing to the Director of Student Services".

After the matter was directed to me, an appointment was set for you to meet with me on October 10 at 8:30 a.m. to deal with the matter. You did not keep the appointment. You came to see me only after an e-mail dated October 14, 2008 from the Deputy Principal, addressed to you indicated "the Director of Student Services and Development should be the person to raise the matter with before coming to me". He suggested in the e-mail that you should see me on that day or the following day, as I would not be available to see you on Thursday and Friday.

The discussion with you was not completed when you came to see me on Wednesday, October 15, due to a previous appointment that I had. I asked you to put your concerns in writing and gave you an appointment for October 23 at 1:30 p.m. to discuss the concerns. Again, you did not keep the appointment, nor submit the written concerns.

Subsequent to the foregoing, in an effort to bring closure to the matter, you were invited to attend a meeting with the Hall Disciplinary Committee for the matter to be reheard. You did not attend, but was represented by Ms. Fara Brown, Attorney-At-Law who stated that she was attending the meeting in the capacity as "a friend". It was reported that the meeting had to be aborted on account of unacceptable behaviour displayed by Ms. Brown.

Based on the advice of the Campus Legal Officer with respect to the above matters, it is agreed that you vacate the Hall as of *Monday, December 22, 2008*, pending further investigation of this matter. You are required to comply with this directive.

Kindly acknowledge receipt of this correspondence by signing the attached copy.

Yours sincerely,

Thelora Reynolds, PhD
Director, Student Services and Development "

2. On the 16th January 2009 the appellant filed a claim seeking the following relief against the University of the West Indies:

- "1. Specific performance of the contract between the Claimant and the Defendant for the Defendant to provide accommodation to the claimant from August 2008 – May 2009;
2. Damages for breach of contract by unlawful termination thereof;
3. Interest on such damages due from the date of the purported termination of the said contract to the date of judgment and as such rate as this Honourable Court may deem just;
4. Costs and Attorney-at-Law cost;
5. Such further and other relief."

3. The Particulars of Claim are as follows:

- "1. The Claimant is and was at all material times a student of the University of the West Indies and resident at Room H21 Mary Seacole Hall, University of the West Indies, Mona, Kingston 7 in the parish of Saint Andrew;
2. The Defendant is and was at all material times a tertiary educational institution establish (sic) by Royal Charter on the 2nd April 1962;
3. In or about August 2008 the Defendant offered

- the Claimant accommodation by way of a contractual licence and the Claimant accepted the offer;
- 4. The duration of the contract is from August 2008 - May 2009;
- 5. In accordance with the contract the Claimant paid Hall fees, the Defendant allowed the Claimant into occupation, and the parties continued to act in pursuance of the contract thereafter;
- 6. On or about the 5th December 2008 the Claimant was informed that she should vacate the Mary Seacole Hall of Residence as of the 22nd December 2008;
- 7. The Claimant claims that the Defendant is in breach of the said contract and has acted unlawfully."

The particulars of the alleged breach were stated to be:-

- (a) Failed to provide the Claimant with accommodation as stipulated in Clause 1 of the contract;
- (b) Purported by the letter of 5th December 2008 to terminate the contract in contravention of Clause 19 of the said contract;
- (c) Purported by way of a letter dated 5th December 2008 to terminate the contract without giving reasons."

4. Clause 1 of the contract states:

- "1. The University shall provide the student with accommodation in a Hall of Residence during the academic year from the day of August 20.....To the day of May 20 Summer Residence may be granted at the

discretion of the Student Services Manager.”

Clause 19 of the contract states:

“19. The University may terminate this Agreement if the student is in breach of any of its terms or violates any of the rules or regulations of any Hall of Residence to which he/she is assigned or of the University. Where this Agreement is terminated in accordance with the provisions of this clause the University may (on the advice of the Student Services Manager) return to the student on pro-rated basis, (sic) a part of the fees paid for lodgings.”

5. By Notice of Application for Court Orders filed by the appellant on the 22nd

December 2008 ... the following orders were sought.

1. That the expulsion of the Claimant from Mary Seacole Hall, University of the West Indies, Mona Campus, Kingston 7 in the parish of Saint Andrew be suspended until the Claimant's claim is determined by this honourable court;
2. that the Defendant be restrained from expelling the Claimant from Mary Seacole Hall, University of the West Indies, Mona Campus, Kingston 7 in the parish of Saint Andrew;
3. that the Claimant be allowed to reside at Mary Seacole Hall, University of the West Indies, Mona Campus, Kingston 7 in the parish of Saint Andrew without interference or harassment from the Defendant their employees, servants or agents;
4. that the Defendant by their employees, servants, or agents be restrained from removing, damaging or interfering with the Claimant's property currently in situ at Mary Seacole Hall, University of the West Indies, Mona Campus, Kingston 7 in the parish of

Saint Andrew.”

6. The respondent, on the 13th January 2008 filed a Notice of Intention to rely on a preliminary point which was couched:

- “(1) The Defendant was incorporated by Royal Charter which provides for there to be a Visitor of the University exercising Visitorial Authority from time to time in relation to, inter-alia, examination, teaching and other activities of the University by such person or persons as may be appointed in that behalf.
- (2) The Claimant being an undergraduate of the Defendant and thereby a member of the Defendant, pursuant to statute 2 made pursuant to the Royal Charter, is not entitled to bring this action in this Honourable Court and must pursue the relief she seeks by an application to the Visitor.

