October 28, 2020

IN THE GRAND COURT OF THE CAYMAN ISLANDS

161

CAUSE NO: OF 2020

BETWEEN:

BILIKA HARRY SIMAMBA

PLAINTIFF

AND

JUSTICE IAN KAWALEY

1ST DEFENDANT

BRIDGET MYERS

2ND DEFENDANT

WRIT OF SUMMONS

TO: JUSTICE IAN KAWALEY, 35 Albert Panton Street, P.O. Box 495 Grand Cayman KY1-1106

TO: BRIDGET MYERS, 35 Albert Panton Street, P.O. Box 495 Grand Cayman KY1-1106

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff in respect of the claim set out in the pages that follow.

Within 14 days after the service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the Court Office, P.O. Box 495G, George Town, Grand Cayman, the accompanying Acknowledgment of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment within the time stated, or if you return the Acknowledgment without stating therein an intention to contest the proceedings, the Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 28th day of October 2020.

NOTE - This Writ may not be served later than 4 calendar months (or, if leave is required to effect service out of the jurisdiction, 6 months) beginning with the date of issue unless renewed by order of the Court.

IMPORTANT: Directions for Acknowledgment of Service are given with the accompanying form.

STATEMENT OF CLAIM

INTRODUCTION

1. The First Defendant is and was at all material times a public officer serving in the capacity of Judge of the Grand Court.

2. The Second Defendant is a Personal Assistant to the First Defendant. Her duties, among other things, consist in receiving correspondence meant for the First Defendant and sending out under her name correspondence from the First Defendant. She was appointed under the Public Service Management Law as read with section 7 of the Grand Court Law.

3. The Plaintiff is and was at all material times employed by the Government as Senior Legislative Counsel in the Legislative Drafting Department of the Portfolio of Legal Affairs and was continuously employed in that Department from August 2003 to May 2015. Under his contract of employment and the Personnel Regulations, Schedule 1, paragraph 9, he is and was at all material times entitled to medical and dental benefits provided by the Government of the Islands, which comprised in receiving free non-elective medical treatment in accordance with the health insurance scheme, which, at all material times, was the Cayman Islands National Insurance Company (CINICO).

4. In 2014, the plaintiff brought a suit against the Cayman Islands Health Services Authority in the matter *Simamba v Cayman Islands Health Services Authority* GC 32 of 2014 for negligence in respect of a medical and dental matter. The matter was first heard in December 2015 by Justice Ingrid Mangatal (as she then was) but, after reserving a ruling on that day, she failed to deliver a ruling, forcing the Plaintiff to complain to the Judicial and Legal Services Commission (JLSC) in May 2018, 2 years and 5 months after the matter was heard. In October 2018, 2 years and 10 months after the hearing, Justice Mangatal recused herself from the matter, citing, among other things, the complaint to the JLSC. She was subsequently convicted of drunk driving on her own guilty plea and was subsequently forced to end her tenure as a Judge of the Grand Court.

5. In the case, outside of the medical and dental issue, a central issue had to do with the holding of Justice Richard Williams in *Thompson v Cayman Islands Health Services Authority* (decided 19 February 2016). There, he held that the HSA had immunity from suit except where there was bad faith. In arriving at that conclusion, the judge took a certain view as to how the

plain meaning rule/literal rule of statutory interpretation was, in his view, to be applied. The matter was appealed to CICA but was settled before the hearing. I was arguing (supported by dozens of authorities, including one Grand Court case) that his approach was wrong. The Chief Justice reassigned the matter to Justice Dame Linda Dobbs (who never sat on the matter) and the matter was further reassigned to the First Defendant. This suit herein arises from how the matter was handled by the First Defendant and the role the Second Defendant played in aspects of the proceedings and preparations for what was supposed to be a hearing.

6. (a) In consequence of those events, the Plaintiff claims damages arising from denial of a right to a fair trial, breach of statutory duty, defamation by way of slander of title (defamation), abuse of process, abdication of responsibility, and conspiracy. Some case law will be included in this pleading as it demonstrates the failure to grant a fair trial.

(b) Specifically, the judgment is defamatory in relation to my profession in that anyone reading the judgement of Justice Kawaley would hold me in odium, contempt or ridicule as an attorney at law as it has painted me, falsely and maliciously, as having brought a case that was frivolous and vexatious and did not conduct it in a manner that was worth taking seriously.

DUTIES OF THE PARTIES

Summary of duties breached by the First Defendant affecting the right to a fair trial

Breach of constitutional duty

7. The First Defendant, being a public official, had the duty under section 19 of the **Constitution of the Cayman Islands**, which he owed to the Plaintiff, to ensure that his decisions were, *"lawful, rational, proportionate and procedurally fair."* In various respects pertaining to the things done and not done by the First Defendant, he acted in breach of the afore-mentioned elements as will be elaborated below.

Breach of Grand Court Law

8. Under section 29 of the **Grand Court Law**, it was the duty of the First Defendant to act within his jurisdiction, with reasonable and probable cause, in good faith and without malice. In

doing or not doing, or ordering to be done or not to be done, the things herein pleaded, the First Defendant acted outside his jurisdiction and outside the bona fide exercise of his judicial functions and, further, acted in bad faith, not believing himself to have the jurisdiction to do or not to do, or order the doing or not doing, of those acts, and furthermore acted maliciously and without reasonable cause as further elaborated below.

Breach of Judicial Codes of Conduct

9. The First Defendant owed a duty to the Plaintiff to deliver justice to him by complying with the Judicial Code of Conduct for Cayman and the Judicial Code of Conduct for the CCJ in the respects indicated in the paragraphs hereinafter appearing, the latter being persuasive in the Cayman Islands.

10. The First Defendant is guilty of a failure to make a decision conscientiously according to law in breach of the **Judicial Code of Conduct of the Caribbean Court of Justice** (25 July, 2013, issued by Rt. Hon. Sir Dennis Byron, President Caribbean Court of Justice – the CCJ Code) which provides in paragraph 2 as follows:

> *"**Principle**:*
> *An independent judiciary is indispensable to impartial justice under law. A judge should therefore uphold and exemplify judicial independence in both its individual and institutional aspects.*
> ***Code**:*
> *2.1 A judge shall exercise the judicial function independently on the basis of the judge's assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason." (Emphasis added)*

11. In the same vein, the **Code of Conduct for the Cayman Islands Judiciary** (9 March 2012, issued by the Judicial and Legal Service Commission – the Cayman Code) provides in paragraph B 10 that:

> *"[N]o judge can be directed as to his or her own judicial decision by any other judge. Consultation with colleagues when points of difficulty arise is important in the maintenance*

of standards. In performing judicial duties, however, the judge shall be independent of judicial colleagues and solely responsible for his or her decisions." (Emphasis added)

12. In his ruling, the First Defendant (after a brief mention in paragraph 74 of my challenge to the application of the literal rule and my invoking of the maximum *generalia specialibus non derogant*) goes on to state as follows:

> *"75. These summary points were then elaborated upon, primarily through statements of broad principle which do not succeed in demonstrating any serious error of approach in Williams J's analysis. The suggestion that the literal rule was applied in an old-fashioned and mechanistic manner is manifestly unsupportable in light of a fair and straightforward reading of the judgment in Thompson."*

13. The First Defendant did not mention a single one of the 52 cases the Plaintiff cited aimed at demonstrating that the application of the literal rule in *Thompson v Cayman Islands Health Services Authority* (2016) 1 CILR 93 was misconceived in law. Those cases are listed in **BHS 3** of the Applicant's First Affidavit appended to the application in *Simamba v Attorney General and Governor* CICA 36 of 2019. Such analysis as is undertaken does not show any real reasoning or analysis of the very detailed arguments the Plaintiff made. The judge also did not specifically address at least 7 issues raised in the skeleton arguments, these being outlined in the Plaintiff's letter to the First Defendant dated 16 June 2019 and written before he finalized his ruling. The letter is **BHS 2** to the Applicant's First Affidavit in CICA 36 of 2019 aforesaid.

