



**GRAND COURT OF THE CAYMAN ISLANDS
DIVISION**

CAUSE NO: 113 OF 2025

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW PURSUANT
TO ORDER 53 OF THE GRAND COURT RULES 1995, REVISED**

**AND IN THE MATTER OF THE DECISION OF THE CIVIL SERVICE APPEALS
COMMISSION**

BETWEEN:

THE CHIEF OFFICER, JUDICIAL ADMINISTRATION

Applicant

-AND -

THE CIVIL SERVICE APPEALS COMMISSION

Respondent

- AND-

MALEA BAIN

Interested Party

NOTICE OF MOTION

TAKE NOTICE that pursuant to the leave granted by the Honourable Justice Cheryll Richards KC on 16 April 2025, the Grand Court sitting at the Law Courts, George Town, Grand Cayman will be moved on the _____ day of _____ at _____ o'clock or so soon thereafter as Counsel can be heard, on behalf of the Applicant, for an Order pursuant to GCR Order 53 rule 1(2) for an order of certiorari quashing the Order dated 24 March 2025 and the Decision dated 7 April 2025 of the Civil Service Appeals Commission in Appeal 003/2024;

AND A declaration that the said Order and Decision are unlawful, irrational and procedurally unfair;

AND for an Order that the Respondent pay the costs of this application.

AND Such further or consequential orders as this Honourable Court deems just.

AND TAKE NOTICE that at the hearing of the Motion the Applicant intends to rely upon the Affidavit of Ms Shiona Allenger sworn on 15 April 2025 and the exhibits therein referred to, a copy of which is served herewith.

AND FURTHER TAKE NOTICE that the grounds of this application dated 16 April 2025 are appended hereto.

Dated the 22nd day of April 2025

Attorney General's Chambers

TO: The Clerk of the Court

AND TO: The Civil Service Appeals Commission

AND TO: Mr Delroy Murray, Murray & Westerberg, Attorneys-at-Law for the Interested Party

TIME ESTIMATE: The estimate length of the hearing of this motion is 4 hours.

THIS NOTICE OF MOTION is served by the Attorney General's Chambers, Attorneys-at-Law for the Applicant, whose address for service is: 4th Floor, Government Administration Building, Elgin Avenue, George Town, Grand Cayman, Cayman Islands



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CAUSE OF 2025

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BETWEEN:

THE CHIEF OFFICER, JUDICIAL ADMINISTRATION

Applicant

AND

CIVILSERVICE APPEALS COMMISSION

Respondent

AND

MALEA BAIN

Interested Party

APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

To the Clerk of the Court, Law Courts, George Town, Grand Cayman

Name, address and description of Applicant

The Chief Officer, Judicial Administration
Addressed to: Attorney General's Chambers,
4th Floor, Government Administration
Building, Elgin Avenue, George Town,
Cayman Islands

<p>Judgment, order, decision or other proceeding in respect of which relief is sought:</p>	<p>The Order of the Civil Service Appeals Commission (“Commission”) of 24 May 2025 and Decision dated 7 April 2025 in Appeal 003/2024, whereby the Commission ordered the Applicant to pay to the Appellant the sum of KY\$100,000.00 as monetary relief and KY\$25,000.00 as costs (“the Decision”).</p>
<p>Relief sought:</p>	<ol style="list-style-type: none"> 1) Leave to apply for judicial review and a direction under Order 53, rule 3(10) of the Grand Court Rules that the grant of leave shall operate as a stay of the Order and Decision under challenge pending the final determination of the application for judicial review; Alternatively: 2) Directions for the listing of the application for leave to apply for judicial review and a stay of the Order and Decision under challenge pending the final determination of the application for leave to apply for judicial review. <p><u>Following the determination of the substantive claim:</u></p> <ol style="list-style-type: none"> 1) Declaration that the Order and Decision was unlawful, unreasonable and procedurally unfair for the reasons set out in the grounds for judicial review. 2) An order quashing the Order and the Decision under challenge (certiorari).

