IN THE GRAND COURT OF THE CAYMAN ISLANDS

CIVIL DIVISION

CAUSE NO. G0076/2024

BETWEEN:

BILIKA HARRY SIMAMBA

APPLICANT

AND:

(1) MARGARET RAMSAY-HALE, CHIEF JUSTICE, MEMBER OF THE JLSC **1ST RESPONDENT**

(2) NICK FREELAND, CHAIRPERSON, JLSC **2ND RESPONDENT**

(3) SIR JOHN GOLDRING, MEMBER, JLSC **3RD RESPONDENT**

(4) JUSTICE ADRIAN SAUNDERS, MEMBER, JLSC **4TH RESPONDENT**

(5) DAME JANICE PEREIRA, MEMBER, JLSC **5TH RESPONDENT**

(6) GUY LOCKE, MEMBER, JLSC **6TH RESPONDENT**

(7) MYRTLE BRANDT, MEMBER, JLSC **7TH RESPONDENT**

(8) ATTORNEY GENERAL **8TH RESPONDENT**

241227 – Ruling. G0076/2024 – Bilika Harry Simamba v Margaret Ramsay-Hale, Chief Justice, et al. Coram: McCarthy J Actg.

Before:	**The Hon Justice Cecil McCarthy (Ag.)**
Appearances:	**Mr. Bilika Harry Simamba – In Person/Representing himself and appearing by videolink**
Heard:	**25th September 2024**
Draft Judgment circulated:	**29thNovember 2024**
Judgment delivered:	**27th December 2024**

Application for leave to apply for Judicial Review.

RULING

[1] By these proceedings the applicant, Bilika Simamba ("Mr. Simamba"), seeks leave to apply for judicial review. The applicant is an attorney-at-law (now retired) and a member of the Bar of the Cayman Islands.

[2] In this application, Mr. Simamba identifies the decision in respect of which relief is sought as the decision of the Chief Justice, the Honourable Justice Margaret Ramsay-Hale *"by which she endorsed without reservation the Recommendation of the Judicial and Legal Service Commissions (JLSC) complaints committee to summarily dismiss Mr Simamba's complaint against Justice Kawaley"*.

[3] As part of his application, Mr. Simamba also challenges the *"decisions of the Attorney General and members of the judiciary culminating in the decision of the Chief Justice"*.

[4] Under this head, Mr. Simamba identifies the various judges, twelve (12) in number, involved in his litigation at various stages: the High Court, the Court of Appeal, and the Privy Council. These judges are alleged variously to have lied; falsified the record; suppressed evidence; engaged in intellectual dishonesty; suppressed arguments and facts; or acted unethically.

[5] Since there is no relief sought in relation to their decisions nor any specifics of the decisions in the application for leave, I do not think it is necessary to identify these justices in this ruling.

BACKGROUND TO COMPLAINT

[6] This is no ordinary application for leave. It is part of a distinct pattern of litigation by which Mr. Simamba has sought to pursue a number of proceedings primarily against Justice Ian Kawaley whom he contends has not fairly adjudicated a negligence claim he brought against the Health Services Authority in 2014 (see [2019] (2) CILR 213).

[7] This initial action led to a number of other suits, such that the Attorney General applied to the Grand Court for a restraint order to curb the enthusiasm of Mr. Simamba for litigation. The background to the various proceedings is described meticulously by **St. John-Stevens Ag. J** in **Attorney General v Simamba [2021] (2) CILR 607**.

[8] An extended extract of those proceedings taken from the judgment of St. John-Stevens J. (Ag) is set out hereinafter:

> *"**Relevant proceedings brought by the respondent***
>
> *23. In 2014, the respondent [Mr. Simamba] in this cause filed a claim in the Grand Court - Simamba v. Health Servs. Auth. (Cause No. G0032 of 2014). This was initiated by writ dated March 6th, 2014 – the substance being a personal injury claim. The plaintiff in this cause alleged that he suffered loss and damage as a result of medical negligence by the Cayman Islands Health Services Authority (HSA).*
>
> *24. Mangatal, J. and Kawaley, J each presided over hearings in the life of this cause. On June 17th, 2019, Kawaley, J. delivered his ruling in this cause, indicating that the respondent's (Mr. Simamba's) claim was bound to fail in the absence of medical evidence (reported at 2019 (2) CILR 213). However, it must be noted that the cause was not struck out, but the judge made an immediate case management hearing order requiring the applicant to file the specified expert evidence. The respondent/plaintiff having requested a further opportunity to serve expert evidence, the learned judge, in the exercise of his discretion, permitted the same; directing that medical and dental evidence be served by October 31st, 2019 – reserving the costs of the application. The period of time granted for service of this expert evidence was, upon the application of the respondent, extended until March 31st, 2020.*
>
> *25. The sole basis that the action was ultimately struck out was as a consequence of the plaintiff's failure (the respondent in this matter) to adduce expert evidence – despite being given time, and an extension of time, so to serve, and being fully aware that his case would be struck out if he failed so to do.*
>
> *26. The respondent sought to re-litigate that decision in the constitutional petition (Cause No. 93 of 2020) and the personal action (G0161 of 2020). Both of these causes were struck out – each sharing a commonality of subject matter and grievance.*

The two applications before CICA relating to the original medical/dental negligence action

27. On November 12th, 2019, the plaintiff filed with the CICA an "Application for leave to file Constitution Motion (pursuant to section 26 of the Constitution)." This application – Simamba v. Health Servs. Auth./Simamba v. Att. Gen. and Governor (CICA Cause No. 36 of 2019) – was adjudicated upon, and refused. The certificate of order and reasons for decision of Beatson, J.A. is dated August 5th, 2020.

28. However before this matter was determined, the plaintiff filed with this court, on June 12th 2020 what he described as an "Application for Leave to File a Constitutional Petitition, pursuant to section 26 of the Constitution."

29. On June 19th, 2020, the plaintiff filed with the CICA an "Application for Leave to Appeal out of Time," the respondent being the Cayman Islands Heath Services Authority (HSA). This application sought leave to appeal the decision of Kawaley, J. in the medical/dental negligence case G0032 of 2014. The CICA rejected the application – the application for leave, dated June 19th 2020, being over a year after the order was made. Within this certificate of order and reasons, which must be read in conjunction with the parallel document relating to an application for leave to file a constitutional motion, Beatson, J.A. considers factors repeated in the causes before the court.

30. In relation to both applications within the CICA Cause No. 36 of 2019 and Cause No. G0093 of 2020, both the Attorney General and His Excellency the Governor of the Cayman Islands were defendants. A careful consideration of the substance of the grounds for each cause revealed that they are without material distinction. Indeed the affidavit in support of each was the same. It is acknowledged, however, that the plaintiff's judicial criticism has broadened to include Mangatal, J., and her decisions, and delay.

31. The plaintiff appears to accept that the cause of action to be considered by the CICA was in all intents and purposes the same as averred in Cause No. G0093 of 2020. Such can be gleaned from the plaintiff's skeleton argument in this matter.

32. On October 28th, 2020, Cause G0161 of 2020 began its life – with the plaintiff joining Kawaley, J. and his assistant, Miss Bridget Myers, as defendants in a personal action – Simamba v. Kawaley and Myers, Cause No. G0161 of 2020.

33. This personal action was filed when the plaintiff's constitutional petition (G0093 of 2020) was still pending before the Grand Court. In the personal action, the plaintiff recycled the complaints which had been the subject of his constitutional motion and which had already been dismissed by Beatson, J.A.

