

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
COMMON LAW AND EQUITY**

2018/CLE/lab/00596

GLEN LAVILLE

Plaintiff

AND

**ADRIAN GIBSON, Executive Chairman
Of the WATER & SEWERAGE CORPORATION**

First Defendant

AND

**HON. DESMOND BANNISTER
MINISTER OF PUBLIC WORKS with
Responsibility for the Water and Sewerage
Corporation**

Second Defendant

AND

THE ATTORNEY GENERAL

Third Defendant

Before: Hon. Justice Keith H. Thompson

**Appearances: Mr. Sidney Campbell along with Mr. Cyril Ebong of Counsel
for the Applicant;**
**Mr. Ferron Bethel along with Mrs. Viola Major of Counsel for
the 1st Defendant;**
**Mr. David Higgins along with Adelnia Roach of Counsel for
the 2nd & 3rd Defendants**

Hearing dates: November 19th, 2018

March 7th, 2019

January 15th, 2020

RULING

- [1] The Plaintiff filed a Summons on January 07th, 2020 for an application seeking an order for leave to re-amend his Specially Endorsed Writ of Summons pursuant to Order 20 Rule 5 and 15/6, /7 of the Rules of the Supreme Court 1975 and under the Inherent Jurisdiction of the Court.
- [2] In essence, the Plaintiff is seeking to add parties in particular the WATER and SEWERAGE CORPORATION and THE MINISTRY OF PUBLIC WORKS.

CASE FOR THE PLAINTIFF:

- [3] Counsel for the Plaintiff explained that upon agreement to amend prior, a mistake was made thereby removing the Water and Sewerage Corporation as a party. This was pursuant to a summons filed November 08th, 2018. This Summons sought an amendment to;

1. i) By inserting "Adrian Gibson, Executive Chairman of the"
- ii) By inserting "Hon. Desmond Bannister, Minister of Public Works with responsibility for Water and Sewerage Corporation and",
2. to file and serve the Writ and Statement of Claim on the Defendants.

AND THAT provisions be made for the cost of this application.

- [4] This is actually an application to RE-ADD the Water and Sewerage Corporation which the First Defendant opposes in the strongest of terms on the grounds that the proposed amendment to now re-add a party is OUTSIDE OF THE APPLICABLE LIMITATION PERIOD.

BACKGROUND:

- [5] This action was commenced by a Specially Endorsed Writ of Summons ^(WOS) was filed May 24th, 2018. The Water and Sewerage Corporation ("WSC") was named as First Defendant.

- [6] Paragraph 1 of the Statement of Claim (SOC) stated that the First Defendant was a statutory Corporation, which was established pursuant to the Water and Sewerage Corporation Act Chapter 196 of the Revised Statute Laws of the Bahamas ("The Act").

- [7] It is of special note that the first WOS in its SOC at paragraph 2 states;

"Sometime on or about 1987 the Defendant employed the Plaintiff in the position. I am Assistant Engineer pursuant to partly written partly oral indefinite employment agreement."

- [8] It is only at paragraph 5 of the SOC that the Plaintiff identifies which Defendant it claims to be his employer. Paragraph 5 states:

[8] It is only at paragraph 5 of the SOC that the Plaintiff identifies which Defendant it claims to be his employer. Paragraph 5 states:

5. **“The Plaintiff has been in the employ of the First Defendant for more than thirty-one (31) years and was eligible to retire even though mandatory retirement occurs on attaining the age of sixty (60) years.”**

[9] At the time of the termination, the plaintiff held the position of General Manager of the (WSC). In this capacity the Plaintiff was responsible for the day to day administration of the Corporation’s affairs in addition to providing technical advice and guidance policy.

[10] Appearances were entered inclusive of an appearance by WSC, which was filed June 7th, 2018. A Defence was also filed July 04th, 2018.

[11] The Plaintiff filed a summons on 08th November, 2018, mentioned above at paragraph 3. As stated earlier, this summons as drafted was seeking to insert “Adrian Gibson” and the Hon. Desmond Bannister both in their respective capacities of Chairman and Minister.

[12] An Order granting such amendment was made on November 19th, 2018 and subsequently an Amended Writ of Summons was duly filed on February 08th, 2018. The perfected Order was filed February 06th, 2019.