In the circumstances, the Defendant contends that this Honourable Court has no jurisdiction to hear the Application brought by the Claimant.”

7. On the 19th January, Anderson J. dismissed the application for court orders, holding that the preliminary point succeeded. The appellant on the 22nd January 2009 filed a Notice of Appeal against the refusal of Anderson J., to grant the requested injunction. Before the hearing of this appeal a futile effort was made before Harrison J.A., for an injunction (in similar terms as that sought in the court below) pending appeal.

8. The appellant in its action in the court below sought relief for what she

complained was a breach of contract by the respondent in directing that she should vacate the hall of residence (see letter of 5th December, 2008, supra). The issue before this court is whether or not the civil courts have jurisdiction to hear such a cause of action. The court below answered in the negative. The appellant contends in this appeal that the court below was in error in arriving at that decision. The burden of the appellant's submission was that:-

"the jurisdiction of the Visitor is limited to the application and interpretation of the internal laws of the University and does not encompass the common law of contract. It is further alleged that the breach of contract upon which the Appellant relies in her claim does not depend on or concern the application or interpretation of the internal laws of the University and is therefore outside the jurisdiction of the Visitor."

9. Paragraph 6 of the Charter provides as follows:

"We, Our heirs and Successors, shall be and remain the Visitor and Visitors of the University and in the exercise of the Visitorial Authority from time to time and in such manner as We or They shall think fit may inspect the University, its buildings, laboratories and general work, equipment, and also the examination, teaching and other activities of the University by such person or persons as may be appointed in that behalf."

Paragraph 3(o) of the Charter empowers the University –

"To establish and maintain and to administer and govern institutions and places for the residence, recreation and study of the officers, staff, students and guests of the University, whether College Halls, Houses or otherwise, and to license and supervise such institutions

and other places whether maintained by the University or not so maintained.”

It would seem incontestable that visitorial capacity embraces every aspect in respect of the governance of all the activities within the purview of the University. Further the University administers and governs the halls of residence.

10. (a) There can be no doubt that where the visitorial jurisdiction exists it is an exclusive jurisdiction. In **Thomas v. University of Bradford** [1987] 1All E.R. 834, the headnote is as follows:

“Held – The jurisdiction of a university visitor, which was based on his position as the sole judge of the internal or domestic laws of the university, was exclusive and was not concurrent with the courts’ jurisdiction. The scope of the visitor’s jurisdiction included the interpretation and enforcement not only of those laws themselves but also of internal powers and discretions derived from them, such as the discretion which necessarily had to be exercised in disciplinary matters. Accordingly, if a dispute between a university and a member of the university over his contract of employment with the university involved questions relating to the internal laws of the university or rights and duties derived from those laws, the visitor had exclusive jurisdiction to resolve that dispute. Furthermore, in exercising that jurisdiction the visitor could order the university to reinstate a member and pay arrears of salary or to pay damages in lieu of reinstatement. Since the plaintiff’s dispute centered on the charter, statutes, ordinances and regulations of the university and whether they were correctly applied and fairly administered, it followed that the visitor had exclusive jurisdiction.”

(b) In respect of the scope of the visitorial jurisdiction, I will cite two passages from the speeches of Lords Griffiths and Ackner in **Thomas**. At p. 843 (c) Lord Griffiths said:

“The jurisdiction derives from the visitor’s position as a judge of the internal laws of the foundation.....”

At p. 851 g, Lord Ackner said:

“In order to consider the scope of the visitorial jurisdiction the historic basis and justification for the jurisdiction must first be considered. An eleemosynary corporation is a corporation founded for the purpose of distributing the founder’s bounty. The purpose of the visitor’s jurisdiction is the supervision of the internal rules of the foundation so that it is governed in accordance with those private laws which the founder has laid down to regulate the objects of his benefaction. Clearly, this supervision cannot be restricted merely to interpreting the statutes. For the supervision to be effective it must involve ensuring that the statutes, properly interpreted, are also being properly applied and observed.”

11. The appellant was directed to vacate the hall of residence, as of Monday December 22, 2008. This in effect terminated the agreement between the appellant and the respondent whereby the former enjoyed the provision of a room in the hall of residence as a licensee. Clause 19 of this agreement has been previously set out. The Charter of Hall Principles and Responsibilities is incorporated into the agreement by Clause 21. In this Charter under Section IV entitled General Responsibilities at paragraph 21, each student who lives in hall

is enjoined, "not to use expletives or to make derogatory and inflammatory remarks"

It was the appellant's purported violation of this injunction that disciplinary proceedings were commenced against the appellant. Further, it is this alleged violation that triggered the termination of the agreement. In my view any determination as to the issue of breach of contract has to be resolved by subjecting the contract and the concomitant considerations to scrutiny. It was all an internal matter. Every aspect of this matter touched and concerned –

- (i) The Charter and especially the role of the visitor
- (ii) The Charter of Hall Principles And Responsibilities, and especially Section IV paragraph 21, and
- (iii) Ultimately the application of the rules of the University in so far as they were relevant to the issue.

The essence of the complaint of the appellant is that the University contravened its internal laws. This being so the ineluctable conclusion is that in the appellant's dispute with the University, the visitor has exclusive jurisdiction.