14. By being this dismissive of all the Plaintiff's cases and arguments, blindly assuming that Justice Williams was right, he makes the assumption that the Plaintiff, or the cases the Plaintiff cited and issues raised, could not possibly offer any perspectives that could make him decide differently. In so doing, he abdicated his responsibility to decide the case "*in accordance with a conscientious understanding of the law, free of any extraneous influences*" (CCJ Code) and failed to assert his duty to "*be independent of judicial colleagues and be solely responsible for his . . . decisions*" (Cayman Code).

15. The First Defendant *failed to display intellectual* honesty. The Cayman Code, paragraph 34, states that a judge "*must display intellectual honesty in the reasoning on which his or her*

decisions are based". In addition to failing to decide the issues according to a conscientious pursuit of the law, Justice Ian Kawaley displayed intellectual dishonesty by:

> *(a) Not addressing the 52 cases cited in relation to the immunity issue and the 7 issues raised in relation to that, in particular, the total failure to address the issue of the Health Services Authority (Amendment) Law 2016 (Law 11 of that year) which had* ***not*** *been enacted when Thompson was decided, and which was argued in the 1st Skeleton Arguments of the Grand Court case (pages 27, 28); the Plaintiff also pointed out in a 7-line paragraph commenting on paragraph 59 of the judge's draft ruling, and also in a 13-line paragraph on page 7 of* ***BHS 4*** *of the CICA application, all of which was before he wrote/finalized his ruling;*
>
> *(b) Issuing his judgement after he had become aware, though my letter of 16 June 2019,* ***BHS 4****, (cited above) that the case of Thompson v CI Health Services Authority, which he did not want to depart from, had expressly been disavowed by the decision of Mangatal J in BDO v Governor in Cabinet (2018) 1 CILR 457.*

16. The First Defendant maliciously failed to give the Plaintiff a meaningful hearing, that is, in law failed to give him a hearing. The CCJ Code provides in paragraph 3 as follows:

> *"**Principle:***
> *Integrity is vital to the proper discharge of the judicial office.*
> ***Code:***
> *3.1 A judge shall ensure that his or her conduct is above reproach in the view of reasonable, fair-minded and informed persons.*
> *3.2 The behaviour and conduct of a judge must reaffirm the people's faith in the integrity of the judiciary. Justice must not only be done but must also be seen to be done."*

17. By unilaterally cancelling the 2-day hearing, even after the defendant had expressed a lack of objection to a video link hearing, and then hearing the matter *ex parte* for 30 minutes, he failed to act in a manner that a fair minded and informed person would consider to be beyond reproach. The subsequent equal time reluctantly granted to the Plaintiff and which the judge had no intention initially of giving, was totally inadequate for the Plaintiff to deal with the issues raised

and this was evidenced by how the judge did not sufficiently or at all deal with the issues in his judgement.

Other duties breached by the First Defendant

18. By failing to give a reasoned decision, the First Defendant prejudiced the Plaintiff's right of appeal in that the Court of Appeal did not get a chance to examine how he dealt with the cases I cited and the arguments I made so as to make a reasoned decision on how the First Defendant dealt with the issues raised. This led the appeal to be decided on facts that were provably (by documentary evidence) not correct.

19. Further, by failing to give a reasoned judgement, the First Defendant failed to be accountable to the public, of which the Plaintiff is one.

20. The reasons set out above (failure to even acknowledge even one of the 52 cases cited let alone consider them in his reasoning) show that the First Defendant acted in bad faith. What is more, a chain of facts, outlined in more detail in the letter before action to him that is **Exhibit BHS 5** to my First Affidavit of the CICA application, makes it clear that he had no intention to decide the matter in good faith. Those facts, in part, are:

> ***First,*** *3 days before his draft ruling was circulated, I made him aware that he had not dealt with the issue relating to the* ***Health Services (Amendment) Law 2016*** *regarding the application of new legislation to pending litigation but he still did not include it in his final ruling. This is the height of bad faith and malice.*
>
> ***Second,*** *I pointed out again, before his ruling was issued, that there was the decision in BDO v Governor in Cabinet by which Justice Ingrid Mangatal decided that she did not agree with the judgement of Justice Williams in Thompson v Cayman Health Services Authority in relation to the plain meaning rule but he went ahead to finalize his judgment, knowing full well that the whole basis upon which he was proposing to make the ruling had been undermined. In light of the level of bad faith and malice shown in this regard, the judge did not maintain any semblance of fairness.*

21. The First Defendant, as shown by the facts indicated in my First Affidavit to my CICA application, show bias and malice. Further and in the alternative, there is at the very least, perceived bias.

22. The First Defendant acted without reasonable or probable cause. No reasonable judge would render the sort of judgment that he rendered. Failure to apply his mind or even mention the 52 cases that were cited to him and the 7 issues outlined in **Exhibit BHS 3** of my First Affidavit to my CICA application is so unreasonable that is negates the whole idea of judicial decision–making and seriously undermines the proper perception of the judicial function. No reasonably competent judge would have taken that approach.

23. The First Defendant denied me the right to a fair trial under section 7 of the Constitution. In addition to what has been outlined above, the First Defendant denied me the right to a trial, and he has done so in the following ways:

(a) He denied me a right to an oral hearing. I only had about 30 minutes to address him in this matter. Even that I only got after he had already heard the matter *ex parte,* giving the defendant in that case about 30 minutes to argue his case in my absence. The matter of *Thompson*, which raised similar issues as to the application of the plaint meaning rule was argued over 8 days in the Grand Court and was set down for 4 days in the Court of Appeal, though it was not ultimately heard, the matter having been settled. Justice Kawaley had himself set it down for 2 days.

(b) My matter was well-pleaded and no part of my pleading was ever challenged. With great difficulty as a litigant in person, I obtained an expensive medical report to cover a principal part of the suit, this being from 2 distinguished pharmacologists in the United Kingdom, who said that I should have been warned of the side effects of the medication in issue. On that basis, I said that it was only fair that, if any additional evidence was necessary, this could be obtained as part of a general order for directions and discovery. The judge refused to allow this and insisted that he would dismiss the matter if additional evidence was not provided even before directions.

(c) Also, despite my pointing out to him that there is a matter of *res ipsa loquitar* relating to the dental part of the suit, he glossed over this and said effectively, without examining

the dental and medical records, that he would summarily dismiss the matter. One would have thought that where I had provided this level of prima facie evidence, at the very least, he should have allowed the matter to proceed to directions, which I had offered to the defendant early in the suit but which he spurned and decided in the end to apply for a strike-out. If the matter had proceeded to directions, any remaining issues could have been dealt with my interrogatories by which I would have firmed any lingering doubts.

24. The First Defendant blatantly and persistently refused to acknowledge or follow clear authorities. In addition to failure to even acknowledge the 52 cases and the 7 issues referenced above, the First Defendant did the opposite of what he should have done in relation to the application for an "*unless*" order. In the case I cited to him of *Mubarak v Mubarak*, Justice Bodey made it clear that: "*The sanction [of an unless order] is . . . a remedy of last resort. Inappropriate attempts to rely on it would be quickly met with censure and order for costs.*" (Even Justice Mangatal had expressed to Mr. Wingrave how unusual the application was at that stage. On the audio of the hearing of 6 May 2019, Mr. Wingrave refers to this statement from Justice Mangatal.) The marked-up version of his ruling (marked by me), **BHS 4** of my First Affidavit to the CICA application, shows in detail the level to which this was violated.

25. Other cases make it clear that this means that, before an *unless* order is made, the person against whom it is made must have disobeyed a previous order. In this case, the defendant applied for an *unless* order as a first resort (not last) after filing a defence and refused my request to agree on directions. In paragraph 39 of his ruling, the judge acknowledged that, "*In the course of the hearing the Defendant's counsel conceded that the Plaintiff was not in breach of any prior Court Orders in relation to producing expert evidence.*" Despite this, which the judge also acknowledged at the short oral hearing by the judge, he did not censure the defendant or award costs in any event against the defendant.

