

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS

3 CAUSE NO. G0017 OF 2021

5 BETWEEN:

6 THE ATTORNEY GENERAL

8 APPLICANT

9 AND:

10 BILIKA HARRY SIMAMBA

11 RESPONDENT

15 **Appearances:** Mr. Tom Lowe Q.C. instructed by Ms. Reshma
16 Sharma, Solicitor General and Ms. Heather
17 Walker for the Applicant

18 **Before:** The Hon. Justice St. John-Stevens (Actg.)

20 **Hearing:** 4th May 2021

22 **Draft Judgment Circulated:** 28th July 2021

24 **Applicant's response¹ to Draft:** 3rd August 2021

26 **Respondent's response² to Draft:** 16th August 2021



29
30 **HEADNOTE**

31 *Civil Law – Application for Restraint Order against the Respondent – To be*
32 *Restrained from issuing any claims or actions, proceedings or making*
33 *applications in any court, for the period of 2 years - Ambit of the restraint: Any*
34 *claims, actions, proceedings or applications involving, or relating to, or*
35 *touching upon those matters raised in (specifically named) proceedings in the*
36 *Grand Court and the Cayman Islands Court of Appeal (CICA).*

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39 **JUDGMENT ON RESTRAINT ORDER APPLICATION**

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¹ This was a 5-page document which addressed in detail forty (40) paragraphs of the Draft Judgment.

² This was a 1¼ page letter which was provided in response to the Judge's request via email of the 16th August 2021 for the Respondent's response to both this Judgment and the "Strike Out" Judgment. By way of detail, this letter makes reference to two (2) paragraphs of this Judgment.



1 **Application for Restraint Order**

2
3 1. The Court has before it an Originating Summons (dated 1st February 2021) supported
4 by an affidavit of Heather Walker³.

5
6 2. The Applicant seeks an order that the Respondent be restrained from issuing any
7 claims or actions, proceedings or making applications in any court, without first
8 obtaining the permission of a Judge of the Grand Court, and that such an order to
9 last for the period of 2 years from the granting of the said order - the ambit of the
10 restraint being, any claims, actions, proceedings or application involving, or relating
11 to, or touching upon those matters raised in proceedings in the Grand Court and the
12 Cayman Islands Court of Appeal (CICA) within any of the following four causes,
13 namely:

- 14
15 a. *Simamba v the Health Services Authority of the Cayman Islands* Cause No.
16 G0032 of 2014;
- 17
18 b. *Simamba v The Health Services Authority/Simamba v The Attorney General and*
19 *Governor of the Cayman Islands* CICA Cause No G0036 of 2019
- 20
21 c. *Simamba v The Attorney General and Governor of the Cayman Islands* Cause
22 No G0093 of 2020;
- 23
24 d. *Simamba v The Honourable Justice Ian Kawaley and Anor* Cause No. G0161 of
25 2020.

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³ (First Affidavit; dated 5 Feb. 2021)

1 **Materials before the Court**

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3. The materials in this case are incorporated within two electronic bundles:
- i. Firstly: “G93 and G161 of 2020 and G 17 of 2021 - Electronic Hearing Bundle.” - 885 pages; and
 - ii. Secondly: “Cause No. G17 of 2021 - Electronic Authorities Bundle” - 150 pages.
 - iii. References to these bundles in this judgment will be [EHB; tab/page/para] & [EAB; tab/page/para] respectively.

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11 **Parties to, and Consideration of, this Application**

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4. This Application is materially connected to G0093 of 2020 and G0161 of 2020.
5. The 1st Defendant in Cause G0093 of 2020 being the Applicant in this application; the Plaintiff in G 0093 & 161 of 2020 being the Respondent in this application.
6. There was a directions hearing held on the 22nd February 2021. This was in relation to summonses issued on 1st and 2nd February 2021 - (amended 15th February 2021)⁴, seeking an Order that the Statements of Claim in both G0093 of 2020 and G0161 of 2020 be struck out.
7. During the course of the directions hearing on the 22nd February 2021 the Court canvassed with the parties the possibility and desirability of consolidating the two Causes, G0093 of 2020 and G0161 of 2020. Each was in agreement to that course. It was further determined, upon the agreement of the parties, that the application to strike out would be heard first; following which, as part of a composite hearing, this

⁴ [EHB; tabs 11, 12 & 14]



1 application for a Restraint Order - G0017 of 2021 - would be heard⁵. Consequently
2 judgment on the applications to strike out and Restraint Order would be given
3 together.

4
5 8. The four identified proceedings in relation to which a Restraint Order is sought,
6 enjoy a commonality. From the first proceedings Cause No.G0032 of 2014| flowed
7 the second, third and fourth; the second, being the Appellate Court’s consideration
8 of the first, and the third and fourth seeking, in the main, to engage the court in the
9 reconsideration of the first Cause and also reconsideration of the Appellate court’s
10 determination of the second.