12. In **Thomas**, Lord Griffiths referred to the "impressive judgment" of Kelly, L.J. in **Re Wislang's Application** [1984] NI 63. The learned Law Lord quoted a passage at paragraphs 80 – 81 of that judgment. It reads:-

"That the matters in dispute were internal matters lying within the visitatorial jurisdiction was of course strongly challenged by Dr.

Wislang. They were not, he said, because they included the question of the validity of the decision to dismiss him, the authority of the Vice-Chancellor and the Secretary of the University, the legality and regularity of the proceedings before the Board of Curators and the Appeal Committee and the Senate. All these were matters he submitted outside the jurisdiction of the board of visitors, because they were or many of them were in breach of his contract of employment. But what the authorities show, as I read them, is that matters may well be in breach of a contract of employment, yet within visitatorial jurisdiction, if those matters are of an internal domestic character or touch upon the interpretation or execution of private rules and regulations of the university. Of course the applicant has the right under his contract to have the criteria relating to the assessment of his fitness as a lecturer observed and the special procedures of the university bodies who determine this and as a result terminate his employment, regularly and fairly followed. But this right while a right under a contract of employment seems to me to relate to the regular and fair execution of procedures in accordance with the internal rules and regulations at the university. If the matters in dispute under his contract of employment related to purely common law or statutory rights and not to private or special rights of the university, of course visitatorial jurisdiction could not determine them and Dr. Wislang's remedies would be in the ordinary courts or the appropriate statutory tribunals. This must follow from the nature of visitatorial jurisdiction itself as analysed and explained by the case-law, as well as the relationship between the university and a lecturer and who by his contract of employment becomes a member of the university and submits himself to its internal rules on matters touching his standing and progress at the university. Undoubtedly a contract of employment may

contain terms some of which are concerned with private or special rights given as a member of the university and other terms express or implied which give purely contractual or statutory rights. In these circumstances the visitatorial and the common law or industrial jurisdiction co-exist. The common law or statutory rights are enforceable in the courts of the appropriate statutory tribunals, but the visitatorial jurisdiction is not ousted.' (emphasis mine)

The appellant sought to place her dispute within the category as "relating to purely common law". As earlier indicated, that was the burden of the appellant's submission. For the foregoing reasons this submission is quite untenable. The judgment of Anderson J. in the court below is unassailable both in its reasoning and conclusion that the appellant's dispute was exclusively within the jurisdiction of the visitor. In the circumstances it is unnecessary for me to advert to the issue of the injunction.

12. The appellant also contended that the letter directing her to vacate the premises did not give reasons for such a direction. The appellant well knew why she was being directed to leave the hall or residence. It is interesting to note the letter written by her attorney-at-law Fara Brown, dated October 9, 2008 (supra). Therein, is evidence that the appellant was aware of all the circumstances. In any event such a complaint can be suitably dealt with within the internal appellate regime of the University. (see Appendix B of the Charter of Hall Principles and Responsibilities).

13. In the written submissions on behalf of the appellant there were two concerns which I think need to be addressed. The first is that:

“neither the Charter nor the Statutes provide any guidance or procedure as to how the authority of the visitor may be invoked or exercised.”

The second is that

‘It may seem startling’ that in circumstances that are attended with urgency an aggrieved party “is required to address her grievance to her Majesty the Queen in England.”

14. I hope that these concerns are given the immediate requisite attention. The appellant implored the court not to visit her with costs in the event that the appeal is unsuccessful as indeed it is. This plea was grounded on the assertion that costs awarded would have to be borne by the Norman Manley Law School Legal Aid Clinic which is a body which suffers from financial ill health. This was a hopeless appeal. The comprehensive judgment in the court below was blessed with clarity. Further, the judgment of K. Harrison, J.A. reinforced the frailty of the appellant’s position. Yet, she persisted. Despite the prayer of impecuniosity, the circumstances dictate that the respondent should have its costs in respect of this appeal.

15. Finally, it is with regret, that I feel compelled to observe that in the conduct of the appeal, Ms Fara Brown did not deport herself in a manner consistent with the expected respect due to the Bench. I would dismiss the appeal and award the costs of the appeal to the respondent.

HARRIS, J.A.

16. In this appeal the appellant challenges a ruling of Anderson J. that the court has no jurisdiction to entertain proceedings brought by the appellant.

17. The Appellant was a student of the respondent, University of the West Indies, between September 2006 and May 2009. The respondent is a tertiary institution. By virtue of a written contractual licence between the appellant and the respondent, she took up residence in the Mary Seacole Hall of the University for the period August 2008 to May 2009.

18. On September 27, 2008 the appellant was embroiled in a dispute in the hall of residence with a fellow student, at which time she was alleged to have used profanity. On September 30, 2008 a letter, under the hand of the respondent's Student Services and Development Manager was sent to the appellant informing her of the report of her use of expletives and of offensive language in the corridor of her hall of residence. By this letter, she was notified of a Disciplinary Hearing which was scheduled for October 5, 2008.

19. By letter of October 6, 2008 the appellant was informed that the Disciplinary Committee had met on October 5, and had made a decision to expel her from the hall of residence with effect from October 11, 2008.

