[2014] JMSC Civ. 138

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2010 HCV 01454

BETWEEN	**ALEXANDER OKUONGHAE**	**CLAIMANT**
AND	**UNIVERSITY OF TECHNOLOGY, JAMAICA**	**DEFENDANT**

Ms. Aisha Mulendwe and Patrick Forrester for the claimant

Gavin Goffe and Jermaine Case instructed by Myers, Fletcher & Gordon for the defendant

Heard: 2, 3 and 4 October 2013, 10 & 20 December 2013 & 19 September 2014

EMPLOYMENT LAW – UNIVERSITY – VISITOR – TERMINATION OF EMPLOYMENT – CONTRACTUAL NOTICE GIVEN – ALLEGATION OF BREACH OF INTERNAL LAWS AND NATURAL JUSTICE BY UNIVERSITY – VISITORIAL JURISDICTION – WHETHER JURISDICTION OF COURT OUSTED – THE UNIVERSITY OF TECHNOLOGY, JAMAICA ACT, SS.5, 11(2).

DEFAMATION – LIBEL – ALLEGED DEFAMATORY STATEMENT MADE BY EMPLOYEE – WHETHER UNIVERSITY LIABLE – FAILURE TO PLEAD FACTS RELIED ON – CONSEQUENCES – CIVIL PROCEDURE RULES (CPR) 8.9 (1) & 8.9 (A)

McDONALD-BISHOP, J

[1] The claimant, Alexander Okuonghae, was employed to the defendant, the University of Technology, Jamaica, as a Laboratory Technologist in its Faculty of Engineering and Computing for the period 13 August 2001 to September 5, 2009.

[2] The claimant's written contract of service expressly provided, *inter alia*, that it could be terminated without cause by either party giving the other party

one month's notice in writing. Over the course of the claimant's employment, disciplinary proceedings were brought against him following several incidents. On 4 August 2009, the defendant gave the claimant one month's notice of the termination of his employment contract to take effect on 5 September 2009.

[3] Grounds for the termination of his contract were expressed thus:

> *"In accordance with Ordinance 1999/15: Staff Redundancy, discipline, dismissal, Removal and Grievance Procedures disciplinary charges have been brought against you and are classified as major offences. Given that this is the second occasion in which you have made inciting and unsubstantiated allegations about the University and its Officers, a decision has been taken to terminate your employment on the following grounds:*
>
> *Misconduct unbecoming of an employee of this institution-*
> 1. *False statements made by you about Officers of the University which can bring the name of the University into disrepute;*
> 2. *Gross insubordination; and*
> 3. *Provocative and inciting statements made by you in correspondence dated June 29, 2009 captioned: "Head of School of Engineering" which could lead to disorder.*
>
> *In keeping with the requirements of your contract, kindly regard this as one month's notice of the termination of your employment with the University effective September 05, 2009…"*

[4] By the terms of the letter, he was not required to be present at work for the notice period and was given his emoluments for the period, among other things. He, therefore, received pay in lieu of notice.

[5] By way of a Further Amended Claim Form and Further Amended Particulars of Claim filed on 19 December 19 and further amended by the court at the start of trial, the claimant seeks relief from the defendant as follows:

“1. Damages for wrongful, and/orunlawful, and/or unjustified**,** and/or unfair dismissal;

2. Damages for breach and/or failure to observe principles of fairness, reasonableness and natural justice arising from the discrimination, bias, unfair treatment and victimization of the Claimant by servants, agents and/or employees of the Defendant during the period 2001 to 2009;

3. Damages for breach of contract of employment by failing, refusing and/or frustrating the process of evaluation of the Claimant by servants, agents and/or employees of the Defendant and thereby depriving the Claimant of consideration for promotion to the position of Technical Officer-Mechanical/Chemical in the faculty or to any other position despite his sterling performance and contrary to the ordinances and/or established policies and practices of the Defendant;

4. Damages for mental and emotional torment and suffering suffered by the Claimant resulting from the unfair and malicious conduct and actions of the servants, agents and/or employees of the Defendant;

5. Damages for negligence, failure and/or refusal to ensure that efficiency and good order was maintained and/or steps taken as were necessary and/or reasonable to safeguard the interests of the Defendant in the circumstances where the Claimant had invoked the special appeals process to the President of the Defendant regarding financial aid and barring the Claimant from entering the Defendant’s Campus, in his pursuit of the Master of Philosophy in Pharmaceutics course.

6. Damages for wrongfully, unlawfully, unjustifiably and unfairly de-registering the Claimant from the Master of Philosophy in Pharmaceutics Programme.

7. Legal Costs paid to Aisha N.M. Mulendwe, Attorney-at-Law in the sum of $**108,000.00 and continuing.**

8. Damages for deprivation of health insurance and other benefits enjoyed by the Claimant;

9. Damages for libel arising from the Defendant’s servant, agent and/or employee publishing and circulating false damming

statements contained in correspondence dated April 15, 2009 namely: “has a history of violence on this campus”, causing the Claimant to be wrongly and unfairly punished by being suspended pending a hearing that was ever convened, and causing other professionals in his faculty to distance themselves from him, making the communication and working environment very untenable, uncomfortable and at times unproductive.

10. Damages for loss of earning and future earnings and/or alternative employment commensurate to the Claimant’s qualifications and work experience, and/or resulting, mental anguish, pain and suffering;

11. Aggravated damages and/or exemplary damages;

12. Interest on general damages at the rate of 6% per annum;

13. Interest on special damages at the rate of 29.99% per annum it being the rate charged by the Claimant’s banker, the National Commercial Bank Jamaica Limited;

14. Costs.”

[6] By written submissions filed, the claimant, through his attorney-at-law, Ms. Mulendwe, indicated that he no longer wished to pursue the following remedies:

a) Damages for unfair and unjustifiable dismissal;

b) damages for mental and emotional torment and suffering suffered by the Claimant resulting from the unfair and malicious conduct and actions of the servants, agents and/or employees of the Defendant;

c) Legal Costs paid to Aisha N.M. Mulendwe, Attorney-at-Law in the sum of $108,000.00 and continuing;

d) Damages for deprivation of health insurance and other benefits enjoyed by the Claimant.

[7] In the light of this abandonment of some aspects of the claim, the issues for resolution between the parties have been slightly reduced. Before examining the substance of the claim, however, it is necessary to resolve an issue raised by the defendant in response to aspects of the claimant’s statement of case.

