[2019] JMSC Civ 100

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2018 HCV 02207

BETWEEN	**ARTHURINE WEBB**	**CLAIMANT**
AND	**DONOVAN STANBERRY**	**DEFENDANT**

Mr Hugh Wildman instructed by Hugh Wildman and Company for the Claimant

Mrs Susan Reid-Jones and Mrs Shawn Wilkinson instructed by the Director of State Proceedings for the Defendant.

Heard: January 8 and May 10, 2019

Administrative Law-Judicial review-Constitutional relief-The public service-Retirement on the grounds of reorganization- Whether public servant have the right to be heard prior to compulsory retirement-The Pensions Act-The Public Service Regulations, 1961

GEORGIANA FRASER, J

INTRODUCTION

[1] This is an application for Judicial Review by the Claimant, Mrs Arthurine Webb, a public officer, seeking several administrative orders, including an order for certiorari to quash the decision made in respect of her removal from her appointed post as Director, Corporate Affairs in the Ministry of Commerce, Agriculture and Fisheries and also from the Public Service by way of retirement.

BACKGROUND

[2] The Defendant at all material times was the Permanent Secretary of the Ministry of Industry, Commerce, Agriculture and Fisheries, with offices at Hope Gardens, Kingston 6 in the parish of Saint Andrew and 4 St. Lucia Avenue, Kingston 5 in the parish of Saint Andrew.

[3] The Claimant in the matter herein has been a long serving member in the government service and has served in a number of capacities. On April 4, 2008, the Claimant was appointed to the post of Director, Personnel (GMG/SEG 2) in the Ministry of Industry, Technology, Energy and Commerce with effect from the 1st of April 2008. The Claimant at that time was appointed with responsible for Human Resource matters. In 2009, the Claimant was promoted to Director, Corporate Affairs (GMG/SEG3) with shared corporate service for all aspects of Human Resource, as well as Procurement, Office Facilities, Transportation, Registry and Access to Information.

[4] In 2011, the Claimant was given additional responsibilities and the substantive post was upgraded/reclassified from GMG/SEG3 to GMG/SEG 4. At the time of the filing of this Claim she was the duly appointed Director, Corporate Affairs, Ministry of Industry and Commerce Agriculture and Fisheries.

[5] In April 2018, the Claimant received a letter dated 4th April, 2018 signed by the Defendant; the letter sought to inform her that she was placed on retirement on the ground of re-organization effective March 31,2018. The Claimant asserted that prior to the receipt of this letter there was no discussion between herself and the Defendant or any other person within the Public Service regarding her employer's intention that the Claimant be retired on the ground of reorganization.

[6] Upon receiving the letter, the Claimant averred that she called and spoke with Ms Yolanda Gibson, the Project Officer assigned to the Defendant and she also spoke with the Defendant at his office on the April 6, 2018. During the discussion she was advised by the Defendant that "it was a decision of the Service Commission to retire" her. The

Defendant she said, also told her “to do a petition letter and hand it to the Defendant for delivery to the Public Service Commission for their consideration”.

[7] The Claimant further stated that on April 10, 2018; she again had dialogue with the Defendant who then informed her that based on discussions with the Chief Personnel Officer, it was his understanding that nothing could be done about her being retired at that stage.

[8] The Claimant contends that she has never had any disciplinary charges brought against her in the Public Service and it is unfair for her to be retired in such a peremptory manner which has left her in “financial ruin”.

PROCEDURAL HISTORY

[9] The Claimant filed a Notice of Application for Court Orders on June 8, 2018 and amended same on June 26, 2018, she sought several declaratory reliefs; an order of certiorari to quash the Respondent’s/Defendant decision purporting to retire the Applicant/ Claimant from her duly appointed post as per a letter dated 4th April, 2018; an interim injunction restraining the Respondent from taking any steps to prevent the Applicant/Claimant from performing her functions as the duly appointed Director, Corporate Affairs, Ministry of Industry Commerce, Agriculture and Fisheries, and a stay of decision contained in the said letter dated 4th April , 2018.

[10] The Amended Notice of Application for Court Orders was heard on 20th July, 2018 by Mr Justice K. Anderson, and by an oral decision on the 31st July, 2018 his Lordship granted leave to apply for judicial review for the order of certiorari, he also granted a stay of the Respondent’s/ Defendant’s decision and ordered that the Applicant/Claimant be reinstated in her substantive post until the determination of the claim or until she achieved retirement age, whichever was sooner. The learned Judge however denied/refused the Applicant’s amended application for leave to apply for declaratory reliefs.

[11] The Claimant thereafter filed a Fixed Date Claim Form on 10th August, 2018 seeking the following orders:

1. A Declaration that the Defendant is not empowered by law to retire the Claimant from the post of Director, Corporate Affairs, Ministry of Industry, Commerce, Agriculture and Fisheries;

2. A Declaration that only the Governor General acting on the advice of the Public Service Commission is empowered by law to retire the Claimant from the Public Service;

3. A Declaration that before the Claimant can be retired from the Public Service by the Governor General on the advice of the Public Service Commission; the Claimant must be afforded an opportunity to be heard as to the reasons for such retirement;

4. A Declaration that only the Governor General acting under section 125 of the Constitution of Jamaica, on the advice of the Public Service Commission, can retire the Claimant from the Public Service;

5. A Declaration that before the Public Service Commission can so advise the Governor General to retire the Claimant from the Public Service, the Public Service Commission must afford the Claimant an opportunity to be heard before it advises the Governor General that the Claimant be retired from the Public Service;

6. A Declaration that the failure of the Public Service Commission to advise the Governor General that the Claimant be retired from the Public Service without giving the Claimant an opportunity to be heard renders the said decision to retire the Claimant from the Public Service null and void and of no effect.

7. A Declaration that the letter dated 4th April, 2018, from the Defendant to the Claimant purporting to retire the Claimant from the post of Director, Corporate Affairs in the Ministry of Industry Commerce Agriculture and Fisheries is illegal, null and void and of no effect;

8. A Declaration that the Claimant has a legitimate expectation that she will not be retired from the post of Director, Corporate Affairs, in the Ministry of Industry Commerce Agriculture and Fisheries by the Governor General acting on the advice of the Public Service Commission without compliance with the procedure laid down under section 125 of the Constitution;

9. A Declaration that the purported reason given by the Defendant to the Claimant in the letter dated April 4, 2018 to retire the Claimant from the Public Service is irrational;

10. A Declaration that the letter served on the Claimant by the Defendant purporting to retire her from her position as the Director, Corporate Affairs in the Ministry of Commerce, Agriculture and Fisheries is in breach of section 125 of the Constitution, rendering the purported retirement null and void and of no effect.