20. By letter of October 9, 2008 the appellant, through her attorney-at-law

Miss Fara Brown, lodged an appeal with the Director of Student Services. By letter of October 30, 2008 the appellant was informed that the decision of the Disciplinary Committee was set aside by the University of West the Indies. A new hearing was fixed for November 2, 2008. On December 5, 2008 the following letter was sent to her:

“Miss Vanessa Mason
Mary Seacole Hall
The University of the West Indies
Mona Campus

Dear Miss Mason:

Re: Expulsion from Mary Seacole Hall

Documents pertaining to the captioned matter were referred to the Campus Legal Officer for advice. The Legal Officer stated that he has examined the allegations in your letter and also the points raised by Miss Fara Brown, Attorney-At-Law, who wrote to me on your behalf.

I note your expressions of breach of specific aspects of the Charter of Hall Principles and Responsibilities. I also note that you did not comply with Appendix B of the said Charter which states that a student in disagreement with the decision of a Disciplinary Committee may, within seven days of the decision “appeal in writing to the Director of Student Services”.

After the matter was directed to me, an appointment was set for you to meet with me on October 10 at 8:30 a.m. to deal with the matter. You did not keep the appointment. You came to see me only after an e-mail dated October 14, 2008 from the Deputy Principal, addressed to you indicated “the Director of Student Services and Development should be the person to raise the matter with before coming to me”. He suggested in the e-mail that you should see me on

that day or the following day, as I would not be available to see you on Thursday and Friday.

The discussion with you was not completed when you came to see me on Wednesday, October 15, due to a previous appointment that I had. I asked you to put your concerns in writing and gave you an appointment for October 23 at 1:30 p.m. to discuss the concerns. Again, you did not keep the appointment, nor submit the written concerns.

Subsequent to the foregoing, in an effort to bring closure to the matter, you were invited to attend a meeting with the Hall Disciplinary Committee for the matter to be reheard. You did not attend, but was represented by Ms. Fara Brown, Attorney-At-Law who stated that she was attending the meeting in the capacity as "a friend". It was reported that the meeting had to be aborted on account of unacceptable behaviour displayed by Ms. Brown.

Based on the advice of the Campus Legal Officer with respect to the above matters, it is agreed that you vacate the Hall as *of Monday, December 22, 2008*, pending further investigation of this matter. You are required to comply with this directive.

Kindly acknowledge receipt of this correspondence by signing the attached copy.

Yours sincerely,
Thelora Reynolds, PhD
Director, Student Services and Development.

21. On January 16, 2009 the appellant filed a claim form against the respondent seeking the following reliefs:

- "1. Specific performance of the contract between the Claimant and the Defendant for the Defendant to provide accommodation to the Claimant from August 2008 to May 2009;

2. Damages for breach of contract by unlawful termination thereof;
3. Interest on such damages due from the date of the purported termination of the said contract to the date of judgment and as such rate as this Honourable Court may deem just;
4. Costs and Attorney-at-Law cost;
5. Such further and other relief."

22. The following are the particulars of claim:

- "1 ...
2. ...
3. In or about August 2008 the Defendant offered the Claimant accommodation by way of a contractual licence and the Claimant accepted the offer;
4. The duration of the contract is from August 2008 to May 2009;
5. In accordance with the contract the Claimant paid Hall fees, the Defendant allowed the Claimant into occupation, and the parties continued to act in pursuance of the contract thereafter;
6. On or about the 5th December 2008 the Claimant was informed that she should vacate the Mary Seacole Hall of Residence as of the 22nd December 2008;
7. The Claimant claims that the Defendant is in breach of the said contract and has acted unlawfully.

PARTICULARS OF DEFENDANT BREACH OF CONTRACT

The Defendant is in breach of contract in that it:

- a. Failed to provide the Claimant with accommodation as stipulated in Clause 1 of the contract;
- b. Purported by the letter of 5th December 2008 to terminate the contract in contravention of Clause 19 of the said contract;
- c. Purported by way of a letter dated 5th December 2008 to terminate the contract without giving reasons.

PARTICULARS OF LOSS TO THE CLAIMANT

- a. Unlawful eviction;
- b. Cost of alternative accommodation.

The Claimant further claims to be entitled to interest on such damages from the date of the purported termination of the said contract to the date of Judgment and at such rate as this Honourable Court deems just;

23. On December 22, 2008 the appellant filed a notice of application for court orders seeking the following orders:

- "1. That the expulsion of the Claimant from Mary Seacole Hall, University of the West Indies, Mona Campus, Kingston 7 in the parish of Saint Andrew be suspended until the Claimant's claim is determined by this honourable court;
2. that the Defendant be restrained from expelling the Claimant from Mary Seacole Hall, University of the West Indies, Mona Campus,

Kingston 7 in the parish of Saint Andrew;

3. that the Claimant be allowed to reside at Mary Seacole Hall, University of the West Indies, Mona Campus, Kingston 7 in the parish of Saint Andrew without interference or harassment from the Defendant their employees, servants or agents;
4. that the Defendant by their employees, servants, or agents be restrained from removing, damaging or interfering with the Claimant's property currently in situ at Mary Seacole Hall, University of the West Indies, Mona Campus, Kingston 7 in the parish of Saint Andrew;
5. that there be such further and other relief as this honourable court may deem fit in all the circumstances;
6. Costs."

24. The application came on for hearing before the learned judge, who, in acceding to a preliminary objection raised by the appellant's attorney-at-law by way of a notice of application for court orders, concluded that the jurisdiction of the visitor was exclusive and not concurrent with the court's jurisdiction, and dismissed the application.