Jurisdictional challenge: whether the court has jurisdiction to deal with aspects of the claim relating to the defendant's internal policies and procedures

[8] The primary contention of the defendant in defence of the claim is that pursuant to section 5 of the University of Technology, JamaicaAct,the Governor - General of Jamaica is the Visitor of the defendant. By virtue of that, the Governor- General, as Visitor, has exclusive jurisdiction in relation to any dispute relating to the internal rules and procedures of thedefendant. Consequently, the court does not have jurisdiction to hear any dispute concerning the defendant's policies, practices, or ordinances.

[9] This point is of critical importance in disposing of the claim and so it warrants primacy of consideration before any other issue is examined. This is so because most of the damages sought from the defendant do relate to allegations of breaches of the defendant's internal procedures and policies. The court must, therefore, first dispense with the question as to its jurisdiction to deal with the claim.

Visitorial jurisdiction

[10] The University of Technology, Jamaica Act, section 5 provides:

> *"5. The Governor-General or the person for the time being performing the role and functions of Governor-General shall be the Visitor of the University, who in the exercise of the visitorial authority, may, from time to time, and in such manner as he shall think fit-*
>
> *(a) direct an inspection of the University, its buildingslaboratories and general work, equipment and of the examination,teaching and other activities of the University by such person or persons as he may appoint in that behalf; and*
>
> *(b) hear matters referred to him by the Council ."*

[11] The First Schedule to the said Act in section 11(2) provides:

> *"The Council of the University shall have general control over the conduct of the affairs of the University and shall have all other functions as may be conferred upon it by the Statues."*

[12] It is the contention of the defendant, as articulated by Mr. Goffe on its behalf, that where visitorial jurisdiction exists, a long line of authority supports the position that such a jurisdiction is exclusive and not concurrent with the court's jurisdiction. He cited in support of this contention ***Patel v University of Bradford Senate and Another*** (**"Patel**") [1978] 3 ALL ER 841, 846 and ***R v Dunsheath, ex parte Meredith(“Meredith”)***[1950] 2 ALL ER 741, 743.

[13] In **Meredith,** it was established as reflected in the headnotes that:

> *"Where there is a Visitor of a corporate body, the court will not interfere in any matter within the Visitor's jurisdiction, and any question of a domestic nature is essentially one for the Visitor whose decision upon it is final. These principles apply equally to a corporation set up by Act of Parliament as to corporation established by charter, equally to a college as to a university."*

Similarly, In **Patel,** Megarry V-C stated:

> *"As was said by Kindersley V. - C. in* ***Thomson v. University of London*** *[1864] 33 L.J. Ch. 625, 634:*
>
> *"…[w]hatever relates to the internal arrangements and dealings with regard to the governmentand management of the house, of the domus, of the institution, is properly within the jurisdiction of the visitor..."*
>
> *In particular, the visitor exercises a special jurisdiction to decide private disputes within the corporation according to the special statutes and code of law governing the corporation. In determining the extent of the visitor's jurisdiction, it may be a matter of considerable importance to determine whetheror not*

those concerned in the dispute are truly members of the corporation. I shall in due course turn to that point…

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. Thevisitor 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."

[14] The case ***Thomas v University of Bradford*** [1987] 1 ALL ER 834 was also cited as a subsequent strong authority on the issue. In that casethe House of Lords held as reflected in the headnotes:

"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."

[15] The Court of Appeal of Jamaica in **Vanessa Mason v The University of the West Indies** ("**Mason**") SCCA No. 7/2009 delivered 2 July 2009 was to follow and strongly reiterate the same principles expounded in **Thomas**and some ofthe earlier authorities on the subject. In **Mason**, the claimant who was an undergraduate of one ofthe university'shalls of residence was expelled from the hall on the decision of the Disciplinary Committee.She sought the court's intervention to prevent the university from expelling her and that she be allowed to reside there without interference or harassment. She also sought specific performance and damages for breach of contract, among other things. The university relied on a similar preliminary point as the one raised in this matter, that the court had no jurisdiction to hear the application because of the provisions of the Royal Charter by which the university was incorporated. It was contended that the Royal Charter provided for there to be a Visitor of the university exercising visitorial authority and as such the matters with which the claim was concerned would fall within that jurisdiction and not the court's.

[16] The Court of Appeal and Anderson, J (at first instance),in examining the issue whether the civil courts have jurisdiction to hear such a cause of action in the light of the visitorialauthority, found that the court has no such jurisdiction. As Harris, JA put it (paragraph [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..."*

[17] Her Ladyship examined in detail the relevant authorities that she discovered on her quest for the true position of the Visitor within our jurisprudence (my words) and concluded at paragraphs [39] and [40] of thejudgment:

> *"[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 the law and apply them, by*

*extension, determine questions of fact arising under those laws. As earlier indicated, the scope of the visitor's powerswithin 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 a visitorsaid:*

> *"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 these functions."*

*[40] In **Hines v Birbeck 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."*

[18] Then at paragraph [49], after citing Griffith L.J.'s dictum in **Thomas**, her Ladyship continued:

> *"[49] There can be no doubt that Griffith L.J.'s clear pronouncement is that it is impermissible for the courts to chose which matters are submitted to the visitor and which are retained by them. His pronouncement offers no room for debate… 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 or disputes arising between members of the University are exclusively within the province of the visitor."*

Whether claim falls within the visitorial jurisdiction

[19] Having been superbly guided by compelling and, otherwise, binding authority on the subject concerning the court's jurisdiction where visitorial power exists, I have examined the circumstances of this case and the contesting views of the parties.

Claimant's submissions against the visitorial jurisdiction

[20] Ms. Mulendwe raised several thought-provoking arguments for the court to reject the defendant's objection and to exercise its jurisdiction.Portions of her arguments will be reproduced in summary at this juncture.

(i) The Visitor is an old creature associated with seventeenth and eighteenth centuries*eleemosynary (charitable organizations)* organizations such as Oxford and Cambridge Colleges and the universities themselves which are civil corporations did not fall under the Visitor's jurisdiction. (See **R (on application of Varma) v HRH The Duke of Kent ("Varma")** [2004] EWHC 1705 (Admin).