11
12 9. This Court has ruled upon the applications to strike out; this Court ordered that each
13 be struck out pursuant to **Grand Court Rules (GCR)** O.18 r.19(1).

14
15 10. The Court, having considered the oral submissions at the directions hearing and the
16 written material, made further case management directions consequent upon the
17 fixing of the hearing to be on the 4th May 2021. That date was the first identified date
18 convenient to the parties and the Court to hear both the application to strike out and
19 the restraint application and which allowed sufficient time for the parties to provide
20 written submissions.

21
22 11. The Court made further case management directions of its own motion - mindful of
23 dealing with The Overriding Objective , as set out in the preamble to the **GCR**, to
24 deal with cases justly and at proportionate cost, which includes, so far as is
25 practicable, allotting to each case an appropriate share of the court's resources.

26



⁵ (See Order; [EHB; tab16])

1 12. In the result this Court directed that, having received helpful written submissions
2 and attendant material, the Court would permit sixty minutes to each party to make
3 oral submissions upon the consolidated application to strike out, and a like period in
4 relation to the application for a Restraint Order. The Court also stated that it would
5 not be assisted by, nor indeed permit, simple repetition of written submissions⁶. Mr.
6 Simamba, in an email, expressed some disquiet as to not being permitted to repeat
7 his written submissions orally. The Court observes the need to engage the word
8 “simple”. Of course the parties were permitted to, and did, repeat written
9 submissions - augmenting them with oral submissions.

10
11

The Oral Hearing - 4th May 2021

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13 13. Prior to the hearing, the Court had indicated that it would permit Mr. Simamba (The
14 Plaintiff/Respondent) to appear remotely via “Zoom”, as he did at the hearing on the
15 22nd February. Upon Mr. Simamba’s invitation, the Court indicated the hearing
16 would be open to the public. In the interests of ensuring both access to justice and
17 open justice the Court further indicated it would permit attendance by the parties via
18 video link (Zoom) and permit interested observers the ability to login.

19
20

20 14. During the hearing Mr. Simamba invited the Court to allow him to have a little more
21 than an hour to present his oral submissions in relation to the strike out application,
22 while at the same time indicating that he would take less than an hour in relation to
23 his oral submissions in response to the application for a Restraint Order. The Court
24 of course acceded to that request. The Court was satisfied that Mr. Simamba, by a
25 combination of his written skeleton arguments and the oral submissions, has had a



⁶ *Note of directions at [EHB; tab18]*

1 fair opportunity to present his case. There was no indication to the contrary from
2 him.

3
4 15. It should be noted that in such a hearing a judge may ask questions by way of
5 clarification or to invite elaboration. It is not incumbent on a judge to indicate to
6 either advocate if a submission does or does not find favour. Particularly so in a
7 situation when the court has afforded the parties time to reduce their positions to
8 written submissions - it is an adversarial process.

9
10 **This Judgment**



11
12 16. The purpose of this judgment is to set out the Court's reasons for its decision, and
13 what conclusions have been reached on the principal controversial issues. That does
14 not include every issue but only those that are determinative in some measure of the
15 application.

16
17 17. Not all issues will be referred to in this judgment, nor to each authority will mention
18 be made - all of which have been subject to careful consideration by this court. Any
19 such omission is not indicative that it has not been considered. At the case
20 management of the hearing it was ensured that each party had time to reduce their
21 submissions to writing, and parties were invited to concentrate on the principal
22 controversial determinative issues.

23
24 18. The Court has read and considered all the written material, augmented by oral
25 submissions, submitted by the parties.

26
27 19. This is not a treatise nor discursive on matters which maybe pertinent, or are on the
28 very margins of determinative relevance. This Judgment focuses on those matters

1 that materially affect the outcome, and on matters that are, or possibly, dispositive
2 of this application.

3
4 20. The Court reminds itself of the authoritative guidance, such as in *South Bucks*
5 *District Council and Another v Porter (No.2)*⁷:

6
7 *“The reasons for a decision must be intelligible and they must be adequate. They*
8 *must enable the reader to understand why the matter was decided as it was and*
9 *what conclusions were reached on the “principal important controversial*
10 *issues”.*

11
12
13 21. This court is mindful of the Plaintiff’s criticism of the questioned judgment of
14 Kawaley J within the Statement of Claim. Paragraph 62⁸ reads:

15 *“I was taken aback by the sheer brevity of a ruling on such a complex case is. It*
16 *was a 29-page ruling in a case which, in my view, on the basis of certain*
17 *comparisons dealt with below, should have been well over 100 pages, perhaps*
18 *close to 200 pages. The decision was disproportionate to the issues that had*
19 *been placed before the court.”*

20
21 22. This court rejects the bald assertions that the sufficiency of a ruling can be measured
22 by the number of pages.