26. On the contrary, the judge flagged in paragraph 84 that, "*it is difficult it is difficult to see why the costs of the expert evidence issue should not logically be awarded to the Defendant in any event.*" This continued with his refusal to consider the case of *BDO v Governor in Cabinet*, which disagreed with the approach taken by Justice Williams, a case the First Defendant (at the latest) became aware of through me, 9 days before the issuance of his final ruling, bringing it to his attention. This is further evidence of blatant refusal to follow authorities that favoured me. I

have no doubt that all 3 judges (Justices Smellie, Mangatal and Kawaley) would have been aware of the *BDO* Case and would likely have discussed it in the context of my case.

27. On the contrary, wherever there is even a doubtful and obscure authority from the English High Court favouring the defendant, such as the *Pantelli* Case, which I laboured to distinguish and point out that, in any case, is not a respected authority, the judge preferred to give it weight. Meanwhile, weighty authorities, 52 of them from the House of Lords, Canadian Supreme Court, High Court of Australia (the highest court) and other courts were systematically ignored and went unanalyzed. And these cases spanned the 1700s, 1800s, 1900s and 2000s.

28. The First Defendant blatantly and persistently failed to reflect all relevant facts. The judgement failed to include a number of significant facts that were in my favour and which were significant not just to the substantive case but also possible costs. These are outlined in the tracked copy of the ruling, **BHS 4**, from my First Affidavit of the CICA application referred to above. This also prejudiced my right of appeal.

29. The First Defendant abused his judicial authority. After pointing out to the First Defendant that he had not dealt with the issues outlined above, he neglected or failed to deal with them despite the fact that he was not *functus officio.* I also pointed out that the lines upon which he was proposing to make his ruling were no longer valid considering that there was another matter in which Justice Mangatal had decided to disagree with Justice Williams. Despite all this, the First Defendant proceeded to make his ruling. But in order to restrict my right to speak about it, he decided to issue a case management order (a gag order) intended to ensure that he is not accountable to the public.

30. The First Defendant abdicated his judicial responsibility to decide the matter by stating:

> *The case was argued on both sides by leading counsel. 25 cases were cited and the legislative history was explored. Other linked legislation was considered. The principles of statutory interpretation were considered and arguments that the literal meaning of section 12 was inconsistent with other parts of the Law (e.g. sections 3(3), 12A and 32(2)) were entertained and rejected.*

This was a condescending and appalling aspect of the matter. **First**, one side of these leading counsel not only took up the matter and argued it before the Grand court; when they lost, they appealed the matter. **Second**, cases that were argued by leading counsel are overruled every day in the courts, unless it is thought that I was not intelligent enough to even possibly give a perspective that would be worth considering. **Third**, Justice Mangatal had no hesitation in finding that the *Thomnpson* Case, which was specifically invoked, was wrongly decided in relation to the plain meaning rule. Fourth, it is an abdication of judicial responsibility. **Fourth,** I am a lawyer of more than 40 years' active involvement in the law much of it in legislative drafting but some also in litigation. Despite never having been a full-time academic, I have written 19 published peer-reviewed papers including in England and South Africa. Two of my books on legislative drafting and legislative processes are prescribed reading at a university in Canada hat teaches legislative drafting. To suggest that, somehow, I would have nothing to offer that could lead to different perspectives is insulting in the extreme.

31. This was a cryptic conclusion arrived at without examining the dozens of cases specifically trying to illustrate why Justice Williams's judgement was wrong. These cases where mainly from the UK, Canada and Australia. It was also fundamentally insulting to me as an attorney-at-law, former prosecutor, part-time academic, long time legislative counsel for international organizations, published in peer-reviewed journals in 7 countries, a Zambian-UK-and-Canadian trained legislative counsel, to suggest that I could not possibly offer submissions that could result in the ruling being changed.

Summary of duties breached by the Second Defendant

32. The Second Defendant, under section 5 (2) (a) of the Public Service Management Law (which contains the Public Servant's Code of Conduct) must, as a public servant, "*behave honestly and conscientiously, and fulfil his duties with professionalism, integrity and care*". It was also the duty of the Second Defendant to act in good faith. The Second Defendant, acted in bad faith in writing the emails outlined in further below and the Attachment to this Statement of Claim, and in doing so acted in a conspiracy with the First Defendant or, in the alternative, acted alone without the knowledge, consent or direction of the First Defendant, thereby denying the Plaintiff the right to be heard. Overall, and in the alternative, the Plaintiff pleads that the emails sent by Bridget Myers were not directed by the judge but sent by her on her own volition without informing the judge.

33. The Second Defendant, in writing and sending the emails aforesaid, also breached section 5 (2) (c) which prohibited her from engaging in conduct that brings, "*the public service or the government into disrepute*".

34. Further, the Second Defendant, in writing and sending the emails aforesaid, was again in breach of the Public Servant's Code of Conduct which states that, "*a public servant must obey the law and comply with all lawful and reasonable directions*", making it irrelevant whether or not she was directed by the First Defendant. Overall and in the alternative, Bridget Myers acted maliciously and in bad faith.

THE DETAILED FACTS

Denial of the right to a fair hearing

35. In the paragraphs 36 to 44, I will summarize the interaction between me and the Defendants but a more detailed chronology (and commentary) appears in the letter I wrote to the Director of Public Prosecution which is the Attachment to this Statement of Claim.

36. The First Defendant was early in 2019 seized of my matter *Simamba v CI Health Services Authority* and set it down to be heard in 2 days. In the Grand Court, the similar matter of *Thompson v CIHSA* was heard in 8 days, but trying not to be difficult, I did not object. I informed the court office in March 2019 that since I was out of the country for medical and family reasons, I would be grateful for a video link hearing, which is allowed under Practice Direction 2 or 2004. The lawyer for the HSA expressed no objection. However, the week before the scheduled date of hearing, that is 8 weeks down the road, suddenly the judge asked why I wanted a video link hearing. I explained that it was due to medical and family reasons and that this had been settled 8 weeks before. I indicated that I would be waiting on the day in question by my computer for the video link hearing.

37. It is also odd that in March 2019 when I requested the video link hearing and Mr. Wingrave said he would get instructions, at that stage, there was an email from him to the court office asking if it was still necessary for him to get instructions. The answer was yes. I got the impression that the court office had conveyed to him the intention of the court (which I was not aware of at the

time) that it did not intend to connect me by video link. This only became clear to me later. I was never informed in advance that the court was not intending to grant me an oral hearing.

38. The court did not try to connect with me on the date of hearing, namely, 6 May 2019. After a while on the same day, I got an email from the Second Defendant stating that the judge had (unilaterally) decided that he would make the decision on the basis of the written submissions alone and that the "*hearing*" lasted for only 30 minutes. He never asked if I was comfortable with this. On the audio of the so-called hearing of 6 May 2019 the judge utters words (addressed to Mr. Wingrave) to the general effect that, "*Subject to what you say, I was inclining towards deciding this matter by written submissions only.*" Mr. Wingrave effectively says that he had no objection but wanted to address the court on some matters.

39. Mr. Wingrave also reminds the judge that I had stated that I would be waiting to be connected by video link. (More on this below.) The court allowed him to make submissions for 30 minutes, during which, for most of the time, the court yessed him along. From my experience, normally a judge would ask the parties before making such a drastic decision to decide the matter by written submissions only. Bizarrely, at one point the First Defendant, opening with the words "*Ironically*", asks Mr. Wingrave to clarify what my arguments were. So, he was relying on Mr. Wingrave to present my arguments accurately, which he did not of course. At that time, I was waiting by my computer to participate in the hearing and had informed the court by email that I would be. Also, he said that the written submissions were detailed enough to allow him to decide the matter. Interestingly, as I have pointed out elsewhere in this affidavit, he ignored 52 cases I cited and 7 issues raised. Clearly the details were not important since he had no intention of reading them.

40. The lawyer for the defendant, Mr. Wingrave, also conveyed to me that the hearing lasted only 30 minutes but added that there were just a few "*clarifications*" that the judge asked for. It turned out that the characterization "*clarifications*" was not correct.