	<p>3) Such further relief as may be needed to give effect to the Court's judgment.</p> <p>4) Costs.</p>
Name and address of Applicants' attorney	<p>Attorney General's Chambers 4th Floor Government Administration Building Elgin Avenue, George Town, Cayman Islands</p>
Signed	<p>Dated 15 April 2025</p>

GROUND ON WHICH RELIEF IS SOUGHT

A. INTRODUCTION

1. For the reasons set out below, the Applicant seek an order providing:

- a) a grant of leave to appeal the decision of the Civil Service Appeals Commission ("Commission") dated 7 April 2025 and a direction that the grant of leave shall operate as a stay of enforcement of the Decision, namely by staying any obligation to pay the monetary award of KY\$100,000.00 and the costs award of KY\$25,000.00, pending the final determination of the appeal;
- b) an order that enforcement of the Commission's Order and Decision, including but not limited to any steps taken to demand or collect the sums awarded, be stayed pending further order of the Court or the final determination of this application for leave to appeal.

B. BACKGROUND

2. On 24 March 2025, the Commission issued an Order in Appeal 003/2024 directing the Applicant (Respondent in the appeal before the Commission) to pay to the Third Party (Appellant in the appeal before the Commission) the sum of CI\$100,000.00 by way of damages and CI\$25,000.00 in respect of legal costs. The Order stipulated that these sums were to be paid within twenty-one (21) days of receipt. The Order was received by the Applicant shortly thereafter. However, at the time the Order was issued, the Commission's reasoned decision had not yet been released. Pursuant to section 54(3) of the Public Service Management Act (2018 Revision), the Commission has 30 days within which to render its decision on the appeal.

3. By correspondence dated 25 March 2025, the Attorney General's Chambers wrote to the Commission to acknowledge receipt of the Order and to raise concern over the practical and procedural inconsistency that had arisen. Specifically, the Applicant noted that the obligation to make payment within twenty-one days of the Order's issuance created a prejudicial circumstance, as the parties were being required to comply with a binding and substantive order prior to having access to the Commission's reasoning. The Applicant highlighted that premature compliance with the Order, without the benefit of reviewing the legal and factual basis upon which it was made, could be construed as acquiescence to the award, thereby undermining any subsequent application to challenge the Commission's decision by way of judicial review. Accordingly, the Applicant respectfully requested that the Commission consider amending the timeline for compliance, so that payment would become due within twenty-one days of the issuance of the reasoned decision rather than the Order itself.

4. In the same correspondence, the Applicant proposed, as a gesture of good faith and in recognition of the Third Party's circumstances, to make an interim payment consisting of the full amount awarded for legal costs (CI\$25,000.00), together with a partial payment of CI\$50,000.00 towards damages. This represented the minimum amount that both parties had accepted as contractually due prior to the hearing. The offer was explicitly made without prejudice to the Applicant's right to challenge the excess of the award through legal proceedings.

5. Shortly thereafter, on or around 30 March 2025, the Chair of the Commission, Mr Huw St. J. Moses OBE, responded to the Applicant's concerns via email. The Chair indicated that the Commission was functus officio and therefore no longer possessed jurisdiction to vary the terms of its Order. He further advised that, unless stayed by the Grand Court, the payment obligation remained binding and enforceable. He did not accept that compliance with the Order would prejudice the Applicant's legal position in judicial review proceedings and confirmed that the Commission did not view the proposed interim payment as unreasonable. However, he noted that the Commission would refrain from enforcing the Order pending delivery of the written decision, should the parties reach agreement in respect of the interim arrangement. The Chair also explained that the reason for the delay in issuing the decision was attributable to his medical condition, though he anticipated being in a position to provide the decision within the week, depending on medical advice.
6. The same day, the Attorney General's Chambers conveyed the Chair's position to the Interested Party's counsel, Mr Greg Walcolm of Murray & Westerberg, and sought agreement to the interim payment proposed. However, by correspondence dated 31 March 2025, Mr Walcolm rejected the proposal, insisting instead that the Applicant comply with the Order in full. He referenced the Chair's indication that Commission would not amend the Order and that payment would not prejudice the Applicant's ability to pursue judicial review.
7. In light of this sequence of events, the Applicant was placed in an invidious position. The Order imposed a strict and imminent deadline, yet the Applicant was without access to the underlying reasons. Attempts to reach a compromise were rebuffed by the Interested Party. The Chair of the Commission confirmed that the Commission could not vary its own Order and that relief could only be obtained through an application to the Grand Court. Faced with the imminent expiry of the 21-day deadline and the real risk of enforcement or adverse procedural consequences, the Applicant had no reasonable alternative but to proceed with the filing of an application for leave to appeal or for judicial review on an urgent basis.