11. A Declaration that the reasons contained in the letter purporting to terminate the Claimant from the post of Director, Corporate Affairs, violates the express provision contained in section 125 of the Constitution, rendering the purported retirement null and void and of no effect;

12. An Order of certiorari quashing the decision of the Defendant as contained in letter dated April 4, 2018, purporting to retire the Claimant from the post of Director, Corporate Affairs, Ministry of Industry Commerce, Agriculture and Fisheries;

13. A stay of the decision contained in letter dated 4th April, 2018 from the Defendant to the Claimant purporting to retire the Claimant from the post of Director, Corporate Affairs, Ministry of Industry Commerce, Agriculture and Fisheries pending the determination of this Application.

14. An Injunction restraining the Defendant whether by themselves, servants and or agents from taking any steps to prevent the Claimant from performing her

functions as the duly appointed Director, Corporate Affairs, Ministry of Industry Commerce, Agriculture and Fisheries.

15. Cost of the Claim to the Claimant

[12] The Fixed Date Claim Form is supported by the Affidavit of the Claimant, Mrs Arthurine Webb filed on August 10, 2018.

[13] The Defendant filed a response to the Fixed Date Claim Form by way of Affidavit of Mr Donovan Stanberry, filed on 3rd October, 2018 and Affidavit of Mrs Jacqueline Mendez filed on 13th November, 2018. In these affidavits, the Defendant sets out evidence relating to events leading up to the issuance of the letter dated 4th day of April, 2018. He additionally proffered an explanation seeking to justify the action taken.

THE CLAIMANT'S SUBMISSIONS

[14] The Claim was brought on two bases:

1. That the Claimant's constitutional rights were breached, in that she was not given an opportunity to be heard before the purported retirement, in accordance with the rules of natural justice and the Constitution;

2. That the Claimant had a legitimate expectation that she would not be removed from the public service without being given the opportunity to be heard.

[15] In relation to the first ground, the Claimant submitted that the letter offends the Constitution particularly, section 125 which deals with the appointment and removal of persons from the public office. The Claimant submitted that the letter seeking to retire her did not emanate from the proper authority as required by the Constitution, and that *prima facie* it contravenes the Constitution. The Claimant also contended that the Defendant has no such authority as that function resides solely with the Governor General and only after due process has been complied with.

[16] Counsel for the Claimant Mr Wildman contended that none of the procedure in relation to section 125 of the Constitution were followed in removing the Claimant from

the Public Service; as the Defendant lacked capacity to remove the Claimant and the letter which seeks to give a reason for the purported retirement on the basis of reorganization is therefore irrational. Counsel Mr Wildman further submitted that nowhere in the **Pensions (Public Service) Act**, in particular section 6 is the Defendant empowered to retire anyone from the public service and therefore the letter seeking to retire the Claimant from the public service is null and void.

[17] In support of his preceding argument, the Claimant relied on the case of ***Deborah Patrick-Gardener v Jacqueline Mendez and Public Service Commission*** *[*2018] JMFC Full 2**.** At paragraph 85 of that judgment Thompson James, J had adumbrated that:

> *"The effect of section 125 (1) of the Constitution is that only the Governor General, acting on the advice of the Public Service Commission, can properly make the decision to retire the claimant. The claimant contended that, because the impugned letter did not expressly state that the Chief Personnel Officer (CPO) was acting on the instruction of the governor General, section 125 (1) was breached, rendering the decision null and void…. I agree with the defendants that, from the words of the letter, neither the 1st or 2nd defendant, expressly or impliedly purported to make the decision to retire the claimant. The letter clearly indicates that the CPO was simply informing the Permanent Secretary of the decision that had been made to retire the claimant ……"*

[18] Counsel Mr Wildman submitted that the present case is *"virtually a carbon copy"* of the ***Patrick-Gardener*** case. Counsel argued that the Claimant in the instant matter is on *"surer footing"* because the Full Court in the above mentioned case found that the letter of retirement came from the proper authority of the Public Service Commission. However, in this case the situation is different.

[19] The Claimant further relied on the case of ***McKain v Parnell*** as authority for the stated principle that *(no citation provided*) in the absence of a statutory provision allowing delegation, then delegation is not permissible. Counsel reiterated the point that since there was no statutory delegation of authority to the Defendant, then the letter dated 4th

April, 2018 terminating the Claimant's employment should have come from the Governor General unless there is evidence of a delegation.

[20] Mr Wildman submitted that the letter dated 4th April, 2018 which purported to retire the Claimant is irrational. Counsel stated that prior to the receipt of the letter on 6th April, 2018, there was no discussion between the Claimant and the Defendant or the Claimant and any other person that she would be placed on retirement on the grounds of reorganization. Counsel submitted that this is a fundamental breach of natural justice. Counsel relied on the case of ***McLaughlin v Government of the Cayman Islands*** [2007] UKPC 50 to bolster his submission in this regard.

[21] Counsel further submitted that if the letter was irrational then it was also a nullity, and where a nullity is established then the decision must be treated as if it was never made. The case of ***Deborah Patrick-Gardener v Jacqueline Mendez and Public Service Commission*** [2018] JMFC Full 2 was cited in support of this point as well**.**

[22] Counsel asserted that the Claimant was not afforded an opportunity to be heard before she was informed of the retirement and as such the decision made to retire the Claimant should be null and void. Counsel argued that the Affidavit of Donovan Stanberry and his assertions that staff meetings were conducted at which the Claimant would have been present, and so she would have been aware that her post was one considered for retirement; does not qualify as a hearing.

[23] Counsel, Mr Wildman also sought to impress upon the Court that there was no compliance with Section 125 (3) of the Constitution as the Claimant was not advised as to her right to appeal to the Privy Council. Counsel submitted that since this procedure was not followed, the failure to do so amounts to a fundamental breach which renders the retirement of the Claimant null and void. Reliance was placed on the case of ***Deborah Patrick-Gardener v Jacqueline Mendez and Public Service Commission*** particularly paragraph 84.

[24] On the issue of the Claimant having a legitimate expectation, Mr Wildman has submitted that the Claimant had a legitimate expectation that she would remain in the public service until she was at the age of retirement.

THE DEFENDANT'S SUBMISSION

[25] The Claimant's main complaint is that only the Governor General can retire the Claimant upon recommendation of the Public Service Commission pursuant to section 125 of the Constitution; and that the Defendant's letter to her informing her of her retirement is null and void. In response, Counsel for the Defendant submitted that despite the fact that the letter dated 4th April, 2018 was written by the Defendant, it is stated therein that the Defendant was directed to inform the Claimant that approval was given for her retirement. It was further submitted that it was the Governor General who approved the retirement of the Claimant on the recommendation of the Public Service Commission.

