IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN CIVIL DIVISION
CLAIM NO. 2007 HCV 04736

IN CHAMBERS

BETWEEN	DR. MATT MYRIE	APPLICANT
AN D	THE UNIVERSITY OF THE WEST INDIES	1ST RESPONDENT
AN D	THE UNIVERSITY OF THE WEST INDIES FACULTY OF MEDICAL SCIENCES	2ND RESPONDENT
AN D	DEAN OF THE FACULTY OF MEDICAL SCIENCES (PROFESSOR ARCHIE MACDONALD)	3RD RESPONDENT
AN D	PROFESSOR DENISE ELDEMIRE-SHEARER (CHAIR FMS, COMMITTEE FOR GRADUATE STUDIES)	4TH RESPONDENT
AN D	PROFESSOR HORACE FLETCHER (CHAIRMAN OBSTETRICS AND GYNAECOLOGY SPECIALITY BOARD)	5TH RESPONDENT
AN D	THE UNIVERSITY HOSPITAL BOARD OF MANAGEMENT	6TH RESPONDENT

Mr. Bert Samuels, Mr. Franklyn Halliburton and Ms. Jacqueline Wilcott instructed by Knight Junor and Samuels for the Applicant

Mr. Stephen Shelton, Mr. Christopher Kelman and Ms. Alexi Robinson instructed by Myers Fletcher and Gordon for the 1st, 3rd, 4th, 5th, and 6th Respondents

2nd Respondent not appearing or being represented

Education – University created by Royal Charter which provides for a Visitor – Whether jurisdiction of the Court ousted thereby

Practice and Procedure –Application for Mandatory Injunction for University to permit student to sit examinations - Whether student's case unusually strong and clear

27th, 28th November 2007 and 4th January 2008

BROOKS, J.

The University of The West Indies (UWI) is this country's oldest university. It has a faculty of medical sciences which administers the teaching and study of subjects leading to degrees in medicine at both first degree and graduate levels. Dr. Matt Myrie is a graduate of the UWI and is enrolled as a graduate student in its Doctor of Medicine (DM) programme. He has successfully completed Part I of the programme.

During the morning of November 15, 2007 Dr. Myrie sat an examination denominated Paper 1 of Part II of the UWI's DM programme. When he returned in the afternoon to sit Paper 2 of Part II, he was barred from the examination room by the invigilator and the UWI's security guards. This, on the basis, they alleged, that he was ineligible to sit the Part II examinations.

Further portions of the Part II examinations were scheduled to be held on the 29th November, 2007. Fearing that he would also be barred from sitting those examinations, Dr. Myrie brought this application for an injunction. He sought orders that he be permitted to sit the examinations and that the UWI also allow him to sit the paper, from which he had been previously barred. Dr. Myrie asserted that he had been provided with all the indicia of an eligible examination candidate and had been allowed to sit Paper 1. On those bases he said that he had been led to have a legitimate expectation that he would have been allowed to sit the entire examination.

Mr. Shelton, on behalf of the UWI, resisted these applications. He submitted, as a preliminary point, that this court had no jurisdiction to hear the application because the UWI's Charter provided for a visitor and it was the visitor to whom Dr. Myrie should have applied for relief. Mr. Shelton submitted that, in any event, Dr. Myrie was ineligible to sit these examinations on the basis, among others, that he had failed to submit, in time, course-work which is a necessary pre-requisite for sitting the examinations. As a consequence, he was not entitled to the injunctive relief which he sought.

The issues to be decided are firstly, whether the jurisdiction given to the visitor in the UWI's Charter could oust the jurisdiction of this court, and secondly, if the court had jurisdiction, whether Dr. Myrie's claim met the requirements to allow for a grant of a mandatory injunction.

At the hearing of the application, I reserved my ruling on the preliminary point and heard the submissions in respect of the substantive application. In light of the urgency of the matter, I made an oral ruling in respect of both issues. I now set out the reasons for my decisions.

The jurisdiction of the UWI's visitor

The UWI had its origins in 1948 as a College of the University of London. It achieved full university status when it was established by Royal Charter on 2nd April, 1962. By the Charter, the persons, who are from time to time its members, "are constituted and incorporated into one Body Politic and Corporate with perpetual succession...". A new Charter was issued on 25th August, 1972. It confirmed the status of the institution which had been created by the 1962 instrument. Clause 6 of each Charter provides that her Majesty Queen Elizabeth II, her Heirs and Successors, "shall be and remain the Visitor and Visitors of the University". However, except for an express intention to inspect, neither of the Charters nor any of the statutes established thereunder provide any further guidance as to the duties or the authority of the visitor. It is therefore to the common law that we are obliged to look for enlightenment on the role of the visitor. All references hereafter shall be to the 1972 Charter ("the Charter").