23
24 **Relevant Proceedings brought by the Respondent**

25
26 23. In 2014 the Respondent in this cause filed a claim in the Grand Court - *Simamba v*
27 *the Health Services Authority of the Cayman Islands* Cause No. G 0032 of 2014.
28 This was initiated by Writ dated 6th March 2014 - the substance being a personal
29 injury claim. The Plaintiff in this cause alleged that he suffered loss and damage as
30 a result of medical negligence by the CI Health Services Authority (HSA).

31



⁷ [2004] WLR 1953 [36]

⁸ [EHB;tab.9/p.115]

1 24. Mangatal J and Kawaley J each presided over hearings in the life of this cause. On
2 the 17th June 2019 Kawaley J delivered his ruling in this cause, indicating that the
3 Respondent’s (Mr. Simamba’s) claim was bound to fail in the absence of medical
4 evidence. However it must be noted that the cause was not struck out, but the judge
5 made an immediate case management hearing order requiring the Applicant to file
6 the specified expert evidence. The Respondent/Plaintiff having requested a further
7 opportunity to serve expert evidence, the Learned Judge, in the exercise of his
8 discretion, permitted the same; directing that medical and dental evidence be served
9 by 31st October 2019 - reserving the costs of the application. The period of time
10 granted for service of this expert evidence was, upon the application of the
11 Respondent, extended until the 31st March 2020⁹.

12
13 25. The sole basis that the action was ultimately struck out was as a consequence of the
14 Plaintiff’s failure (the Respondent in this matter) to adduce expert evidence - despite
15 being given time, and an extension of time, so to serve, and being fully aware that
16 his case would be struck out if he failed so to do.

17
18 26. The Respondent sought to re-litigate that decision in the Constitutional Petition
19 (*Cause No. 93 of 2020*) and the Personal Action (*G161 of 2020*). Both of these causes
20 were struck out - each sharing a commonality of subject matter and grievance.

21
22 **The Two Applications before CICA relating to the original Medical/Dental Negligence**
23 **action.**

24
25 27. On the 12th November of 2019 the Plaintiff filed with the CICA an “*Application for*
26 *leave to file Constitution Motion (pursuant to section 26 of the Constitution)*”¹⁰. This

⁹ [EHB; Tab.28/p.432-3]

¹⁰ [EHB; Tab29]



1 application - Simamba v The Health Services Authority/Simamba v The Attorney
2 General and Governor of the Cayman Islands CICA Cause No 36 of 2019 - was
3 adjudicated upon, and refused. The Certificate of Order and Reasons for Decision of
4 Justice of Appeal Beatson is dated 5 August 2020¹¹.

5
6 28. However before this matter was determined, the Plaintiff filed with this Court, on
7 the 12th June 2020 what he described as an ‘*Application for Leave to File a*
8 *Constitutional Petition, pursuant to section 26 of the Constitution*’¹².

9
10 29. On the 19th June 2020 The Plaintiff filed with the CICA an “*Application for Leave*
11 *to Appeal out of Time*”; the Respondent being the Cayman Islands Health Services
12 Authority (HSA). This application sought leave to appeal the decision of Mr. Justice
13 Kawaley in the medical/dental negligence case G0032 of 2014. The CICA rejected¹³
14 the application - the application for leave, dated 19th June 2020, being over a year
15 after the order was made. Within this Certificate of Order and Reasons, which must
16 be read in conjunction with the parallel document relating to an application for leave
17 to file a Constitutional Motion, Justice of Appeal Beatson considers factors repeated
18 in the causes before this Court.

19
20 30. In relation to both applications within *CICA Cause No 36 of 2019* and *Cause No*
21 *G0093 of 2020*, both the Attorney General and His Excellency the Governor of the
22 Cayman Islands were defendants. A careful consideration of the substance of the
23 grounds for each cause revealed that they are without material distinction. Indeed
24 the affidavit in support of each was the same¹⁴. It is acknowledged however that the

¹¹ [EHB;tab30,p454]

¹² [EHB; tab7].

¹³ [EHB; tab32]

¹⁴ [EHB;tab,24]



1 Plaintiff's judicial criticism has broadened to include Mangatal J, and her decisions,
2 and delay.

3
4 31. The Plaintiff appears to accept that the cause of action to be considered by the CICA
5 was in all intents and purposes the same as that averred in Cause No G0093 of 2020.
6 Such can be gleaned from the Plaintiff's Skeleton Argument in this matter¹⁵.

7
8 32. On 28th October 2020 Cause G161 of 2020 began its life – with the Plaintiff joining
9 the Honourable Justice Ian Kawaley and his assistant, Miss Bridget Myers, as
10 Defendants in a personal action - Simamba v The Honourable Justice Ian Kawaley
11 and Bridget Myers Cause No. G 0161 of 2020¹⁶.