34. In each of the two causes, the applicant/plaintiff merely repeated and recast the complaints which had been the subject of his unsuccessful constitutional motion, and the application to appeal out of time – CICA Cause No. 36 of 2019 by Beatson, J.A.

35. Each of these four causes enjoy a commonality. From the first proceedings (Cause No. G0032 of 2014) – flowed the second, third and fourth. The second, being the appellate court's consideration of the first, and the third and fourth seeking, the main, to engage the court in the reconsideration of first and the determination by the appellant court to reject the second."

RELIEF SOUGHT

[9] I reproduce in its entirety paragraph 10 of the application which identifies the relief sought. That paragraph reads:

*"10. I request an order under **O53 r 3** (which is mandatory if requested) and **O.32, r.13** for an open public hearing of my application for leave "by reason of its importance" and the same for the merits hearing if leave is granted. In addition, I request the following:*

(1) An order of certiorari to quash the decision contained in the Respondent's letter dated 15 February 2024 and send the matter back to the 1st Respondent to be reconsidered and decided in accordance with the findings of the Court;

(2) An order of mandamus directing the Chief Justice to:

(i) state whether the Recommendation made by the Committee and accepted by the Commission is her decision made in exercise of her power under section 106 (1B)(a) to exercise disciplinary control over judges of the Grand Court;

(ii) to sign, stamp or otherwise authenticate that decision as her own;

(3) An order of mandamus directing the Chief Justice to:

(a) state in its decision whether the failure of Justice Kawaley to decide the issue relating to loss of tooth and consider BDO v Governor in Cabinet was:

(i) a dereliction of duty.

(ii) a denial of my right to have my rights determined by a court under section 7 of the Constitution;

(4) An order of mandamus directing the 1st Respondent to reconsider and decide, in accordance with the findings of the Court, the issues pointed out in this filing:

(5) An order that the 1st Respondent furnish me with constitutionally and legally valid reasons for the decision, to satisfy section 19 of the Constitution of the Cayman Islands, and that such decisions be sufficient in law in terms of the details required as may be ordered by the Court;

(6) An order that the reasons aforesaid be given in respect of each of the issues I have raised;

*(7) An order under **O 53 r 2** and all the powers thereunder enabling, for the orders set out below for defamation;*

*(8) Damages, under **O 53 r 7**, to be assessed;*

(9) if leave is granted, to allow me to file a full statement of claim and that, thereafter the matter proceed as an ordinary civil action;

(10) Punitive damages;

(11) Costs; and

(12) Such further, consequential, or other relief as this Honourable Court deems just."

GROUNDS ON WHICH RELIEF IS SOUGHT

[10] Mr. Simamba contends that the Complaint Rules adopted by the Judicial and Legal Services Commission ("the JLSC") on 30 October 2023 are procedurally unfair in the following respects:

1. They do not allow a complainant to call witnesses. The calling of witnesses is left to the absolute discretion of the Chief Justice.
2. The Rules only permit the Chief Justice, who has the responsibility under the Constitution to discipline judges, to play a minor role.

3. The Complaints Rules are contrary to the letter and spirit of the 2016 amendment to the Constitution under which complaints against Grand Court judges go to the Chief Justice rather than the JLSC.
4. Furthermore, Mr. Simamba alleges that neither the Committee nor the Commission granted him an oral hearing therefore no witnesses could give statements or be available for cross examination.

[11] Mr. Simamba complains that the witnesses who were aware of Justice Kawaley's misconduct were not called nor were they required to submit written statements.

[12] Mr. Simamba's further grounds in support of his application included the following:

(a) the Chief Justice and not the Commission must make the decision with respect to the complaint;
(b) the manner of handling the complaint was procedurally unfair. The names of the members of the Commission have not been disclosed. Mr. Simamba contends that this prejudiced his right to complain against a member who may be conflicted;
(c) Since the Chief Justice's letter did not explicitly state that the decision was hers she has abdicated her responsibility. She has not made a decision. The authorities show that the person charged with a responsibility must apply his/her deliberate judgment. This did not occur;
(d) Since the Commission made the decision it amounts to a usurpation of the Chief Justice's power and a violation of section 106 (1B)(a) of the Constitution.

[13] In support of his application, Mr. Simamba swore an affidavit to which he annexed the following documents:

1. A letter dated 2 December 2023 addressed to the Chief Justice setting out the complaint;

2. The recommendations of the Complaints Committee of the JLSC;
3. The Chief Justice's letter of 15 February 2024 advising that his complaint against Justice Kawaley has been summarily dismissed;
4. A document entitled "Facts Omitted from the Judgment".

[14] The document at 4. above refers to what Mr. Simamba considers to be the facts omitted by Justice Ian Kawaley in **GC0032 of 2014 Simamba v Health Services Authority**.

[15] On 12 July 2024, a directions hearing was held via Zoom and Mr. Simamba appeared on his own behalf.

At the hearing, the Court made the following orders:

(1) That the applicant shall file written submissions with respect to the application for leave to seek judicial review by 16 August 2024.

(2) That the Judicial and Legal Services Commission is permitted to file written submissions with respect to the application for leave to apply for judicial review by 16 August 2024.

(3) That the applicant is permitted to address in his written submissions his view that the oral hearing of the application should be in open court.

(4) That the oral hearing of the application for leave is set down for 25 September 2024.

APPLICANT'S SUBMISSIONS

[16] Mr. Simamba filed written submissions (28 pages) and made oral submissions at the hearing on 25 September 2024. The principal submissions are dealt with hereinafter, and later under the rubric: "**PRELIMINARY ISSUES**".

[17] In his submissions Mr. Simamba contended that his case was already public and should remain so. He submitted that the allegations of misconduct against Justice Kawaley were already made public in the following cases: **G0093 of 2020 Simamba v Attorney General**, **Governor**; **G0161**

of 2020 Simamba v Kawaley and Myers (Consolidated) (Unreported); and **Attorney General v Simamba (2021) (2) CILR 607**.

[18] In addition, Martin JA delivered the judgments in **Simamba v Attorney General and Governor, CICA 020 of 2021/ G0093 of 2020** and **Simamba v Kawaley and Myers CICA 021 of 2021** and **G0161 of 2020**.

[19] There was also the case Simamba v Attorney General CICA 022 of 2021/ G0017 of 2021.

[20] Mr. Simamba also referred me to the following judgments of the Court of Appeal (Birt Moses and Rix JJA in the consolidated case of:

(i) **Simamba v Attorney General CICA (Civil) Appeal No: 20 of 2021** (formerly case G0093 of 2020);

(ii) **Simamba v Kawaley and Myers CICA (Civil) Appeal 21 of 2021** (formerly Case No: G0161 of 2020);

(iii) **Simamba v Attorney General CICA (Civil) Appeal 22 of 2021** (formerly G 0017 of 2021).

[21] Mr. Simamba submits that the Chief Justice and the JLSC have acted in an intellectually dishonest manner which is contrary to paragraph 34 of the Code of Conduct of the Cayman Islands Judiciary.

[22] In addition to the grounds for relief stated above Mr. Simamba's further submissions include the following:

Abuse of discretion

(1) The Chief Justice did not exercise her discretion reasonably. If this matter had been a regular court case, a judge would have ordered that the witnesses testify and that the

respondent state if the emails were authentic. Failure to do so would have resulted in a finding being made against the party failing to produce. Different standards were wrongly applied in his case.