(ii) While the University of Technology, Jamaica Act provides for a Visitor who is the Governor - General, section 3(2) of the Act also states that the University is established as a body corporate. The section also provides that the term body corporate should be accorded the same meaning as in section 28 of the Interpretation Act that provides that a body corporate can sue and be sued. Therefore, having established that the defendant is a body corporate, and since the claimant contends that the defendant breached the terms of his employment contract, it should follow that his claim for damages is properly before the court.

(iii) There are also some procedural barriers for the defendant's argument in disputing the court's jurisdiction. This is because the defendant failed to adhere to rules 9.6 (1) and 9.6 (5) (b) of the Civil Procedure Rules, 2002, ("the CPR") that provide the steps that a defendant should take if he intends to dispute the court's jurisdiction. A defendant is required to make such an application within the time allowed for filling a defence. A defendant who does not proceed to make such an application is deemed to have accepted the court's jurisdiction. In this case, the defendant, having not made an application but having filed a defence, has accepted the court's jurisdiction.

[21] I have examined each argument in turn and having done so, I have found none of the points raised,thus far,by the claimant sufficient to ward off the

defendant's jurisdictional challenge. The case of **Varma** only serves to reinforce the point that the Visitor is the sole authority to determinematters falling within the domestic sphere of the institution over which he exercises jurisdiction but that his decision, even though final, can be made the subject of judicial review. This was also made clear in **Meredith.** In **Varma**, it was the actual decision of the Visitor that was being examined by the court by way of judicial review proceedings and not an internal matter that fell within the jurisdiction of the Visitor. The court did not assume any jurisdiction over any dispute that was for the Visitor to decide. The court maintained the principle that a Visitor of a university "had to make the final decision on any appeal but that he had a wide discretion to decide the appropriate procedure in dealing with appeals." The facts of **Varma** are, therefore, distinguishable from the facts of the case at bar.

[22] On the point of the corporate status of the defendant, I find that the fact that the defendant is a body corporate does not oust the operation of the visitorial authority where it exists. Parliament had not only seen it fit to accord corporate status to the defendant but alsosaw it equally fit to appoint the Governor-General as its Visitor. The two are not mutually exclusive.

[23] Indeed, the irrelevance of the corporate status of the defendantto the exercise of visitorial authority over its affairs is made particularly clear and unmistakable by dicta of Lord Goddard CJ in **Meredith.** There, his Lordship categorically stated that the principles of exclusivity of the Visitor's jurisdiction apply equally to corporation set up by Act of Parliament as to corporations established by charter and that it applies equally to a college as to a university. In this case, the defendant is a corporation set up by an Act of Parliament and which is made subject to the visitorial jurisdiction by its maker. The fact that the defendant can sue and be sued has no bearing on this fact. So, the argument that the court should not exercise jurisdiction on that basis is, therefore, unsustainable.

[24] I have also found it difficult to accept Ms. Mulendwe's contention that rules 9.6 (1) and 9.6 5 (b) of the CPR stand as a procedural barrier to the defendant's argument. In the first place, as Mr. Goffe submitted, the jurisdictional point is not the totality of the defence. The defendant is not contending that the court has no jurisdiction at all in this matter. Its position is that the court may properly resolve disputes over a breach of the employment contract, but that it has no jurisdiction to hear a dispute that is solely related to a breach of the internal ordinances and statutes of the defendant. So, the defendant's contention is that such matters that arise on the claim that would fall within the visitorial jurisdiction ought not to be determined by the court. Based on the claim, there is room for aspects of it to be decided on by the court.

[25] Secondly, and in any event, based on the authorities that there is no concurrent jurisdiction between the Visitor and the court and that the jurisdictions are mutually exclusive,it would mean that the court,simply, cannot entertain a claim that is onefor the Visitor. It is,therefore,a substantive question of law to be decided by the court and not a merely procedural one whether matters placed before the court is for the Visitor or the court. Once it is accepted that whatever is in issue falls within the purview of the Visitor, as explained in law, then it would be exclusively within the province of the Visitor and the jurisdiction of the court would be ousted.Rules9.6 (1) and 9.6 5(b) cannot avail the claimant at all. So, I agree with the views of Mr. Goffe that on the question of jurisdiction, the claimant's submission that the CPR preclude the defendant from contesting jurisdiction at this stage, without an application to do so, is not supported by the cases.

[26] Ms. Mulendwe also cited the case of **The University of Technology, Jamaica v Collin Davis & Sharon Hall ("Utech v Davis")** [2012] JMSC Civ 5**.** In that case the Defendant (in this case) brought a claim against a lecturer and his guarantor for failure to repay a loan granted to him to pursue studies. According to counsel, the contract between the defendant and the lecturer

related strictly to the internal policies of the defendant, and he was still in its employ when the matter was brought before this court, despite the existence of the Visitor. According to her, the claim brought by the defendant is inconsistent with its present assertions of the role of the Visitor. In fact, she said, it demonstrates the defendant's vacillating position towards the role of the Visitor, whenever it pleases. She relied on this case to argue thatthe defendant's contention that termination of the claimant's contract is an issue concerning the internal policies of the defendants and, therefore, within the sole province of the Visitor is inconsistent with the defendant's claim for damages in **Utech v Davis**.

[27] Mr. Goffe, on the other hand, contended that the case cited did not involve any dispute as to the defendant's policies and procedures so as to oust the jurisdiction of the court. That is, indeed, so. The question for consideration at this point is whether there are areas of dispute that fall outside the jurisdiction of this court. It is evident that the case of **Utech v Davis** was a matter that was for determination within the ambit of the general law of contract and exclusively so and would, therefore, have beenone for the court to determine. It is the nature and characteristic of the matter in dispute that will determine whether it falls within or outside the visitorial jurisdiction. The substance of the matter in dispute must be examined by the court to arrive at a decision wherein jurisdiction lies whenever jurisdiction is disputed.

Discussion/ Findings

[28] In **Mason**and all the other cases examined, the relevant court inspected the matters in dispute between the parties to see wherein jurisdiction would lie having regard to the provisions for the exercise of visitorial jurisdiction in the particular case. I am attracted to the approach adopted by Megarry V-C in **Patel.** His Lordship, in analysing the case before him, identified three propositions that he said were to be established by the university in that case in objecting to the court's jurisdiction. They are as follows: (1) that the university (defendant) has a Visitor; (2) that the issues raised by the claimant were within the jurisdiction of

the Visitor and were outside the jurisdiction of the court; and (3) that the claimant falls within the jurisdiction.