12
13 33. This personal action was filed when the Plaintiff's Constitutional Petition (G0093 of
14 2020) was still pending before the Grand Court. In the Personal Action the Plaintiff
15 recycled the complaints which had been the subject of his Constitutional Motion and
16 which had already been dismissed by Beatson JA.

17
18 34. In each of the two causes the Applicant/Plaintiff merely repeated and recast the
19 complaints which had been the subject of his unsuccessful constitutional motion, and
20 the application to appeal out of time - CICA Cause No 36 of 2019, dismissed by
21 Beatson JA.

22
23 35. Each of these four causes enjoy a commonality. From the first proceedings (Cause
24 No. G0032 of 2014) - flowed the second, third and fourth. The second, being the
25 appellate court's consideration of the first, and the third and fourth seeking, in the
26 main, to engage the court in the reconsideration of first and the determination by the
27 Appellate Court to reject the second.



¹⁵ [EHB; Tab4/p.42./para 8]

¹⁶ [EHB;tab9]

1 **The Application to Strike Out re Causes - G161 of 2020 and Causes G0093 of 2020 and 161**
2 **of 2020**

3
4 36. This Court acceded to the application to strike out each Statement of Claim in these
5 causes. Pursuant to GCR O.18 r.19(1)(a)&(d) it found in relation to both The
6 Constitutional Petition (*Cause Nos. G93 of 2020*) and the Personal Action (*G161 of*
7 *2020*) that both disclosed no reasonable cause of action and/or amounted to an abuse
8 of the process of the court.

9
10 37. A number of the grounds did not disclose a reasonable cause of action as they were
11 not justiciable. Examples being that judicial review of a Grand Court decision is
12 impermissible; the Grand Court being a Superior Court of Record pursuant to s.94(1)
13 of Schedule 2 to the Cayman Islands Constitution Order, 2009 which provides as
14 follows:¹⁷

15
16 ***Constitution and jurisdiction of the Grand Court***



17
18 “94. (1) *There shall be a Grand Court for the Cayman Islands which*
19 *shall be a superior Court of Record*

20
21 38. In consequence, the Grand Court, could not be subject to the control of any other
22 court other than its Appellate court - such a principle being enunciated in ***Suratt v***
23 ***AG of Trinidad and Tobago***¹⁸.

24
25 39. The Respondent did seek leave to appeal the same issues - both in relation to a
26 constitutional motion and the striking out of the original negligence suit¹⁹.

¹⁷ [EAB;tab.3A/p.69]

¹⁸ [2008] 1 AC 655 [EAB to the Strike Out applications in G 93/20 and G161/20]

¹⁹ (to wit: *Simamba v the Health Services Authority of the Cayman Islands Cause No. G 0032 of 2014; Simamba v The Health Services Authority/Simamba v The Attorney General and Governor of the Cayman Islands CICA Cause No 36 of 2019*)

1 40. Judicial immunity was also engaged. In some instances the grounds of complaint
2 were unarguable.

3
4 41. Matters which were determined as an abuse of process were the fact that the grounds
5 advanced in each cause were in all intents and purposes those which were advanced
6 in the medical negligence cause (which was struck out) which were again repeated
7 before the CICA. It is an abuse of process of the court for a litigant to keep returning
8 to the same court when not in agreement with decisions.

9
10 42. The Court in approaching its decision in the application to strike out considered, not
11 simply the sufficiency of each ground, but also considered the totality of them all –
12 in the course of considering a *prima facie* case that there had not been a fair trial.

13
14 43. It was plain and obvious that each action was certain to fail and any defect could not
15 be remedied by amendment, considering only the allegations in the proceedings.

16
17 44. The Court did not make any final determination as to whether either one or both
18 cause(s) amounted to being “scandalous frivolous or vexatious”²⁰.

19
20 **Power to make a Restraint Order**

21
22 45. Power to prohibit institution of action without leave is vested in the Court pursuant
23 to statute and/or under the Court’s inherent jurisdiction.

24
25 46. Statutory Power: Section 2 of the *Vexatious Actions Act* (1998 Revision)²¹ provides,
26 *inter alia*;



²⁰ (O.18 r.19(1)(b))

²¹ {Was referred as the Vexatious Actions Law (1998 Revision) - prior the change of nomenclature of Cayman Islands Legislative Assembly to the Cayman Island Parliament; Constitution (Amendment) Order 2020 - effective from. 3rd December 2020}

1 “2. *If, on an application made by the Clerk of the Court under this section,*
2 *the Chief Justice of the Grand Court is satisfied that any person has*
3 *habitually, persistently and without any reasonable ground instituted*
4 *vexatious legal proceedings, whether in the Grand Court or in any*
5 *inferior court,*”
6

7 47. It appears from the words of this Act, adopting the plain meaning construct, that such
8 power vests only in the Chief Justice.