[13] The trial of the action itself was scheduled to commence on January 15th & 16th, 2020. It would appear that Adrian Gibson despite having been added as a party

was never served with the WOS, but caused an appearance to be entered on his behalf demonstrating that he had every intention to defend the action as against himself.

[14] The Plaintiff's position is that it is open to all parties to amend up to the date of judgment. However, counsel for the Plaintiff did not cite any authority in that regard. However, that is trite law and can be found in Order 20 /5 - 8/9 of the White Book inclusive of various authorities.

[15] The Executive Chairman however, is making a different point, he is making the point of the limitation period.

[16] It is of some importance to highlight the fact that the Plaintiff in his first WOS sued WSC as First Defendant. Counsel for the WSC entered an appearance on behalf of the WSC. By the Summons filed November 08th, 2018 which simply sought insertions, a totally different light glows on the entire action.

[17] The action then became entitled.

GLEN LAVILLE

Plaintiff

AND

**ADRIAN GIBSON, Executive Chairman of the
WATER AND SEWERAGE CORPORATION**

First Defendant

HON. DESMOND BANNISTER Minister of Public Works
With responsibility for the Water and Sewerage Corporation

Second Defendant

AND

THE ATTORNEY GENERAL

Third Defendant

[18] By Summons filed January 07th, 2020, the Plaintiff sought a further amendment (Re-Amendment) of the WOS relative to parties. This summons seeks to “Re-Add the WATER AND SEWERAGE CORPORATION as First Defendant and to re-add the MINISTRY OF PUBLIC WORKS as Third Defendant.”

[19] Adrian Gibson, Executive Chairman of the Water and Sewerage Corporation (“WSC”) now takes the position that this is a new action against the intended First Defendant and as the intended First Defendant is a public body, formed by statute pursuant to the WATER AND SEWERAGE CORPORATION ACT, Chapter 196, (“The Act”), the Plaintiff is barred by the Limitation Act.

[20] A new action against the WSC must be in compliance with the Limitation Act is the First Defendant’s argument.

[21] Section 12 of the Limitation Act provides;

“(1) Where any action, prosecution or other proceeding is commenced against any person for any act done in pursuance or execution or intended execution of any written law or of any public duty or authority or in respect of any alleged neglect or default in the execution of any such written law, duty or authority the provisions of sub-section (2) shall have effect.

(2) The action, prosecution or proceeding shall not lie or be instituted unless it is commenced within twelve months next after the act, neglect or default complained of or in the case of a continuance of injury or damage within twelve months next after ceasing thereof.”

[22] Counsel for the Executive Chairman says that the issue for determination in this matter is whether the Plaintiff was engaged as General Manager, a statutory position, under a private contract or a public contract, and whether the duty to terminate was a public duty. In support he cites the cases of **AMBER ANDERSON – THOMAS V DEEPAK BHATNAGAR 2015/CLE/gen/00282** and **ALVES V THE ATTORNEY GENERAL OF VIRGIN ISLANDS [2017] UKPC 42.**

[23] For clarification, I think it prudent to revert to the application by the Plaintiff which is for an amendment to the WOS. Counsel for the Executive Chairman is of the view that by the Summons filed November 08th, 2018, the Plaintiff sought leave to amend the WOS by (i) removing WSC as the First Defendant and replacing it with “Adrian Gibson, Executive Chairman of Water and Sewerage Corporation” and (ii) removing Ministry of Public Works as Second Defendant and replacing it with “Hon. Desmond Bannister, Minister of Public Works with responsibility for Water and Sewerage Corporation.

[24] There was a perfected Order in that regard filed February 06th, 2019. In effect therefore, what took place on that application and order subsequent thereto was the removal of the Executive Chairman, “WATER AND SEWERAGE CORPORATION” and also the removal of “MINISTRY OF PUBLIC WORKS”.

[25] This is what in my opinion created the legal defence of the Executive Chairman as the Plaintiff now seeks by his summons of January 07th, 2020 to re-add WSC and MINISTRY OF PUBLIC WORKS back into the proceedings. This is

what raises the issue of any claim now being brought against WSC being statute barred under the provisions of the Limitation Act.

MISTAKE:

[26] Counsel for the Plaintiff says that there was never an intention to remove WSC and MINISTRY OF WORKS from the proceedings. However, the summons was very specific and when asked by the Court, counsel for the Plaintiff confirmed that the summons of the 08th November, 2018 sought exactly what it said. Now counsel says there was a mistake in the drafting of the WOS.