Whether the defendant has a Visitor

[29] In looking at the claimant's case with these guidelines in mind, it is clear that the defendant has a Visitor in the person of the Governor-General. This was established by Parliament by virtue of section 5 of the University of Technology, Jamaica Act.

Whether matters falls within the jurisdiction of the Visitor

[30] The second question to be examined is whether the issues raised by the claimant are within the jurisdiction of the Visitor and outside the jurisdiction of the court. To resolve this issue, it is necessary to closely examine and to ascertain the nature and substance of the claim. Upon an examination of the claimant's statement of case, it becomes immediately obvious that the bulk of the claimant's complaint is about treatment of him by the defendant in administrative matters. Paragraphs 4 – 8 of the Further Amended Particulars of Claim reveal an allegationthat the defendant is liable in damages to him for breach of natural justice, discrimination, bias, unreasonable and unfair treatment and victimization by the defendant, its servants and agents. It contains too complaintsabout matters relating to his evaluation, promotion, academic trainingand right to have grievances relating to him properly addressed in accordance with the policies, procedures, rules and regulations of the defendant.

[31] The issues surrounding the claimant's evaluation, promotion, development, and similar matters, as averred in paragraphs 4 – 8,are governed by the defendant's *Human Resources Policies and Procedures– General,* in particular,those portions falling under the heading"*Performance Review, Planning and Development – Administrative,Technical and Ancillary Staff (Levels 1-9).*" The matters complained of in those paragraphs,clearly, would fall within the

internal administrative mechanisms of the defendant even though the claimant has placed them as being part of his contractual arrangement.

[32] In paragraphs 9 to 11 of the particulars of claim, the issue is raised concerning the termination of the claimant's employment by notice in writing dated 4 August 2009. Those averments relating to the termination of his employment read:

> *"9. That without due process and/or hearing, on 4 August 2009, the Defendant, through its Senior Director Human Resources, wrongfully and unfairly purported to terminate the Claimant's employment for misconduct unbecoming an employee on allegations of;*
>
> *a. False Statements made by the Claimant about Officers of the University which can bring the name of the University into disrepute;*
>
> *b. Gross misconduct and;*
>
> *c. Provocation and inciting statements made by the Claimant in correspondence dated June 29, 2009 captioned "Head of School of Engineering" which could lead to disorder.*
>
> *10. The said "termination of employment" letter contained mis-statements of facts as well as erroneous unsubstantiated assertions. The Claimant was unaware that charges classified as major offences had been brought against him until he received the said letter, in breach of the Defendant's own procedures and/or principles of natural justice and laws of Jamaica…*
>
> *11. The Defendant wrongly purported to rely on ordinance 1999/15 rules regulations and principles of natural justice when it purported to terminate the Claimant thereby denying the Claimant a hearing, prior to the purported*

> *termination, in breach of his right to confront his accusers and be heard in his own defence."*

[33] The undisputed evidence shows that the claimant was dismissed in accordance with the terms of his contract. It is seen that under the terms of his contract of employment, either the claimant or the defendant could terminate theemployment contract by giving one month's notice in writing. The claimant was given one month's written notice of the termination of his employment contract. He was also paid his full salary in respect of this period of notice.

[34] When one examines the claimant's pleadings against these facts, it is evident that the claimant's complaint is not that the notice period was unlawful as being in breach of statute, the common law or in breach of his contract. His complaint is, generally, that he was dismissed without a hearing and in breach of the defendant's own procedures and/or principles of natural justice and laws of Jamaica. The claimant has not pointed to the laws of Jamaica that have been breached and by what means. The gravamen of his complaint,clearly,is on the grounds of unfairness arising from alleged breaches of internal processes, policies and procedures. Thisis therefore, a claim for unfair or unjustifiable dismissal which on my understanding, the claimant has abandoned.It means,in essence, that that these averments would now be merely of academic interest. Be that as it may, however, I will just pause to examine briefly the internal laws of the defendant pertaining to disciplinary and grievance procedures to see whether there is any basis on which the claimant could successfully resist the jurisdictional challenge.

[35] Statute XXII of the Second Schedule to the University of Technology, Jamaica Act makes provisions for '*Removal from Office and Employment and Discipline of Staff*'. This Statute prescribes that:

> *"(1) The Council may, from time to time, prescribe Ordinances, the rights, privileges and rules governing the employment of –*

(a) academic staff;

(b) administrative and technical staff; and

(c) ancillary staff.

(2) *In providing for these matters, the Council shall ensure that the procedures provide for the hearing of staff grievances and appeals."*

[36] The claimant would fall within the group of employees in respect of whom the Council would make provisions pertaining to disciplining and grievances. It is the Council that is given the authority to deal with all these matters. The Council, pursuant to the statutory authority, issued the Ordinances. The relevant one for our purposes is Ordinance 1999/15 that, *inter alia*, deals with staff discipline, dismissal, removal and grievance procedures.

[37] The Council had set up an elaborate scheme for dealing with these matters. In respect of employees with grievances, there is a system established where the grievances could be taken as far as to the Council which is the final stage in the process. No appeal lies from the decision of the Council. There is thus no reference to the Visitor being the authority to whom the right to appeal lies.It,therefore, follows that nowhere in the Act is it stated expressly that the claimant is subject to the jurisdiction of the Visitor as Ms. Mulendwe was at pains to point out.

[38] It, does not mean, however, that because the Visitor is not expressly indicated as a person to whom the claimant may complain,that the matters complained of do not fall within the visitorial jurisdiction but the court's. The grievance and disciplinary procedures are internal matters laid down by the Council.The Visitor is the ultimate authority on the enforcement of the domestic or internal laws of the defendant. Furthermore, there is still an avenue provided for such matters to be referred to the Visitor because the Act provides that the

Visitor may hear matters referred to him by Council. One does not know if this is a matter that the Council might not have referred to the Visitor. We would never know that, however, because the claimant had failed to exhaust the internal machinery that was available to deal with his grievance before filing his claim.