[26] In an effort to negate the Claimant's assertion that the Defendant's conduct of removing her from her post had been non-compliant with section 125 (1), Counsel Mrs Reid-Jones directed the Court's attention to the Affidavit of Mrs Jacqueline Mendez, the Chief Personnel Officer. On perusal of the affidavit the Court confirmed that indeed the required statutory procedure was observed. Mrs Jacqueline Mendez Affidavit relates that:

> ***"****13. In light of all the circumstances on February 20, 2018 the PSC made a recommendation to His Excellency the Governor General, for the Claimant to be retired on the grounds of reorganization and for retirement of the Claimant with effect from March 31, 2018. Approval was granted by the Governor General pursuant to section 125 (1) of the Jamaica (Constitution) Oder in Council, 1962*
>
> *14. The approval for the Claimant to be retired on the grounds of reorganization was communicated to the Defendant by way of letter dated 27th March, 2018"*

[27] The Defendant also relies on the minutes of the proceedings wherein the issue of the Claimant's retirement was raised and the Governor General's approval was sought and was subsequently obtained. This evidence clearly demonstrates that it was Mrs Mendez who was directly involved in making the submission to the Public Service Commission as it relates to the retirement of the Claimant. The evidence also demonstrates that the appropriate steps were taken as required by statute and the approval of the Governor General was secured prior to the Claimant being informed of the decision to retire her. The evidence further demonstrates that the Defendant was merely a conduit to inform the Claimant that she was to be retired on the ground of reorganization.

[28] In an attempt to fortify the conduct of the Defendant and the procedure that obtained in the instant case as correct and statutory compliant, the Defendant also relied on the ***Patrick-Gardener*** case in particular, at paragraph 86 where the Court stated that:

> *"Further, the 1st Defendant's evidence is that it is the Governor General who made the decision on March 24, 2016, acting on the advice of the Public Service Commission… I therefore find that the retirement was done in accordance with section 125 (1) of the Constitution*."

[29] The Defendant submitted that the Claimant was retired in accordance with the requirements of section 125 (1) of the Constitution and there is no basis for her complaint in that regard.

[30] As it relates to the issue of the Defendant's failure to comply with section 125 (3) of the Constitution. Counsel for the Defendant posited that in this case, the Claimant was being retired due to reorganization, the decision having been made for her post to be abolished when vacant; and that in the circumstances section 3 of the **Civil Service Establishment Act** makes provision for the Minister (of Finance) to abolish posts. Counsel further posited that the **Public Service Regulations**, are also applicable in such circumstances. Counsel brought to the court's attention that in the ***Patrick-Gardner*** case the Full Court had determined that Regulation 26 of the Public Service Regulations

specifically required that the affected officer be given an opportunity to respond. While accepting the pronouncement of the Full Court in the ***Patrick-Gardner*** case, Mrs Reid-Jones nonetheless submitted that in the instant case it is Regulation 25 that is most appropriate for consideration. Counsel also pointed out that unlike Regulation 26, there is no corresponding obligation under Regulation 25 for the affected officer to be allowed to make representations prior to the decision being made.

[31] The Defendant submitted further that even if the Court does find that Regulation 26 is applicable to this case, the Court is not bound by the decision in the ***Patrick-Gardener*** case and ought not to follow it in respect of its ruling in relation to section 125 (3) of the Constitution since Regulation 25 seems to contemplate that this particular case (of abolition of post) that a hearing is not necessary. Counsel cited the case of ***Gibson v The United States of America*** [2007] UKPC 52**,** to the effect that the principle of stare decisis is not an absolute one.

[32] As it relates to the issues of the purported retirement being irrational, Counsel has submitted that the purported retirement was contemplated on the basis of reorganization in accordance with section 6(i) (iv) of the **Pensions Act.** On the evidence of the Defendant which has not been contradicted by the Claimant, the Defendant and Human Resource Personnel at the Ministry had several meetings in relation to the merging of the two Ministries which would result in some posts being abolished. Further, there was a letter dated 28th November, 2017 which not only spoke to the merger and the rationalization process but told the Claimant that her post would be abolished consequent upon it becoming vacant. The Defendant submitted that this letter taken together with letter dated 4th day of April, 2018 clearly evinces the rationale for the Claimant's retirement and cannot be faulted as unreasonable in the circumstances; having regard to the merger of the Ministries and the resultant duplication of posts. In the circumstances the Defendant was of the view that the principles of natural justice had not been flouted, on the contrary it had been manifestly observed. Counsel relied on the renowned case of ***Associated Provincial Picture Houses Ltd v Wednesbury Corporation*** [1948] 1 KB 223 for the definition of the irrationality in the context of a judicial review matter.

[33] Counsel also submitted that the Grant of Certiorari is a discretionary remedy. A Judicial Review Court, even if it finds one or more of the allegations proved, may decide that is not in the interest of justice to grant the orders sought. In support of this legal premise the Defendant cited the case of ***Legal Officers Staff Association and Others v The Attorney General and Others (LOSA)*** [2015] JMFC 3 in that case McDonald–Bishop, J (as she then was), stated at paragraph 148 of this judgment that:

> **"***My starting point is to declare my acceptance of the principles that the discretion to grant judicial review is a wide one. It is also recognised, as demonstrated by the authorities, that the fact that the remedy is discretionary means that a claimant could win on every point and still find that the court refuses a remedy in the exercise of its discretion. In granting the remedy, there are several key factors that fall for determination by a court. For instance, delay (or even where there is no delay), the questions of hardship, prejudice, and what is in the interest of good administration are relevant considerations when one is considering whether judicial review should be granted. A court may still refuse relief if it considers that granting relief would be likely to cause substantial hardship to, or substantially prejudice the rights of, any person or would be detrimental to good administration"*

[34] Counsel also relied on paragraphs 158 and 159 where the learned Judge expounded further that:

> " *…Clive Lewis in Judicial Remedies in Public Law (1992) at page 294, by citing some relevant authorities, made the relevant point under the sub-heading 'IMPACT ON ADMINISTRATION' that: "The courts now recognise that the impact on the administration is relevant in the exercise of their remedial jurisdiction. Quashing decisions may impose heavy administrative burdens on the administration, divert resources towards re-opening decisions, and lead to increased and unbudgeted expenditure. Earlier cases took the robust line that the law had to be observed, and the decision invalidated whatever the administrative inconvenience caused. The courts nowadays recognise that such an approach is not always appropriate and not be in the wider public interest. The effect on the administrative process is relevant to the courts' remedial discretion and may prove decisive. This is particularly the case when the challenge is procedural rather than substantive, or*

if the courts can be certain that the administrator would not reach a different decision even if the original decision were quashed. Judges may differ in the importance they attach to the disruption that quashing a decision will cause.…

I conclude that there is ample evidence upon which this court may legitimately find that to grant the claimants the reliefs they seek by way of judicial review would be inimical to good administration and would prove more prejudicial to the government in carrying out its policies in the public's interest than it would be to the claimants. If this court were to hold otherwise, then, it would be donning the garb of the policy-makers and, by so doing, would be intruding on the field of the executive and the legislature, which it ought not to do."