CASE OF THE MINISTRY OF PUBLIC WORKS and THE ATTORNEY GENERAL):

[27] Counsel for the Ministry of Public Works and for the Attorney-General rightly points out the fact that he objects to the Ministry of Public Works being re-added as there are no particulars set out in the SOC whatsoever. In this regard, I totally agree and will grant the removal of the Attorney-General and deny the re-adding of the Ministry of Public Works, as there are absolutely no particulars whatsoever relating to the Ministry of Public Works and the Attorney-General.

THE LAW:

[28] The thrust of the objection to the application comes from counsel for the WSC and the Executive Chairman. It is an objection in the strongest of terms.

[29] The application is pursuant to Rules of the Supreme Court Order 20, Rule 5 and Order 15, Rule 6 and 7;

Order 20, Rule 5:

“5. (1) Subject to Order 15, rules 6, 7 and 8 and the following provisions of this rule, the Court may at any stage of the proceedings allow the plaintiff to amend his writ, or any party to amend his pleading, on such terms as to costs or otherwise as may be just and in such manner (if any) as it may direct.

(2) Where an application to the Court for leave to make the amendment mentioned in paragraph (3), (4) or (5) is made after any relevant period of limitation current at the date of issue of the writ has expired, the Court may nevertheless grant such leave in the circumstances mentioned in that paragraph if it thinks it just to do so.

(3) An amendment to correct the name of a party may be allowed under paragraph (2) notwithstanding that it is alleged that the effect of the amendment will be to substitute a new party if the Court is satisfied that the mistake sought to be corrected was a genuine mistake and was not misleading or such as to cause any reasonable doubt as to the identity of the person intending to sue or, as the case may be, intended to be sued.

(4) An amendment to alter the capacity in which a party sues (whether as plaintiff or as defendant by counterclaim) may be allowed under paragraph (2) if the capacity in which, if the amendment is made, the party will sue is one in which at the date of issue of the writ of the making of the counterclaim, as the case may be, he might have sued.

(5) An amendment may be allowed under paragraph (2) notwithstanding that the effect of the amendment will be to add

or substitute a new cause of action if the new cause of action arises out of the same facts or substantially the same facts as a cause of action in respect of which relief has already been claimed in the action by the party applying for leave to make the amendment.”

Order 15, Rule 6 & 7:

“6. (1) No cause or matter shall be defeated by reason of the misjoinder or non-joinder of any party; and the Court may in any cause or matter determine the issues or questions in dispute so far as they affect the rights and interests of the persons who are parties to the cause or matter.

(2) At any stage of the proceedings in any cause or matter the Court may on such terms as it thinks just and either of its own motion or on application –

(a) order any person who has been improperly or unnecessarily made a party of who has for any reason ceased to be a proper or necessary party, to cease to be a party.

(b) order any of the following persons to be added as a party, namely –

(i) any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon; or

(ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which in the opinion of the Court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter.

But no person shall be added as a plaintiff without his consent signified in writing or in such other manner as may be authorised.

(3) An application by any person for an order under paragraph (2) adding him as a party must, except with the leave of the Court, be supported by an affidavit showing his interest in the matters in dispute in the cause or matter or, as the case may be, the question or issue to be determined as between him and any party to the cause or matter.

7. (1) Where any person against whom an action would have lain has died but the cause of action survives, the action may, if no grant of probate or administration has been made, be brought against the estate of the deceased.

(2) Without prejudice to the generality of paragraph (1), an action brought against “the personal representatives of A.B. deceased” shall be treated, for the purposes of that paragraph, as having been brought against his estate.

(3) An action purporting to have been commenced against a defendant who has died shall, if the cause of action survives, and no grant of probate or administration has been made, be treated as having been brought against his estate in accordance with paragraph (1).

(4) In any such action as is referred to in paragraph (1) or (3)

-

(a) the plaintiff shall, during the period of validity for of the writ or originating summons, applying to the Court for an order appointing a person to represent the deceased's estate for the purpose of the proceedings or, if a grant of probate or administration has been made since the commencement of the action, for an order that the personal representative of the deceased be made a party to the proceedings, and in either case for an order that the proceedings be carried on against the person so appointed or, as the case may be, against the personal representative, as if he had been substituted for the estate;

(b) the Court may, at any stage of the proceedings and on such terms as it thinks just and either of its own motion or on application, make any such order as is mentioned in subparagraph (a) and allow such amendments (if any) to be made and make such other order as the Court thinks necessary in order to ensure that all matters in dispute in the proceedings may be effectually and completely determined and adjudicated upon.