[39] It could be argued that section 5, in establishing the visitorial authority, only indicates some duties that the Visitor may carry out in the exercise of that authority. It does not appear that section 5 has set out in an exhaustive fashion the extent of the duties of the Visitor. It is the visitorial authority known to law that the Governor-General, as Visitor, is to exercise and so,as part of that authority, he may carry out those functions specifically delineated by the statute. That, however, would not be the extent of his power in the light of the established authorities.

[40] Lord Goddard CJ in **Meredith**, in observing the provisions of the Act under consideration in that case, concluded that the Act conferring visitorial authority had conferred some special duties on the Visitor but that there was nothing in the Act to show there was any limitation imposed on the ordinary visitorial powers of the Visitor. I share the same observation in examining our statutory provision. It has not sought to limit the ordinary visitorial authority of the Visitor known to law so there are no restrictions imposed on such authority.

[41] Megarry V-C, in considering this second question in **Patel**, noted:

> *"Jurisdiction to hear complaints, and appeals is a function which may be exercised at any time and not only at times fixed for general visitation. Subject to the restrictions imposed by the founder, the Visitor has a general jurisdiction over all matter of dispute relating to the statutes of the foundation and the internal affairs and members of the corporation."*

His Lordship then made reference to **Thomson v University of London** [1864] 33 L.J. CH. 625, 634 in which it was stated:

> *"Whatever relates to the internal arrangements and dealings with regard to the government and management of the house, of the domus, of the institution, is properly within the jurisdiction of the Visitor."*

His Lordship, then continued:

> *"In particular the Visitor exercises a special jurisdiction to decide private disputes within the corporation according to the special statutes and code of law governing the corporation."*

[42] Cooke, J.A. in **Mason** at paragraphs [9] and [10], similarly, noted that:

> *"[9] 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.*

His Lordship then repeated, in full, the headnotes of **Thomas** set out in paragraph [14] above.

[43] Following closely on the guidance of the authorities, it could be said that these matters set out in paragraphs 4-11 of the Further Amended Particulars of Claim are for the visitorial jurisdiction as they fall squarely within the internal 'policies, practices and regulations' of the defendant to use the claimant's own words in paragraph 8 of the said particulars of claim. The matters in issue are purely connected to the internal laws, policies and processes governing the defendant and its employees like the claimant. They relate exclusively to the private or special rights of the defendant even if clothed by the claimant in the term "breach of contract." The complaint is, simply, that the defendant has failed to observe or adhere to its internal laws.

[44] In **Mason** at paragraph [12], Cooke JA referred to the dictum of Kelly, L.J. in **Re Wislang's Application** [1984] NI 63 (cited by Lord Griffith in **Thomas**) which I find rather useful as providing a complete answer to the claimant's contention on this issue. It is, indeed, a brilliant exposition on the issue that is worthy of application to the facts before me without modification.His Lordship, Kelly L.J. opined:

> *"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 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."*

[45] His Lordshiplater continued in terms even more relevant for immediate purposes:

> "*Of course, the applicant has the right under his contract to have the criteria relating to 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, 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 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 contains terms some of which are concerned with private or special rights given as member of the university and other terms expressed 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."

[46] I adopt these views, wholeheartedly, as expressing my sentimentsexactly in relation to the instant case. There is not much more I would add except to say that in the final analysis, there is no place in the general law of contract to facilitate the determination of the matters in dispute between the partiesset out in paragraphs 4-11 of the Further Amended Particulars of Claim because of their palpably clear and exclusive domesticity. The Visitor is the sole judge of the internal laws of the defendant to ensure their observance along with the rules of natural justice. The dispute that arises in relation to the mattersenumerated in the selected paragraphs is one that would fall squarely within the exclusive purview of the Visitor and outside the jurisdiction of this court.A conclusion that a substantial portion of the claimant's claim falls within the exclusive jurisdiction of the Visitoris, therefore, inescapable.

Whether the claimant falls within the jurisdiction of the Visitor

[47] The third stage of the analysis, according to Megarry V-C's formulation, would be whether the claimant (as distinct from the matters raised by him) falls within the jurisdiction of the Visitor.The claimant was a member of the defendant as defined under Statute 1 of the Second Schedule of the Act. This was by virtue of his contract of service. He, by the terms of his contract, had submitted to, *interalia,* the rules and regulations of the defendant (clause 4 of his contract) and

to “all statutory instruments relating to the University, which may now or hereafter be enacted” (last sentence of the contract). He was, therefore, subjected tothe visitorial authority as an employee/member of the defendant during the course of his employment.

[48] The question that now arises for consideration is whether the claimant is or was at the time he initiated these proceedings within the scope of the visitorial jurisdiction, his contract having been terminated. It could be argued that he no longer stands as a member of the defendant and so is not subject to the jurisdiction of the Visitor.This issue, or at least one of similar nature, was considered in reasonable detail by Megarry V-C in ***Patel.***

[49] In that case, as the headnotes depict (which I will transcribe almost *verbatim*), the plaintiff was a student at a university incorporated by royal charter and by the terms of the charter was a member and corporator of the university. Having twice failed to pass his examination at the end of the academic year, he was required to withdraw from the university and was refused re-admission until he could provide proof of greater academic ability. By an originating summons, he sued the university for certain declarations in regard to his position, and by a writ sought declarations, an injunction, and damages against a former Vice-Chancellor and Principal of the university, all with the object of securing his re-admission.

[50] On the question whether the court had jurisdiction it was held,*inter alia*, that (1) the Visitor's jurisdiction was exclusive and that all the matters of which the plaintiff complained were of a nature which fell within it; (2) the jurisdiction extended not only to those who were admittedly members of the university but also to all disputed questions of membership, and so applied to the plaintiff in his challenges both to the termination of his membership and to the refusal to re-admit him; and (3) the court accordingly had no jurisdiction.