9
10 48. In the UK s.42 of the **UK Supreme Court Act** 1981 creates a statutory restriction of
11 vexatious legal proceedings:

12 “42. *Restriction of vexatious legal proceedings.*
13
14 (1) *If, on an application made by the Attorney General under this*
15 *section, the High Court is satisfied that any person has*
16 *habitually and persistently and without any reasonable*
17 *ground—*
18
19 (a) *instituted vexatious civil proceedings, whether in the*
20 *High Court or the family court or any inferior court,*
21 *and whether against the same person or against*
22 *different persons; or*
23 (b) *made vexatious applications in any civil proceedings,*
24 *whether in the High Court or the family court or any*
25 *inferior court, and whether instituted by him or*
26 *another, or*
27 (c) *instituted vexatious prosecutions (whether against the*
28 *same person or different persons),*
29 *the court may, after hearing that person or giving him an*
30 *opportunity of being heard, make a civil proceedings order, a*
31 *criminal proceedings order or an all proceedings order.”*
32
33

34 48. This statutory jurisdiction emanated from the common law restraint known as the
35 **Grepe v Loam**²² jurisdiction. In the case of **Ebert v Venvil**²³, the English Court of
36 Appeal held that this jurisdiction survived the introduction of a statutory remedy:
37



22 [1887] 37 Ch. D. 168

23 [1999] EWCA Civ 3043 [EAB; tab 1/p.5]

1 “It is accepted that the existence of the statutory power has not supplanted the
2 power of the court to make a limited *Grepe v Loam* order. They serve to
3 emphasise the importance of the *Grepe v Loam* orders only being made when a
4 clear case for making the orders has been established. This is one of the
5 situations where it is accepted that notwithstanding the intervention of
6 Parliament an inherent jurisdiction remains alongside the statutory
7 jurisdiction.”²⁴
8
9

10 49. The English Court of Appeal considered the inter-relationship between civil restraint
11 orders under the inherent jurisdiction and the statutory jurisdiction in *Bhamjee v*
12 *Forsdick (Practice Note)*²⁵. It also recognised – endorsing the approach Neuberger
13 J in *Ebert* - that a court could make extended restraint orders (or extended *Grepe v*
14 *Loam* orders) to prevent the litigant, not only from prosecuting an existing action,
15 but also from taking any steps, including commencing related actions.

16 50. Is not a matter of dispute between the parties that the Grand Court still has an
17 inherent power, emanating from common law to grant a Restraint Order - such power
18 surviving the enactment of the *Vexatious Actions Act* (1998 Revision).
19

20 51. The basis for making a civil restraint order has been settled and flows from a number
21 of authorities, two of which are *Philcox v Wilson*²⁶ and *Nowak v the Nursing and*
22 *Midwifery Council*²⁷.
23

24 52. It is gleaned from these authorities, and again this is not in dispute, that the Court
25 must apply a three stage test:
26



²⁴ At 493E per Lord Woolf M.R.

²⁵ [2004] 1 WLR 88 [*EAB*; tab 2/p.19]

²⁶ [2018] EWHC 3138 at [21] [*EAB*; G17/21 tab 3/p.37]

²⁷ [2013] EWHC 1932 [*EAB*; tab 5/p.67]

1 “The Threshold Test

2
3 i. *whether the litigant has persistently issued claims or made applications*

4 *which are totally without merit;*

5
6 The Discretion Test

7 ii. *whether an objective assessment of the risk which the litigant poses*

8 *demonstrates that he will, if unrestrained, issue further claims or make*

9 *further applications which are an abuse of the court's process; and*

10
11 The Proportionality Test

12
13 iii. *what order, if any, it is just and proportionate to make to address*

14 *the risk identified.”*

15
16 **The Threshold Test**

17
18 53. In *AG v Barker*²⁸ (a case on the statutory provision where the conduct must also be

19 “habitual”), Lord Bingham at 764 described conduct justifying restraint as follows:

20
21 *“From extensive experience of dealing with applications under section 42[(1)(a)*

22 *of the Supreme Court Act] the court has been become familiar with the hallmark*

23 *of persistent and habitual litigious activity. The hallmark usually is that the*

24 *plaintiff sues the same party repeatedly in reliance on essentially the same cause*

25 *of action, perhaps with minor variations after it has been ruled upon, thereby*

26 *imposing on defendants the burden of resisting claim after claim; that the*

27 *claimant relies on essentially the same cause of action perhaps with minor*

28 *variations after it has been ruled upon in actions against successive parties who*

29 *if they were to be sued at all should have been joined in the same action; that*

30 *the claimant automatically challenges every adverse decision on appeal; and*

31 *that the claimant refuses to take any notice of or give any effect to orders of the*

32 *court. The essential vice of habitual and persistent litigation is keeping on and*