41. So, having waited more than 3 years to have a chance to make my case (since the *Thompson* ruling of February 2016), in May 2019 before the First Defendant, I was not even getting a chance to make my arguments. Further, since 30 minutes is a long time for clarifications, I was suspicious and I asked for the audio tape. The judge appeared reluctant to allow this. We went back and forth in correspondence, the court asking what I wanted to address the court on. I

said it was in relation to whatever the HSA lawyer had submitted. Finally, he acceded to my request to send me the audio.

42. What I heard on the audio was appalling. Basically, the judge gave Mr. Wingrave 30 minutes to argue his case, effectively *ex parte*, in which he essentially yessed the lawyer along, as I have said. I conveyed to the judge by email that, clearly, he had not even read my arguments. Undeterred, I asked through another email if I could at least have one morning to help him through my arguments, but he declined this request. Finally, he said he would give me 30 minutes since Mr. Wingrave had had 30 minutes.

43. This was hard for me. I was the party that bore the burden to show that the decision of Justice Williams was wrong. The judge himself acknowledges this in paragraph 71 of his ruling by saying that, '*The Plaintiff bears the burden of convincing me that the earlier decisions are "wrong"*'. And yet now he could give me only 30 minutes in a case that raised issues which had been argued in the Grand Court for 8 days. Even the minutes I got were given because I exerted pressure on him to at least grant some time for rebuttal to Mr. Wingrave's 30 minutes of effectively an *ex parte* hearing. Had I not insisted, I was not going to any time at all to make even the rushed oral submissions I made in 45 minutes (with interruptions).

44. After the First Defendant refused to give me at least one morning, as stated above, I requested that he give me at least 2 hours but he refused. I finally decided to stop fighting. In desperation, I convinced myself, somehow, that I could trust the judge. I eventually got only 45 minutes (with interruptions) to state my case at a hearing in June. Even then I had to stretch it as the judge tried to stop me at about 30 minutes.

45. Sometime after this last date of hearing, but before judgment, about 3 days before he conveyed his (rushed) draft ruling, I came across the decision of Justice Mangatal in *BDO v Governor in Cabinet* (2018) 1 CILR 457 decided in May 2018 (10 months after her ruling in my case management matter, 19 July, 2017 where she summarily rejected the argument she accepted in *BDO*). Basically, she expressly disavowed the decision of Justice Williams in the *Thompson* Case. Justice Mangatal, as stated above, accepted the same argument she had rejected out of hand from me about 10 months earlier, namely, that you cannot say that a provision is clear and unambiguous until you have read it in its full context. If she had applied the same

principle in the instant matter, she would have decided that the Health Services Authority did not have immunity from suit.

46. On 8 June 2019 by email I brought the *BDO* decision to the attention of the First Defendant, Justice Mangatal and Chief Justice Smellie through **Exhibit BHS 1** to my CICA First Affidavit. None of them responded. On 11 June 2019, 3 days after I brought *BDO* to his attention and that of the Chief Justice and Justice Mangatal, the First Defendant circulated his draft ruling. In it he basically said (without analysing my arguments or the ruling of Justice Williams or Justice Mangatal) that he could not go against the ruling of Justice Williams. He made no mention of *BDO*. Going by how brief and disjointed it was, I concluded that it has been rushed.

47. To clarify, at the so-called hearing of 6 May, 2019, the First Defendant says on the audio that I had a number of "*interesting arguments*" (his words) but no "*knock-out blow*" (his words again). He adds that it may have been different if there had been perhaps another case that disavowed *Thompson*. Having said that, quite apart from the dozens of cases I had cited to him already, I now made him aware of a case from Cayman, decided on the basis a rule of interpretation that was at issue in the instant case, and he decided to ignore it in that he did not even attempt to analyse it. On the contrary, he proceeded to prepare a draft ruling on the immunity issue, a ruling based solely on the fact that he did not want to disagree with another judge, namely, Justice Williams.

48. Despite having found out that Justice Mangatal did not agree with Justice Williams, the First Defendant still went ahead to render the ruling as if the Mangatal judgement did not exist. This meant that the whole basis upon which he was proposing to make the ruling had been undermined. His non-decision decision, bad as it already was, could now no longer be logically sustained (even by his own "*logic*") since there were now 2 decisions from the Grand Court, which did not agree, but he still delivered the decision.

49. So, with full knowledge of this, in a rare show of efficiency in the Grand Court, he rushed to issue a (disjointed) ruling on the matter within 3 days of my bringing *BDO* to his attention.

50. The draft ruling prompted my detailed response to him, **Exhibit BHS 2** to my First Affidavit in the CICA application. And even after I made him aware, again, of the Mangatal ruling, the First Defendant still went ahead and signed the judgment. Normally, in such a case, a court would ask

the parties to address it further. In fact, the HSA lawyer had objected (feebly) in an email but said that, if the judge would consider the case, then he would want to have a chance to address the court on it. That would have been fine, but the judge decided to sign his final ruling without further argument.

51. I indicate here that 52 cases (listed in **Exhibit BHS 3** of the First Affidavit to my CICA application) which I cited were not mentioned and deliberately not considered and at least 7 issues remained unaddressed, including the arguments relating to pending matters. He falsified the record in key factual areas and deliberately ignored at least 52 cases, which he never considered or even acknowledged. He said in paragraph 75:

> *These summary points were then elaborated upon, primarily through statements of broad principle which do not succeed in demonstrating any serious error of approach in Williams J's analysis.*

This is simply not true. In the 52 cases I recounted facts of other cases, had quotations, conceptual and linguistic arguments, including some illustrations, for example, from international diplomatic law.

52. I also conveyed to the First Defendant a marked-up version of the ruling where I commented extensively regarding the arguments, cases and facts he had not mentioned. This marked up version is **Exhibit BHS 4** to the First Affidavit to my CICA application. Then, I can safely assume, because of the mark-ups I did to the draft ruling and the letter I wrote, which he described as "*extraordinary*", he decided to issue a wide ranging gag order covering areas not really related to the case and based on false premises.

53. I have reason to believe that the First Defendant was aware of the *BDO* Case from the beginning. The First Defendant would have been discussed the file with Justice Mangatal, who had heard the case previously. Justice Mangatal would have mentioned the *BDO* Case. And the most significant issue was of course the approach of Justice Williams to the plain meaning rule in *Thompson*. The *Thompson* Case was expressly considered and rejected by Justice Mangatal in the *BDO* Case. There is also no doubt that the First Defendant would have discussed the matter with Chief Justice Smellie since the matter was the subject a complaint and I repeatedly mentioned to Justice Mangatal, and it was also reported in the press, that I disagreed with the

interpretation given by Justice Williams. The fact that the First Defendant did not consider it significant after the case was pointed out to him, before he even sent his draft ruling, and still ignored it after I again pointed it out to him in my red line draft and a letter, is conclusive evidence that he deliberately ignored it even before I mentioned it to him.

54. As the First Defendant acknowledges, and I have stated above, I was the one who bore the burden of convincing the judge that Justice Williams (who decided the *Thompson* Case, which the First Defendant did not want to depart from in terms of the immunity issue) was wrong. I was not given anything even resembling an adequate opportunity to address the court. Also, after the issue of me being heard by video link had been settled (since I could not travel from Canada) and the defendant expressed no objection 8 weeks earlier, the judge, without consulting me, unilaterally decided that there was to be no video link hearing. The judge basically gave an excuse by email regarding what he called communication problems. He also denied that the court was ever involved in the discussions on that and yet the emails are there to prove that it was. As will be seen from the summary in the Attachment to this Statement of Claim, this was simply not true.

55. I would have thought that since the matter was pending for a long time, was complex, and I had filed a complaint against another judge, the First Defendant would have tried at least to give me a hearing on the second listed day of hearing.

56. I did indicate to the First Defendant, by email that I was participating under protest. I made it clear that it was not appropriate to decide such a complex case by written ruling only. After all, this was a case which Justice Mangatal had described – when the matter was before her, in paragraph 19 of her ruling of 19 July 2017 – as dealing with "*extremely important areas of law*". In the same paragraph she said that the issues "*would take at least a week*" to argue. Counsel for the defendant thought it would require 8 full days (paragraph 16). I believe that the Court of Appeal had set the case down for 4 days. The First Defendant himself had set it down for 2 days, as indicated above.