25. The contractual relationship between the respondent and the appellant is founded on, the University of the West Indies Halls of Residence Agreement. The following clauses of the agreement are pertinent to the disposal of this appeal:

"2 **The student acquires by this Agreement a license to use, and not a tenancy of the**

room assigned by the University, and the possession of the premises is retained by the University subject to the rights created by this Agreement.

10. **The student shall keep the interior of the premises in good and clean condition, keep the garden and yard area tidy at all times, clean the windows of the premises regularly and observe Section IV (General Responsibilities) of the Charter of the Hall Principles and responsibilities.**
12. The student shall ensure that **no disturbance or inconvenience** is caused to neighbours by any form of anti-social behaviour. [Emphasis mine]. **Noise shall be kept to a minimum particularly at night.** The student shall observe Section VI of the Charter of Hall Principles and Responsibilities.
19. The University may terminate this Agreement if the student is in breach of any of its terms or violates any of the rules or regulations of any Hall of Residence to which he/she is assigned or of the University. Where this Agreement is terminated in accordance with the provisions of this clause the University may (on the advice of the Student Services Manager) return to the student on pro-rated basic (sic), a part of the fees paid for lodgings.
21. The student shall abide by all the rules and regulations of any Hall to which he/she is assigned by the University, and such rules and regulations herein incorporated as terms of this Agreement."

26. The University of the West Indies was created by a Royal Charter. It is necessary to make reference to such parts of the Charter which are relevant to

the disposal of the appeal.

Paragraph 1 of the Charter states:

"The University constituted and founded by the Original Charter in the Territories... and shall continue to have perpetual succession ... and with power to break, alter and make anew the said Seal from time to time at their will and pleasure and in that name to sue and be sued in all manner of actions and suits with power to take, purchase, hold and also to grant, demise or otherwise dispose of real and personal property and to do all other matters and things incidental or appertaining to a body corporate."

27. Paragraph 2 outlines the objects of the University. Paragraph 3 outlines its powers. For the purpose of this appeal, it will only be necessary to make reference to paragraphs 3 (o) and (6).

Paragraph 3 (o) reads:

"The University shall be both a teaching and an examining body and, subject to the provisions of this Our Charter and the Statutes, shall have the following powers:-

- (o) To establish and maintain and to administer and govern institutions and places for the residence, recreation and study of the officers, staff, students and guests of the University, whether College Halls, Houses or otherwise, and to license and supervise such institutions and other places whether maintained by the University or not so maintained."

Paragraph 6 provides as follows:

“(6) We, Our Heirs and Successors, shall be and remain the Visitor and Visitors of the University and in the exercise of the Visitorial Authority from time to time and in such manner as We or They shall think fit may inspect the University, its buildings, laboratories and general work, equipment, and also the examination, teaching and other activities of the University by such person or persons as may be appointed in that behalf.”

28. In addition to the Charter, the University has Statutes, Ordinances and Regulations governing, among other things, the function, powers and duties of the Authorities of the University. Under statute 2 (1) (k) a student is designated a member of the University. Save and except for the provision in paragraph 6 of the Charter, the Charter, Statutes, Ordinances and Regulations are silent as to how the duties and powers of the Visitor may be invoked.

Grounds 3 (a) and 3 (b)

3. (a) The learned judge erred in law in finding that the circumstances of this case fell within the jurisdiction of the Visitor.
- (b) The learned judge erred in law in finding that by virtue of the exclusivity of the Visitor’s jurisdiction the Claimant had no basis for applying to the Court for relief other than by way of judicial review.”

29. Miss Brown submitted that the Visitor’s jurisdiction is not all encompassing. She argued that the issue of jurisdiction arising out of the breach of contract as alleged, is not determined merely by the fact that, the appellant,

being a member of the University, the determination of the issues arising from the contract between herself and the respondent would fall within the exclusive jurisdiction of the Visitor. The fact that the contract is internal, having been created under the rules of the University, does not affect the issue of jurisdiction, she argued.

30. Mr. Kelman argued that the matters of which the appellant complain fall within the exclusive jurisdiction of the visitor. It was his submission that the authority of the visitor is enshrined in the Charter which includes, among other things, the administration, supervision and governance of the halls of residence. The appellant, he argued, by reason of her being a member of the University as defined by the Charter, falls within the Visitorial Jurisdiction. These grounds of appeal raise an interesting point relating to the scope and extent of the visitorial powers. The critical question in this appeal is whether, in the circumstances of this case, the dispute between the appellant and the respondent is one which falls within the province of the Visitor.

31. The learned judge embarked on an extensive review of the authorities dealing with the question of visitorial jurisdiction. In finding that the Visitor's jurisdiction was exclusive and not concurrent with that of the court, he went on to state as follows:

"The scope of the visitor's jurisdiction included the interpretation and enforcement not only of those laws themselves but also of internal

powers and discretions derived from them, such as the discretion which necessarily had to be exercised in disciplinary matters. Accordingly, if a dispute between a university involved questions relating to the internal laws internal laws (sic) of the university or rights and duties derived from those laws, the visitor had exclusive jurisdiction to resolve that dispute. Furthermore, in exercising that jurisdiction the visitor could order the university to reinstate a member and pay arrears of salary or to pay damages in lieu of reinstatement. Since the plaintiff's dispute centred on the charter, statutes, ordinances and regulations of the university and regulations of the university (sic) and whether they were correctly applied and fairly administered, it followed that the visitor had exclusive jurisdiction."