[35] The Claimant has sought a declaration that she had a legitimate expectation that she would be retired in accordance with section 125 of the Constitution. The Defendant asserted that the Claimant has not set out the bases for the contention that she was entitled to a legitimate expectation and as such the application is inapplicable.

[36] The Defendant has urged the Court to decline the grant of the orders sought on the basis that to do so would be acting in vain based on the circumstances of this case where "the Claimant is 59 years of age and will become 60 on the 15th May, 2019 and would be eligible for retirement. It is likely that by the time the court hears and determines the claim the Claimant would have reached the normal retirement age". Counsel cited in support of this point the case of ***McLaughlin v Governor of the Cayman Islands*** [2007] UKPC 50**,** ***The Board of Management of Bethlehem Moravian College v Dr Paul Thompson and Anor consolidated with the Teacher's Appeal Tribunal v Dr. Paul Thompson and another*** [2015] JMCA Civ 41.

[37] The Defendant has also submitted that the Claimant failed to give full and frank disclosure in that she failed to disclosed a letter dated 11th April, 2018 that was sent to the Governor General wherein she was seeking his consideration for her to be given the option of early retirement. It is apparent therefore that the Claimant was not per say averse to retirement but rather the terms on which she was in fact retired.

ISSUES

[38] Notwithstanding the orders of Anderson, J granting leave specifically for Judicial Review for the order of certiorari only, the Claimant has filed a Fixed Date Claim Form setting out no less than eleven (11) declaratory reliefs. It is not this Court's intention to stray beyond the boundaries as fixed by the Court granting leave. I have noted however that some of the declaratory reliefs sought should properly have been framed as arguments in support of the order for certiorari. In light of my above assessment and in light of the pertinent primary facts arising in this case and the consequent dispute that has arisen between the parties; I have identified the following key issues for consideration and resolution:

1. Whether the Claimant was retired in a proper and lawful manner in accordance with the procedure set out in section 125 of the Constitution?

2. Whether the Defendant's action in purporting to retire the Claimant was irrational?

3. Whether or not the Claimant was entitled to an opportunity to be heard prior to the decision?

4. Whether the Claimant had a legitimate expectation that she would not be retired from her post without compliance with the procedure laid down at section 125 of the Constitution and if so was it breached?

5. Whether the Claimant should be granted the relief sought in the circumstances?

LAW AND ANALYSIS

[39] The Claimant herein avers that she was unlawfully retired by the Defendant from her stated post as per a letter dated 4th April, 2018. She avers that the Defendant's action is unlawful because the provisions of section 125 of the Constitution were not observed. Since she so alleges, it is incumbent upon the Claimant to establish that she is a person

to whom section 125 of the Constitution applies. In the Claimants Affidavit filed 10th August 2018, in support of the Fixed Date Claim Form, she stated that she is "*a duly appointed Director, Corporate Affairs. Ministry of Industry Commerce Agriculture & Fisheries, a public office under the Jamaica (Constitution) Order in Council 1962 ("The Constitution")".* The Claimant is relying upon exhibit "AW1", her letter of appointment dated 4th April, 2008 indicating her appointment in the government service, at the then grade of GMG/SEG 2 and which also makes reference to her status as a public officer. The Claimant also relies on exhibit "AW2", the impugned letter of retirement signed by the Defendant, Mr Stanberry.

[40] The Defendant does not dispute the assertions of the Claimant's status nor the contents of the letter or indeed the attempted retirement of the Claimant. In the Defendant's Affidavit in response filed on 3rd October 2018, the Defendant inferentially supports that the Claimant is a public officer and is entitled to the rights afforded by the provisions of section 125 of the Constitution and is a person that "*was retired on the grounds of reorganization by the Governor General upon the recommendation of the Public Service Commission…"*

[41] I acknowledge that the employment of persons in public offices is indeed governed by Chapter IX of the Jamaica (Constitution) Order in Counsel, 1962 referred to as the Constitution. Sections 124 and 125 of the Constitution establishes the Public Service Commission and empowers it with the control and management of the public service and public service officers. Section 125 (1) specifically provides that:

> *"Subject to the provisions of this Constitution, power to make appointments to public offices and to remove and to exercise disciplinary control over persons holding or acting in any such offices is hereby vested in the Governor-General acting on the advice of the Public Service Commission"*

[42] In all the above circumstances, it is my view that the Claimant has successfully overcome the first hurdle as regards her status as a public officer and as such, this Court should proceed to consider and determine the substantive issue and the order of certiorari sought.

Was the Claimant retired in a proper and lawful manner?

[43] It is not in dispute that the Claimant was ever the subject of any disciplinary action for behavioural misconduct and neither is there any evidence or suggestion that the Claimant was performing unsatisfactorily in her post. The Defendant at all times had posited that the Claimant's removal from office was as a result of her post becoming vacant and was to be abolished on her retirement. There is no challenge by the Claimant that persons in the public service can be removed from their post by way of retirement before the attainment of the designated retirement age. The dispute herein concerns the proper method of achieving that result. Hence, the unlawfulness alleged by the Claimant arises where an act which is lawful becomes unlawful because it was carried out in an improper manner.

[44] Pursuant to section 125 (1) of the Constitution, it is only the Governor General acting on the advice of the Public Service Commission who can properly make the decision to remove the Claimant from her post by way of retirement. The Claimant asserted that the letter dated 4th April, 2018 did not come from the Governor General and as such the decision to terminate her services is null and void. The Defendant on the other hand, while owning that he had signed the letter in question has argued that he was not the one who made the decision to retire the Claimant but was advised to do so by the Public Service Commission. The letter under the hand of the Defendant indicated that as the Permanent Secretary he was informing the Claimant that a decision had been made to retire her, in that regard his Counsel has particularly highlighted the following excerpt "**...** *I am directed to inform you that approval has been given for you to be retired from the Public Service on the Ground of Re-organization…"* The Defendant reiterated in his Affidavit dated 3rd October, 2018 that:

> *"...the letter stated that I was directed to inform the Claimant that approval was given for her to be retired from the Public Service. While it is true that the letter was signed by me I repeat the decision was made by the Governor General upon the recommendation of the Public Service Commission*".

