

IN THE EASTERN CARIBBEAN SUPREME COURT

**IN THE HIGH COURT OF JUSTICE
Civil Division**

COMMONWEALTH OF DOMINICA

Claim No. DOMHCV2024/0218

**IN THE MATTER OF THE INTERPRETATION OF THE
CONSTITUTION OF THE COMMONWEALTH OF
DOMINICA INCLUDING SECTION 66 THEREOF**

BETWEEN:

BURNEY RYAN

Claimant

-and-

**THE ATTORNEY GENERAL OF THE
COMMONWEALTH OF DOMINICA**

Defendant

Before the Honourable Madam Justice Zainab Jawara-Alami

Appearances: Mr Vishaal Siewasaran with Mr Jared Jagroo led by Mr Anand Ramlogan
S.C for the Claimant
Mr Jason Lawrence with Mrs Tameka Burton led by Mr Anthony Astaphan
S.C, for the Defendant

2025: January 25
March 10
May 26

JUDGMENT

BACKGROUND /CLAIM

[1] **JAWARA-ALAMI J:** - The Claimant herein applies to this Honourable Court for the determination of the following issues and questions and like declarations to wit:

- i. Whether, in circumstances where there is occasion for the appointment of a Leader of the Opposition, after Senators have been appointed, and no elected

member of the House of Assembly appears to command the support of the largest single group of members of the House who do not support the Government, the President is obliged to recognize and/or take into account the support of the Opposition Senators in determining who should be appointed as Leader of the Opposition;

- ii. Whether, after Senators have been appointed in accordance with section 34 of the Constitution and the occasion subsequently arises to appoint a Leader of the Opposition, the President is obliged to recognize and/or take into account the votes or support of the appointed senators;
- iii. Whether the President was obliged to recognize and/or take into account the support of the four Senators who should be appointed Leader of the Opposition following the resignation of Ms. Jesma Paul-Victor;
- iv. Whether the President was obliged to recognize and/or take into account the support of the four Opposition Senators who indicated their support for Ms. Paul-Victor as leader of the Opposition in determining who commands the support of the largest single group of members of the House who do not support the Government for the purpose of appointing a leader of the opposition, or her as the leader of the opposition consequent upon the resignation of Ms. Paul-Victor effective 20th June, 2024;

- 2] The Defendant on 6th January 2025 filed an application seeking an order that this claim be struck out and the Court directed that the claim and the said application will be dealt with as a rolled up hearing. Accordingly, submissions and replies were filed by the parties to the Defendant's application and the substantive suit.

THE CLAIMANT'S FACTS:

- 3] The Claimant asserts that in Dominica the major political parties are the Dominica Labour Party (DLP) and the United Workers Party (UWP) and that the DLP has been in

government since 2000. That in 2022 a snap election was held in which the UWP boycotted the elections on the basis alleging that electoral reform to facilitate free and fair elections in Dominica were not implemented. The following results were returned after the December 6th 2022 polls: • DLP- 19 seats • Two independent candidates (Jesma Paul-Victor and Anthony Charles) each took the other two seats of Salisbury and Marigot respectively and The DLP which was the incumbent party, again formed the Government.

- [4] The Claimant asserts that there was no clear person to be appointed as the Leader of the Opposition (“the stalemate position”). However, the President was informed by letter dated 9th December 2022 cosigned by Ms. Paul-Victor and Mr. Charles of a power sharing arrangement whereby each, beginning with Ms. Paul-Victor, would hold the office of Leader of the Opposition for a period of eighteen (18) months and a further arrangement would be made for the balance of the parliamentary term. Based on that arrangement Ms. Paul-Victor was sworn in as Leader of the Opposition on 20th December, 2022. Having appointed a Leader of the Opposition, the four (4) Opposition Senators were subsequently appointed namely: i. Delbert Parris ii. Lorie Victor iii. Chalikia Vidal iv. Lorraine Henderson-Reid . Consistent with the agreement, Ms. Paul-Victor resigned from the post of Leader of the Opposition with immediate effect on 20th June, 2024 to make way for Mr. Charles to be appointed as Leader of the Opposition.
- [5] The Claimant also asserts that during Ms. Paul-Victor’s stint as Leader of the Opposition, Mr. Charles changed his political status and moved away from being an Independent Candidate and aligned himself with the United Progressive Party (UPP). By letter dated 20th June, 2024 the four Opposition Senators indicated their support for Ms. Paul-Victor to be recognized and appointed as Leader of the Opposition. The letter is also signed by Ms. Paul-Victor indicating her interest in re-appointment. That Her Excellency accepted the resignation of Ms. Paul-Victor and by letter dated 5th July, 2024 the President indicated her refusal to appoint Mr. Charles as the Leader of the Opposition on the basis that he does not command the support of the majority of members who do not support the Government.