Abdication of responsibility by the Chief Justice

(2) To the extent that the Chief Justice's letter of 15 February 2024 does not say that the decision was hers, she abdicated her responsibility. Therefore, in law, she has not made a decision and is, therefore, open to the writ of *mandamus*.

Usurpation of the Chief Justice's duty by the Commission

(3) Again, the part of the letter of the Chief Justice dated 15 February 2024 which shows that it was the Commission which made the decision to dismiss his matter, amounted to a usurpation of the Chief Justice's power by the Commission. Accordingly, it is a violation again of section 106 (1B)(a) of the Constitution.

Intellectual dishonesty

(4) The facts outlined in the Application for Leave and the supporting affidavit show that the Chief Justice and the Commission have acted in an intellectually dishonest manner, which is prohibited by para [34] of the Code of Conduct of the Cayman Islands Judiciary (March 2012).

Bias

(5) Further and in the alternative, there is, at the very least, perceived bias as per the principles in, among many cases, **R v Sussex Justice ex parte McCarthy [1924] I KB 259**; and **Metropolitan Properties Co Ltd v Lannon [1969] I KB 577**. It is this bias that has led the Chief Justice, the Commission and the Committee to not conduct a bona fide inquiry.

Unreasonableness

(6) The decision is Wednesbury unreasonable, that is, irrational, to borrow the term in section 19(1) of the Constitution. Mr. Simamba submits that no reasonable court or public authority would have dismissed his case as being frivolous and vexatious.

Improper motives

(7) The decision is influenced by improper motives, intended to keep unexposed the failings of the judiciary. Any public hearing of the matter or even a proper synthesis of the facts and legal provisions involved would have clearly shown that Justice Kawaley lied.

Bad faith

(8) The facts and arguments set out throughout these submissions also indicate bad faith on the part of the Chief Justice and the Commission.

[23] In his written submissions, Mr. Simamba, in support of his arguments about the open justice principle, addressed the issue of whether applications for leave for judicial review qualify as originating process and should, therefore, be placed on the registrar of writs.

[24] This issue was addressed by Justice Kawaley in Cause 30 of 2019, Unsurprisingly Mr. Simamba submits that the case was wrongly decided.

[25] However, I have not addressed the issue in this ruling because I do not consider it material to the decision in this case.

WRITTEN SUBMISSIONS ON BEHALF of 1st to 7th RESPONDENTS

[26] Mr. Tom Hickman KC made written submissions on behalf of the members of the JLSC with respect to the application for leave to apply for judicial review. These submissions are set out in the paragraphs hereafter (27-44 inclusive).

[27] In his submissions Mr. Hickman referred to the relevant provisions of the Constitution and the Complaints Procedure made by the JLSC pursuant to the authority granted under the Constitution.

[28] Among the observations made by Mr. Hickman is the following:

> *"The Constitution reposes power in the Chief Justice "to exercise disciplinary control" over any judge of the Grand Court other than the Chief Justice (section 106 (1B) of Schedule 2)".*

[29] The Constitution establishes the Judicial and Legal Services Commission, and it mandates the Judicial and Legal Services Commission to draw up a code of conduct for the judiciary and a procedure for dealing with complaints.

[30] Under the Constitution, where a complaint has been commenced against a judicial officer, the Manager is obligated to refer the complaint to a complaints committee comprised of the Chief Justice, the President of the Court of Appeal and not less than two (2) members of the JLSC appointed by the Chairman.

[31] The Complaints Committee is not obliged to investigate complaints in certain defined circumstances, including where the complaint is adjudged to be vexatious, frivolous or unmeritorious.

[32] Upon conclusion of its work, the Committee is required to issue a report to the JLSC. Among other things, the Committee is mandated to indicate whether the report should be dismissed.

[33] It is only if a complaint is not dismissed that it must be referred by the JLSC for investigation.

[34] On 2 December 2023, the JLSC received an e-mail to which was appended a complaint for the attention of the Chief Justice.

[35] The Committee was convened in accordance with the provisions of the complaints rules and the committee undertook a review of the complaint and produced a written report which

recommended that the complaint did not warrant investigation on the basis that it was "frivolous, vexatious and unmeritorious".

[36] On 15 February 2024 the Chief Justice wrote to the applicant, advising him that his complaint was summarily dismissed and that no further action would be taken.

[37] Mr. Hickman submits that the fact under the Grand Court Rules that an application for judicial review *"must be made ex parte to a judge"* does not mean the judge must determine the matter on an ex parte basis. Mr. Hickman points out that the case **Smith v Commissioner of Police (1980-83) CILR 126 (Smith)**, 134-35 predated the overriding objective which now governs the Grand Court Rules, which require that cases be determined in a just, economic and efficient manner.

[38] Mr. Hickman also cites recent cases in which the court has determined leave applications inter partes (see: **Kruger v Governor 1997 CILR 73**, page 89; **Powell & Rowe v Attorney General [2009] CILR 298**; **BDO Cayman Ltd and Others v Governor and Attorney General** referred to in ruling of Mangatal J in **G168 of 2016**.) Moreover, Mr. Hickman cites the following passage from **Anglin v Governor of Cayman Islands**:

> *"It is always open to a judge at the leave stage of an application for judicial review to invite the Respondent to attend and make submissions. Had that happened here it may well be that these proceedings, conducted, as I understand it, entirely at the public expense, would have stopped at the outset."*

[39] Mr. Hickman submits that there were several factors that warranted that the respondent be given an opportunity to respond to the application. These include the following:

(a) serious allegations are raised (including unconstitutional conduct, bias and bad faith);

(b) there are numerous and varied grounds of judicial review raised, and the court may as a result, benefit from the assistance of submissions of the respondent;

(c) the applicant did not comply with the pre-action protocol for judicial review.

[40] Mr. Hickman submits that the proper respondent to the application is the JLSC since the decision under challenge was made by that body. Additionally, the Attorney General was not involved in the decision and should not be a party.

[41] Mr. Hickman submits that the grounds relied upon by the applicant are not arguable grounds having a realistic prospect of success, as is required by law.

[42] Specifically, in response to the applicant's contention that the JLSC or the Chief Justice did not call witnesses or allow oral representations, Mr. Hickman observes that the Complaints Procedure has a preliminary hurdle to surmount that is the Committee considering the application can recommend the summary dismissal of the complaint on several grounds. In this case the matter never reached the investigative phase, since the Committee found the complaint to be vexatious, frivolous and unmeritorious.

[43] Mr. Hickman also refutes the complaints that assert that the evidential basis on which the Commission took its decision was not disclosed. He points to the comprehensive report of the Committee setting out the basis for its recommendation.

[44] In response to the applicant's view that because the Chief Justice has responsibility for disciplining judges under section 106(1B) of the Constitution, the complaint cannot be dealt with by the JLSC, Mr. Hickman points out that the complaint procedures do not require the Chief Justice to investigate all complaints about Judges. However, where the complaint enters the investigative phase, this can result in a report being submitted to the Chief Justice for consideration of the exercise of a disciplinary sanction under section 106(1B) of the Constitution, but that stage was not reached in this complaint.