The office of visitor has its origins in the law regarding corporations. The office has particular relevance in respect of eleemosynary corporations. "Eleemosynary corporations are those established for the perpetual distribution of the free alms or bounty of the founder to such persons as he has directed." (*Tudor on Charities* 8th Ed. page 371) The principle behind the existence of the office of visitor, briefly stated, is that the founder of an eleemosynary corporation, whether it be a charity, educational institution or otherwise, is entitled to provide the laws by which the object of his bounty are to be governed. He is also entitled to establish himself or some other person whom he may appoint, as the sole judge of the interpretation and application of those laws. That sole judge is referred to as a visitor.

In outlining the jurisdiction of visitors, the learned editors of *Halsbury's Laws of England*, 4th Ed. Reissue Volume 15 (1) at paragraph 495, state in part:

> "...the visitor has untrammelled power to investigate and right wrongs done in the administration of the internal laws of the foundation. A dispute as to the correct interpretation and fair administration of the domestic laws of the university, its statutes and its ordinances falls within the jurisdiction of the visitor, subject to the supervisory jurisdiction of the High Court, and therefore the court usually lacks jurisdiction in the first instance to intervene. However a decision of the university visitor may be amenable to judicial review."

In *Regina v. Lord President of the Privy Council* <u>ex parte</u> *Page* [1993] AC 682, Lord Griffiths, in explaining the function and antiquity of the office of the visitor stated at p. 694A:

> "For three centuries the common law courts have recognised the value of the visitor acting as the judge of the internal laws of the foundation and have refused to trespass upon his territory.... The value of the visitorial jurisdiction is that it is swift, cheap and final."

In that case Lord Browne-Wilkinson also explained the jurisdiction of the visitor and the court's view of that office. He said at page 695G – 696B:

> "It is established that, a university being an eleemosynary charitable foundation, the visitor of the university has exclusive jurisdiction to decide disputes arising under the domestic law of the university. This is because the founder of such a body is entitled to reserve to himself or to a visitor to whom he appoints the exclusive right to adjudicate upon the domestic laws which the founder has established for the regulation of his bounty. ...
>
> Those propositions are all established by the decision of this House in Thomas v. University of Bradford [1987] A.C. 795 which held that the courts had no jurisdiction to entertain such disputes which must be decided by the visitor. However the Thomas case was concerned with the question whether the courts and the visitor had concurrent jurisdictions over such disputes. In that context alone it was decided that the visitor's jurisdiction is "exclusive". Thomas does not decide that the visitor's jurisdiction excludes the supervisory jurisdiction of the courts by way of judicial review."

Further explanation of the court's stance was given by Lord Woolf MR at paragraphs 29 and 31 of the case of *Joan Elizabeth Clark v University of Linconshire and Humberside,* [2000] 1 WLR 1988, when he said:

> "The court, for reasons which have been explained, will not involve itself with issues that involve making academic judgments....
>
> This is a matter of considerable importance in relation to litigation by dissatisfied students against universities. Grievances against universities are preferably resolved within the grievance procedure which universities have today. If they cannot be resolved in that way, where there is a visitor, they then have (except in exceptional circumstances) to be resolved by the visitor. The courts will not usually intervene."

In explaining why most university students should be precluded from access to the courts in many matters of dispute with the university authorities, Megarry V-C in *Patel v University of Bradford Senate* [1978] 3 All ER 841 at page 851-852 said:

"First, there is no question of the students being denied access to a tribunal that can resolve the dispute: the only question is whether that tribunal is to be the visitor or the courts. For students who seek to have a university decision set aside or reversed the advice in most cases should be "Go to the visitor, not to the courts". Second, there is much to be said in favour of the visitor as against the courts as an appropriate tribunal for disputes of the type which fall within the visatatorial (sic) jurisdiction. In place of the formality, publicity and expense of proceedings in court, with pleadings, affidavits and all the apparatus of litigation (including possible appeals to the Court of Appeal and, perhaps, the House of Lords), there is an appropriate domestic tribunal which can determine the matter informally, privately, cheaply and speedily, and give a decision which, apart from any impropriety or excess of jurisdiction, is final and will not be disturbed by the courts. This aspect of the matter has been the subject of repeated high judicial approval...Third, the extent of visitatorial jurisdiction in university life has greatly expanded in recent years....with the founding of the 19th century universities came the general extension of the visitatorial jurisdiction to all the undergraduate members, instead of only the scholars. The same applies to the 20th century universities...The general picture of only a small part of the small undergraduate population of the universities being within the visitatorial jurisdiction has changed into a picture of the great majority of the far larger undergraduate population of the universities being within it. The visitatorial jurisdiction exercisable by the Lord Chancellor on behalf of the Crown must now be of formidable dimensions; for in most of the modern universities the Crown appears to be the visitor."

Finally, by way of background, there is the principle re-iterated in *Thorne v University of London* [1966] 2 All ER 338, that the High Court has no jurisdiction to hear complaints by a member of the university, "or by a person seeking a degree from the university, against the university about its examinations or conferment of degrees, because those matters are within the exclusive jurisdiction of the visitor of the university". These matters are treated as domestic disputes and in the judgment of Diplock L.J. (at p 339 e-f), "[t]he High Court does not act as a Court of Appeal from university examiners...[c]learly it does decline the jurisdiction".

These principles were extensively discussed and approved by Lord Griffiths in his judgment in the House of Lords case of *Thomas v University of Bradford,* mentioned above. *Thomas* is also reported at [1987] 1 All ER 834, and it is to this report that I shall later make reference.

With that background, the issue of the jurisdiction of the Visitor of the UWI may now be examined. Clause 6 of the Charter which was referred to earlier merits being quoted in full:

> "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."

Mr. Samuels, on behalf of Dr. Myrie, resisted the preliminary point. He submitted firstly, that the role of the visitor as outlined in another jurisdiction and in other universities should not be "imported" into our jurisdiction as if it were a part of the common law. He said that the visitor should only have such exclusive powers as are set out in the Charter. In so far as this Charter is concerned, submitted Mr. Samuels, it is clear that the founder of the UWI sought to restrict the visitorial authority to the role of inspecting rather than one allowing for enquiry into, or resolution of, disputes. Mr. Samuels also argued that the officers of the UWI; the Registrar and others, were acting on behalf of the Founder and Visitor and therefore their actions could be said to be Her Majesty's and therefore subject to judicial review. He relied on the case of *Neville Lewis and others v The Attorney General of Jamaica and another* P.C.A. 60, 65 and 69 of 1999 and 10 of 2000 (delivered 12th September 2000).

The relevant principle in the Neville Lewis case was that the procedure used by an august body such as the Jamaican Privy Council, on even the issue of the exercise of the prerogative of mercy, was subject to judicial review. According to their lordships "the prerogative of mercy should be exercised by procedures which are fair and proper and to that end are subject to judicial review".

Whereas I agree that the provisions of the Charter may delimit the authority of the visitor, and there may be some merit to the invitation to depart from the line of English authorities, I am of the view that Mr. Samuels is not on good ground on the rest of these submissions. The cases cited above, as well as those as far back as *Phillips v Bury* (1694) Skin. 447; [1558-1774] All ER (Rep) 53 and as recent as *Joan Elizabeth Clark v University of Linconshire and Humberside,* cited above, clearly show the role and authority of the visitor as residing in the sphere of the common law. It is true, however, that the office has been described in some quarters as an "ancient anachronism" and equally true that the Court of Appeal of New Zealand has adopted a different approach from the English Courts, to the jurisdiction of the visitor. The case cited in *Thomas v University of Bradford* in demonstration of the New Zealand approach is *Norrie v Senate of the University of Auckland* [1984] 1 NZLR 129. That approach, according to Lord Griffiths in *Thomas* (at page 841 h), viewed the jurisdiction of

the courts and the visitor as being no longer mutually exclusive and that the jurisdiction of the visitor was now subordinate to that of the courts. Lord Griffiths took the view that the line of English authorities was too well established to permit the House of Lords to depart from the position that the visitor's jurisdiction was exclusive.