- [6] Additionally, the House of Assembly of the Commonwealth of Dominica has been and continues to be without a Leader of the Opposition following Ms. Paul-Victor's resignation and the President's refusal to make an appointment as pleaded and supported by the Opposition Senators.

THE DEFENDANT'S APPLICATION TO STRIKE OUT THE CLAIM:

- [7] The Defendant filed an application to strike out¹ on the grounds that the Defendant has no standing to bring this claim and submits that there can be no issue of standing as the decision of the President is not reviewable/justiciable. The grounds of the application submitted by the defendant were numerous but I found that only two were relevant in the determination of the striking out application and they are; there is no pleaded basis in law or fact which discloses a viable or reasonable cause of action and; the Claimant lacks standing to bring this claim.
- [8] The Defendant contends that under Rule 56.2 of the CPR, standing for judicial review requires the applicant to have sufficient interest in the matter including "anybody or group that can show that the matter is of public interest and that the body or group possesses expertise in the subject matter of the application"². The defendant also contends that the Claimant, as alleged Chairman of the St. Joseph Constituency for the United Workers' Party (UWP), lacks standing due to his remote and indirect connection to the issue. That he is not an elected Representative, or an independent Senator appointed by the LOO after the 2022 elections. Additionally, the United Workers Party, of which he was allegedly a member, boycotted the elections, leaving him with no direct involvement in the parliamentary process or any personal interest adversely affected by the alleged constitutional breach³. It is submitted that judicial resources should not be expended on claims brought by individuals with remote or generalized interests, particularly when the issues concern electoral processes in which the source of the Claimant's alleged interest chose not to participate and cites the cases of **Attorney**

¹ Defendant's Notice of Application to strike out

² As per Rule 56.2(2)(d)

³ paragraphs 3-6 of the Claimant's Affidavit.

General v Dumas⁴ and Richards v The Attorney General of St. Vincent & the Grenadines⁵.

- [9] The Defendant submits in its reply ⁶ that the heading of the Claimant's Fixed Date Claim Form ("FDCF") states "...Filed pursuant to Part 56, Rule 7(1) of the Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023". CPR 56.7 deals with the "Service of a claim form for administrative order" and CPR Part 7 deals with "Service of Court Process Out of jurisdiction". Neither provision establishes standing or supports the Claimant's case. Additionally, it is submitted that, nowhere in the Fixed Date Claim Form or the Claimant's Affidavit in support did the Claimant plead Section 103 of the Constitution upon which he now seeks to rely as the basis for his standing.
- [10] The Defendant also submits that the Claimant's belated attempt to rely on s.103 and/or the case of **Dumas** constitutes an abuse of process by improperly attempting to cure the obvious deficiencies in his claim. That the Claimant is essentially attempting to perform an amendment by way of submissions as opposed to making the proper application under Part 11 of the CPR. Even if one could amend by way of submissions, **AG of St. Lucia v Darrel Montrope⁷**, established that amendments to correct defective pleadings are impermissible once (1) the first case management conference has passed, or (2) an application to strike has been filed, both of which have occurred in this case.
- [11] The Claimant on his part submits that he has standing to bring this claim, that the claim is meritorious and the matter is in no way an abuse of process or vexatious because it was conclusively settled by the Privy Council in **Attorney General of Trinidad and Tobago v Dumas** where the Board approved Jamadar JA's seminal judgment where he held that "public interest litigation for constitutional review" was