33 *on litigating when earlier litigation has been unsuccessful and when on any*

34 *rational and objective assessment the time has come to stop.”*

35
36
37 54. Lord Bingham also accepted that the words ‘habitually and persistently’ connoted

38 “an element of repetition” which did not need to be over a prolonged period. There

39 must be an element of persistence or, as described in *Bhamjee v Forsdick (Practice*

40 *Note)*²⁹ of “persistent vexatiousness”. Within this authority the court observed the

²⁸ [2000] 1 FLR 759

²⁹ [2004] WLR at 42H,



1 “very serious contemporary problems” created by vexatious litigants, and
2 observed³⁰:

3 “3. ... The problem created by these hopeless applications is not only a
4 serious financial one.....It is also that the court is having to divert
5 skilled attention that ought to be paid to cases of real merit which
6 warrant early hearings to cases which have no merit at all. A further
7 problem is created by the fact that these litigants are often without the
8 means to pay any costs orders made against them.....
9

10 4. ... In most cases, particularly after an unsuccessful appeal has been
11 handled in the same way that will be the end of the matter so far as the
12 courts are concerned, even if the litigant's sense of unfair treatment will
13 often linger on. But in a tiny minority of cases he will not take 'no' for
14 an answer. He may start collateral litigation about the same subject
15 matter. He may sue the judge. He may sue the lawyers on the other side.
16 He may bombard the court in the same case with further applications
17 and appeals.” {This Court’s emphasis}
18

19
20 55. The underlined portion above is particularly apposite in the application before this
21 Court.

22
23 56. The Applicants contend that for the purposes of this application, the relevant
24 threshold has been met. The persistent institution of meritless proceedings is
25 evidenced by:

- 26
27 i. the number of applications filed since the Personal Injury Claim;
28
29 ii. the fact that the grounds of complaint/challenge are substantially the
30 same in each application;
31
32 iii. the Court of Appeal’s decisions on the Leave Application and s.26 **Bill**
33 **of Rights** Claim where the grounds of complaint were found to be
34 unarguable and lacking in merit;



³⁰ p.91

1 iv. the fact that notwithstanding the Court of Appeal’s decisions, the
2 Respondent persisted in instituting further proceedings in Cause No. 161
3 of 2020, this time against Kawaley J and Ms. Myers, in which the same
4 grounds of complaint were repeated extensively;

5
6 v. there is no question that Kawaley J has immunity from suit for acts
7 undertaken in the exercise of his judicial office³¹. Accordingly, the
8 action cannot be sustained;

9
10 vi. the Respondent’s pleaded case in Cause No. 161 of 2020 goes a step
11 further in asserting “*Prejudice suffered from the Court of Appeal’s*
12 *Certificate of Order and Reasons by Justice Beatson*”³². In essence, the
13 Respondent is inviting the Grand Court to overturn the findings of the
14 Court of Appeal when it has no jurisdiction to do so. This is consistent
15 with the Respondent’s habit of using the Grand Court as an avenue for
16 appeal from its own decisions³³; and

17
18 vii. Further, the Respondent continues to raise in his proceedings other
19 matters which fall outside the Court’s jurisdiction such as the breach of
20 Judicial Codes of Conduct and the removal of judges from office.

21
22 57. The CICA, in its rulings on the Leave Application and s.26 **Bill of Rights** Claim,
23 effectively certified the Respondent’s grounds of complaint as totally without merit.
24 The views of that Court, or its ‘certification’, ought to be conclusive and subsequent
25 courts should not permit argument as to whether an application or claim was in fact

³¹ (see *Sirros v Moore* [1975] 1 QB 118 at 135[D]-[G])

³² (see **HW-15** at [81]-[87]) [*EHB; tab 34/p.533-536/para. 81-87*]

³³ (see **HW-12**, Cause No. 93 of 2020) [*EHB; tab 31*]



1 totally without merit³⁴. Not to understand the Appellate Court’s decision as
2 “conclusive” and to permit further argument on the same submissions, would not be
3 an efficient use of this Court’s time and resources.

4
5 58. The Respondent, Mr. Simamba, in opposing this application, submitted that the
6 grounds raised before the court relating to his Medical/Dental action were legitimate
7 grounds of complaint which when looked at individually and/or together raised a
8 *prima case* that he had been deprived of a fair trial. The Respondent submitted
9 further that he had demonstrated intellectual dishonesty and bias in the judges, and
10 there had been a conspiracy precluding his fair hearing both in the Grand Court and
11 the CICA. In consequence he describes that it would be the “height of absurdity”
12 and “a gross abuse of authority” to suggest that his grounds were unarguable.