Lord Griffiths (at page 845) quoted, without disapproval, from the judgment of Hoffman J. (as he then was) in the case of *Hines v Birkbeck College* [1985] 3 All ER 156, where the latter said, at page 164-165:

> "If one were seeking to devise a new system from scratch, it might well be thought fair to allow the courts full concurrent jurisdiction in all claims based on causes of action at common law or in equity, subject to the discretionary power to stay proceedings on the ground that some or all of the matters in issue are more suitable for adjudication by the university's internal tribunals. Something along these lines seems to have been canvassed by the New Zealand Court of Appeal in *Norrie v Senate of the University of Auckland* ..."

The arguments before me, bearing in mind the fact that Mr. Samuels did not have previous notice of the preliminary point, were not as comprehensive as they might have been. I am of the view however that there is a sufficiently extensive line of authority to allow me, with confidence, to state that this court should not depart from, the principle established by the line of the English authorities. I also find that I can, with confidence, say that on either of the choices brought to my attention by the cases cited above, that Dr. Myrie's complaint should properly be dealt with by the UWI's visitor, if the Charter so allows. This is because in *Norrie:*

> "...the courts in fact refused judicial review to a medical student who had been refused enrolment in the faculty of medicine after failing his final examination in the previous year. The court held that such an issue should be dealt with by the visitor." (*Per* Lord Griffiths at page 841h.)

I think it also fair to say that the court in *Norrie* placed sufficient emphasis on the fact that the University of Auckland was created by statute, that the decision may be distinguished on that basis. In the most extensive judgment in the case, Woodhouse P. said at page 133 starting at line 51:

> "In the present context the immediate issues turn upon the nature of the contemporary jurisdiction exercisable by the University Visitor in this country and whether Parliament really has intended to limit the supervision and control which ordinarily would be exercisable by the superior Courts in regard to this or any other inferior tribunal."

Again, at page 134 starting at line 24, the learned Jurist, in dealing with the position of the English courts said:

> "...Lord Hailsham could have considered that there was a visitatorial power to decide the common law issue before him only if he had been able to feel at the same time that it was something which could not be dealt with by the Courts. But for myself **I do not think such strict and artificial barriers have been intended by the legislature to operate in this country**." (Emphasis supplied)

I return to an examination of clause 6 of the UWI's Charter. In my view, a proper interpretation of clause 6 does not allow for the view that it includes a limit to the jurisdiction of the visitor. I find that the mention of the power to inspect only highlights one aspect of that jurisdiction. The relevant words in this regard are, "and in the exercise of the Visitorial Authority". These words do not bear the restrictive meaning which Mr. Samuels submits that they have.

The other difficulty with Mr. Samuels' submission is that there is nothing in the UWI's statutes which amounts to an appointment of the Registrar or any of the other officers of the institution to carry out the duties of the visitor. The very context of Clause 6 implies a jurisdiction, separate and apart from the day to day administration of the UWI. I find therefore that the *Neville Lewis* case is not relevant at this stage, as the issue does not concern a review of the visitor's procedure in arriving at a decision.

The Charter and the Statutes and Ordinances established thereunder are set out in a 1998 publication by the UWI. A framework of authority and procedure is set out by these instruments. They stipulate how the UWI is to be run. Clause 14 of the Charter shows that the UWI's Senate is the academic authority of the institution. Subject to the control and approval of the UWI's Council, it is the Senate which is to "regulate and superintend the academic work ...and the discipline of students of the [UWI]". This authority of the Senate is particularized in Statute 25. Section 1 of this Statute speaks to the Senate's authority to control examinations. Section 2(f) speaks to its power to regulate the admission of persons to courses of study and their continuance at such courses. Importantly, Section 2(h) speaks to the power of the Senate to "review, amend, refer back, control or disallow any act of any Faculty, School, Institute, Delegacy, Board or Department and to give directions to any such body".

As far as a Board of Faculty is concerned, Statute 30 establishes a Board for Graduate Studies and Research. Clause 4(a) authorizes this Board to exercise, by way of delegation, the majority of the powers of the Senate, in so far as they relate to post-graduate studies. Ordinance 29 provides further details of the responsibilities of the Board for Graduate Studies.

In addition to the above, detailed regulations have been instituted for the School for Graduate Studies and Research. These were exhibited in the affidavit of Professor Denise Eldemire-Shearer, who deposed in opposition to Dr. Myrie's application. Regulation 42 speaks to the Board for Graduate Studies and Research debarring students from taking examinations. The bar, it seems, must be on the recommendation of the Head of Department. Regulation 53 (b) allows for appeals against the decisions of that Board, and that the decisions of the Appeals Committee are final. It seems however that such appeals only apply to decisions of the Board in respect of cases of suspected cheating.