32. will commence by posing this question. What is the role of a visitor?

Hoffman J., in **Hines v. Birkbeck College & Anor.** [1985] 3 All ER 156 at page

161 describes the visitor's role in the following terms:

"The visitor is a domestic forum appointed by the founder for the purpose of regulating the foundation's domestic affairs in accordance with its statutes, including the determination of domestic disputes. As Megarry V-C said in *Pate? v University of Bradford Senate* [1978] 3 All ER 841 at 846, [1978] 1 WLR 1488 at 1493:

"... the visitor has a general jurisdiction over all matters in dispute relating to the statutes of the foundation, and the internal and membership of the corporation."

33. e first issue to be addressed relates to the scope and extent of the

visitor's jurisdiction in the determination of matters emanating from internal disputes between a University and its members. Although the Charter and other regulatory instruments are silent as to the precise powers of the visitor, historically, the courts, in ascertaining the scope and extent of the visitor's powers, have sought aid from the common law.

34. The court's quest in determining the visitor's powers has led to a line of established authorities which have eminently propounded the exclusivity of the visitor's jurisdiction. The historical development of law relating to the visitor's jurisdiction, as distilled by the authorities, originated with the case of **Philips v. Bury** 1 Ld Raym 5 at 8, 91 ER 900, in which, a dissenting judgment of Holt, C.J, was upheld by the House of Lords. At page 903 of his judgment, Holt C. J., in his pronouncement on the visitor's jurisdiction said:

"...the office of the visitor by the common law is to judge according to the statutes of the college, to expel and deprive upon just occasions, and to hear appeals of course. And from him, and him only, the party grieved ought to have redress; and in him the founder hath reposed so entire confidence that he will administer justice impartially, that his determinations are final, and examinable in no other court whatsoever."

35. In **R. v. Dunsheath ex p Meredith** [1950] 2 All ER 741; [1951] 1 KB 127, an applicant sought an order for mandamus to direct the chairman of Convocation of London University to summon an extraordinary meeting in obedience to a statutory requirement of the University. The order was refused

on the ground that the relief sought was one within the visitor's jurisdiction.

At page 743 Lord Goddard C.J said:

"This court has always refused to issue a mandamus if there is another remedy open to the party seeking it. This is one of the reasons, no doubt, why, where there is a visitor of a corporate body, the court will not interfere in the matter within the province of the visitor, and especially this is so in matters relating to educational bodies such as colleges. I see no difference in this purpose between a college and a university. Any question that arises of a domestic nature is essentially one for a domestic forum, and this is supported by all the authorities which deal with visitorial powers and duties ..."

36. In **Thorne v University of London** [1966] 2 All ER 338, the plaintiff having failed certain papers in the London LLB examinations, brought an action against the University for damages for negligently misjudging his examination papers and for mandamus to compel the University to award the grade "at least justified". His claim was struck out. On appeal it was held that his claim fell within the visitor's exclusive jurisdiction.

Diplock L. J, at page 339 said:

"There is clear and recent authority in **R. v. Dunsheath, Ex p. Meredith** [1950] 2 All ER 741; that actions of this kind relating to domestic disputes between members of London University (as is the case with other universities) are matters which are to be dealt with by the visitor and the court has no jurisdiction to deal with them. In that case,

which was a decision of the Divisional Court, Lord GODDARD, C.J., referred with approval to **Thomson v. London University** (2) (1864), 33 C.J. Ch.625] which was decided in 1864.”

37. In **Patel v. University of Bradford Senate and Another** [1978] 3 All ER 841, the plaintiff, a student at Bradford University, failed his examination in one year and was allowed to repeat but he again failed. He was subsequently notified that he should withdraw. His request for permission to return to the institution was refused. He brought an action against the University seeking declarations that he had been arbitrarily, unreasonably and unlawfully refused re- admission and lawful access to the University. He also sought to obtain an injunction and exemplary damages. It was held, inter alia, that internal disputes are within the visitor’s sole and exclusive jurisdiction.

At page 846, Megarry, V-C said:-

“On the authorities it seems to be clear that the visitor has a sole and exclusive jurisdiction, and that the courts have no jurisdiction over matters within the visitor’s jurisdiction. In consequence, any proceedings in the courts which seek the determination of those matters will be struck out for want of jurisdiction. The visitor is not free from all control by the courts. Thus prohibition will lie to restrain him from exceeding his jurisdiction, and so will mandamus if he refuses to exercise it. But the courts will not adjudicate in matters which lie within his jurisdiction.”

38. Miss Brown further argued that the appellant’s claim as pleaded, relates to breach of contract and although the internal regulations of the University are

part of a contract, the contract is not dependent on the interpretation of the University's rules. The purported termination of the contract is in breach of the agreement between the appellant and the respondent and the visitor cannot determine whether a contractual term has been breached, she argued. The contract contains clauses of which some are in relation to those rules which fall within the authority of the visitor, while others are contractual in nature, the latter she argued, are judicious. It was her further submission that in a case such as the present, the contractual rights are issues for the courts. In support of her submissions she cited the cases of in **Re Wislang's Application** and [1984] N1 63; **Thomas v. University of Bradford** [1987] 1 All ER 834.