(5) Before making an order under paragraph (4) the Court may require notice to be given to any insurer of the deceased who has an interest in the proceedings and to such (if any) of the persons having an interest in the estate as it thinks fit.

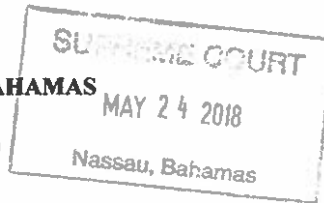
(6) Where an order is made under paragraph (4), rules 8(4) and 9(3) and (4) shall apply as if the order had been made under rule 7 on the application of the plaintiff.

(7) Where no grant of probate or administration has been made, any judgment or order given or made in the proceedings shall bind the estate to the same extent as it would have been bound if a grant had been made and a personal representative of the deceased had been a party to the proceedings.”

[30] Counsel for the WSC and the now Executive Chairman takes the position that to now make an application to re-add the “WATER & SEWERAGE CORPORATION” places the Plaintiff outside of the limitation period. In this regard he cites Section 12 of the LIMITATION ACT, which is set out in full at paragraph 21.

[31] In the original WOS, the SOC read thus;

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law and Equity Division



Gen 2018/CLE/mb7 00596

BETWEEN

GLEN LAVILLE

Plaintiff

AND

WATER AND SEWERAGE CORPORATION

First Defendant

AND

MINISTRY OF PUBLIC WORKS

Second Defendant

AND

THE ATTORNEY GENERAL

Third Defendant

ELIZABETH THE SECOND, by the Grace of God, Queen of the Commonwealth of The Bahamas and of her other Realms and Territories. Head of the Commonwealth.

TO: WATER AND SEWERAGE CORPORATION
87 Thompson Blvd
Nassau, Bahamas

TO: Ministry of Public Works
John F. Kennedy Drive
Nassau, Bahamas

TO: THE ATTORNEY GENERAL
The Office of the Attorney General
John F. Kennedy Drive
Nassau, Bahamas

WE COMMAND YOU that within 14 days after service of this Writ on you inclusive of the day of such service, you do cause an appearance to be entered in an action at the suit of Glen Laville, (former General Manager of the Water and Sewerage Corporation). of Nassau, Bahamas c/o **CAMPBELL-EBONG CHAMBERS**, No. 51 Infant View Road. Nassau, Bahamas.

AND take notice that in default of your so doing the Plaintiff may proceed therein, and judgment may be given in your absence.

WITNESS the Honorable Mr. Stephen Isaacs, Our Acting Chief Justice of our Commonwealth of The Bahamas the day of in the year of Our Lord Two Thousand and Fourteen.

REGISTRAR

This Writ is to be served within twelve calendar months from the date thereof, or, if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

The Defendants may enter an appearance personally or by Attorney either by handing in the appropriate forms, duly completed, at the Registry of the Supreme Court, BAF Financial Centre, Marlborough Street, in the City of Nassau, on the Island of New Providence, one of the Islands of the Commonwealth of The Bahamas or by sending them to that office by post.

If the Defendants enter an appearance they must also deliver a Defence to the Attorney for the Plaintiff within fourteen days from the last day of the time limited for appearance, unless such time is extended by the Court or a Judge, otherwise Judgment may be entered against them without notice, unless they have in the meantime been served with a Summons for Judgment.

STATEMENT OF CLAIM

1. The First Defendant is a statutory Corporation established pursuant to The Water and Sewerage Corporation Act, Chapter 196, Revised Statute Laws of The Commonwealth of The Bahamas (2002).
2. Sometime on or about 1987 the Defendant employed the Plaintiff in the position of an Assistant Engineer pursuant to a partly written partly oral indefinite employment agreement.
3. The Third Defendant is sued by virtue of section 12 of the Crown Proceedings Act.
4. The Plaintiff continued to be employed by the Defendant until the 14th March 2018 when the Defendant breached the Plaintiff's contract by unfairly and /or in the alternative wrongfully dismissed the Plaintiff against his right not to be unfairly dismissed or wrongfully terminated. See Section 34 of the Employment Act.