⁴ (2017) 90 WIR 507

⁵ Civil Suit No. 484 of 1989

⁶ Paragraphs 6 to 11 of the Defendants Reply filed 20th February 2025

⁷ SLUHCVP2019/0021

available to ordinary citizens notwithstanding the removal of the specific rule that had previously permitted interpretation claims in the old Rules of Court. This matter is plainly justifiable in the public interest. The claimant submits that It is a matter of fundamental constitutional and public importance and the Claimant is not a mere busybody who is acting for a collateral purpose.

[12] The claimant made no submissions to the alleged defects in his originating claim.

ISSUES FOR DETERMINATION:

[13] The issues arising before this Court for the just resolution of this matter are; **Whether the jurisdiction of this court has been properly invoked by the applicants.**

Resolution of Issue No.1 :

THE LAW AND ANALYSIS:

[14] It is settled that the High Court derives its constitutional jurisdiction to hear matters such as this one exclusively from **Section 103** which provides thus;

“(1) Subject to the provisions of sections 22(5), 38(6), 42(8), 57(7), 115(8), 118(3) and 121(10) of this Constitution, any person who alleges that any provision of this Constitution (other than a provision of Chapter I thereof) has been or is being contravened may, if he has a relevant interest, apply to the High Court for a declaration and for relief under this section.

(2). The High Court shall have jurisdiction on an application made under this section to determine whether any provision of this Constitution (other than a provision of Chapter I thereof) has been or is being contravened and to make a declaration accordingly.”

[15] From the foregoing it is apparent that Section 103 of the Constitution of Dominica provides the High Court with original jurisdiction to determine whether any provision of the Constitution (other than a provision of Chapter I) has been, or is being, contravened. It permits any person with a “relevant interest” to apply to the Court for relief.

[16] The test herein is that firstly the claimant must identify the relevant section of the constitution that is being contravened and secondly that he has relevant interest. In this case instant, the claim form clearly does not identify section 103, although it specifies Section 66 as constitutional provision that has allegedly been breached. In **Farrell v Secretary of State**⁸ and the the Guyanese case of **Ameerally v A.G**⁹ the necessity to particularise and plead alleged constitutional violations was emphasised. The claim must be sufficiently particularised to enable the Court to determine whether it has jurisdiction to grant the relief sought.

[17] In Baldwin **Spencer v Attorney General of Antigua and Barbuda**¹⁰, the Court of Appeal (per Sir Dennis Byron CJ) explained the correct approach to constitutional claims. He stated:

“The approach which our Courts have adopted has recognised the principle that in these public law cases, the Court first determines the nature of the alleged violation of the Constitution, and only if there is a sustainable allegation of such a violation does it consider whether the applicant has a relevant interest.”

[18] Moreover, the Court held that before any question of locus standi arises, there must be a sustainable allegation that a provision of the Constitution has been, or is being, contravened, and that the alleged contravention affects the interests of the applicant.

[19] It is well established that in constitutional litigation, procedural requirements must be complied with to ensure the court can properly exercise its jurisdiction. CPR 56.(3) requires that the claim form specify the constitutional provision relied upon and the relief sought. For ease of reference, I have reproduced the relevant rule below which clearly sets out the procedure for making an application for an administrative order, and provides that:

⁸ (1980) 1 All E.R. 166 at 173

⁹ (1978) 25 WIR 272.):

¹⁰ Civil Appeal No. 20A of 1997

“56.3 (1) “An application for an administrative order must be made by a fixed date claim in Form 2 identifying whether the application is for - (a) a declaration;(b) judicial review;(c) relief under the relevant Constitution; or (d) some other administrative order (naming it), and must state the grounds and nature of any relief sought.