RELEVANT PROVISIONS OF THE GRAND COURT RULES ("GCR")

[45] The provisions governing applications for leave to apply for judicial review are set out in GCR 53(3) which stipulates:

> ***"Grant of leave to apply for judicial review (O.53, r.3)***
>
> *3. (1) No application for judicial review shall be made unless the leave of the Court has been obtained in accordance with this rule.*
>
> *(2) An application for leave must be made ex parte to a Judge by filing -*
>
> *(a) a notice in Form No. 53 of the Grand Court Rules – Volume II containing a statement of –*
>
> *(i) the name and description of the applicant;*
>
> *(ii) the relief sought and the grounds upon which it is sought;*
>
> *(iii) the name and address of the applicant's attorney (if any); and*
>
> *(iv) the applicant's address for service; and*
>
> *(b) an affidavit which verifies the facts relied on.*
>
> *(3) The Judge may determine the application without a hearing, unless a hearing is requested in the notice of application, and need not sit in open Court; in any case, the Clerk of the Court shall serve a copy of the Judge's order on the applicant.*
>
> *(4) Where the application for leave is refused by the Judge, or is granted on terms, the applicant may renew it by applying to a single judge sitting in open Court:*
>
> *Provided that no application for leave may be renewed in any non-criminal cause or matter in which the Judge has refused leave under paragraph (3) after the hearing.*
>
> *(5) In order to renew his application for leave the applicant must within 10 days of being served with notice of the Judge's refusal, file notice of his intention in Form No. 54 of Appendix I.*
>
> *(6) Without prejudice to its powers under Order 20, rule 8, the Court hearing an application for leave may allow the applicant's statement to be amended, whether by specifying different or additional grounds for relief or otherwise, on such terms, if any, as it thinks fit.*
>
> *(7) The Court shall not grant leave unless it considers that the applicant has a sufficient interest in the matter to which the application relates.*
>
> *(8) Where leave is sought to apply for an order of certiorari to remove for the purpose of its being quashed any judgment, order, conviction or other proceedings which is subject to appeal and a time is limited for the bringing of the appeal, the Court may adjourn the application for leave until the appeal is determined or the time for appealing has expired.*

> *(9) If the Court grants leave, it may impose such terms as to costs and as to giving security as it thinks fit.*
>
> *(10) Where leave to apply for judicial review is granted, then –*
>
> *(a) if the relief sought is an order of prohibition or certiorari and the Court so directs, the grant shall operate as a stay of the proceedings to which the application relates until the determination of the application or until the Court otherwise orders;*
>
> *(b) if any other relief is sought, the Court may at any time grant in the proceedings such interim relief as* could be granted in an action begun by writ."

[46] In arriving at my decision in this matter I have read all documents submitted by Mr. Simamba. I have also read the relevant sections of the Grand Court Rules and the Constitution, the Complaint Rules, the Pre-Action Protocol, and the cases cited by Mr. Simamba and Mr. Hickman along with others.

[47] In writing this decision I will address the matters that I have promised the applicant that I will examine, and I have referred to the matters that otherwise I consider relevant to my decision. The fact that an issue or argument or fact has not been referred to in this Ruling is not to be construed as my not considering or not having been acquainted with those matters.

PRELIMINARY ISSUES

[48] One of the matters that Mr. Simamba objected to was my decision to permit counsel for the respondents to make written submissions with respect to the application for leave for judicial review. Mr. Simamba submitted that the proposed respondents had no right under law to make written submissions or to appear at the hearing.

[49] Interestingly, when the matter was raised at the directions hearing Mr. Simamba had said that he had no objection to the written submissions provided he was given an oral hearing in open court.

[50] Mr. Simamba cited the case of **Smith v Commissioner of Police (1980 -83) CILR 126** (Smith), a decision of the Cayman Islands Court of Appeal where the Court of Appeal cited a Trinidad and

Tobago case where the application for leave was inadvertently served on the Attorney General who was the intended respondent. In the case the Judge entertained the arguments of the Attorney General despite the protestations of the applicant. The Court of Appeal held that the Attorney General had no right to be there until the matter had passed the leave stage.

[51] In the instant case, counsel for the 1st to 7th respondents sought and obtained permission to make written submissions. As I understand it, inadvertently, the matter was listed among the several inter partes court matters, and as a result, the respondents were named and became aware of it. It was because of this that they sought permission to make written submissions. In his written submissions, Mr. Simamba alleged that "the Attorney General injected himself into an ex parte hearing" without stating any special reason. In this regard, Mr. Simamba is incorrect; I have received no requests from the Attorney General, and that office has not participated in any part of these proceedings.

[52] GCR 53 is in substantially similar terms to the English Order 53 which was introduced in England in 1977 (see the White Book 1997 Edn. paragraph 53/ 1-14/1).

[53] As early as 1982 in **Inland Revenue Commissioners v National Federation of Self-Employed and Small Businesses Ltd. [1982] A.C. 617, 632** Lord Diplock considered the "new" Order 53 and described the procedure in the following way:

> *"the procedure under Order 53 involves two stages: (1) the application for leave to apply for judicial review and (2) if leave is granted, the hearing of the application itself. The former or 'threshold' stage is regulated by rule 3. The application for leave to apply for judicial review is made initially ex parte,* ***but may be adjourned for the persons or bodies against whom relief is sought to be represented****." (**My emphasis)***

[54] A similar view is expressed by Lord Donaldson M.R. in **R v Secretary of State for the Home Department, ex p. Begum C.O.D. 107, 108** (see also the White Book 1997 edn. para 53/1-14/30 where the following is stated under the rubric: "**Leave to apply for Judicial Review"**:

> *"If, on considering the papers, the Judge cannot tell whether there is, or is not, an arguable case, he should invite the putative respondent to attend the hearing of the leave application and make representations on the question whether leave should be granted."*

[55] In this jurisdiction a similar approach has been adopted and has gained the approval of the Court of Appeal where it has been stated recently that:

> *"It is always open to a judge at the leave stage to invite the Respondent to attend and make submissions."* (see **CICA (Civil) Appeal No 6 of 2022 – Anglin and Governor of Cayman Islands et al** para. 70 of judgment delivered by **The Rt. Hon. Sir John Goldring, President**).

[56] Finally, it should be noted that **Smith** is distinguishable from the instant case. In **Smith**, the respondent attended the leave hearing without obtaining permission from the Court. In this case counsel for the 1st to 7th respondents sought and obtained permission from the Court to make written submissions.

[57] The other preliminary issue raised by Mr. Simamba is that the application for leave should be heard in public. In support of this contention, Mr. Simamba cites the following provisions of section 7 of the Constitution:

> *"**Fair trial***
>
> *7. (1) Everyone has the right to a fair and public hearing in the determination of his or her legal rights and obligations by an independent and impartial court within a reasonable time.*
>
> *...*
>
> *(9) All proceedings instituted in any court for determination of the existence or extent of any civil right or obligation, including the announcement of the decision of the court, shall be held in public.*
>
> *(10) Nothing in subsection (1) or (9) shall prevent the court from excluding from the proceedings persons other than the parties to them and their legal representatives to such extent as the court-*
>
> *(a) may be empowered by law to do and may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice, or in interlocutory proceedings, or in the interests of public morality, the welfare of minors or the*

protection of commercial confidence or of the private lives of persons concerned in the proceedings; or

(b) may be empowered or required by law to do in the interests of defence, public safety, or public order."

[58] Mr. Simamba submits that this section guarantees open justice subject to derogations, and in this regard the current approach is that where the general is prescribed and derogations are attached, a prima facie case is established that the right is engaged, and the burden is on the person claiming the derogation to show that they come within the derogation.