13
14 59. In my judgement, the repeated attempts to litigate the same issues, in the form and
15 manner he has, fall squarely within the description of Lord Bingham in *AG v*
16 *Barker*³⁵ of conduct justifying restraint as follows:

17
18 *“The hallmark usually is that the plaintiff sues the same party repeatedly in*
19 *reliance on essentially the same cause of action, perhaps with minor variations*
20 *after it has been ruled upon, thereby imposing on defendants the burden of*
21 *resisting claim after claim; that the claimant relies on essentially the same cause*
22 *of action perhaps with minor variations after it has been ruled upon in actions*
23 *against successive parties who if they were to be sued at all should have been*
24 *joined in the same action; that the claimant automatically challenges every*
25 *adverse decision on appeal; and that the claimant refuses to take any notice of*
26 *or give any effect to orders of the court. The essential vice of habitual and*
27 *persistent litigation is keeping on and on litigating when earlier litigation has*
28 *been unsuccessful and when on any rational and objective assessment the time*
29 *has come to stop.”*
30



³⁴ (see *Nowak* at [67])

³⁵ [2000] 1 FLR 759

1 60. The Respondent has pursued litigation and complaints ancillary to primary issues,
2 of which, of themselves, this court can take account when considering the threshold
3 test and proportionality in making any order.

4
5
6 61. Not only were the series of actions attempting to re-litigate issues which were
7 unarguable, the Respondent sought a criminal avenue, that is, writing to the Director
8 of Public Prosecutions on the 21st September 2020³⁶. He sought to explore the
9 possibility of prosecuting Kawaley J. In that letter he misreported that His
10 Excellency The Governor and the Attorney General had described Kawaley J's
11 actions as serious, when in fact their response, which he in fact set out in his letter,
12 describes them as "significant allegations". I reference the letter in response from
13 HE The Governor letter³⁷ - which clarifies this position and makes it clear it was not
14 making admission to the matters.

15
16 62. The Respondent states within that letter that Kawaley J lied in his judgment in this
17 matter, relating to being allowed to be heard at a hearing; that the Judge lied and
18 falsified a record, and then stated a falsehood in his ruling; that the Judge lied in his
19 explanation why he had not considered 52 cases, and 7 clear arguments.

20
21 63. This Court observes that Kawaley J in his ruling specifically made no determination
22 on the matter of immunity to which those authorities related - granting liberty to
23 apply to further argue the matter.



³⁶ [EHB;tab.33]

³⁷ [EHB; tab.37/p.564]

1 Justice Kawaley. As the Court held in striking out this action against the 2nd
2 Defendant, written reasons were given for HE The Governor's refusal to refer the
3 matter of Kawaley J's conduct to the Judicial and Legal Services Commission. In
4 any event, the proper avenue for challenging HE The Governor's decision was by
5 way of judicial review for which the Plaintiff is now out of time.

6
7 70. Once again I note that the CICA considered this ground when considering the
8 application for leave to file a Constitutional Motion. Beatson JA refused the
9 application and gave reasons in relation to this matter³⁸.

10
11 71. In the immediately preceding paragraphs I purposed not to set out all the
12 Respondent's complaints made in the preceding causes, or the reasons why they
13 were rejected and his causes struck out. Those paragraphs demonstrate, by way of
14 example, why, in my judgement the threshold test has been emphatically met; the
15 Respondent has persistently issued claims and made applications which are totally
16 without merit.



17
18 **The Discretion Test**

19
20 72. This Court must make an objective assessment of whether the risk which the litigant
21 poses demonstrates that he will, if unrestrained, issue further claims or make further
22 applications which are an abuse of the court's process.

23
24 73. The chronology of the causes flowing from the striking out of the medical/dental
25 action based on unsustainable grounds in and of itself demonstrates there is a future
26 risk. Whilst of course acknowledging this is past action, it provides evidence of a
27 course of conduct. This Court notes that despite courts, including the CICA,

³⁸ [EHB;tab.30/p.457/para.8]

1 adjudicating on the Respondent’s complaints, he would, put simply, not take “no”
2 for answer.

3
4 74. The Court asks the question of itself: “Will the striking out of the two recent Causes
5 deter the Respondent from instituting further proceedings?” The answer to that
6 question in my judgement is a resounding “No”.

7
8 75. I must also make objective assessment of any material that supports or undermines
9 the contention that he will continue instituting further proceedings. This involves,
10 *inter alia*, the consideration of emails emanating from the Respondent - both in terms
11 of frequency but also in terms of the tone and tenor – and, additionally any other
12 declaration of intent from the Respondent, not simply limited to emails but to any
13 other material.

14
15 76. Despite the determination of his two applications by the CICA (Constitutional
16 Motion and Leave to Appeal), on the 5th August 2020, the Respondent continued
17 raising complaints that had been dismissed, namely;

- 18
19 i. 4th September 2020 - an open letter to the Cayman media houses: This
20 rehearsed totally unfounded allegations such as those against The Chief
21 Justice, Kawaley J, Mangatal J and Court staff³⁹.
22
23 ii. 21st September 2020 - letter to the DPP re Possible Criminal Charges
24 against Kawaley J⁴⁰.
25



³⁹ [EHB; tab.35/p.546]

⁴⁰ [EHB; tab.33/p.492]

1 iii. 26th November 2020 - letter to HE The Governor - concluding “*I await*
2 *your response. Meanwhile I will continue my civil and criminal*
3 *proceedings as well as the exposure of this misconduct*”⁴¹.