(2) The claim form in an application under a relevant Constitution requiring an application to be made by originating motion should be headed ‘Originating Motion’. (3) The claimant must file with the claim form evidence on affidavit. (4) The affidavit must state –

(a) the name, address and description of the claimant and the defendant;
(b) in the case of a claim under the relevant Constitution – the provision of the Constitution which the claimant alleges has been, is being or is likely to be breached ”; (emphasis mine)

[20] The rule cited above requires that the claim form must identify the specific constitutional provision under which the claimant seeks relief. In addition, the claimant’s affidavit must state the provision of the Constitution that has been, is being, or is likely to be breached.

[21] The claimant has failed to comply with these requirements, in particular CPR 56.3(1)(c), by not identifying section 103 as the constitutional basis for his claim. Furthermore, contrary to CPR 56.3(2), the claimant failed to entitle his claim as an “Originating Motion”, thereby leaving the Court to speculate whether the matter properly falls within its constitutional jurisdiction, which it cannot do.

[22] This point was succinctly articulated by the court of appeal in **Nicholas Esprit & Ors v. Speaker of the House of Assembly & Ors**¹¹ where it held that “CPR 56.7 makes it

“...mandatory that an application for an administrative order must identify whether the application is for relief under the relevant constitution. In the present case however, no such identification exists. The appellants sought to get around this omission by stating that the affidavit in support of their Originating Motion supplies the required information. This however, will not suffice; the Civil Procedure Rules 2000 require both the Originating Motion and affidavit be specific. Accordingly, the trial judge was correct in holding that the appellants have not identified or pleaded any express provision of the Constitution which was purportedly infringed by the Speaker of the House”.

¹¹ Commonwealth of Dominica Court of Appeal HCVAP 2008/005

[23] The Court also agreed that:

“...that the Claimants have not identified or pleaded any express provision of the Constitution which was purportedly infringed by the Speaker of the House. I also agree. In fact when one looks at the Claimants’ originating motion it is seen that no relief is claimed under the Constitution”The court went further to say that ; “What cannot be gainsaid is that Part 56.7 of CPR makes it mandatory that an application for an administrative order must identify whether the application is for relief under the relevant constitution. In this case no such identification exists. The ground of appeal, as framed, and quoted above, attempts to seek a way around this omission by stating that the affidavit in support of the Originating Motion supplies the required information. With respect, CPR 2000 requires both the Motion and the affidavit to be specific. This was not done and so I would agree with the finding of the learned trial judge”.

[24] In ascertaining whether a court has jurisdiction to entertain a matter, the statement of claim/affidavit or where absent the claim form are the only documents to be looked at. Thus, where the claim form does not expressly invoke the relevant constitutional provision, and the pleadings do not clearly set out the alleged breach of a specific constitutional duty or right, the Court is left with no basis upon which to exercise its constitutional jurisdiction. In this case instant, the claim form alleges that the President's failure to act is unconstitutional but does not cite the constitutional provision it wishes to move the court on and that is Section 103, which confers original jurisdiction on the High Court in relation to non-Chapter I constitutional matters.

[25] The failure to identify the constitutional provision alleged to have been breached, or to assert a "relevant interest" as required under Section 103, leaves the claim deficient in both form and substance.

[26] While mere technical defects in pleading may not always be fatal particularly where constitutional issues are involved a claim must at a minimum invoke the jurisdictional basis for the relief sought. This is especially critical where the claim is not one seeking private law remedies, but rather constitutional declarations against the State. The jurisdiction of the Court cannot be assumed in the absence of a properly pleaded constitutional foundation.

[27] Applying the foregoing reasoning, this Court finds that the claim fails at the threshold and the Court accordingly finds:

- i. The claim against the Defendants be struck out as it without merit, not properly invoking the jurisdiction of the Court under Section 103 of the Constitution of the Commonwealth of Dominica;
- ii. The issue of locus standi does not arise in the absence of a viable claim;
- iii. There shall be no order as to costs on the application.

ORDERS:

[28] For the reasons above, I make the following orders on the Defendant's application filed on 6th January 2025:

- i. The Claimant's claim filed on 29th October 2024 is struck out; and
- ii. There be no order as to costs on the application filed on 6th January 2025 or the claim filed on 29th October 2024.



Zainab Jawara-Alami
High Court Judge

By the Court,

Registrar