8. The timing of the Order's enforcement, which preceded the issuance of the Commission's reasoned decision, created a practical dilemma: the Applicant was required to comply with significant financial obligations before having the benefit of the Commission's full reasoning. In this context, the Applicant engaged promptly and transparently with both the Commission and the Third Party's counsel, proposing an interim payment as a good faith measure to preserve its legal position while continuing to assess the matter. However, the lack of consensus and the proximity of the compliance deadline left the Applicant with no reasonable alternative but to act expeditiously. The Applicant therefore respectfully submits that, in these exceptional and time-sensitive circumstances, the application for leave was both necessary and appropriate.

C. GROUNDS ON WHICH RELIEF IS SOUGHT

9. Pursuant to section 19(1) of the Cayman Islands Constitution Order 2009 ("Constitution"), all decisions and acts of public officials, including those of statutory tribunals such as the Commission, must be lawful, rational, proportionate, and procedurally fair. In this regard, the proposed appeal concerns the lawfulness, rationality, and procedural fairness of the Commission's decision dated 7 April 2025. In summary, there are three principal grounds upon which leave to appeal is sought:

- i. **Ground 1 – The Decision is unlawful:**

- a. The Commission's Order that the Applicant pay KYD \$100,000.00 to the Third Party significantly exceeds any amount sought and is unsupported by the legal or factual submissions advanced before the Commission. The principal issues before the Commission was the Third Party's entitlement to compensation for accrued vacation leave and the extent to which she had mitigated her loss following her re-employment in the private sector on 2 December 2024. No claim was advanced for reputational damage or general damages, nor was the Third Party cross-examined or called upon to prove any such matters.

- b. Moreover, the Commission's jurisdiction is expressly confined by section 54 of the Public Service Management Act (2018 Revision) ("the Act"). Pursuant to section 54(2) of the Act, the Commission may only consider a decision of a Chief Officer where it is satisfied that the decision was unfair, unreasonable, or inconsistent with the requirements of Part 7 of the Act. This jurisdiction is narrowly framed and is directed towards addressing breaches that arise within the context of employment in the public service. There is no provision, express or implied, that empowers the Commission to award compensation for reputational harm or to grant general damages of the kind typically awarded in tort.
- c. Section 60 of the Act confers general powers on the Commission to grant appropriate remedies including monetary relief, in furtherance of its statutory mandate. While section 60 of the Act provides that the Commission "may make such determination as it considers appropriate and may, without limiting the generality of this power, grant monetary relief and make interim orders," this discretionary authority must be exercised within the boundaries set by the Act.
- d. Section 60 does not operate as a freestanding or unlimited remedial power. Rather, it enables the Commission to grant appropriate relief in furtherance of its core function, namely, the adjudication of employment-related disputes governed by the Act and the Personnel Regulations. It does not permit the Commission to stray into areas outside its statutory mandate or to award relief on the basis of speculative or unproven claims, such as damage to reputation, which were neither pleaded nor substantiated at the hearing.
- e. In purporting to award monetary relief that appears to include compensation for reputational damage (despite the absence of any evidentiary basis or statutory authority to do so) the Commission acted beyond the scope of its lawful powers. The Order imposes financial liability on the Applicant that exceeds what the Act permits and rests on considerations unrelated to the pleaded issues or the legal framework governing the dispute. It is therefore submitted that the Commission's decision is unlawful.