57. So, after more than 3 years of waiting for a ruling and an opportunity finally to make my very detailed arguments about why I thought that Judge Williams was wrong, the First Defendant (who was supposed to clean up the mess left by Justice Mangatal) refused to give me a hearing and unilaterally decided that he would decide the matter on the basis of written submissions. He never consulted me. He only consulted the lawyer for the defendant. As it turned out, it is clear

that he never intended to consider the cases I cited and issues raised, let alone even read them. Finally, he gave a so-called judgment that violates just about every rule on the duties of a judge in relation to rendering judgments. All this is elaborated below.

58. Also, the First Defendant ruled that unless I produced further medical evidence, the matter would be dismissed (effectively without entering upon an evaluation of, at least, the evidence before the court and the *res ipsa loquitar* argument relating to the dental case). The court portrayed this as a kind of victory for me. The judge said that if I produced this evidence, he would use the Chief Justice's judgment in *Chantelle Day* v *Governor*, Civil Causes Nos. 111 and 184, to amend the law so than I could be compensated if necessary.

59. But quite apart from being a tenuous "*victory*", it went against all authorities relating to strike-out. The courts in Cayman as elsewhere have decided that once you plead a case properly the court must not go deep into evidentiary issues to decide if a person is entitled to go to trial, or at least to discovery. The court must assume that the matters will be proved. This is what the Chief Justice decided in *Groupo Torras SA v X Bank* (1996) 14 CILB 19 which relied on a long line of UK cases. There are also numerous UK and Cayman cases on the point. What is more, in my case, I had even produced medical evidence but it was still being said that unless I produced even more at this stage, the matter would be summarily dismissed and cannot even go to discovery.

60. Further, the judge misrepresented my argument by saying that I argued that I had a right to go to trial. My argument was more nuanced and yet simple: It was that since I had a well pleaded case, had produced at least one medical report (by two experts) supporting my pleading, had a plausible case of *res ipsa loquitar* on the dental issue, it should at least go to discovery and interrogatories. I also indicated that the defendant had not produced anything to rebut my *res ipsa loqutar* argument. These matters I even emphasized in my very brief oral arguments of 3 June 2019, but all to no avail. Indeed, the judge, at the hearing of 6 May 2019 says that one is entitled to a trial only if they have a "*meritorious case*". The trite law is that you are entitled to a trial (at least to discovery) if you have a "*triable case*". I had more than met that threshold. The judge's position is such an egregious error of law that it is a sign of bias. It is also unbelievable that despite having emphasized in my supplementary submissions and at the hearing of 3 June 2019 that I was not saying that I had an absolute right to go to trial, he insisted that this was my argument.

61. Even if the judge wanted to dismiss the matter, it was unlawful and irrational to dismiss it before he had examined the medical and dental records. For example, as I have said, on my dental issue (different from the medical issues) there is an argument of *res ipsa loquitar* meaning that expert medical evidence may not be necessary. This is a recognized principle in law and even Justice Mangatal has apparently been warming up to this on the dental issue. The First Defendant had not heard any arguments on this principle or even seen the records but he said that unless there was also a report on this he would summarily dismiss the matter, that is, without hearing arguments or seeing the medical records. I believe that these are matters a judge should explore during an oral hearing so that the parties can express views on them. I should not have to express these views after the fact.

62. All this can be summarized as follows.

First, after waiting for more than 3 years for an opportunity to argue the matters raised in *Thompson*, The First Defendant denied me a right to argue my case.

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

Third, he heavily suppressed facts favourable to me, knowing that if there were correctly reflected, it would be difficult for the judgment to look reasonable.

Fourth, he basically ignored all the 52 cases I cited (yes 52) in relation to a key part of the case, namely, the issue of the so-called immunity of the Cayman Islands Health Services Authority.

Fifth, and related to that, he ignored and just did not consider or even mention up to at least 7 critical issues I raised. All in all, he made no decision on most of the issues. In so doing – or not doing – the First Defendant has acted in an extremely incompetent and biased manner, clearly in breach of the Judicial Code of Conduct issued by the JLSC by which judges are supposed to be intellectually honest, decide matters according to law, after a conscientious pursuit of the same.

Sixth, about 3 days before the First Defendant circulated his drafting ruling (which was a blind endorsement of Justice Williams in the *Thompson* Case without analysis), I made him aware of a decision by Justice Mangatal which disagreed with the *Thompson* decision regarding the approach to statutory interpretation. The First Defendant decided to ignore that and went ahead to prepare his drafting ruling and later sign it without asking us the parties as to whether we wanted to address him on that. In other words, knowing full well that the whole basis of his proposed ruling on the immunity issue (that he did not want to disagree with another judge) had been undermined, in that now there was another judge who had decided differently, he still proceeded hurriedly to sign the judgement. This is bad faith and malice.

63. For clarity, the chronology is in expressed in tabular form as follows:

How the First Defendant Deliberately Ignored a Key Authority	
Date	**Event**
6 May 2019	The First Defendant indicates that his difficulty in seeing things my way is that there is no other case that disagrees with Williams J in *Thompson (a nebulous position in itself in that it suggests that he is ready to follow another judge but he cannot make a decision for another judge to follow)* – 30 minutes
3 June 2019	Second, short hearing insisted on by me – 45 minutes (after judge refuses to give me at least one morning)
8 June 2019	I send email to Justices Kawaley, Mangatal and Smellie bringing *BDO v Governor in Cabinet* (which disagreed with *Thompson*) to their attention. In that case, Mangatal disagrees with Williams as to how the plain meaning rule is to be applied. *This is 3 days before he sends his draft, unsigned judgment.*
11 June 2019	The First Defendant issues the draft ruling, ignoring *BDO. This is 3 days after BDO is*

	brought to his attention and that of Justices Smellie and Mangatal.
16 June, 2019	Plaintiff <u>again</u> brings *BDO* to attention of The First Defendant in a letter. He again ignores it.
17 June, 2019	The First Defendant signs his final ruling without mention of *BDO*. This is 9 days from the date of the email first bringing the case to his attention. *Note: So, having said that there was no case disagreeing with Thompson, when a case is brought to his attention, he ignores it and proceeds to sign his ruling.*

64. After signing his ruling, he issued a gag order which was unnecessary but merely intended to restrict my right to discuss the case, which order in itself was an abuse of power. By email I objected to the untrue factual premise of the order.

65. In this particular case, an appeal is not an appropriate way to deal with all the issues arising. For a start, the judge also heavily distorted the summary of facts in the judgement, knowing that they would be taken to be true by the appeal court. I cannot introduce new facts at the level of appeal except by very complicated applications and procedures, with are very, very rarely undertaken and hardly ever granted. What is more, failure to correctly report the facts as this judge has done (even facts that are not disputed) is a great impediment to justice and is further evidence of bad faith and malice. Under a heading further below, I have indicated how I actually suffered prejudice in the prosecution of my case before Justice Beatson of the Court of Appeal.

Brevity of the ruling by The First Defendant

66. In addition to the projections indicated above as to how many days the hearing was expected to take and what is pointed out specifically below as to what was not dealt with, it is instructive to note just how brief the ruling was in relation to the substance.

67. My skeleton arguments totalled at least 75 pages and those of the defendant about 45 pages, making a total of about 110 pages. I cited a total of perhaps 60 cases and the defendant

the defendant perhaps about 25 cases, making a total of about 85 cases. And yet the ruling as a whole was only 29 pages, portions of which are copious quotations. Incidentally, in some places it was rather disjointed. The reasoning, if you can call it that, on the immunity issue is not particularly erudite. I doubt that, especially on the immunity issue, this judgement will be cited by practitioners or students as guidance.