39. The jurisdictional authority of the visitor is derived from the power to administer the domestic laws of a University. All members of the University are subject to the domestic laws. The visitor is empowered to interpret that law and apply them and by extension, determine questions of fact arising under those laws. As earlier indicated, the scope of the visitor's powers within the parameters of the domestic laws of a University, includes the right to resolve disputes among members. In **Patel v. The University of Bradford** (Supra) at page, 849 Megarry V-C in dealing with the powers and functions of the visitor said:

"The interpretation of the statutes of the corporation has long been established as part of the visitor's functions."

At page 850 he continued by saying:

"The resolution of disputes among members is

another undoubted part of those functions.”

40. In **Hines v. Birkbeck College and Another** [1985] 3 All ER 156, Hoffman J. makes it evident that jurisdictions of the visitor and of the courts are mutually exclusive. He unmistakably asserted that a dispute is characterized as having the requisite domesticity if it involves members of a corporation and the construction or application of its internal rules and regulations. The domesticity of a dispute is not eroded because a point in issue is with reference to terms of a contract. At page 165 he said:

“... the authorities also make it clear that, irrespective of whether the courts would be as well or better qualified to deal with the particular case a dispute has the necessary domesticity if it involves members of the corporation and the interpretation or application of its internal rules, customs or procedures.

Further, as Sir Samuel Romilly said in argument in **Ex p Kirkby Ravensworth Hospital** (1808) 15 Ves 305 at 311, 33 ER 770 at 772 (a passage quoted in Dr. Smith’s article ((1981) 97 LQR 610 at 614)):

‘A visitor is ... a judge, not for the single purpose of interpreting laws, but also for the application of the laws, that are perfectly clear: requiring no interpretation; and, further, for the interpretations of questions of fact ...’

In my judgment the dispute is no less domestic because the rules, customs or procedures in issue are alleged to constitute terms of a contract or because their construction or the questions of fact involved in their application are equally conveniently justiciable (sic) in a

court.”

42. By her claim, the appellant effectively challenges her expulsion from the hall of residence. Under clause 19 of the Agreement the University reserves the right to terminate the agreement. Miss Brown’s contention that notwithstanding clause 19 the court is seized of jurisdiction to hear and determine the appellant’s claim runs contrary to the authorities. Her submission that in light of the cases of In **Wislang’s Application** and **Thomas v. University of Bradford**, in disputes between a University and a member relating to contractual obligations, the jurisdictions of the visitor and the courts are concurrent, is unsustainable. In order to dispel the perception that these cases prescribe that the jurisdictions of the visitor and the courts co-exist, it is essential to examine both cases.

42. In **Wislang**, in 1981 the Senate of Queen’s University, Belfast appointed the applicant a lecturer. The appointment was subject to a probationary period ending on September 30, 1983. His performance was subject to an assessment by an ad hoc group. In September 1982, the group made an assessment adverse to the applicant as a consequence of which it was recommended that the appointment should not be confirmed. He was subsequently invited by the Board of Curators to attend an interview. He failed to do so. Confirmation of his appointment was not recommended by the Board to the Senate and he was so informed.

43. In April 1983 he appealed the decision. A committee appointed by the

Senate, after hearing submissions, dismissed the appeal and informed the Senate. Following this, the Board resolved to terminate the appointment. The applicant appealed to the visitor who informed him that his appeal would be heard on paper. He sought an oral hearing. The Board refused his application. The applicant then sought and was granted leave for judicial review. The University appealed contending that the visitor and not the court was vested with authority to hear and determine among other things, questions involving contractual disputes. It was held that the matters in dispute were exclusively within the jurisdiction of the visitor.

44. At pages 80 - 81 Kelly. L.J said:-

"But what the authorities show, as I read them, is that matters may well be in breach of a contract of employment, yet within visitatorial jurisdiction, if those matters are of an internal domestic character or touch upon the interpretation or execution of private rules and regulations of the university. Of course the applicant has the right under his contract to have the criteria relating to the assessment of his fitness as a lecturer observed and the special procedures of the University bodies who determine this and as a result terminate his employment, regularly and fairly followed. But this right while a right under a contract of employment seems to me to relate to the regular and fair execution of procedures in accordance with the internal rules and regulations of the University. If the matters in dispute under his contract of employment related to purely common law or statutory rights and not to private or special rights of the University, then or (sic) course visitatorial

jurisdiction could not determine them and Dr Wislang's remedies would be in the ordinary courts or the appropriate statutory tribunals. This must follow from the nature of visitatorial jurisdiction itself as analysed and explained by the case-law, as well as the relationship between the University and a lecturer and who by his contract of employment becomes a member of the University and submits himself to its internal rules on matters touching his standing and progress at the University. Undoubtedly a contract of employment may contain terms some of which are concerned with private or special rights given as a member of the University and other terms express or implied which give purely contractual or statutory rights. In these circumstances the visitatorial and the common law or industrial jurisdictions co-exist. The common law or statutory rights are enforceable in the courts or the appropriate statutory tribunals, but the visitatorial jurisdiction is not ousted."

45. In addressing submissions on the question of the disputed issues as they relate to the contract between Mr. Wislang and the University, it is without doubt that Kelly L.J effectively pronounced that the matters of dispute between the parties were exclusively for the visitor and not the court. The statement made by Kelly. L.J in his dicta as to the presumptive co-existence of the two jurisdictions is obviously obiter and clearly do not form a part of the ratio decidendi of the case.