[45] The Defendant has also tendered into evidence an exhibit referred to and attached to his Affidavit with the caption ***Minute 153*** dated 20th February, 2018. This document recites that at a meeting held on 19th February, 2018 the Public Service Commission considered the recommendation from the Permanent Secretary (the Defendant, Mr. Stanberry) that Mrs Arthurine Webb (the Claimant) be retired on the ground of reorganisation, the matter was thereafter referred to the Governor General for his consideration and approval. The Court notes in particular that the said document clearly evinces the Governor General's signature and dated 20th March, 2018 approving the decision for the Claimant to be retired on the advice of the Public Service Commission.

[46] Counsel for the Defendant Mrs Reid-Jones has brought to the Court's attention that a similar contention was raised in the ***Patrick-Gardner*** case but was dismissed by the Full Court as being without merit. The Claimant herein has provided no evidence which contradicts the Defendant's argument that the Governor General was indeed the decision maker, therefore, the Claimant has failed to discharged her evidential burden in this regard. In the absence of evidence to prove otherwise, I accept the Defendant's evidence that it was the Governor General who made the decision to retire the Claimant and not the Defendant. This Court therefore finds that the Claimant's retirement was done in accordance with section 125 (1) of the Constitution.

[47] As it relates to section 125 (3), Counsel for the Claimant has been inconsistent in his submissions as to the applicability of these provisions. In one breath he has submitted that this section was breached as the Claimant was not advised of her right to appeal to the Privy Council but in the next breath has said that the section is irrelevant since the Claimant was not removed as a penalty resulting from behavioural misconduct. I must therefore closely scrutinize this provision and make a determination as to its applicability in these circumstances.

[48] Section 125 (3) of the Constitution states that:

> "*Before the Governor-General acts in accordance with the advice of the Public Service Commission that any public officer should be removed or that any penalty should be imposed on him by way of disciplinary control, he shall inform the officer*

> *of that advice and if the officer then applies for the case to be referred to the Privy Council, the Governor-General shall not act in accordance with the advice but shall refer the case to the Privy Council accordingly.*

It is the view of this Court that the above section is not confined to circumstances involving behavioural misconduct, the several provisions are disjunctive in effect and does independently relate to any removal of a public officer arising from such circumstances as in this case by way of posts becoming abolished due to reorganization of the two Ministries merging together.

[49] Having determined that the section is applicable for present purposes, I must now determine whether the Claimant was at any time informed of her pending retirement *as per* the requirements of section 125 (3).

[50] The Claimant has strenuously averred that prior to receipt of the letter dated 6th April 2018, there was no discussion between herself and the Defendant nor between herself and "*any other person within the Public Service that the Claimant would be placed on retirement on the grounds of reorganization".* The Court appreciates the Claimant to be saying that when she was informed of her status, she was presented with a *fait acompli*; thus she would have been deprived of the right to know before the decision became a foregone conclusion and would also have been denied the right to refer her case to the Privy Council.

[51] The Defendant on the other hand is of the view that contrary to the Claimant's assertion there were many prior instances where the Claimant was sensitized as to the reorganizational exercise that was occurring and the imminent rationalization process that would have resulted in the abolition of some posts. These I will briefly itemize as follows:

I. Countless meetings held at the senior management level, the Claimant being present. Explanations made to each department affected that due to duplications, rationalization was inevitable;

II. Departmental level discussions with senior managers as to positions to be retained based on the Ministry's mandate;

III. Staff were informed on numerous occasions that where persons were not retained under the new structure, every effort would be made, working in conjunction with the Office of the Services Commission to have those persons find placements elsewhere in the government service;

IV. The Applicant was interviewed for at least five (5) positions within the government service, but was not placed;

V. Letter dated 28th November, 2017 was given to the Claimant, in respect of the said reorganization;

VI. Numerous discussions between the Claimant and the relevant Human Resource Management Personnel.

[52] Having regard to the above listed steps taken by the Defendant or persons acting on his behalf, I accept that the Defendant would have made efforts to sensitize staff members and even the Claimant as to the reorganization and rationalization that obtained then. There would have been information that some posts would be affected and there would have been an undertaking to assist affected persons in obtaining alternative employment within the government service. The Claimant has not disputed nor denied that she had received the letter dated 28th November, 2017, the letter would have provided information regarding the effects and consequences of the ongoing reorganization/rationalization exercise, significantly the letter does inform the Claimant that her post was affected by the process and would ultimately be abolished. The letter moreover did inform the Claimant that her name had been submitted to the Services Commission with the requisite leave entitlement and she would be *"notified directly by the Office of the Services Commission in due course in terms of [her] continued tenure in the government service".*

[53] Whilst I regard the contents of the letter to be quite explicit and ought to have alerted the Claimant as to a possible termination, I am of the view that there was not compliance with section 125 (3). In the first instance the appropriate authority who is to provide information of the pending removal to the affected officer is the Governor General. In this case the information clearly emanated from the Permanent Secretary, the Defendant herein. In the said letter dated 28th November 2017, there is no qualifying words to suggest that the Defendant was conveying information as per the Governor General's directive. Secondly, the letter whilst indicating an impending abolition of the Claimant's post, did not specifically indicate that her fate was retirement. On the contrary the letter conveyed the possibility of alternative employment within the government service. Thirdly, the Claimant would not have information sufficient for her to invoke her option of having her matter referred to the Privy Council. This option could only be initiated after she had exhausted the opportunities for alternative placement and after a decision to retire was unequivocally relayed to her.

[54] The Claimant had also averred that she had a legitimate expectation that she would only be retired in accordance with section 125 of the Constitution and has sought a declaration to this effect as one of the reliefs claimed. Although the Claimant is seeking a declaration to this effect, I am reiterating that no leave was granted by his Lordship, Anderson, J for the Claimant to seek declaratory reliefs. In any event the Claimant has failed to advance any evidence or legal submissions to ground or sustain such relief being granted.

[55] Counsel Mrs Reid-Jones for the Defendant had made short thrift of this issue and has directed this Court's attention to the fact that a similar argument was raised by Counsel, Mr Wildman in the ***Patrick-Gardner*** case and on which he now heavily relies. In that case, Thompson-James, J indicated that the line of argument regarding legitimate expectation was inappropriate where the Claimant's contention was predicated on compliance with section 125 of the Constitution. In determining the issue as raised the learned Judge had made reference to the decision of McDonald-Bishop, J in the ***LOSA*** case and the broad principles enumerated by that Judge, as governing the doctrine of legitimate expectation. Significantly she found that the Claimant had not by the evidence

established that any promises were made by the relevant authority which would "*create a legitimate procedure or substantive expectation*", as is the position in this case. The learned Judge Thompson-James, J at paragraph 143 had further opined that in such circumstances (as in this case), where a Claimant relies on a statutory framework, then:

> *" …in light of the fact that it provides a legal obligation on the parties to whom it applies, a breach of which would invalidate any action or inaction in contravention thereto. There would therefore be no need to assess whether the claimant had a legitimate expectation in relation thereto"*

[56] In determining the issue of legitimate expectation, I wish to adopt Thompson-James, J succinct and erudite disposition of the issue as adumbrated in the ***Patrick-Gardner*** case and to only add that the relief sought by way of a declaration in this regard; is refused.