[59] It is worthwhile to revisit the actual words of Order 53(3) which reads in part:

"The Judge may determine the application without a hearing unless a hearing is requested in the notice of application, and ***need not sit in open Court****…" (****My emphasis****)*

[60] Mr. Simamba requested a hearing in his application, and this was granted, but not in open court.

[61] Even on the extract from the Cayman Constitution referred to by Mr. Simamba it is clear that the Judge, as provided for in order 53(3) need not sit in open court.

[62] The application for leave is a mere filter to eliminate those cases which are frivolous, vexatious and without merit. This has been the law and practice for decades. The Constitution recognises this and the applicant's arguments to the contrary are without merit.

[63] In demanding an open court hearing Mr. Simamba also cites Order 32 Rule 13 which provides as follows:

"Order 32

13(1) The Judge in Chambers may direct that any summons, application or appeal shall be heard in Court or shall be adjourned into Court to be so heard if the Judge considers that by reason of its importance or for any other reason it should be so heard.

(2) Any matter heard in Court by virtue of a direction under paragraph (1) above may be adjourned from Court into Chambers."

[64] The above provision merely confers a discretion on the judge to hear a matter in Court as opposed to chambers on account of its importance or for any other reason. Certainly, I am aware that it is open to the court even at the leave stage, to have a hearing in open court, but I am of the view after considering all the facts, that it is not justified in this case.

[65] At the oral hearing, Mr. Simamba asserted that the two (2) aforementioned preliminary issues must be ruled upon before any other issues could be addressed, including the application for leave. I rejected his submission because it appears to me that the responsibility falls squarely under the case management powers of the court, under the GCR. Moreover, it would be a waste of judicial time to adjourn the matter, as he suggested, to deal with preliminary issues which could be dealt with in rendering the decision on the application for leave.

THE APPLICANT'S COMPLAINT

[66] The gravamen of the applicant's complaint is his belief that he did not have a fair hearing of his case: **GC 32 of 2014 Simamba v Health Authority**, a case that was eventually struck out by Justice Kawaley on 17 September 2020. On 17 July 2019, Justice Kawaley delivered a written decision on an application by the defendant to have his claim struck out. It is this judgement that has formed the basis of these proceedings.

[67] Having instituted several appeals and other proceedings without success, Mr. Simamba used the complaints procedure to ask the court to determine whether Justice Kawaley lied: (a) in paragraph 5 of his judgment concerning emails that preceded the judgment; (b) in paragraph 75 of his judgment about cases cited to him.

[68] The essence of Mr. Simamba's complaint is captured in the brief summary given by the JLSC's Complaints Committee's Recommendation to the JLSC which I adopt for the purposes of this decision. It reads:

> *"3. On 17 June 2019 Justice Kawaley having heard an application by the Cayman Island's Health Authority to strike or obtain summary judgment in respect of Mr.*

Simamba's claim for medical negligence, dismissed it. A fundamental issue in the application was whether section 12 of what was then the Health Services Law barred Mr. Simamba's claim.

4. *Mr. Simamba now seeks to impugn the conduct of Justice Kawaley. To this end, by a letter to the Chief Justice of 2 December 2023 ("the letter"), he has lodged a complaint in which he states that he is not asking to reopen his negligence and human rights suits but instead he complains that Justice Kawaley's judgment was rendered in bad faith. Mr. Simamba points in particular to paragraphs 5 and 75 of the judgment. Other allegations are made by Mr. Simamba of the propriety and fairness of the proceedings conducted by Justice Kawaley.*

5. *Mr. Simamba submits that at paragraph 5 of his ruling of 17 June 2019, when dealing with the question of Mr. Simamba's remote participation in the hearing, the judge lied when he said that:*

> *"How the Plaintiff would participate in the two-day hearing of the Defendant's Summons was not expressly addressed by the parties or the Court. Shortly before the hearing fixed for May 6, 2019 with no directions given to exempt the Plaintiff from the usual requirement of personal appearance in Court, the Plaintiff formally requested permission to participate remotely."*

Mr. Simamba also submits that when the judge, at paragraph 75 of the judgment, said that Mr. Simamba's submissions on statutory interpretation consisted of broad principle he was again lying because Mr. Simamba had cited some 52 cases and referred to seven issues in his written submissions. (Mr. Simamba also states the judge lied at a hearing on 6 May).

6. *The case was ultimately struck out on the basis that Mr. Simamba had not produced a medical report.*

7. *Mr. Simamba states that following on from Justice Kawaley's decision, "successive judges have deliberately suppressed or distorted evidence," (paragraph 4 of the letter)."*

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[69] Before examining the Complaints Rules it is important to note that Mr. Simamba is alleging judicial misconduct and is essentially repeating allegations which have been examined and adjudicated in a number of cases decided by the courts.

[70] In a number of these cases it has been pointed out to Mr. Simamba that a Judge of the Grand Court is immune from suit in any civil court for any act done by him when acting within his jurisdiction.

[71] In the Cayman Islands judicial immunity is provided for in section 29 of the **Grand Court Act (2015 revision)** which states:

> *"29. (1) Neither the Chief Justice nor any Judge nor any person acting as Chief Justice or Judge under section 97 of the Constitution shall be liable to be sued on any civil court for any act done or ordered to be done by him – (a) when acting within his jurisdiction and in the discharge of his judicial functions; or (b) whether or not within the limits of his jurisdiction, provided that he, at the time and in good faith, believed himself to have the jurisdiction to do or order the act complained of, unless it is proved that he acted maliciously and without reasonable cause."*

[72] The above provision can be viewed as codifying the views of **Lord Denning MR** in **Sirros v Moore and Others [1975] QB 118, 132** in which he said:

> *"Ever since the year 1613, if not before, it has been accepted in law that no action is maintainable against a judge for anything said or done by him in the exercise of the jurisdiction which belongs to him. The words which he speaks are protected by an absolute privilege. The orders which he gives, and the sentences which he imposes, cannot be made the subject of civil proceedings against him. No matter that the judge was under some gross error or ignorance, it was actuated by envy, hatred and malice, and/or uncharitableness, he is not liable, an action."*

[73] In cause **No. G0032 of 2014**, at all material times, Justice Kawaley was acting within his jurisdiction and therefore his words and actions were covered by section 29(1)(a) of the Grand Court Act, supra.

Despite this, Mr. Simamba continues to advance the argument that section 29(1)(b) is the governing provision and, therefore, Justice Kawaley had qualified immunity, and he must therefore show that he acted in good faith, without malice, and with reasonable cause.