Two other portions of the Statutes place the matter of jurisdiction in context. By Statute 2, Graduates and Students are listed among the members of the UWI. By Section 5 of Statute 10, a Campus Principal has the power of excluding any student from the precincts of the UWI campus or any part thereof. The Campus Principal is responsible to the Vice-Chancellor.

Based on this framework and the authority vested in the Board of Faculty, the Senate, the Campus Principal, the Vice Chancellor and the Council, it is my view that a procedure existed, and still exists, for Dr. Myrie to adopt in protesting the action of the invigilator and any other person who sought to prevent him from sitting his examinations. In the event that he is dissatisfied with the result of the process I find that he is entitled to appeal, by way of petition, to the visitor of the UWI. There is nothing in the Charter to restrict the visitor's jurisdiction to hear such a matter. Based on the authorities cited above it is the visitor who has exclusive jurisdiction in the matter, and that the visitor's decisions (as opposed to the decision-making process) are final and conclusive.

It is with some diffidence that I have come to this conclusion, as the urgency existing at the time of this application may have not allowed sufficient time to implement those procedures so as to give Dr. Myrie a real chance of securing timely relief. The members of the institution must however, adhere to the rules to which they have bound themselves.

Mr. Samuels complained that there were no local cases cited in support of the preliminary objection by the UWI. There may be good reason for that. In *Clark,* cited above, Sedley L.J. said at paragraph 12, in speaking to the contractual relationship between a fee-paying student and his university said:

> "Like many other contracts, it contains its own binding procedures for dispute resolution, principally in the form of the student regulations. Unlike other contracts, however, disputes suitable for adjudication under its procedures may be unsuitable for adjudication in the courts. This is because there are issues of academic or pastoral judgment which the university is equipped to consider in breadth and in depth, but on which any judgment of the courts would be jejune and inappropriate."

Though I have found no local case on the point, there is however very powerful persuasive authority in a decision of the Court of Appeal of Trinidad and Tobago. In *Wadinambiaratchi v Hakeem Ahmad and others* (1985) 35 WIR 325, that Court, in relation to the office of Visitor to the UWI, found (a) that the visitorial authority of its Visitor was a general one, and (b) that matters relating to the internal management of the institution fell outside the jurisdiction of the courts and within that of the visitor. Bernard JA. said at page 346:

> "It seems clear that the basic principle is that matters relating to the internal management of the university such as the admission to courses, the holding of examinations ...and such like matters fall outside the jurisdiction of the court once there is a visitor thereto endowed with visitatorial jurisdiction. Such matters are classified as purely domestic matters falling within the exclusive province of the visitor or his delegate, whose decisions on such matters are regarded as final and conclusive....I take the view that having regard to the broad terms of section 6 of the charter, Her Majesty's appointment was not ceremonial but one of general visitatorial jurisdiction."

I respectfully adopt that as the correct position to be taken by this court in respect of the visitor of the UWI and the jurisdiction annexed to that office.

Whether a Mandatory Injunction should be issued

In the event that I am in error on the issue of the jurisdiction of the visitor, and as I did hear submissions on the substantive point, I shall examine the question of whether Dr. Myrie is entitled to injunctive relief. Although Order 1 of the Notice of Application for Court Orders was framed to appear as a restraining order, what it in fact sought to do is to mandate the UWI to provide for Dr. Myrie sitting the examinations in question. The orders would have required the UWI to take all the specific steps required in the administration of an examination for Dr. Myrie and the marking of the scripts submitted by him. It is true that some of those aspects would not be unique to Dr. Myrie, but some certainly would be so. In seeking an order to have the UWI provide all those facilities the application was clearly for a mandatory injunction.

The authorities are well established as to the issue of such injunctions. The case of *Shepherd Homes v Sandham* [1970] 3 All ER 402 is the case most often cited in respect of this type of injunction. In that case Megarry J. said at page 412 b, that a court is far more reluctant to grant a mandatory injunction than it would a comparable prohibitory injunction. He said that in the normal case the court should feel a high degree of assurance that the grant of an interim mandatory injunction would be approved of at trial. In pointing to a higher standard for mandatory injunctions Megarry J. said that "the case has to be unusually strong and clear before a mandatory injunction will be granted, even if it is sought to enforce a contractual obligation" (page 409 h). The principle has

been approved in a number of local decisions. Among these are *NRCA v Seafood and Ting International Ltd.*, (1999) 58 WIR 269, *Infochannel Ltd. V Cable and Wireless Ltd* (2000) 62 WIR 176 and *Esso Standard Oil S.A. Ltd. v Lloyd Chan* (1988) 25 J.L.R. 110.