[51] Megarry V-C made some useful pronouncements on this aspect of the casethat I find necessary to re-state in undiluted terms in applying them to the instant case. His Lordship noted:

> "*Now the plaintiff relied strongly on the definition of "students" in statute 1. He was plainly not at present "following" any course of studies in the university. Accordingly, he said, he was not one of the "students of the university" who by virtue of statute 2 were "members of the university" and so were corporators by virtue of the reference to "members of the university" in clause 1 of the royal charter. Furthermore, by similar reasoning, he was not one of the "undergraduate students of the university" who by clause 1 of the royal charter were* ***made*** *corporators.* ***Therefore, being plainly no member of the university and no corporator, he stood outside the visitatorial jurisdiction…***
>
> ***The plaintiff further contended that he had ceased to be a member of the university by reason of his failure to re-register at the university after his first year ended…***
>
> *The cogency of the plaintiff's argument on this point plainly rests on a foundation of the Visitor's jurisdiction being confined to those who are admittedly members ofthe university. If that foundation were sound in law, there would be some force in the contention, though there would also be problems, not least in relation to the relief which the plaintiff is seeking in the proceedings.However, for the reasons that I have given, I do not think that the Visitor's jurisdiction is confined in this way.* ***It is not restricted to disputes between members but extends to all questions of disputed membership; and that plainly includes the question whether the plaintiff was validly dismissed from the university and whether he was validly refused re-admission to it…***
>
> *Questions whether examination results were unlawfully withheld and whether certain appointments to the Student Progress Committee were unlawful plainly fall within the visitatorial jurisdiction over internal matters and the proper construction of the*

> *university legislation; and I cannot see that the plaintiff has any legitimate interest in them save as a student member of the university within that jurisdiction.* ***Nothing that happened in 1973 has taken away the jurisdiction of the Visitor over the matters of which the plaintiff complains."*** (Emphasis added.)

[52] It does appear to me, by parity of reasoning, that although the claimant is no longera member of the defendant, he is challenging the validity or legality of his dismissal that involvesmatters pertaining to the treatment of him as an employee by the defendant. These matters complained of all relate to his standing as an employee of the defendant and involve the application to him of the rules and regulations of the defendants. I can see him having no legitimate interest in such matters except as an employee or (disputed employee) of the defendant. It means that the termination of his services would not take away from the jurisdiction of the Visitor over the matters of which he complains. He, therefore, falls within the jurisdiction of the Visitor as a 'disputed' employee.

[53] In fact, other cases have demonstrated the position of the law on the question that even if the person ceased to be a member of the university, the visitorial jurisdiction might still extend to him depending on the question in dispute. In this case all the matters under scrutiny, thus far, are matters that relate to the claimant's position as an employee or disputed employeeof the defendant and which include the validity of his dismissal. I see no basis for him to be taken outside the visitorial jurisdiction. He was the one who clearly did not seek to exhaust the grievance mechanisms set up by the Council. It is the claimant's case, that to date the matters about which he is concerned have not been brought to the attention of the Council. He has failed to exhaust internal remedies.

[54] The authorities have also alluded to the remedies one can obtain from the Visitor for breach of the internal laws that leads to a dismissal. Those include

reinstatement or damages in lieu of reinstatement. So, it is not that the claimant would have been without the possibility of a remedy if he were to have exhausted the internal channels open to him under the internal laws of the defendant and within the Visitor's jurisdiction.

[55] I would hold that the claimant would fall within the jurisdiction of the Visitor. This finding would mean then that the defendant has successfully established that a substantial portion of the claimant's claim would fall outside the jurisdiction of this court.

Whether the defendant is liable in damages for wrongful dismissal

[56] The authorities have made it clear that the terms of a contract could give rise, expressly or impliedly, to matters that are justiciable within the court's jurisdiction while at the same time giving rise to matters that are not so. The visitorial jurisdiction can, therefore, co-exist with the court's (or other appropriate tribunal's) jurisdiction. It is for that reason that I have found it necessary to go a bit further to settle this issue raised by the claimant that he is entitled to damages for wrongful dismissal which would fall within the court's jurisdiction.

[57] The evidence shows thatthe defendant, although giving the grounds for the termination of the claimant's employment, did give the requisite contractual and statutory notice along with his monetary entitlements. There is no dispute about that. In **Cocoa Industry Board and Cocoa Farmers Development Company Limited and F.D. Shaw v Burchell Melbourne** [1993] 30 J.L.R.242, the Court of Appeal heldthat where the contract of employment made it clear that the employer could terminate the agreement on the giving of one month's notice or one month's salary in lieu of notice, then once the employer gave such notice or made those payments, there is no basis on which a claim for wrongful dismissal can be upheld. The court further held that where such a notice or salary in lieu of it is given, the statements of the employer on the employee's behaviour in the letter of dismissal is of no importance as the employee was not

summarily dismissed. That is the law that I am bound to apply in this case. It follows that the statement of the grounds for the dismissal in the claimant's letter of termination did not mean that the claimant was being dismissed for cause in the legal connotation of that phrase because he was given the contractual and statutory notice to which he was entitled.

[58] Ms. Mulendwe's contention that the present case is distinguishable from **Cocoa Industry Board** because both parties agreed that the contract would be subject to the defendant's, act, statutes, ordinances and regulations is rejected. I do not agree that those matters would make the dismissal wrongful or unlawful. The question of wrongful dismissal is thrown through the door when the statutory and contractual notice was given and payment for the period made. The claimant's grievance by reference to the internal policies, practices and rules of the defendant,if nothing else, renders his challenge as being one directed at the manner of his dismissal. He said the principles of natural justice and the internal procedures, rules and regulations of the defendant were not observed before he was dismissed. He has raised grounds that amount to an issue of unfair or unjustifiable dismissal. This requires a separate and distinct consideration from wrongful dismissal.

[59] It was made clear beyond question by our Court of Appeal in **Kaiser Bauxite Co. v Vincent Cadien** [1983] 20 J.L.R. 168 that the concept of natural justice which is generally applicable to the sphere of public law has no application to private contractual relationships and, therefore, cannot be relied upon by an employee to challenge his dismissal.This means the claimant's grouse cannot be facilitated in a claim before this court for unfair dismissal as a result of breach of natural justice.

[60] Furthermore, I have accepted the invitation of Mr. Goffeto notethe current state of the law on a claim for damages by an employee for the manner of his dismissal, which this aspect of the claim is all about. According to counsel**,** it is

now established that damages are not recoverable for breach of either an implied or express term of an employment contract as to the manner of dismissal.He pointed to the English cases of, ***Johnson v Unisys Ltd*** **[2001] UKHL 13**; ***Edwards v Chesterfield Royal Hospital NHS Foundation Trust and Botham (FC) v Ministry of Defence*** **[2011] UKSC 58** which have all been considered.