[74] In the consolidated cases **No. G0093 of 2020 Simamba v the Attorney-General and the Governor**; **G0161 of 2020 Simamba v Justice Kawaley**, Justice St. John-Stevens (Ag.) addressed the immunity question at paragraphs 85 to 106 of his judgement. At paragraphs 100 to 103, the learned judge said:

> *"100. The Defendants submit that in this case the acts complained of levelled at Kawaley J were, incontrovertibly, acts when he was acting within his jurisdiction and, therefore, fall squarely within paragraph (a) of the Cayman Legislation (unqualified immunity).*
>
> *101. In relation to the alleged failings, including lies: I do not find any basis to accept any such failings, including the alleged lies, on the part of Kawaley J. All the actions arose when the Judge was acting within his jurisdiction. It is my view that they do not take his acts without his jurisdiction. Any questioned acts within jurisdiction are, of course, susceptible to Appellate scrutiny.*
>
> *102. The Court finds favour with the Defendants' submission and, therefore, Kawaley J has immunity from suit in his judicial decision making in this case as he was acting within his jurisdiction. There is absolutely no basis in the submission that he acted outside his jurisdiction. There is no basis that he acted "maliciously and without reasonable cause"*

[75] So far as relevant, the Complaints Procedure provides:

> *"2.* ***FORM OF COMPLAINTS***
>
> *(1) Complaints concerning a judicial office-holder shall be made to the Commissions Secretariat on the form in the Schedule.*
>
> *(2) Notwithstanding subparagraph (1), the Judicial and Legal Services Commission may of its own motion initiate a complaint against a judicial office-holder where the JLSC has reasonable cause to believe that the conduct of the judicial office-holder should be investigated.*

3. ***PRELIMINARY CONSIDERATION***

(1) *Where a complaint has been initiated against a judicial officer, whether by the Commission on its own motion or by a Complainant on the prescribed form, the Manager shall refer to a Complaints Committee, comprised of the Chief Justice, the President of the Court of Appeal, and not less than two members appointed by the Chairman of the JLSC, for preliminary consideration; and the Manager may, if so directed by the Commission, serve the judicial office-holder who is the subject of the complaint, with a copy of the complaint.*

(2) *Unless there are reasons why it believes that a complaint should be investigated, the Complaints Committee may recommend dismissal of a complaint, or part of a complaint, to the JLSC if the complaint falls into any of the following categories –*

(a) *it is about a judicial decision or judicial case management, and raises no question of misconduct;*

(b) *the action complained of was not done, or caused to be done, by a judicial office-holder;*

(c) *it is vexatious, frivolous or unmeritorious;*

(d) *it is without substance or even if substantiated, would not require any disciplinary action to be taken;*

(e) *it is manifestly untrue, mistaken or misconceived;*

(f) *it raises a matter which has already been dealt with, whether under these regulations or otherwise, and does not present any material new evidence;*

(g) *it is about a person who no longer holds any judicial office;*

(h) *it is about the private life of a judicial office-holder and could not reasonably be considered to affect his or her suitability to hold judicial office;*

> *(i) it is about the professional conduct in a non-judicial capacity of a judicial office-holder and could not reasonably be considered to affect his or her suitability to hold office;*
>
> *(j) for any other reason it does not relate to misconduct by a judicial office-holder.*
>
> *(3) Where a complaint is about a judicial decision case management, and raises a question of misconduct, the Complaints Committee shall defer consideration until the appeal process in the case is complete or the time for appealing has expired without any appeal being lodged; and the Complaints Committee shall then review the matter, and proceed in the light of any appellate ruling ...*
>
> *(7) Upon conclusion of its work the Committee shall issue a Report to the JLSC. The report shall indicate whether the complaint should be dismissed and, if so, for what reasons; or shall provide the Committee's initial observations on the complaint including in particular whether there is a need for the Commission to employ a Special Investigator to investigate the complaint."*

[76] Paragraph 4. of the Complaints Procedure stipulates that unless the Complaints Committee dismisses a complaint under paragraph 3, or the complaint alleges a criminal offence the JLSC must refer the matter for investigation.

[77] After receipt of Mr. Simamba's complaint a Complaints Committee was convened as required by paragraph 3(1) of the Complaints Procedure. The Chief Justice chaired the Committee, which carried out a thorough review of the matters complained of and produced a detailed written report which was exhibited in the applicant's affidavit. The report recommended that the complaint did not warrant investigation because it was frivolous, vexatious and unmeritorious under paragraph 3(2)(c) of the Complaints Procedure.

The JLSC considered the report on 8 February 2024 and accepted the recommendation of the Complaints Committee. The decision was transmitted to the applicant by the Chief Justice's letter of 15 February 2024 referred to herein.

[78] Until recently, the only legal regime for the exercise of discipline over the Judiciary in the Commonwealth was the provision for removal from office for serious misconduct usually prescribed in the Constitution.

[79] In Bermuda there is a Judicial Complaints Protocol which was introduced 1 January 2014. Paragraphs 3, 4 and 5 explain the thinking behind such complaints procedures as are now provided for in the Caymanian Constitution. Those paragraphs I believe to be instructive in the context of this case. I therefore reproduce them. They state:

> *"3. The current trend is clearly in the direction of creating a framework for members of the public to be able to make complaints about the conduct of judges which relate to the propriety of their ethical conduct in cases where no suggestion of serious misconduct calling for removal from office arises. A few examples illustrate this shift in the direction of increasing the accountability of the Judiciary to the public in a way which supports judicial independence.*
>
> *(a) in England and Wales a legislative scheme for judicial complaints was introduced in 2006, the same year our own Guidelines for Judicial Conduct were adopted;*
>
> *(b) in Australia non-statutory judicial complaints procedures have been developed at the Federal and State level in recent years;*
>
> *(c) the Cayman Island 2009 Constitution obliges the Judicial and Legal Service Commission to both create a code of judicial conduct and a procedure for making complaints of judicial misconduct;*

(d) the Isle of Man Judiciary introduced non-statutory 'Procedural Notes in Respect of Complaints of Personal Misconduct against Members of the Judiciary of the Isle of Man' in October, 2012.

4. A unifying feature of all of these judicial complaints procedures is that complaints will not be entertained where in substance a litigant is dissatisfied with whether or not a decision made by a judicial officer is right or wrong. The remedy for such a complaint lies in the appeals process. This non-statutory Protocol is designed to provide members of the public who consider that a judge has acted in a way which is inconsistent with the standards set in the Guidelines for Judicial Conduct with a clear pathway for having their concerns heard. This not only makes the Judiciary accountable to the public. It also affords judges against whom unmeritorious complaints are made with a mechanism through which they can be vindicated. Consistent with international best practice, the Protocol is also designed to preserve judicial independence by ensuring that the Executive is not directly involved in imposing penalties on serving judicial officers.

5. It is important to emphasise that this complaint procedure cannot be used by disgruntled litigants to express their dissatisfaction with a decision made against them or to gain a tactical advantage in proceedings that are still ongoing. Such a complaint would be liable to be dismissed without full consideration on the grounds that it was vexatious. For example, where a party to legal proceedings believes a judge was biased against him, this complaint should be pursued by way of appeal. On the other hand, if a party or witness believes that a judge has dealt with them in a rude and disrespectful manner, this would be a complaint of judicial misconduct which could be pursued under this Protocol, assuming the relevant proceedings have concluded."

[80] As a judge of the Grand Court acting within his jurisdiction, as discussed earlier, Justice Kawaley is immune from suit. Furthermore, by virtue of section 94(1) of the Constitution, the Grand Court is a superior court of record and is not subject to judicial review (see **Suratt v AG of Trinidad and Tobago [2007] UKPC 55**).

[81] Mr. Simamba, having exhausted all of his appeals pursuant to the various suits against Justice Kawaley can only resort to the Complaints Procedure drawn up by the JLSC pursuant to section 106 (10) (a) of the Constitution which was last revised on 30 October 2023.

[82] Pursuant to paragraph 2 of the Complaints Procedure, complaints concerning a judicial officer holder *"shall be made to the Commissions Secretariat on the form in the Schedule"*. Mr. Simamba's complaint falls to be determined in accordance with the stipulations set out in the Complaints Procedure.