68. As compared to *Thompson v CIHSA* (the one that dealt with the immunity issue only), that case had about 25 cases cited, and the ruling was 82 pages long. If that can be used as a yardstick, the judgement in my case should have been about 200 pages. Indeed, if he had considered all the issues, the case would have wound up being probably the most important case on statutory interpretation in the Cayman Islands and possibly the Caribbean.

The First Defendant misrepresented key facts and arguments favourable to my case

69. There are a number of uncontroverted facts relating to the medical report I produced from two UK experts; some facts relating to my interaction with the defendant's lawyer through correspondence; the nature of my arguments; and other matters. The judge suppressed these in order to justify his ruling. One has to read my marked-up version **BHS 4** (referred to above) to see just how appalling the Judge's conduct was.

70. He also misrepresented the law in relation to the maximum allowable damages. As much as I have indicated in general terms willingness to settle the matter within the *JC Guidelines*, technically my suit is not covered by the Medical Negligence (Non-Economic Damages) Law 2011 (Law 11 of that year) which restricts damages to $ 500,000.00. This is because my material dates occurred before the date of enactment, namely, 30 March 2011. This was conceded by Mr. Wingrave at the hearing before Justice Mangatal. And yet, in paragraph 3 of the ruling, the First Defendant states that the legislation restricts damages to that figure, yet another sign that the judge was not au faire with the facts and proceedings before him. As much as I am not claiming that anymore (that having been written at a very emotional time for me) this is simply wrong.

Cases not dealt with by The First Defendant

71. As stated above, I cited 52 cases (fifty-two) related specifically to the issue of the supposed immunity and the defendant cited some as well. These are cases from the highest courts in the

UK, Canada, Australia and other countries from the 1700s, 1800s, 1900s and 2000s. The First Defendant dealt with this issue in about 9 pages, running from page 18 to 28. Nowhere in those pages did he cite even one of my 52 cases. In his judgment, he does not even acknowledge in general terms that these cases were cited. One has to read the judgment and relevant submissions to believe this. It was an extreme dereliction of duty.

Issues not dealt with

72. In addition to failure to deal with the 52 cases, as I have said, the First Defendant does not address 7 specific issues and significant arguments raised in my submissions. In doing this, he does not abide by the very basic rules set out in the Supreme Court of Canada case of *R v Sheppard* [2002] 1 S.C.R. 869, 2002 SCC 26, regarding the need to decide issues raised and to give reasons for those decisions. I will here cite only 3 of the 7 issues he just totally avoids.

73. **First,** after the decision in *Thompson* and while my case was pending, the Health Services Authority (Amendment) Law 2016 was passed, which expressly stated that negligence can be a ground of suit unlike before when only bad faith was expressly mentioned. This issue did not arise in *Thompson* and I cited 7 cases in 7 pages of a 41-page Plaintiff's 1st submission indicating that there are authorities which suggest that new legislation can apply to pending legislation. He totally ignored all this and never said anything one way or the other, let alone acknowledge that the argument was made, and authorities cited. When I noticed this in the draft ruling, I indicated in my redline copy that this significant issue was not dealt with. He ignored that as well and proceeded to sign the judgment.

74. **Second,** he deliberately ignored this provision from the Judicial Code of Conduct which I cited to him in my written submissions:

> "[N]o judge can be directed as to his or her own judicial decision by any other judge. Consultation with colleagues when points of difficulty arise is important in the maintenance of standards. In performing judicial duties, however, *the judge shall be independent of judicial colleagues and solely responsible for his or her decisions*."

I cited this to him because he was already expressing a desire not to depart from the decision of Williams J not because of any stated reasons but merely to avoid disagreeing with the other judge.

75. The judge referred in paragraph 69 of his judgement to *Halsbury's* which says that there is no rule of law compelling a judge to agree with another judge. He ignored all this and went along with some obscure (English High Court decision of *Lornamead Acquisitions Ltd-v-Kaupthing Bank HF* [2013] 1 BCLC 73) where a lower court judge expressed unwillingness to disagree with another judge. The case is clearly an outlier and does not come from the House of Lord/Supreme Court or the Court of Appeal. The judge did not even try to reason the matter and indicate what he understood the Judicial Code of Conduct to be saying or what its standing was in relation to the case he cited which was about judicial comity. Judicial comity is one matter, deciding to blindly follow another judge without considering detailed new arguments that are placed before a judge, is another. Indeed, Justice Mangatal, in her short tenure on the Grand Court has been more bullish in this regard and clearly does not follow the shrinking violet approach of the First Defendant. During that time, she disagreed with another judge at least twice, including in *BDO*.

76. **Third,** I cited Order 15 Rule 16 of the Grand Court Rule which reads:

> *Declaratory Judgement (O15, r 16)*
> *16. No action or other proceeding shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the Court may make binding declarations of right whether or not any consequential relief is or could be claimed.*

This was an important part of my argument. Basically, I said that this supports the argument that the words "not liable in damages" do not mean that the court cannot hear it at least to determine the rights of the parties even if damages are not awarded. He never even mentioned this Grand Court provision. Indeed, since then, I have found that this is actually rooted in the Grand Court Law, section 11 (2) which provides:

> *. . . the Court shall have and shall be deemed always to have had power to make binding declarations of right in any matter whether any consequential relief is or could be claimed or not.*

This echoes (or is the origin of) Order 15 Rules 16 of the Grand Court Rules cited above.

77. I also had a detailed argument related to the Constitution as to why a case still has to be heard even if damages cannot be awarded. I made the argument that since the provisions being relied upon said "*shall not be liable in damages*" this did not mean that there was immunity from legal process. I also cited statutes from the UK, Australia, Canada and the Caribbean to illustrate the point. He again totally ignored these and never even acknowledged that the argument had been made. He dismissed everything in a paragraph stating:

> *78. In my judgment no authority is required for the proposition that when a statute provides that the staff of a health authority shall not be "liable in damages", the words used are intended to exclude liability for, inter alia, the tort of negligence. A claim in negligence is an action for damages.*

There was no analysis of the linguistic and conceptual points raised and there was a deliberate suppressing of the arguments I advanced.

78. Overall, therefore, I believe that the judgement to be a false document, a forgery. It does not reflect fairly the facts, arguments or issues that were placed before this judge to enable an appeal court to meaningfully carry out its appellate functions. In that regard, it represents the result of an egregiously unfair trial.

Deliberately ignoring of judgement in *BDO v Governor in Cabinet*

79. Since the close of submissions (if you can call them that), as stated above, I came across the decision of Mangatal J in *BDO Cayman v Governor in Cabinet* (2018) 1 CILR 457 with respect to the plain meaning rule. In making reference to that case, I reminded the First Defendant that Justice Williams, who decided *Thompson v Cayman Islands Health Services Authority* (2016) 1 CILR 93, said:

> *33. . . other presumptions of statutory interpretation must not be given greater weight than the plain meaning of section 12.*

Justice Williams also said:

"89. . . . I find that there is no ambiguity or absurdity which requires the Court to apply any other rules of statutory interpretation, or any external aid."

80. Further, Williams J stated (as summarized in the issue notes and headnotes) that, since section 12 was not ambiguous, reference to legislative history and presumptions is impermissible. I basically submitted that these approaches were wrong in law (and Justice Mangatal agreed with that in substance) but the First Defendant rejected my arguments summarily, without analysing or even summarizing them.

PREJUDICE SUFFERED IN COURT OF APPEAL APPLICATION

Prejudice from the Certificate of Order and Reasons by Justice Beatson (CICA)

81. In the ruling given on 5 August 2020 in relation to the argument that the First Defendant failed to address 52 cases and 7 issues, Justice Beatson states in paragraph 5 of the reasons:

It is not necessary, however, for a judgement to identify and explain each and every factor which weighted with the judge or to provide multiple citations for a single proposition particularly on a point such as the immunity point, on which no final decision was reached.

