IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2009 HCV 1173

BETWEEN	UNIVERSITY OF TECHNOLOGY JAMAICA	CLAIMANT
AND	INDUSTRIAL DISPUTES TRIBUNAL	1st DEFENDANT
AND	UNIVERSITY AND ALLIED WORKERS UNION	2nd DEFENDANT

Mr. Gavin Goffe and Mrs. Alexis Robinson instructed by Myers, Fletcher & Gordon for the Claimant.

Ms. Lisa White instructed by the Director of State Proceedings, appearing for the 1st Defendant, Ms. Ralph, Legal Officer, watching proceedings on behalf of the Industrial Disputes Tribunal.

Mr. Wendel Wilkins instructed by Robertson, Smith, Ledgister & Co. for the 2nd Defendant, Mr. Lambert Brown, watching proceedings on behalf of the University and Allied Workers Union.

Heard: 1st, 2nd, October 2009 and 23rd April 2010

JUDICIAL REVIEW – ADMINISTRATIVE LAW – COSTS – Rule 56.15(5) of the C.P.R.

Mangatal, J

On the 23rd of April, 2010 I handed down judgment in favour of the Claimant Utech by granting an order of Certiorari quashing the I.D.T.'s decision No. I.D.T. 6/2008.

After hearing argument from the parties, I granted Utech three-quarters of the costs. Half costs were ordered in favour of Utech against the 1st Defendant, the I.D.T. One quarter costs were ordered in favour of Utech against the 2nd Defendant the Union.

Rule 56.15 (4) and (5) of the Civil Procedure Rules "the C.P.R.", states the following with regard to the matter of costs in relation to Judicial Review and Administrative Law matters: -

(4) The court may however make such orders as to costs as appears to the court to be just, including a wasted costs order.

56.15(5)

The general rule is that no order for costs may be made against an applicant for an administrative order unless the Court considers that the applicant has acted unreasonably in making the application or in the conduct of the application.

(Part 64 deals with the Court's general discretion as to the award of costs ...) (My emphasis).

Mr. Goffe asked the Court to award full costs in favour of the successful Applicant Utech against both Defendants. He pointed out that there are some decisions in the area of judicial review where Courts have interpreted this Rule or similar rules to mean or warrant that no order for costs should be made at all. He submitted however, that the rule exists for the protection of an unsuccessful Applicant who has made an application seeking the Court's review of a decision of an inferior tribunal in circumstances or in a manner which could not be described as frivolous or unreasonable. Where, however, the Applicant is successful, Mr. Goffe submitted that costs should follow the general rule, which is

that the successful party should be awarded costs, payable by the unsuccessful party.

Ms. White, on behalf of the 1st Defendant the I.D.T., submitted that, based on the type of functions which the I.D.T. is mandated to carry out, and the scope of the matters raised in this case, no order for costs should be made against the I.D.T.

Mr. Wilkins on behalf of the Union, acknowledged that the Union had itself successfully applied to the Court to be joined as a Defendant. He submitted, however, that given the role which the Union plays, and has to play in the field of industrial relations, the Union became involved in order to assist the Court by making submissions and certainly the Union's involvement in the matter and its submissions in relation to the several very important issues of Law involved in this case, could not be described as a waste of time or unreasonable. He asked the Court not to make any order for costs against his client.

Mr. Goffe helpfully referred me to the case of **Toussaint v. Attorney General St. Vincent & The Grenadines** [2007] UK PC 48.

In that case, the Court of Appeal of Appeal of St. Vincent & The Grenadines had set aside an order for costs made by a judge in a first instance judicial review application in favour of the applicant against the Attorney General.

It is not clear from the decision whether the Rule of the East Carribean Civil Procedure Rules 2000 to which the Judicial Committee of the Privy Council referred, dealt with costs in relation to final hearings as well as to costs in relation to interim skirmishes between the parties. However, the rule, Rule 56.13,

appears to be very similar to our own Rule, which appears under a heading pertaining to the final or substantive application. At paragraphs 37 – 39, Lord Mance delivered the reasoning of the Board as follows:-

[37.] When making this direction (ordering that there be no order as to costs), the Court of Appeal referred to r. 56.13 of the East Caribbean Civil Procedure Rules 2000: This governs administrative law applications, including applications against the state for constitutional relief or judicial review. Paragraphs (4) and (6) of r. 56.13 provide:

> *(4) The judge may ... make such orders as to costs as appear to the judge to be just ...*
>
> *(6) The general rule is that no order for costs may be made against an applicant for an administrative order unless the court considers that the applicant has acted unreasonably in making the application or in the conduct of the application.*

[38] The Court of Appeal's reasoning was that neither party had acted so unreasonably in making and defending the application to strike out that it took the case outside of the general rule in r. 56.13(6) of the Rules' and that the Judge's direction would therefore be set aside and would be replaced by a direction that there be no order for costs, and that for the same reason there would be no order as to costs on this appeal.

[39] The Court of Appeal thus appears to have viewed r. 56.13(6) as a general rule , not merely that no order for costs would be made against an unsuccessful applicant who had acted reasonably, but as a general rule that no order for costs would be made in favour of a successful applicant against the unsuccessful state represented by the Attorney General. The Board cannot agree with this interpretation of r. 56.13(6), which is a provision intended to facilitate administrative law applications, not to deprive a successful litigant against the state of the ordinary award of costs in his favour. In the present case, the application to strike out was a discrete application, which has now for all relevant purposes failed.

I note that in deSmith's Judicial Review, 6th Edition at paragraph 16-097, the actions discussed the corresponding English C.P.R. Part 54 Rules on Costs in relation to judicial review applications along the same lines as their Lordships discussed the issue in **Touissant.**

In my view, our Rule 56.15(4) and (5) should be similarly interpreted. The successful Applicant Utech is entitled to be awarded costs. However, looking at the matter in the round, including the fact that, on some important issues, the defendants' submissions were accepted by me, I am of the view that it would be just to award Utech seventy five percent of the costs. I also think that it is appropriate that liability for payment of those costs should be shared between the Defendants. Although the Union made submissions in support of the IDT's Award, they have played a fairly central role in these proceedings, and indeed, the entire matter and I am therefore of the view that it would be appropriate for

them to bear some portion of the costs. That is why I have ordered that half of Utech's costs are to be paid by the IDT, and a quarter of Utech's costs are to be paid by the Union.