4
5 iv. 26th December 2020 - Letter to Kawaley J; in offensive terms repeated
6 his complaints (over 5 pages) then states:

7
8 “*Let me make it clear to you that in 2021 I will use all lawful*
9 *means possible to ensure that you are removed from office ...*
10 *You are a lying, shameless, rogue Judge, a cheap crook, a man*
11 *of straw, who is unfit to hold office in the Cayman Islands or*
12 *elsewhere. Therefore, I will continue, as I have done to this*
13 *point, to publicly expose you on various media....”*

14 and the communication concludes with the words

15 “*We are about to get very well acquainted*”⁴²

16
17
18 v. 20th March 2021 - Letter to Kawaley J; rehearsing the same matters and
19 including the paragraph below and referring to the causes struck out by
20 this Court⁴³

21
22 “*Also, this case is now in the public domain. One or two*
23 *publications have reported it. It is now on the judicial website,*
24 *after I overcame an attempt to keep it from there. There are also*
25 *new complaints I have now filed with a number of public*
26 *authorities which are directly and indirectly related to this*

⁴¹ [EHB; tab.37/p.562]

⁴² [EHB; tab.36/p.552-556]

⁴³ [EHB;tab.62p.880]



1 80. The Court is left in no doubt that acceding to the application for a Civil Restraint
2 Order is a necessary and proportionate response to protect the integrity and standing
3 of the courts. This Court must consider what order, if any, is just and proportionate
4 to make to address the risk identified. It has to be noted that the restrictive terms of
5 the order does not extend to all access to the courts and is limited in time. In **R**
6 **(Mahajan) v Dept for Constitutional Affairs**⁴⁵ Lord Justice Brooke states:

7
8 *“So far as Article 6 is concerned, there is now plenty of case law, both in this*
9 *court and the Court of Human Rights at Strasbourg, which makes it quite clear*
10 *that, so long as the right of access to the court is not extinguished, a court is*
11 *entitled to regulate its affairs so as to protect its process and the interests of*
12 *other parties against whom vexatious litigation is persistently brought. In my*
13 *judgment, Mr. Mahajan's High Court proceedings against court staff are totally*
14 *misconceived”*

15
16 81. It is of note that this case involved aspects which perhaps resonate with some aspects
17 of the instant case. Paragraph 34 reads:

18
19 *“34. ... This complaint arises ultimately out of Mr Mahajan's litigation*
20 *against the eight defendants. These proceedings constitute complaints*
21 *about various orders made by courts on Mr Mahajan's subsidiary*
22 *applications following the striking out of his claim alleging fraud and*
23 *conspiracy. In essence he was complaining that his human rights had*
24 *been breached by the actions of 13 different persons. The claim referred*
25 *to all the occasions on which judges had made orders adverse to him*
26 *from 15th May 2003 onwards; the conduct of court staff at the Civil*
27 *Appeals Office in conducting the handling of Mr Mahajan's constant*
28 *applications in the way they did;”*

29
30
31 82. This Court herein Orders:
32
33 a. That Bilika Harry Simamba be restrained from issuing any claims or actions or
34 proceedings or making applications (whether personally or through any servant
35 or agent) in any court concerning any matter involving or relating to or touching



⁴⁵ [2004] EWCA 946 at [41] – [EAB tab 8/p.138]

1 upon those raised in the following Grand Court and Court of Appeal (CICA)
2 causes, namely;

3
4 i. *Simamba v the Health Services Authority of the Cayman Islands Cause*
5 *No. G0032 of 2014;*

6
7 ii. *Simamba v The Health Services Authority/Simamba v The Attorney*
8 *General and Governor of the Cayman Islands CICA Cause No 36 of*
9 *2019;*

10 iii. *Simamba v The Attorney General and Governor of the Cayman Islands*
11 *Cause No G0093 of 2020; and*

12
13 iv. *Simamba v The Honourable Justice Ian Kawaley and Anor Cause No.*
14 *G0161 of 2020,*

15
16 without first obtaining the permission of a Judge of the Grand Court –
17 with such restraint remaining in effect for a period of 2 years from the
18 date of this order, unless extended by the Grand Court.

19
20 b. That the Respondent, Mr. Bilika Simamba should pay the Applicant’s costs of
21 this application to be taxed if not agreed.

22
23 **Dated this the 28th day of October 2021**

24 

25 **Justice St. John-Stevens**
26 **Acting Judge of the Grand Court**
27

28
29