82. This reasoning is clearly misplaced and was facilitated by the falsification of the record in not providing a summary of what was in the skeleton arguments. More specifically, Justice Kawaley did not decide the central issue. The central issue had to do with two cases: **First**, in *Thompson* the judge said that if a provision appears to be clear and unambiguous, then you do not need to read the provision in the context of the statute. It also said that if you do that, and an ambiguity thereby emerges, that is not an ambiguity the court should try to resolve. **Second**, and on the contrary, in *BDO*, the court said that even if a statute appears clear and unambiguous, you still have to read it in its entire context to see if the context might disclose a latent ambiguity. If one emerges as a result of context, then the court must try to resolve that ambiguity even if it effectively means narrowing down or expanding the meaning that was initially thought to be clear. The judge never considered this dichotomy and later basically lied by saying that there was no other case other than *Thompson* on the point. Also, there was the issue of the interpretation of section 12 of the Health Services Act before the 2016 amendment (which raised one set of

interpretational principles) and then the form in which it took after the amendment (which raised a different set of issues, supported from my side by 7 cases) but he never decided these issues.

83. Further, these cases were not all on the same point. As clearly indicated in the CICA application there were 7 cases generally on statutory interpretation; 38 cases on the immunity/plain meaning rule; 4 on "*unless*" orders; and 7 specifically on the 2016 amendment, and how new legislation can apply to pending litigation.

84. What is more, the trial judge does not say that all the submissions were on the same point. This is an invention of the appeal court judge who also apparently did not read CICA application carefully since it even divided the cases into 4 categories in **BHS 3** to the affidavit there to show what each category was dealing with. Justice Kawaley's guilty mind is revealed when he does not acknowledge that these cases and submissions were made and then lies about what was before him. Whereas the submissions were very specific and argued in detail, he said in paragraph 75 that my arguments were "*primarily through statements of broad principle*". This is simply not true. He cited one broad principle I mentioned and then ignored the bulk of my 41-page submissions where I went into great detail.

85. Also, in paragraph 6 (b) of the Reasons, Justice Beatson says as follows:

> *It appears, as stated in the judgement at [5], that the application by video link was first made <u>very</u> shortly before the hearing and only after the court office sent an email to the parties about a hearing: see para 10 (19) of the Applicant's Reply to the Respondent's Response to the Constitutional Motion. At that stage, it was not practicable to make the administrative arrangements for the videoconference hearing; judgement 6.*

86. Again, this is simply not true:

First, Justice Kawaley said in the judgment, "*<u>Shortly</u> before the hearing*" and not "*<u>very shortly</u>*". This is an embellishment or mistake by the Court of Appeal judge. As elaborated in the next point, this is not true.

Second, I first requested a video conference on 14 March, 2019, 8 weeks before the hearing. On that date alone (as one can see from the Attachment), there are 5 emails which were written, received or copied to a total of 4 people who include the Plaintiff; Bridget Myers, the PA; Yasmin Ebanks, the Listing Officer; and Michael Wingrave, the lawyer for the Health Services Authority. That is all on 14 March, 2019 alone. Please see pages 4 to 7 of the Attachment.

Third, there is a further email on 18 March 2019 from Michael Wingrave to Bridget Myers with a copy to Yasmin Ebanks, the Listing Officer and to me, stating that Mr. Wingrave was "*nearly there with obtaining instructions on this issue*", that is the issue of the video conference.

Fourth, there are further emails in May 2019 in the week preceding the hearing, starting 1st May 2020, dealing with the issue. Significantly, the Second Defendant, Bridget Myers (either of her own deliberate falsehood or as directed by Justice Kawaley, or in a conspiracy between them) states falsely in an email of 3 May 2010 that, "*You did not request a similar indulgence when the substantive hearing was fixed.*" This is clearly false. I raised it first on 14 March 2019.

Fifth, even if for the sake of argument it were assumed that all the people who were parties to the emails of March 2019 had forgotten about them, there was enough time on each of the days from 1 May, 2 May, 3 May, 4 May or 5 May to book a Zoom meeting. It is indeed grotesque that the suggestion was even made that there was no time to arrange for a Zoom meeting in a case where there were no witnesses and only two locations, the court's and my location.

Sixth, as will be seen from the Attachment, at the hearing of 6 May 2019, both Justice Kawaley and Mr. Wingrave do not mention that the antecedents of the matter except for Mr. Wingrave saying that Mr. Simamba indicated that he will be available to attend by video conference.

Seventh, the judge does not mention that he denied me the hearing because the request was made "*Shortly before the hearing*". He just says that the facility is "*not available*". In other words, Zoom was not available for 8 weeks.

Eight, the judiciary must have one or more Zoom accounts and you can set up a meeting in about one minute.

Ninth, when the Attorney General applied for costs in the CICA matter, I set out in more detail the evidence showing that the judgement had been falsified. I verily believe that this influenced Justice Beatson in refusing to award costs against me.

87. In paragraph 6 (c) of the Reasons, Justice Beatson states as follows:

> *The circumstances taken into account by the judge and the reasons for this decision that the application turned primarily on points of law, detailed arguments had been submitted on both sides, and that the Applicant wished the case to be heard rather than be adjourned. Judgement [6] and [7] "*

First, there is no legal authority for the suggestion - nor does it make sense to suggest - that because a matter turns primarily on points of law, there is no need for an oral hearing. All appeal cases are heard on points of law and yet it is considered to be important that parties be given an oral hearing.

Second, the matter did indeed turn on points of law (raised in 52 cases and up to 7 issues) but he never considered any of them. So, it seems he needed to hear these arguments since, clearly, he did not read them or care to decide on them.

Third, the suggestion that I "*wished the case to be heard rather than be adjourned*" is a blatant falsehood by Justice Ian Kawaley to justify denial of my right to a hearing. This is emblematic of how my right to have a fair chance to argue the appeal was prejudiced by falsification of the record. In April 2016 at a case conference called by Justice Mangatal to ask me if I still wanted to pursue my case in light of the decision in *Thompson*, I indicated clearly that I disagreed with *Thompson* and wanted to argue my case. She denied me this request repeatedly while I wrote letters and reiterated my request at several management hearings until, in May 2018, I complained to the Judicial and Legal Services Commission. In October 2018, she recused herself, citing the complaint. When Justice Kawaley took over the matter, I asked for a video conference 8 weeks before the date of hearing without any objection from the court apart from asking the other party to state if they objected. That is how badly I wanted to be heard. There is no point at

which I was asked to choose between having an "*early*" judgement without a hearing or a late judgement but have a hearing. If I had been given that choice, I would have chosen to wait a few more weeks or months.

89. What is more, as will be seen in the emails quoted in the Attachment, up to the last minute, I was begging the judge for a hearing. Finally, when he refused me that request (before the hearing), seeing that the judge was bent on denying me a hearing, I wrote the following email on 4 May 2019, with copies to several court clerks:

> *The Judiciary,*
>
> *I will be ready to argue my case at the date listed for hearing that is 10.00AM Cayman time on Monday 6th May 2019. I will be ready for testing of equipment at 9:00AM unless otherwise informed.*
>
> *In case of emergency, I can be contacted at 647-745-0951.*

It is therefore a blatant falsehood by Justice Kawaley to state that I preferred to have the case proceed.

90. Finally, what makes this matter particularly egregious is the pattern of injustices deliberately and persistently perpetrated by Justice Ian Kawaley. To summarize:

- He denied me the most fundamental right underpinning justice, the right to be heard, and then lied about the reason and antecedents – says I requested it late, which was not true. It was requested 8 weeks before the hearing and several court staff and staff in the other party's office will attest to this through emails.
- He ignored all the 52 cases and 7 issues I referred to and then lied about them – that I made only "*statements of broad principle*". The cases dealt with 4 different issues and he never even mentioned a single one of the cases.
- Then, having been given the case of *BDO v Governor in Cabinet*, he ignored it, did not even mention it, and again lied that there was no case disagreeing with *Thompson v CI Governor in Cabinet* – even after it was brought to his attention (and that of the CJ and Justice Mangatal) before he finalized his ruling.

91. Had I been heard, I submit that I would have won the immunity issue and, given a chance to argue the medical and dental case and to send interrogatories to the urologist on the basis of my own two experts' report, I would have won the case or at least met the threshold for justifying the issue to be tried.