[83] In this case, Mr. Simamba addressed his complaint directly to the Chief Justice. By letter dated 15 February 2024, the Chief Justice informed Mr. Simamba about the outcome of his complaint. That letter reads in part:

> *"Your 2 December 2023 complaint in respect of Justice Kawaley's conduct was, however, considered by the JLSC's Complaints Committee to which it was referred pursuant to section 3(1) of the JSLC's Complaints Procedure. The Committee of which I was a member, undertook a thorough review of the judgments of Justice Kawaley and of the Court of Appeal which considered the several allegations made by you that Justice Kawaley had lied.*
>
> *The Committee concluded that you were seeking to re-argue allegations which had been comprehensively rejected by the Courts and noted that the Commission is not and cannot operate as a further Court of Appeal for a dissatisfied litigant. The Committee determined among other things that the complaint was "frivolous, vexatious or unmeritorious" and*

raised a matter which had already been dealt with. The Committee recommended that the complaint be dismissed as it did not warrant investigation.

The Commission considered the Committee's report at a meeting convened on 8 February 2023 and accepted the Committee's recommendation.

Accordingly, I write to advise that your complaint against Justice Kawaley is summarily dismissed and no further action will be taken. Please find attached hereto a copy of the Recommendation to the JLSC of the Complaints Committee for your records."

[84] By her letter, the Chief Justice succinctly communicates the decision of the JLSC to summarily dismiss the complaint, a decision which was arrived at diligently following the provisions set out in paragraph 3(2) of the Complaints Procedure. That provision permits the Complaints Committee to recommend summary dismissal of a complaint.

[85] At the directions hearing and at the hearing on 25 September 2024, I invited Mr. Simamba to consider whether he had identified the correct respondents. Specifically, I inquired why he did not enjoin the JLSC instead of the individual members. His answer included the opinion that the JLSC did not enjoy legal personality. He also argued that the JLSC usurped the powers of the Chief Justice.

[86] Mr. Simamba, in my view, clearly is wrong on both counts. The members of the JLSC cannot individually make a decision about dismissal of a complaint. The members act as a body and their decisions are reviewable as a body.

[87] The JLSC is a body established under section 105 of the Constitution. Any decision of the JLSC requires the concurrence of at least five members (s. 105).

[88] Under section 106 of the Constitution the JLSC renders advice to the Governor with respect to appointment of the Chief Justice and Judges of the Grand Court, among others.

[89] The Cayman Islands Constitution (Amendment) order 2016 amended the Constitution. One major amendment had the effect of reposing power to exercise disciplinary control over Judges of the Grand Court in the Chief Justice.

[90] Two of the functions of the JLSC, under the Constitution, are to draw up a code of conduct for the judiciary and a procedure for dealing with complaints (see 106 (10) (a)). It is by virtue of this power that the JLSC drew up the Complaints Procedure which was revised effective 30 October 2023.

[91] What is clear from the above is that the JLSC plays a significant role in the Constitutional framework, under which it acts as a body and not as individuals. It is pursuant to the power conferred by section 3(2) of the Complaints Procedure that the JLSC has the power to dismiss summarily complaints that do not require investigation. Indeed, the Complaints form highlights the categories of complaint that can be dismissed summarily.

JUDICIAL REVIEW

[92] In his text **Commonwealth Caribbean Public Law**, **Third Edition**, Professor Albert Fiadjoe defines judicial review as "the jurisdiction of superior courts to review laws, decisions, acts and omissions of public authorities in order to ensure that they act within their given powers". (page 15)

[93] In **Kemper Reinsurance Company v The Minister of Finance and Others (Bermuda) 1998 UK PC 22**, Lord Hoffman, in delivering the judgment of the Judicial Committee of the Privy Council while comparing judicial review with an appeal, said that judicial review *"is concerned with the legality rather than the merits of the decision, with the jurisdiction of the decision maker and the fairness of the decision-making process rather than whether the decision was correct"*. (paragraph 18 of the judgment).

[94] The need to obtain leave to apply for judicial review is to sift out unmeritorious claims. As the learned authors of the White Book 1997 Edn. at paragraph 53/1-14/30, put it:

> *"The purpose of the requirement of leave is: (a) to eliminate at an early stage any applications which are either frivolous, vexatious or hopeless, and (b) to ensure that an applicant is only allowed to proceed to a substantive hearing if the court is satisfied that there is a case fit for further consideration (see below). The requirement that leave must be obtained is designed to "prevent the time of the court being wasted by busybodies with misguided or trivial complaints of administrative error, and to remove the uncertainty in which public officers and authorities might be left as to whether they could safely proceed with administrative action while proceedings for judicial review of it were actually pending even though misconceived" (R v Inland Revenue Commissioners, ex p. National Federation of Self-Employed and Small Businesses Ltd [1982] A. C. 617, p.642; [1981] 2 All E.R. 93, p. 105 per Lord Diplock)."*

[95] The test for leave is that stated by Lord Bingham of Cornhill and Lord Walker of Gestingthorpe in **Sharma v Browne-Antoine and others [2006] UKPC 57** at **paragraph 14(4)** which states:

> *"The ordinary rule now is that the court will refuse leave to claim judicial review unless satisfied that there is an arguable ground for judicial review having a realistic prospect of success and not subject to a discretionary bar such as delay or an alternative remedy: R v Legal Aid Board, Ex P Hughes (1992) 5 Admin LR 623, 628; Fordham, Judicial Review Handbook, 4th ed (2004), p 426. But arguability cannot be judged without reference to the nature and gravity of the issue to be argued. It is a test which is flexible in its application. As the English Court of Appeal recently said with reference to the civil standard of proof in R(N) v Mental Health Review Tribunal (Northern Region) [2005] EWCA Civ 1605, [2006] QB 468, para 62, in a passage applicable mutatis mutandis to arguability:*
>
> > *"... the more serious the allegation or the more serious the consequences if the allegation, is proved, the stronger must be the evidence before the court will find the allegation proved on the balance of probabilities. Thus the flexibility of the standard lies not in any adjustment to the degree of probability required for an allegation to be proved (such that a more serious allegation has to be proved to a higher degree of probability), but in the strength or quality of the evidence that will in practice be required for an allegation to be proved on the balance of probabilities."*
>
> *It is not enough that a case is potentially arguable: an applicant cannot plead potential arguability to "justify the grant of leave to issue proceedings upon a speculative basis which it is hoped the interlocutory processes of the court may strengthen": Matalulu v Director of Public Prosecutions [2003] 4 LRC 712, 733."*

[96] In **Attorney General of Trinidad and Tobago v Ayer-Caesar [2019] UKPC 44** Lord Sales, (with whom Lady Black, Lord Gibbs and Lord Kitchen agreed) described the test for grant of leave at paragraph 2 of his judgment as follows:

> *"The test to be applied is the usual test for the grant of leave for judicial review. The threshold for the grant of leave to apply for judicial review is low. The Board is concerned only to examine whether the respondent has an arguable ground for judicial review which has a realistic prospect of success: see governing principle (4) identified in Sharma v Brown-Antoine [2006] UKPC 57; [2007] 1 WLR 780, para 14. Wider questions of public interest may have some bearing on whether leave should be granted, but the Board considers that* ***if a court were confident at the leave stage the legal position was entirely clear and to the effect that the claim could not succeed, it would usually be appropriate for the court to dispose of the matter at that stage****." ("****My Emphasis****")*

[97] In order to meet the threshold for leave, Mr. Simamba must show an arguable case having a realistic prospect of success. In my view, he ought to have identified the decision-maker and also to demonstrate that the decision was arrived at in a manner contrary to the relevant law.