Whether the Defendant's action in purporting to retire the Claimant was irrational?

[57] The Claimant has alleged that the Defendant's action in purporting to retire the Claimant is irrational. Counsel Mr Wildman did not however seek to posit any arguments or highlight any aspect of the evidence to support this claim. I would here indicate that where in the context of this judicial review there is an allegation of irrationality, this means no more than that the decision maker acted unreasonably. In ascertaining whether or not a decision maker or administrative body acted unreasonably, attention must be given to the oft quoted case of ***Associated Provincial Picture Houses Ltd. v Wednesbury Corporation*** [1948] 1 KB 223. This case outlined three instances in which the court can intervene to usurp the decision of a public administrative body. The instances are as follows: -

> 1. In making the decision, the Defendant took into account factors that ought not to have been taken into account, or
> 2. The Defendant failed to take into account factors that ought to have been taken into account;

3. The decision was so unreasonable that no reasonable authority would ever consider imposing it.

[58] In the case at bar the irrationality issue would perhaps best fit within the ambit of number three (3) above. In his definition of reasonableness Lord Greene MR in the said ***Wednesbury*** case opined at page 229 that: -

> *"It is true the discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology commonly used in relation to exercise of statutory discretions often use the word "unreasonable" in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting "unreasonably." Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority. Warrington LJ in Short v Poole Corporation [1926] Ch. 66, 90, 91 gave the example of the red-haired teacher, dismissed because she had red hair. That is unreasonable in one sense. In another sense it is taking into consideration extraneous matters. It is so unreasonable that it might almost be described as being done in bad faith; and, in fact, all these things run into one another".*

[59] As to whether the Defendant's action in the instant case fits within any of the instances enunciated in the ***Wednesbury*** case can only be determined after an examination of the evidence that was within the consideration of the decision maker. The evidence as proffered on behalf of the Defendant and which stands unchallenged clearly establishes the following:

I. In or about March 2016 there was a merger of two ministries namely; Ministry of Industry, Investment and Commerce and the Ministry of

Agriculture and Fisheries. The entity then became known as the Ministry of Industry, Commerce, Agriculture and Fisheries (MICAF);

II. The Permanent Secretary who is the Defendant herein was tasked to undertake the rationalization process;

III. The rationalization was done to facilitate greater efficiency in the Ministry and posts subject to duplication would be liable for removal from the Ministries;

IV. The Claimant's post as Director, Corporate Affairs was one of several posts so affected and would be abolished when vacant;

V. Attempts by the Defendant to find alternative and suitable placement for the Claimant elsewhere in the public service proved unsuccessful;

VI. The decision taken to retire the Claimant was on the basis of this reorganization;

[60] After giving consideration to the details of the circumstances as itemized above, I find that the Defendant's action in the instant case does not fit within any of the instances enunciated in the ***Wednesbury*** case***.*** I have also had regard to the treatment of the Full Court regarding a similar issue that was raised in the ***Patrick Gardner*** case and which was succinctly dealt with at paragraph 125 of that judgement where Thompson-James, J enunciated that:

> *"As stated earlier, the need to retire the claimant allegedly emanated from the desire of Parliament to re-organize the management of the court system for greater efficiency. There is no evidence before the Court of bias or that there was some other purpose for the Claimant's retirement, nefarious or otherwise. The effect of the words stated in the impugned letter purporting to retire the claimant was that the retirement was 'consequent on the amendment of the Judicature (Supreme Court) Act' and 'on the grounds of reorganization'"*

[61] The learned Judge further enunciated at paragraph 131, that:

> "*Undoubtedly, it would be inimical to good administration if the government, and in particular, the legislature, were to be constrained to allow an administrative structure to remain that proved to be inefficient and uneconomical. In that regard I am of the view that the fact of the retirement in and of itself is not unreasonable or irrational"*

I wish to adopt the above words of the learned Judge and to add that in all the circumstances of this case the decision to retire this Claimant was neither irrational nor unreasonable, having taken note of the distinguishable features of this case.

Whether the Claimant was entitled to be heard prior to the decision?

[62] The second major ground of contention advanced by the Claimant is that she was not given an opportunity to be heard before the decision was made to retire her. The Defendant argued that there is no such requirement in law in these circumstances where the Claimant was not dismissed due to a penalty for behavioural misconduct for her to be entitled to a hearing. However, it is clear in law that natural justice demands that a person must be treated fairly if he/she is to be dismissed, whatever the reason.

[63] Natural justice demands that all parties involved should be heard before a decision is taken. In the decided case of ***Derrick Wilson v The Board of Management of Maldon High School and The Ministry of Education*** [2013] JMCA Civ 21, the Court of Appeal made it clear that in the absence of a specific statutory provision requiring a hearing this does not negate the requirement for a decision maker to adhere to the rules of natural justice. Harris JA in delivering the judgment of the Court, adumbrated at paragraphs 47 and 48 that:

> *"…A decision maker is required at all times to observe the requirement of procedural fairness. The rule is "of universal application and founded on the plainest principles of justice" - see Ridge v Balwin. As a consequence, an aggrieved party must be given an opportunity to address any adverse complaint affecting his rights.*

> *The importance of observing the audi alteram partem maxim has been pronounced in a trilogy of authorities. This rule embraces the concept of fairness. In Regina v Secretary of State for the Home Department v ex parte Doody [1993] 3 WLR 154 at page 169, Lord Mustill speaking to the requirement of fairness within the rules of natural justice had this to say: "My Lords, I think it unnecessary to refer by name or to quote from, any of the often-cited authorities in which the courts have explained what is essentially an intuitive judgment. They are far too well known. From them, I derive that (1) where an Act of Parliament confers an administrative power there is a presumption that it will be exercised in a manner which is fair in all the circumstances, (2) The standards of fairness are not immutable. They may change with the passage of time, both in the general and in their application to decisions of a particular type. (3) The principles of fairness are not to be applied by rote identically in every situation. What fairness demands is dependent on the context of the decision and this is to be taken into account in all its aspects (4) An essential feature of the context is the statute which creates the discretion, as regards both its language and shape of the legal and administrative system within which the decision is taken (5) Fairness will very often require that a person who may be adversely affected by the decision will have an opportunity to make representations on his own behalf either before the decision is taken with a view to producing a favourable results or after it is taken with a view to procuring its modification; or both (6) Since the person affected usually cannot make worthwhile representations without knowing what factors may weigh against his interest, fairness will often require that he is informed of the gist of the case which he has to answer."*

[64] It is clear that there was a breach of section 125 (3), however the question that this Court now faces is what is fairness in the circumstances of this particular case. It is of significance that the basis of the Claimant's retirement is due to a reorganization and rationalization process resulting from a merger of two (2) ministries. The merger would have given rise to duplicated posts some of which were to be abolished on becoming

vacant. The post of Director, Corporate Affairs, Ministry of Industry, Commerce, Agriculture and Fisheries, which the Claimant occupies was one such post affected.