[61] There are highly persuasive dicta from the cases cited by Mr. Goffethat serve to establish that disciplinary procedures were intended to operate within the scope of the law of unfair dismissal and do not provide contractual duties which are independently actionable so as to entitle a claimant employee to common law damages in the ordinary courts for breach of them. My understanding of the principles derived from the authorities is that disciplinary procedures, even if incorporated or intended to be incorporated as apart of contractual arrangements between employer and employee, cannot be taken as being intended to qualify the employer's common law or statutory right to dismiss without cause on giving the requisite notice. The dispute would still relate to the issue of unfair dismissal which, within our local context, would not be a matter for this court but one that would fall within the remit of the Industrial Disputes Tribunal set up by Parliament under the Labour Relations and Industrial Disputes Act.

[62] Having examined the authorities cited, I am fortified in my view that this court cannot entertain the claim of the claimant on the bases advanced by him under the heading of wrongful dismissal, even more so in circumstances where he said he is no longer pursuing a claim for unfair /unjustifiable dismissal.

[63] Having looked at the claim relating to the dismissal of the claimant from the defendant's employment, it does appear that this court would have no jurisdiction to entertain the claim in relation to the dismissal of the claimant as averred in his statement of case on two limbs: firstly, on the exclusive jurisdiction of the Visitorover the matters complained of and/or(2) the fact that this court is

not the proper forum to deal with the issues of unfair/unjustifiable dismissal that arise on the pleadings in paragraph 9-11. Furthermore and in any event, the claimant has abandoned that aspect of his claim.I see no basis on which this court can properly exercise jurisdiction to grant an award of damages as claimed in those paragraphs of the claim form.

[64] I find then that this court does not have the jurisdiction to grant the claimant the damages he seek for the matters contained in paragraphs 1, 2, 3, 5 and 6of his Further Amended Claim Formthat he had pursued. He has abandoned his claim in relation to paragraphs 4, 7 and 8. The objection taken by the defendant to some aspects of the claimant's claim as being outside the jurisdiction of this court is, therefore, upheld.

Whether the claimant is entitled to damages for libel

[65] The averment of the claimant in paragraph 9 of the Further Amended Claim Form that he be awarded damages for libel now arises for consideration. I find that this aspect of his claim falls within the jurisdiction of this court for even though the defendant's internal procedures are at the centre of the complaint, adjudication on allegations of libel would be extraneous to the visitorial jurisdiction.It, therefore, falls squarely within the common law jurisdiction of this court.

[66] The pleading is that the claimant is claiming damages for libel as follows:

> *"[a]risingfrom the Defendant's servant, agent and/or employee publishing and circulating false damming statements contained in correspondence dated April 15, 2009,namely: "has a history of violence on his campus" causingthe claimant to be wrongly and unfairly punished by being suspended pending a hearing that was never convened, and causing otherprofessionals in his faculty to distance themselves from him, making the communication and working environment very untenable, uncomfortable and at times unproductivity."*

[67] The statement being complained of as being defamatory is attributed to an employee of the defendant whose name was ordered to be removed from the claimant's statement of case as 2nd defendant by order of Mangatal J (as she then was) on 23 November 2012. When the matter came before me, the name still appeared in paragraph 9 and an amendment was sought to remove it pursuant to the order of Mangatal J when the defence took issue with the pleading as it was at the time. In essence, then, all the claimant did was to remove the name of the employee who allegedly made the alleged defamatory statement. The pleading still shows that the complaint concerns "an employee, servant or agent of the defendant" meaning only one person and, more so, not the defendant itself. This pleading is important to note in considering, ultimately, whether liability can be attached to the defendant.

[68] At paragraph 38 of his witness statement, the claimant gave evidence in support of this averment. There, he stated that in a memorandum written by the particular employee addressed to the Director of Safety and Security and the Senior Director and copied to two other persons (top ranking officers of the University], the employee "maliciously, falsely and unfairly and without proof stated that, "*your records would indicate that Mr. Okuonghae has a history of violence on this campus*." His complaint was that this characterization of him as "violent" was "wholly unsubstantiated and a calculated effort on the part of that employee to get rid of him once and for all." Then he said that this memo was read at the meeting that afternoon of at leasteleven persons and that the statement impacted on the decision of the defendant resulting in his suspension.

[69] It is clear from all this that the complaint is that the alleged defamatory statement emanated from the employee. There is no allegation of libel against the defendant in either the pleadings or the evidence. So the question arises, what would be the basis of the defendant's liability? It is noted in considering the question that the letter in which that statement is said to be containedwas written by that employee in her personal capacity and arising out of some dispute

between the claimant and her. The employee was reporting threats she said the claimant made to her. The defendant played no part in that dispute except to receive the complaint.

[70] The employee in making the statement was at the timenot acting or purporting to act on behalf of the defendant during the execution of her duty. She was not acting as a servant or agent of the defendant in the making of that statement. There is thus no factual or legal basis on which the defendant can be held liable on the basis of vicarious liability for the making of any statement made by that employee in the circumstances.

[71] In relation to the personal liability of the defendant, no fact on which such a claim is based was pleaded by the claimant. The position of the defendant as a tortfeasor in its own right is not established on the pleadings and on the evidence proffered. The amendment sought by the claimant and which was granted was simply to remove the name of the employee involved as was previously ordered by the learned judge and no further amendment was made. The averment, therefore, has nothing to do with the personal liability of the defendant for alleged defamatory statement.

[72] It was during the course of cross-examination of the defendant's witness and in submissions eventually made on behalf of the claimant that a claim against the defendant in libel was brought to the fore. It is observed that it is in written submissions that Ms. Mulendwe sought to advance a case against the defendant on the ground of excessive publication in that the defendant did not follow prescribed procedures and had wrongly placed the memo containing the alleged defamatory statement before persons constituting a panel some of whom had no right to hear the statement.

[73] According to Ms. Mulendwe, the defendant is liable for libel because it did not invoke and adhere to proper grievance proceedings in contravention of its

statutes to deal with the allegation.In so doing, it wrongly exposed the defamatory material contained in the complaint against the claimant to persons who had no right or business hearing the matter. Her argument is that the defendant must be found liable for defamation for recklessly, and without caringwhether it was true, circulating defamatory material to officers of the defendant who were not authorized nor supposed to hear the internal grievance.