In cases where there are serious disputes as to fact the court should be even more wary. In the *Esso* case cited above, the Court of Appeal at page 114A referred to matters which required further evidence and said:

> "On this state of the affidavit evidence, with the credibility of the deponents so critical an issue, it could not be said that the respondent had presented a clear case for an order for a mandatory injunction ...much less was his case "unusually strong and clear"."

In my view, Dr. Myrie is in similar straits to that of the Plaintiff in the *Esso* case. In the instant case a number of disputes exist. They are:

a. whether Dr. Myrie was actually registered at the time he sat Paper 1 of Part II. He had previously been absent from the programme due to illness and applied to be re-registered but had not, up to November 15, (the date of the first examination) received the Dean's approval. Indeed that approval has still not been granted. The result, the UWI contends, is that he was not then registered for the programme, and therefore ineligible to sit any examination therein.

b. whether Dr. Myrie had completed the necessary course work to entitle him to be admitted to sit the Part II examinations. This course work includes the presentation of a case book which is to be scrutinized to determine his eligibility to sit the examination. It is not in dispute that he was very late in presenting his case book to the DM coordinator. The case book should have been submitted six months prior to the examination. His was submitted two days before the examination.

c. whether he had clear written indication that he was not eligible to sit the examination. Prior to the examination Dr. Myrie had received a letter dated September 14, 2007 from the Chairman of the Obstetrics and Gynaecology Specialty Board informing him that he was not eligible to sit the examination. There is no evidence that the Chairman had resiled from his stance or that any approval of Dr. Myrie's readmission to the programme was issued.

d. what were the circumstances under which he was allowed to sit the examination. This issue is less pivotal than the issues previously mentioned.

In Dr. Myrie's favour, is the fact that he received an examination card and time-table from the UWI's registry. It was on the basis of the receipt of these items that Dr. Myrie attended the venue of the examination. I do not find it a factor which overwhelms all the previous issues which the UWI has raised.

Based on these points I feel confident in repeating the words of Campbell JA. in the *Esso* case, in the context of Dr. Myrie's case. It cannot be said that Dr. Myrie has presented a clear case for an order for a mandatory injunction on the basis of his eligibility to sit the examinations, much less a case that is "unusually strong and clear".

Although those are my substantive reasons for having refused the application, in seeking to balance the inconvenience to the parties, I was also influenced by two assurances by Mr. Shelton, which had the tacit approval of Professor Eldemire-Shearer, who was present at the hearing. The first was that Dr. Myrie's presentation at Paper 1 would not be considered an attempt at the examination for the purposes of the special regulations for the DM programme. More importantly perhaps, Mr. Shelton stated that Dr. Myrie's periods of absence from the programme would not be considered in calculating his period of study, as prescribed by the general regulations of the programme. It means that although he would have lost time in respect of his pursuit of the higher degree, his status as a candidate for that degree, would not have been prejudiced.

Conclusion

The UWI's Charter having provided for a visitor, the visitor is the authority which has the jurisdiction to decide disputes arising under the domestic law of the institution. That jurisdiction is defined in the common law and the courts decline jurisdiction in such circumstances. Dr. Myrie, being a member of the UWI was obliged to follow its domestic procedures for applying for relief. His application to this court is therefore inappropriate.

Even if this court does have jurisdiction at this stage, Dr. Myrie's application, for what is, in effect, a mandatory injunction cannot succeed. His case is encumbered by a number of issues which require resolution by a trial. It therefore has not attained the standard that it is unusually strong and clear. That is the standard which should usually be achieved before a court will grant a mandatory injunction. I find that it cannot be said "with a high degree of assurance" that at the conclusion of a trial, a mandatory injunction, especially one which would give him the relief which he sought in the substantive action, would have been found to have been correctly granted.

It is for these reasons that I refused Dr. Myrie's application on November 28. There was no application at that time to strike out the claim. The order made then was:

1. Application refused
2. Costs to the 1st, 3rd, 4th, 5th and 6th Respondents to be taxed if not agreed.