ii. Ground 2 – The Decision is irrational:

- a. The Commission's reasoning reflects a departure from the evidence and submissions placed before it. The parties confined their arguments to the issue of contractual loss arising from the early termination of the Third Party's fixed-term employment. The Applicant assessed the loss at KYD \$58,643.81, and the Third Party placed her calculation at KYD \$71,957.24. Despite this relatively narrow range of figures and the absence of any additional pleaded heads of loss, the Commission awarded the Third Party KYD \$100,000.00, a rounded sum not directly derived from either party's submissions or the underlying contractual entitlements.
- b. In explaining its rationale, the Commission appears to have relied, in part, on extraneous considerations including reputational harm and the cost of legal representation. This approach is particularly concerning in light of the Commission's own findings regarding legal costs. It expressly concluded that the fees incurred by the Third Party, totalling over KYD \$60,000.00 were excessive, and it awarded only KYD \$25,000.00 in costs, having regard to issues such as duplication of work, the use of senior counsel without support from junior staff, and the public interest in maintaining proportionality between recoverable costs and the complexity of the matter. The Commission further noted that many of the costs claimed would likely have been reduced or disallowed had the matter been subject to formal taxation.
- c. Against this backdrop, it is difficult to reconcile the Commission's cost ruling with its decision to award damages in excess of what was claimed. The effect of the award appears to be, in substance, to compensate for legal fees that were otherwise deemed irrecoverable, thereby reintroducing, through damages, costs that the Commission had explicitly excluded. This creates an element of inconsistency and raises legitimate concerns as to whether the Commission applied its discretion on a principled and proportionate basis.

- d. While the Commission is afforded a degree of discretion under section 60 of the Act to grant monetary relief, that discretion must be exercised rationally and within the limits of the statutory scheme. In the present case, the approach taken lacks sufficient clarity and justification to support the extent of the award made. It is, in the Wednesbury sense, so unreasonable that no rational tribunal properly directing itself could have arrived at such a decision. It is therefore unsustainable in law.

iii. Ground 3 – The Decision lacks procedural fairness:

- a. The decision also suffers from a fundamental lack of procedural fairness. The Commission introduced and relied upon considerations, most notably alleged reputational damage, that were neither properly pleaded nor supported by evidence, and were never subjected to adversarial scrutiny. The Third Party was not cross-examined on this matter, and no documentary or other evidentiary material was submitted to support such a claim. Nevertheless, the Commission appears to have treated this speculative harm as a central factor in determining and enhancing the monetary award.
- b. Crucially, the Applicant was afforded no opportunity to challenge the relevance, accuracy, or evidential basis of any assertions relating to reputational damage. The Commission's reliance on such untested considerations deprived the Applicant of a fair hearing on a material issue that ultimately influenced the outcome. This constitutes a serious departure from the basic tenets of procedural fairness.
- c. In the circumstances, the Applicant was denied a fair opportunity to be heard on issues that materially influenced the Commission's decision. The process by which the monetary relief was assessed and determined failed to comply with the procedural safeguards mandated by section 19(2) of the Cayman Islands Constitution Order 2009, which guarantees that all decisions of public authorities must be lawful, rational, proportionate, and procedurally fair. The

Commission's decision, as issued, therefore falls short of these constitutional and statutory requirements.

- d. On 3 March 2025, the Interested Party filed a writ of summons in the Grand Court, asserting a claim for defamation arising out of her former employment within Judicial Administration. The writ was formally served on the Applicant on 25 March 2025. The writ claims general damages in tort for reputational harm. The coincidence of timing between the service of the writ and the issuance of the Commission's Order gives rise to legitimate concern that the Commission's award (particularly the element of damages exceeding what was claimed contractually) may have been influenced, whether consciously or unconsciously, by considerations more appropriately reserved for determination in the defamation proceedings. This creates a serious risk of overlapping or duplicative recovery and suggests that the Commission's decision may have been tainted by extraneous and prejudicial considerations, thereby exceeding its statutory remit under the Public Service Management Act.