[74] This was never pleaded and no application was made to amend the pleadings to make such assertions against the defendant. This is a totally different case from that which was pleaded and for which an amendment was granted at the commencement of the trial. The defendant was never put on notice of this case it has to answer as formulated by Ms. Mulendwe in her submissions. I must say that both the defendant's counsel and the court were taken by surprise by this turn of events. We had formed the view that the claimant was not pursuing a case of libel against the defendant, the employee not being a party and no allegation was made against the defendant personally.

[75] Furthermore, to build a case on excess publication as Ms. Mulendwe sought to do, all the names of the persons to whom the statement was published would have to be pleaded or if the names are not known, the best available particulars as to their identity would have had to be pleaded. In Bullen & Leake & Jacobs, ***Precedents of Pleadings*** Volume 1, page 513, paragraph 28-16, it is stated with the aid of cited cases under the sub-heading *"Pleading nature and extent of publication:"*

> *"In the case of a letter or other private communication, the name of each publishee should be pleaded (see **Dalgeish v Lowther** [1899] 2 Q.B. 590, or, if unknown, the best available particulars as to identity should be given. Otherwise, the claimant will generally not be allowed to prove at trial publication to any other person (**Davey v Bentick** [1893] 1 Q.B. at 186; **Barham v Lord Huntingfield** [1913] 2 K.B. 193; Russell v Stubbs Ltd [1913] 2. K.B. 200."*

[76] This must be critical because the court and the defendant must be placed in a position to see which person would have had no legitimate interest and right to receive the statement which is a relevant consideration in excessive publication claims. It follows logically, then, that where no name has been pleaded in circumstances where such names and identity would be known or ascertainable, then the claimant ought not to be allowed to prove publication to anyone at trial.

[77] I must, however, state categorically that the claimant is not allowed to rely on any factual contention raised in the written submissions that were not pleaded in his statement of case to build a case against the defendant. This is in keeping with rule 8. 9A of the CPR that states:

> *"8.9A The claimant may not rely on any allegation or factual argument which is not set out in the particulars of claim, but which could have been set out there, unless the court gives permission."*

This provision follows on rule 8.9 (1) that states:

> *"8.9 (1) The claimant must include in the claim form or in the particulars of claim a statement of all the facts on which the claimant relies."*

[78] The claimant has breached those provisions and the interest of justice cannot be served by allowing him to proceed on a case raised at such a late stage of the proceedings without the court's permission.

[79] I must say too, that even if the claimant had raised such a case on his pleadings,the evidence presented would not have been enough to ground liability in the defendant, personally or vicariously. The particulars are clear that the statement being complained about allegedly emanated from an employee and not the defendant personally. The evidence disclosed the context in which the statement was made. The maker of the alleged defamatory statement is not a

party to the proceedings. The claimant would have to prove that the statement is untrue and that it was published with malice. Without the employee being a part of the proceedings and based on the evidence given on this issue, there is no way this court could determine only on the evidence of the claimant whether the statement was true or untrue and made with malice.

[80] This is particularly so because there is undisputed evidence that there was, at least, one occasion when the claimant was involved in an altercation with a female friend while at work on the defendant's campus. This altercation led to the involvement of the campus security and the police. Both the defendant and the female friend were given letters to seek medical attention. The claimant has denied it being a physical alteration and of him receiving or inflicting any injuries. He said this to say that there was no violence. The question does arise: if there was no physical altercation, why then would he and the young lady be sent by the police to seek medical attention? The question also arises: what has led the employee to make such an allegation? This can only be answered by the employee who asserted it.

[81] The reason for the employee alleging that the records of the university would show that the claimant has a history of violence on campus cannot be explored, as she is not a party to the proceedings. The defendant did not utter the words, so it cannot say the reason and motive for the employee saying so. The claimant saying there was no violence in relation to that incident is not sufficient in my view to establish, on a balance of the probabilities,that the statement made by the employee is not true. Without a case against that employee for her evidence to be objectively assessed with the claimant's evidence by this court, it is difficult on the evidence to find a basis for personal or vicarious liability of the defendant.

[82] For all the reasons given above, I see no legal and factual basis on which the claimant can succeed in his claim for damages for libel against the defendant. That aspect of the claim fails.

Claim for loss of earnings/ future earnings

[83] In the light of my findings in relation to the other aspects of the claim discussed above, I see no legal or factual basis on which an award could be made to the claimant for loss of earnings and future earnings and/or alternative employment commensurate with the claimant's qualifications as claimed. This claim was also devoid of particularity in pleadings. This aspect of the claim is dismissed.

Claim for aggravated and exemplary damages

[84] The claimant has included in his claim form and particulars of claim, a claim for an award of aggravated and exemplary damages. The claimant has failed in making such a claim to abide by the fundamental rules that the bases on which such a claim is made are to be particularized in the pleadings and full details of the facts and matters upon which the claimant relies in support of his claim for such damages should be stated. In any event, based on my knowledge of the law concerning the circumstances in which such awards can be made, there is no basis on which to award such damages as the claimant has failed to prove any primary liability in the defendant that would justify any award of damages at all. This aspect of the claim is dismissed.

Claim for interest

[85] The claimant's claim for interest on damages is dismissed, there being no damages awarded in his favour.

Conclusion

[86] The claimant has failed to satisfy this court that there is any basis on which the defendant should be held liable in damages for any aspect of the

Further Amended Claim Form as filed. His contract of service was lawfully terminated by one month's notice in writing and payment to him of a sum for the period in keeping with his contract and the general law. There is no basis of an award of damages for wrongful dismissal.

[87] The claimant cannot recover damages from this court for the manner in which he is contending his services were terminated as being unfair, in breach of natural justice, the internal laws of the defendant and the laws of Jamaica. This is so even if the grievance and disciplinary procedures were incorporated into his contract of service. This court has no jurisdiction to entertain such a claim. The matters raised by him, except libel, do fall outside the civil jurisdiction of this court and within the visitorial jurisdiction of the Visitor of the defendant andthe statutory regime established by the Labour Relations and Industrial Disputes Act to deal with unfair/unjustifiable dismissal. He has also failed to plead and prove liability of the defendant in damages for libel.

[88] There is thus no basis in fact and in law on which any damages, interest or costs claimed by the claimant may be properly awarded by this court. The claim is, therefore, dismissed in its entirety.

Judgment

[89] Judgment is entered on the claim for the defendant with costs to be taxed if not agreed.