[65] It is also evident that the Claimant would have been aware as early as August 2016, that a number of posts were so affected. Her affidavit evidence clearly demonstrated that she was aware of the changes afoot regarding the reorganization/rationalization process, she indicated that she was a member of a committee tasked with the process of "*merging of post of the Ministries of Industry and Commerce and Agriculture and Fisheries*". She attested that the Defendant "*did hold meetings with all staff on the matter of reorganization of the Ministry of Industry, Commerce, Agriculture and Fisheries*". I have accepted the Defendant's evidence in this regard that at such meetings where the Claimant was present, it was explained to each department affected and senior personnel that due to duplications in posts some of the posts would be rationalized. I also accept that the Claimant would have known that efforts were made to facilitate her absorption elsewhere in the government service as per the uncontested evidence of the Defence that the Claimant was interviewed for at least five alternative placements but was unsuccessful.

[66] The evidence as contained in the affidavit of the Defendant also averred that there were two (2) invitations extended to the Claimant to meet with him for a discussion regarding her situation and she did not respond to the said invitations, further it was not until after she received the impugned letter that she attempted to arrange meetings with the Defendant. I accept the Defendant's evidence as credible in this regard. The Claimant has challenged this evidence in her 2nd Affidavit dated November 14, 2018, she indicated therein that she went to speak with the Defendant on several occasions but never had the opportunity as he was called into various meetings.

[67] The Claimant insisted that her *"post was on the proposed agenda for redeployment. Based on this proposal the Claimant would have been reporting to the Principal Director of the Ministry and her post would not have been abolished"*. The Claimant has not however indicated at what stage or date of the reorganization process this proposal was on an agenda; neither has she indicated whether there was any

decision taken regarding the proposal. I appreciate that a proposal is not to be equated with decision or a fact and therefore does not support the Claimant's argument that her post was never considered for abolishment.

[68] The Claimant has not moreover addressed the issue of the 28th November, 2017 letter, which clearly indicated the pending abolition of her post. I also note that in that letter the Claimant was informed that *"the Ministry would assist where possible should an opportunity arise to consider [her] for assignment"*. At this point the Claimant according to Mrs. Mendez, would have already unsuccessfully interviewed for the post of Senior Director, Corporate Services (GMG/SEG 5) at the Ministry of Justice on 20th November 2017; I accept this evidence as undisputed and truthful. In light of the plethora of information that was supplied to the Claimant and what she admitted to have been within her ken, I reject her assertion that she did not know she was to be retired or that the post would have been abolished. If her post was secured and was only to be redeployed, why then was she participating in at least one admitted interview for other positions.

[69] In the ***Patrick-Gardner*** case on which both parties rely, the Court had considered the issue of the Defendant's failure to afford the Claimant a hearing. Their consideration of this issue took into account not only section 125 (3) of the Constitution but also the **Public Service Regulations.** The Court had considered Regulation 24 dealing with premature retirement and pointed out that, that regulation provided for a hearing in such circumstances. While Regulation 24 was the appropriate regulation for that Court's consideration, the same is not necessarily so in this case. I agree with Counsel, Mrs Reid-Jones that a consideration of Regulation 25 by this Court would be more apt, as it specifically concerns situations where posts are being abolished; contemplated for abolition; or where appointments of officers are to be terminated "*for the purpose of facilitating improvement in the organization of a Ministry or Department in order to effect greater efficiency or economy"*. I accept Counsel's submissions that Regulation 25 of the **Public Service Regulations** is most appropriate in this instance and also that it does not contain a provision for the affected officer to be allowed to make representations nor does it allow for a hearing.

[70] In this case clearly there was no hearing conducted, but I cannot say that in all the circumstances the Claimant was treated unfairly. I bear in mind the ruling of the Court of Appeal in the case of ***Derrick Wilson v The Board of Management of Maldon High School and The Ministry of Education*** where it stated that "…*the principles of fairness are not to be applied by rote identically in every situation. What fairness demands is dependent on the context of the decision and this is to be taken into account in all its aspects".* I have considered that in the instant case the Claimant was being retired as a result of reorganization and the subsequent abolition of her post, this was not a separation due to misconduct or any negative behaviour on her part. I therefore pose the following questions; would a hearing have been meaningful in the circumstances? Would a hearing have changed the outcome of the decision taken? I say no. The reasons for the decision would still obtain and I do not see that a reference to the Privy Council or a hearing would have changed the reality of the duplicated posts which would have resulted in unnecessary expenditure; nor would a hearing change the need for rationalization /abolition of the Claimant's post.

Whether or not the Court should grant the orders as prayed for the Claimant?

[71] The Claimant has submitted to the Court that the procedure provided for under section 125 (3) was not complied with and as such the decision of the Defendant to retire the Claimant should be deemed null and void and of no effect. The Claimant in the same breath is asking this Court to grant an order of certiorari to quash the decision that was made to retire the Claimant, this seems to be a contradiction as both positions taken by her is mutually exclusive. The Defendant on the other hand has submitted that a judicial review court, even if it finds one or more of the allegations proved, may decide not to grant the orders sought, as the orders sought are discretionary.

[72] The authors H.W.R Wade and C.F. Forsyth in their text, ***Administrative Law***, 10th edition stated at page 424:

> "…*the remedies most used in natural justice cases certiorari, prohibition, injunction,* declaration-are discretionary*, so that the court have the power to*

withhold them if it thinks fit; and from time to time the court will do so for some special reason, even though there has been a clear violation of natural justice"

[73] Lord Walker in ***Bahamas Hotel Maintenance and Allied Workers v Bahamas Hotel Catering and Allied Workers*** [2011] UKPC 4, at paragraph 40 stated:

"*All relief granted by way of judicial review is discretionary, and the principles on which the Court's discretion must be exercised take account of the needs of good public administration*."