92. Ultimately, I was denied a hearing by Justice Mangatal, Justice Kawaley and ultimately even Justice Beatson, while court orders piled up against me.

93. Overall, the decision of Justice Kawaley was unlawful, irrational, disproportionate and procedurally unfair contrary to section 19 of the Constitution.

94. The First Defendant's bungling of simple legal issues also denied me a right to argue certain issues. He ruled that the defendant in *Simamba v CI Health Services Authority*, had immunity. But having made that ruling, effectively he was saying that he had no jurisdiction in the matter. Accordingly, he had no jurisdiction to make an order on the medical issue. But he tried to cling on to jurisdiction by saying that he could compensate me if he could amend the legislation as attempted by the Chief Justice in *Chantelle Day v Governor* if I could produce a further medical report. However, late in 2019 the Court of Appeal decided that he could not do that since the Grand Court had no power to amend legislation. One should have known that even if, for the sake or argument, he still claimed jurisdiction, the Court of Appeal decision eliminated that.

95. And yet, he took up the matter and purported to dismiss it on medical grounds. One would have thought that he should have dismissed it on immunity grounds (broadly or narrowly defined) and then decide that in the circumstances he would not decide the medical and dental matter as he had no jurisdiction. This notwithstanding, he purported to dismiss it on the expert evidence ground and then made a wide order for me to pay all costs from the beginning of the case, effectively including before Justice Mangatal. When I pointed out to him *ex post facto* that I should not pay costs for the irresponsible recusal of Justice Mangatal, he seemed to see the light and amended the order to exclude costs for interlocutory matters before he took over the matter. What is more, he made a final dismissal of the case while we were trying to agree on dates for a summons to review the matter, which is the correct procedure. He abruptly changed his mind without notice (the day after I filed my constitutional motion) ignored this procedure. Then he unilaterally extended the period for filing an extra medical report (without finding out why I had not obtained one) and stated that if the evidence is not produced by then, the matter shall be dismissed. Meanwhile, statements from Justice Beatson and Mr. Wingrave indicate that they consider that the matter of immunity is still to be finally decided by Justice Kawaley. He considers that this is not so and has awarded costs. This is a shambles.

96. If they try to enforce the costs order, I will resist it as it is null and void. He should have dismissed it on the basis of the immunity matter and award costs on that aspect. But he did the wrong thing and awarded costs on a matter on which he had no jurisdiction.

AND THE PLAINTIFF claims:

1. General damages, aggravated damages and exemplary damages arising from denial of a right to a fair trial, breach of statutory duty, defamation by way of slander of title, abuse of authority, abdication of responsibility, and conspiracy;

2. General damages, aggravated damages and exemplary damages arising from what I would have recovered in my negligence suit against the Cayman Islands Health Services Authority;

;

2. Pre- and Post- judgement interest in accordance with the Judicature Law and all other relevant laws;

3. Costs; and

4. Such other orders as the court may think fit.

BH Simamba

Plaintiff in Person

THIS WRIT was issued by BILIKA HARRY SIMAMBA whose address for service is 30 Fairlawn Road, P. O. Box 1393, George Town, Grand Cayman KY1-1110, Cayman Islands

DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE OF WRIT OF SUMMONS

1. The accompanying form of Acknowledgment of Service should be completed by an Attorney acting on behalf of the Defendant or by the Defendant if acting in person. After completion it must be delivered or sent by post to the Law Courts, P.O. Box 495G, George Town, Grand Cayman.

2. A Defendant who states in his Acknowledgment of Service that he intends to contest the proceedings must also serve a defence on the Attorney for the Plaintiff (or on the Plaintiff if acting in person).

If a Statement of Claim is indorsed on the Writ (i.e. the words "Statement of Claim" appear on the top of page 2), the Defence must be served within 14 days after the time for acknowledging service of the Writ, unless in the meantime a summons for judgment is served on the Defendant.

If the Statement of Claim is not indorsed on the Writ, the Defence need not be served until 14 days after a Statement of Claim has been served on the Defendant.

If the Defendant fails to serve his defence within the appropriate time, the Plaintiff may enter judgment against him without further notice.

3. A Stay of Execution against the Defendant's goods may be applied for where the Defendant is unable to pay the money for which any judgment is entered. If a Defendant to an action for a debt or liquidated demand (i.e. a fixed sum) who does not intend to contest the proceedings states, in answer to Question 3 in the Acknowledgment of Service, that he intends to apply for a stay, execution will be stayed for 14 days after his Acknowledgment, but he must, within that time, issue a Summons for a stay of execution, supported by an affidavit of his means. The affidavit should state any offer which the Defendant desires to make for payment of the money by instalments or otherwise.

See over for notes for guidance

Please complete overleaf

Notes for Guidance

1. Each Defendant (if there are more than one) is required to complete an Acknowledgment of Service and return it to the Courts Office.

2. For the purpose of calculating the period of 14 days for acknowledging service, a writ served on the Defendant personally is treated as having been served on the day it was delivered to him.

3. Where the Defendant is sued in a name different from his own, the form must be completed by him with the addition in paragraph 1 of the words "sued as (the name stated on the Writ of Summons)".

4. Where the Defendant is a FIRM and an attorney is not instructed, the form must be completed by a PARTNER by name, with the addition in paragraph 1 of the description "Partner in the firm of (.....)" after his name.

5. Where the Defendant is sued as an individual TRADING IN A NAME OTHER THAN HIS OWN, the form must be completed by him with the addition in paragraph 1 of the description "trading as (.....)" after his name.

6. Where the Defendant is a LIMITED COMPANY the form must be completed by an Attorney or by someone authorised to act on behalf of the Company, but the Company can take no further step in the proceedings without an Attorney acting on its behalf.

7. Where the Defendant is a MINOR or a MENTAL PATIENT, the form must be completed by an Attorney acting for a *guardian ad litem.*

8. A Defendant acting in person may obtain help in completing the form at the Courts Office.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 2020

BETWEEN:

BILIKA HARRY SIMAMBA

PLAINTIFF

AND

JUSTICE IAN KAWALEY

1ST DEFENDANT

BRIDGET MYERS

2ND DEFENDANT

ACKNOWLEDGMENT OF SERVICE OF WRIT OF SUMMONS

If you intend to instruct an Attorney to act for you, give him this form IMMEDIATELY.

Important: Read the accompanying directions and notes for guidance carefully before completing this form. If any information required is omitted or given wrongly, THIS FORM MAY HAVE TO BE RETURNED. Delay may result in judgment being entered against a Defendant whereby he may have to pay the costs of applying to set it aside.

1. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged.

2. State whether the Defendant intends to contest the proceedings (tick appropriate box)

Yes No

3. If the claim against the Defendant is for a debt or liquidated demand, AND he does not intend to contest the proceedings, state if the Defendant intends to apply for a stay of execution against any judgment entered by the Plaintiff (tick box)

Yes No

Service of the Writ is acknowledged accordingly.

BHSimamba

(Signed).....

Plaintiff in Person

Please complete over

Notes on address for service

Attorney: where the Defendant is represented by an attorney, state the attorney's place of business in the Cayman Islands. A Defendant may not act by a foreign attorney.

Defendant in person: where the Defendant is acting in person, he must give his post office box number and the physical address of his residence or, if he does not reside in the Cayman Islands, he must give an address in Grand Cayman where communications for him should be sent. In the case of a limited company, "residence" means its registered or principal office.

Indorsement by plaintiff's Attorney (or by plaintiff if suing in person) of his name, address and reference, if any, in the box below. Indorsement by defendant's Attorney (or by defendant if suing in person) of his name, address and reference, if any, in the box below.

Bilika Harry Simamba
Plaintiff in Person
30 Fairlawn Road
George Town
Grand Cayman, KY1-1110
Cayman Islands

Tel: 345 928 2644 (cell)

Email: bsimamba@yahoo.co.uk

Indorsement by defendant's Attorney (or by defendant if suing in person) of his name, address and reference, if any, in the box below.

See over for Attachment: Letter from Simamba to DPP dated 21 September 2020 – Colour from the original.