[98] In this case, Mr. Simamba has not only misdirected himself concerning the decision-maker, but he has neither been able to demonstrate that the decision was contrary to law nor procedurally flawed.

[99] In my view, the legal position is entirely clear; the JLSC has acted in accordance with its remit under the Constitution and the Complaints Procedure and a claim for judicial review is bound to fail.

ADDITIONAL OBSERVATIONS

[100] The Judicial Complaints Procedure is not intended to undermine the principle of judicial immunity which underpins and reinforces the independence of the judiciary. It is a mechanism that allows the public to make complaints of judicial misconduct that, if proven, can justify the Chief Justice exercising his or her powers of internal discipline over judges. The expansive relief sought by Mr. Simamba and the basis on which it is sought, demonstrate that he does not appreciate or at best has lost sight of the fact that the decisions of Judges of the Grand Court are

not subject to Judicial Review. Therefore, his complaint must be guided only by the provisions of the Complaints Procedure.

[101] The affidavit that accompanies the application for leave needs to disclose evidence that supports the application. Allegations of bad faith, malice, improper motives, dishonesty and the absence of reasonable cause all dealt with by judges both at the original and appellate level of the court system, cannot form the basis of a successful application for review where there is no factual basis set out in the affidavit. After a detailed review of the complaint and the cases that were decided by the courts, the Complaints Committee gave its verdict at paragraphs 28 and 29 of its report to the JLSC which reads:

> *"28. In addition to raising meritless allegations of lying, Mr. Simamba is seeking before the Commission to re-argue allegations which have been comprehensively rejected by the courts. The JLSC is not and cannot operate as a further Court of Appeal for a dissatisfied litigant.*
>
> *29. In the circumstances, this complaint falls to be dismissed for a number of reasons. It is "vexatious, frivolous or unmeritorious; without substance; manifestly…misconceived" and "raises a matter which has already been dealt with…and does not present any material new evidence." There are no reasons why it should be investigated."*

[102] Paragraph 5 of the Bermuda Judicial Complaints Protocol referred to above, reminds us that the complaints procedure is not to be used by disgruntled litigants to express their dissatisfaction with a decision of the court. This is precisely what Mr. Simamba has done throughout the entire course of his litigation commencing with his suit against Justice Kawaley. It is this fact, which he does not deny, that renders the litigation, including this complaint, hopeless, vexatious and unmeritorious. Furthermore, his affidavit reveals no new facts and merely deals with matters previously litigated in the courts.

PROPER PARTIES

[103] Careful consideration must be given to the parties against whom the substantive action is intended. Where the legal scheme identifies a body such as the JLSC as the decision-maker, and that body takes a decision in accordance with the law, then it is this decision that must be challenged.

[103] Judicial review is concerned with supervising inferior courts, public bodies, and other public officials. As suggested by Mr. Hickman, the joinder of the individual members of the JLSC and the Attorney General, cannot be justified in law. The members of the JLSC do not act individually. In this case, where the relevant procedures vest the authority in the JLSC to make a decision to summarily dismiss complaints, it is irrational to argue that they are usurping the power of the Chief Justice.

[104] Mr. Simamba appears to have assumed that because the 2016 Constitutional Amendment has vested power in the Chief Justice to exercise disciplinary control over judges of the Grand Court, that all complaints must be determined by her.

[105] By reposing the power to sift out complaints to determine which ones do not meet the threshold for investigation, the provisions allow a committee of four (4) persons to examine the complaint and make recommendations to the JLSC. In this case, the Chief Justice would have sat on the Committee with three (3) other very experienced judges, but the provisions go further and require the JLSC as a body to make the final decision with respect to summary dismissal of complaints.

[106] By broadening the number of people who examine the complaint, it avoids the natural proclivity of complainants to allege that the Chief Justice is protecting her judges. The provisions signal that complaints are treated so seriously that the decision of the full JLSC is required to summarily dismiss a complaint.

[107] It is for the foregoing reasons that I refuse the application for leave to apply for judicial review.

CONDUCT OF THE APPLICANT

[108] It is ironic that in cases where the thrust of Mr. Simamba's allegations is that judges have been guilty of misconduct, he consistently misconducts himself. For example, in rendering the judgement of the Court of Appeal in the consolidated appeals Nos. 20, 21 and 21, respectively, of 2021: **Simamba v the Attorney General and the Governor**; **Simamba and Justice Kawaley and Myers**; **Simamba v the Attorney General**, Moses JA said

> *"43. Not content with these proceedings and his threats, Mr. Simamba has launched an ugly and abusive press campaign against members of the judiciary on the Island. They do not deserve repetition save it should be recorded that they include threats against Kawaley J "watch this space I am not done with this judge" and "Get ready to deal with this matter until your last days in Cayman. The battle lines are drawn".*
>
> *44. No court should have to tolerate this behaviour. There was no ground for complaint and never could be justification for these offensive threats. It is worth repeating that Mr. Simamba is a lawyer; he knows what he is doing; his behaviour is deliberate and calculated to provoke. The courts will not be provoked but will take steps to protect the rule of law on the Islands and those who seek to uphold it. The appellant is fortunate that the Order sought and made was limited. We dismiss the appeal."*

[109] The above remarks capture the manner in which Mr. Simamba has pursued his several claims before the court. In the instant case, in a letter dated 16 November 2024, addressed to me and directed through the office of the court, Mr. Simamba delivered himself of the following:

> *"As we await your judgment, I think it important to ensure that I make my expectations known. This letter is without prejudice to my request that you recuse yourself for the ten Overt Acts that I have indicated in a previous letter. Those Overt Acts are grounds of appeal in themselves. Meanwhile, I have asked the Chief Justice and Governor to indicate to the Chief Justice in Barbados that a complaint has been filed against you. You must understand that if you issue a bone-headed judgement, you will be left holding the bag for the Commission and Chief Justice Ramsay-Hale."*

[110] Of course, I have disregarded his disrespectful conduct in arriving at this decision, which is amply supported by the facts and the law, and it is on those bases that I refuse the application for leave.

CONCLUSION

[111] The fundamental problem with Mr. Simamba's complaint is that the substance of his allegations, has been dealt with in detail by courts at the level of the High Court and the Court Appeal in significant detail. Mr. Simamba has pursued these matters through the permissible appeal mechanisms. Judicial review only lies against an inferior court. The matters complained of were appealed to a higher court. The High Court cannot review judicially its own decisions, nor of course, the decisions of a higher court. It has no jurisdiction to do so. In this complaint, Mr. Simamba has not introduced any new grounds of complaint. He must therefore accept that his litigation has come to an end. The complaints procedure is not intended to unlock the door that is now closed to litigation. His application is without merit and is on a collision course with legal practice and reason.

COSTS

[112] In view of the fact that counsel for the Commission was permitted to make written submissions at the invitation of the court and was not required to attend the oral hearing, I make no order as to costs.

DISPOSITION

[113] I make the following orders:

(1) The application for leave to apply for judicial review is refused.

(2) There will be no order as to costs.

The Honourable Justice Cecil N. McCarthy
ACTING JUDGE OF THE GRAND COURT

241227 – Ruling. G0076/2024 – Bilika Harry Simamba v Margaret Ramsay-Hale, Chief Justice, et al. Coram: McCarthy J Actg.