[74] Similarly, in ***Credit Suisse v Allerdale Borough Council*** [1997] QB 306 Hobhouse LJ at page 355 of the judgment opined that:

"*The discretion of the Court in deciding whether to grant any remedy is a wide one. It can take into account many considerations, including the needs of good administration, delay, the effect on third parties, and the utility of granting the relevant remedy. The discretion can be exercised so as partially to uphold and partially to quash the relevant administrative decision or act…" be exercised so as partially to uphold and partially to quash the relevant administrative decision or act…"*

[75] I also found instructive the **LOSA** case paragraph 148 of the judgment where McDonald- Bishop J (as she then was) stated:

"My starting point is to declare my acceptance of the principles that the discretion to grant judicial review is a wide one. It is also recognised, as demonstrated by the authorities, that the fact that the remedy is discretionary means that a claimant could win on every point and still find that the court refuses a remedy in the exercise of its discretion. In granting the remedy, there are several key factors that fall for determination by a court. For instance, delay (or even where there is no delay), the questions of hardship, prejudice, and what is in the interest of good administration are relevant considerations when one is considering whether judicial review should be granted. A court may still refuse relief if it considers that granting relief would be likely to cause substantial hardship to, or substantially prejudice the rights of, any person or would be detrimental to good administration"

[76] The learned Judge went on at paragraph 158 on the said issue:

> "*I am moved to accept on the defendants' case, after weighing all the various considerations, including fairness to the claimants, that the quashing of the decision to de-link and ordering the 2nd defendant to revert to the earlier policy could cause serious administrative inconvenience with undesirable consequences for the government and the nation. Clive Lewis in Judicial Remedies in Public Law (1992) at page 294, by citing some relevant authorities, made the relevant point under the sub-heading 'IMPACT ON ADMINISTRATION' that:*
>
> *The courts now recognise that the impact on the administration is relevant in the exercise of their remedial jurisdiction. Quashing decisions may impose heavy administrative burdens on the administration, divert resources towards re-opening decisions, and lead to increased and unbudgeted expenditure. Earlier cases took the robust line that the law had to be observed, and the decision invalidated whatever the administrative inconvenience caused. The courts nowadays recognise that such an approach is not always appropriate and not be in the wider public interest. The effect on the administrative process is relevant to the courts' remedial discretion and may prove decisive. This is particularly the case when the challenge is procedural rather than substantive, or if the courts can be certain that the administrator would not reach a different decision even if the original decision were quashed. Judges may differ in the importance they attach to the disruption that quashing a decision will cause.…"*

[77] At paragraph 159, McDonald-Bishop determined the issue as follows:

> "*I conclude that there is ample evidence upon which this court may legitimately find that to grant the claimants the reliefs they seek by way of judicial review would be inimical to good administration and would prove more prejudicial to the government in carrying out its policies in the public's interest than it would be to the claimants. If this court were to hold otherwise, then, it would be donning the garb of the policy-makers and, by so doing, would be intruding on the field of the executive and the legislature, which it ought not to do…*"

[78] In the oft cited case of ***Patrick-Gardener***, Thompson James J, at paragraph 130 of the judgment posited:

> *"Undoubtedly, it would be inimical to good administration if the government, and in particular, the legislature, were to be constrained to allow an administrative structure to remain that proved to be inefficient and uneconomical"*

[79] The Court is prepared to hold that there was a breach of section 125 (3). I also find the submissions made by Counsel on behalf of the Defendant to be very attractive. On a deeper analysis of the cases and authorities submitted on behalf of the Defendant, this Court is of the view that a post can be abolished or become vacant and this is what obtained in this case. However, in relation to the removal of a public officer, such must be done in a particular manner, which brings us back to section 125 (3) and that the particular provision enshrined in the Constitution was not followed and as a result there was a breach in procedure and as such the Claimant was unlawfully retired.

[80] The Court in all regards must strive for uniformity in its decisions where it is that the issues and circumstances are of similar nature and as such the Court is of the view that the decision by the Full Court in the case of ***Deborah Patrick-Gardener v Jacqueline Mendez and Public Service Commission*** *and the Privy Council in the case of* ***McLaughlin v the Governor of Cayman*** which held that in instances concerning the removal of a public officer the procedure laid out in the Constitution must be followed and as such I agree with these authorities.

[81] However, having considered all the evidence in this case and the particular circumstances of this case I am of the view regrettably that there is a greater public interest at stake than the procedural breach that was committed against the Claimant in that she was not given the prior requisite information that would have afforded her the opportunity to have her case referred to the Privy Council, pursuant to section 125 (3) of the Constitution. This is rather unfortunate, but this Court finds that there is ample evidence upon which the Court could legitimately refuse to grant the Claimant the relief and orders she seeks by way of judicial review on the basis that it would be inimical to good administration and governance. In coming to this position I have taken into account

the compelling argument of the Defendant's Counsel, who pointed out the fact that the Claimant is now only days away from her 60th birthday anniversary and will be compelled by the attainment of age to retire from the public service in any event. So whilst I recognise that the Claimant has established the statutory breach pursuant to section 125 (3) nonetheless to exercise my discretion and grant her the order of certiorari sought would be a puerile victory and would prove more prejudicial to the government in carrying out its policies in the public's interest than it would be to the Claimant.

[82] The Court had also taken into consideration that at the interlocutory stage on the Amended Notice of Application for Court Orders for Leave to Apply for Judicial Review filed on June 26th 2018, this Court had stayed the Defendant's decision to retire the Claimant as communicated in the letter dated 4th April, 2018 on June 26, 2018. This order was further extended by Anderson, J on July 31, 2018, in terms that *"the proposed retirement of the Applicant from her employment post in the public service, is stayed until either when she reaches retirement age or alternatively until the conclusion of this claim whichever is sooner"*. This order to stay the Claimant's retirement has kept the Defendant's purported retirement at bay and therefore the Claimant has enjoyed all the benefits of her post up until now and has therefore suffered no loss.

[83] The issue of entitlement to damages is usually important in these proceedings but none was requested in this case and no leave was granted on this point. In a case where the Court has ruled that the Claimant was unlawfully retired or removed from public office due to a breach of the procedure in section 125 (3) of the Constitution then damages would be granted in those circumstances. This principle was clearly highlighted in the ***Patrick-Gardener*** and ***McLaughlin*** cases.

[84] I raise these facts to demonstrate that the Claimant has suffered no damage up to this point and at all material times she was entitled to her salary and the relevant allowances attached to her post. It is on this ground that the decision in the cases of ***Patrick-Gardener*** and ***McLaughlin*** can be distinguished as in both cases the Claimants were removed or retired from public office and were without a salary and any allowances

attached to the relevant posts for a period of time and hence were able to recover damages.

Orders

1. The order of certiorari as set out in paragraph 1 of the Fixed Date Claim Form is refused on condition that the Claimant shall continue in her appointed post until she attains the relevant retirement age and such post shall not be abolished until her retirement. In the alternative the Claimant if retired before her relevant retirement date is to be paid as compensation a sum equivalent to any remuneration and benefits that she would have been entitled to up until such retirement would take effect.

2. The order for declarations as set out in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 of the said Fixed Date Claim Form is refused.

3. No order made as to costs.