46. In **Thomas v. University of Bradford** , in (1973) the plaintiff by virtue of a contract of service, was appointed a lecturer in 1973. It was a term of the contract, among other things, that her employment and status with the

University were coterminous. It was also provided in the contract that she was subject to and entitled to the benefits of the charter, statutes, ordinances and regulations of the University. In 1983, the University purported to dismiss her. She commenced proceedings against the University seeking a declaration for wrongful dismissal, claiming damages or alternatively arrears of salary, on the ground that her dismissal was in breach of the terms of her contract of service.

47. The University contended that her claim fell within the purview of the visitor's jurisdiction and sought a stay of proceedings pending the determination of a petition to the visitor. The judge refused the stay and on appeal the Court of Appeal upheld the refusal. The University appealed to the House of Lords. On appeal it was held:

48. In **Thomas v. University of Bradford** Griffith L.J, at page 846, said:

"This then leads me to consider what is meant by the reference in the cases to the 'domesticity' of the visitatorial jurisdiction. The word is clearly not used with the width of its everyday meaning. Nothing could be more domestic in its everyday sense than the arrangements in the kitchens or for the cleaning of the premises, but no one suggests that the domestic staff of a university fall within the visitatorial jurisdiction. I am satisfied that in referring to the domestic jurisdiction the judges are using a shortened form of reference to those matters which are governed by the internal laws of the foundation. This will include not only the interpretation and enforcement of the laws themselves but those internal powers and discretions that derive from the internal

laws such as the discretion necessarily bestowed on those in authority in the exercise of their disciplinary functions over members of the foundation. It is only if 'domesticity' is understood in this sense that any principle emerges that can be of general application to determine whether or not a given matter falls within the visitatorial jurisdiction. What is not permissible is to regard 'domesticity' as an elastic term giving the courts freedom to choose which disputes it will entertain and which it will send to the visitor. This approach necessarily involves the concept of a concurrent jurisdiction and, as I have endeavoured to show, this is not the way in which our law has developed. "

49. There can be no doubt that Griffith L.J.'s clear pronouncement is that it is impermissible for the courts to choose which matters are submitted to the visitor and which are retained by them. His pronouncement offers no room for debate. The approach, contended for by Miss Brown, is wrong. Griffith L.J. asserted that to embrace the concept of concurrent jurisdictions of the visitor and the courts would run contrary to the development of the law. It is unquestionable that, as established by the authorities, questions of disputes arising between members of the University are exclusively within the province of the visitor.

50. In the case under review, the claim by the appellant against the respondent is for specific performance of the contract to provide her with accommodation, and for damages for breach of the contract. The appellant, being a member of the University of the West Indies, is subject to its Charter, Statutes, Ordinances and Regulations. The dispute between the respondent and herself arose out of contractual license which she enjoyed in acquiring residence

in the Mary Seacole Hall. The relief being sought by the appellant, by way of her claim, is for the restoration of her license in order for her to continue in occupation of the hall of residence and for damages for the unlawful deprivation of the use of accommodation therein. The nature of the appellant's complaint is that the respondent had misconstrued or misinterpreted or misapplied the terms of contract between the respondent and herself. This complaint, being grounded in the domestic laws of the respondent, namely, its Charter, Statutes, Regulations and Ordinances, falls completely within the province of the visitor. The appellant is bound to submit to the jurisdiction of the visitor. The relief being sought ought to be resolved by the appellant seeking to employ the relevant process for its determination by the visitor.

51. The learned judge's decision to dismiss the appellant's application for want of jurisdiction is without doubt entirely correct.

Grounds 3 (c) (d) and (e) are as follows:

- "(c) The learned Judge erred in law in relying on the reasoning in the case of Myrie when the facts in that case were materially different from and the decision premised on those facts was consequently distinguishable from the facts in this case.
- (d) The learned Judge erred in law and in fact by finding that the Claimant could be adequately compensated in damages and therefore that the interim orders should not be granted.
- (e) The learned Judge erred in law in misapplying the principles in the case of American Cyanamid Co. v. Ethicon Limited."

52. It cannot be denied that the facts in **Myrie v UWI**, HCV 04736/07, delivered on 4th January 2008, differ from those in the case under review. It is clear however, that the learned judge in citing **Myrie's** case placed reliance on the principle of the exclusivity of the visitor's jurisdiction. In light of the conclusions which I have reached in the matter, it becomes unnecessary for me to give consideration to these grounds. I would dismiss the appeal.

53. So far as the question of costs is concerned, Miss Brown argued that the court should take into consideration the fact that the parties are not on equal footing as regard to their respective financial positions. Mr. Kelman argued that the appellant brought the action at her risk as she pursued a claim which could not have been supported in law by which she had put the respondent to great costs to defend. He submitted that under Rule 64.6 (1) of the Civil Procedure Rules 2002, the respondent is entitled to its costs. The respondent, he further argued, had acted properly at all times and there is nothing which could bar the recovery of its costs.

54. There is merit in Mr. Kelman's submissions. I am in agreement with him that the appellant commenced and pursued an unnecessary action. In obedience to Rule 64.6 (1), the respondent, being the successful party, is entitled to its costs. There are no circumstances which would warrant a departure from the rule.

ORDER

SMITH, J.A.

The appeal is dismissed. Costs are awarded to the respondent to be taxed if not agreed.