10. In awarding compensation that appears to be grounded in reputational harm (despite the absence of a legal or evidential foundation) the Commission exceeded the boundaries of its statutory remit. The Act does not confer authority upon the Commission to award damages for reputational injury, which is inherently subjective and ordinarily assessed by a court of law with the benefit of full evidentiary procedures. In the circumstances, the award lacks both legal foundation and procedural integrity, and the process by which it was determined failed to meet the minimum standards of fairness required under the Cayman Islands Constitution and established principles of natural justice.

11. In the premises, the Applicant respectfully seeks an order granting leave to appeal the Commission's decision on the grounds that it is unlawful, irrational and procedurally unfair. The Applicant seek a further order setting aside or varying the monetary award imposed by the Commission and such further relief as the Court considers just.

D. LEAVE TO APPLY

12. As observed by Lord Bingham in *R v Secretary of State for Trade and Industry, ex parte Eastaway* [2000] 1 WLR 2222:

“The requirement of permission to apply for judicial review is imposed primarily to protect public bodies against weak and vexatious claims. The requirement of permission to appeal is imposed primarily to protect the courts against the burden of hearing and adjudicating on appeals with no realistic chance of success.”

13. The leave stage is intended to operate as a procedural filter, excluding claims that are plainly unmeritorious, while ensuring that those raising properly arguable grounds receive a full and fair hearing.
14. This case demonstrably satisfies, and indeed surpasses, the standard required at the leave stage. The Applicant has identified specific and clearly arguable errors in the Commission’s decision. Errors that go not only to the merits of the award, but also to the lawfulness, rationality, and procedural fairness of the decision-making process itself. These are not merely disagreements on the facts or amount of compensation awarded. Rather, they concern the legality of the Commission’s approach, its interpretation and application of the statutory framework, and the procedural safeguards to which parties appearing before it, are entitled. Each of these matters raises questions that merit consideration by the Court.
15. Accordingly, it is respectfully submitted that the Applicant has a realistic prospect of success. The issues raised are neither abstract nor academic, but go directly to the scope of the Commission’s powers and the integrity of its process.

E. INTERIM RELIEF

15. In light of the matters set out above, the Applicant respectfully seeks a stay of the Commission's Order pending the determination of the substantive appeal. This request is made to preserve the status quo and prevent the enforcement of the monetary award prior to the Court's adjudication on the lawfulness and propriety of the Decision. The Applicant submits that such relief is consistent with the Court's powers under Order 53 Rule 3(10)(a) of the Grand Court Rules, which permits the grant of interim relief in the proceedings where the relief sought is an order of prohibition or certiorari.
16. Given that the central issues raised in the appeal concern issues of jurisdiction, procedural fairness, and rationality (each of which directly affects the validity of the award) it would be just and proportionate for the Court to grant a stay to ensure that the appeal is not rendered nugatory and to avoid irreparable prejudice to the Applicant in the interim. Order 53 Rule 3(10) of the Grand Court Rules provides:

“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”.

F. RELIEF

17. The Applicant seeks the following relief:
- i. An interim stay as outlined above.
 - ii. A declaration that the Decision of the Civil Service Appeals Commission is unlawful, irrational and/or procedurally unfair for the reasons set out in the grounds for judicial review.
 - iii. An order quashing the Decision under challenge by way of certiorari;
 - iv. Such further or other relief as may be necessary to give effect to the Court's judgment;
and
 - v. Costs.



18. A draft of the proposed order is attached hereto for the Court's consideration.

Attorney General's Chambers
Attorney General's Chambers

Dated this 15th day of April 2025

TO: The Clerk of the Court

TIME ESTIMATE: The estimated length of the hearing of this summons is half hour.