5. The Plaintiff has been in the employ of the First Defendant for more than thirty one (31) years and was eligible to retire even though mandatory retirement occurs on attaining the age of sixty (60) years.
6. The First Defendant terminated the Plaintiff unfairly against his right to a fair compensation and / or in the alternative wrongfully: See sections 34, 35, 45, 46, 47 and 48 of the Employment Act, and /or in the alternative reasonable notice which in the circumstances constitute salary and benefits up to mandatory age of retirement at age 60. The Plaintiff had a legitimate expectation to work for the Defendant to the said age of retirement.
7. At the time of dismissal the Plaintiff earned a salary of \$124,070.00 per year and was also entitled to the following benefits:, accrued vacation days for 3.9 years accrued at 28 days per year, accrued casual days on 3.9 years at 10 days per year, accrued group medical insurance premium for 3.9 years to which the First Defendant contributed \$600.00 per month on behalf of the Plaintiff, Gratuity payment (from pension plan), 200 accrued sick leave days at 50%, monthly pension payments upon attaining the age of 60 years, in the sum of \$5,169.07 and any salary increase granted to executive staff of the Defendant over the Notice period.
8. The Plaintiff was a member of the Water & Sewerage Management Union and was elected to treasurer of the said union sometime between 1993 and 1994, during which time the union negotiated better terms and conditions which became a part of his contract of employment by virtue of Section 4(a) and 4(b) of the Employment Act.
9. On or about the 29th day of September, A.D., 2017, the First Defendant's Chairman of the Board of Directors had placed the Plaintiff on administrative leave without reason/s and or unlawfully as such disciplinary powers was only available to the Minister of Public Works as per the Water and Sewerage

Corporation Act. In this regard the said administrative leave constituted constructive dismissal of the Plaintiff contract of employment.

10. Further, the manner in which the administrative leave and unfair dismissal and or in the alternative the wrongful dismissal was carried out, on the face of it, appears to have been intended to and did cause harm to the Plaintiff's reputation. Therefore the plaintiff is entitled to be paid for aggravated bad faith damages and damage to his reputation. In the case of damage to reputation it is to be assessed for the period of 10 years as the Plaintiff is able to work in his craft up to the age of 70 years.
11. The action of Second Defendant's Permanent Secretary and the First Defendant's, Executive Chairman of the Board of Directors by not providing an investigation of the matter and allowing the Plaintiff to respond to the allegations against him, constitutes a breach of Section 33 of the Act and natural justice.
12. Every employee shall have the right not to be unfairly dismissed by his employer:
See Section 34 of the Act.
13. At termination the First Defendant paid the Plaintiff for accrued salary and vacation accrued to the date of termination.
14. By reason of the First Defendant's dismissal of the Plaintiff and failure to ensure that the Plaintiff right not to be unfairly dismissed was not infringed, the Plaintiff has suffered loss and damage.

PARTICULARS OF DAMAGE

1.	Basic award 3 weeks pay for each year of completed service (yrs of service 31.2)	\$ 223,071.06
2.	Compensatory award:	
	(i.) Salary: Period 14-Mar 2018 to 17 Feb 2022	\$ 488,121.97

(ii.)	Vacation: 28 days annually to 17 Feb 2022	\$ 52,365.58
(iii.)	Casual Days: 10 days annually to 17 Feb 2022	\$ 18,701.99
(iv.)	Medical group Premium: \$7,000.00 p/y to 17 Feb 2022	\$ 27,539.73
3.	Mandatory Retirement Benefits:	
(v.)	Gratuity (Pension Plan)	\$ 206,762.66
(vi.)	200 accrued sick days at 50%	\$ 47,536.40
4.	Aggravated Bad Faith Damages	\$ 100,000.00
5.	Damage to Reputation/Impact on future employment - 10 working yrs x \$124,070.00	\$1,240,700.00
	Total	\$2,404,799.39

AND THE PLAINTIFF CLAIMS:-

1. Special damages in the sum of \$2,404,799.39; plus monthly pension payment in the sum of \$5,169.07 upon the Plaintiff attaining the age of 60 years;
2. Damages;
3. Interest pursuant to the Civil Procedure (Award of Interest) Act, 1992; and
4. Such further or other relief as the Court deems just.

Dated the 20th day of MAY, A.D., 2018

CAMPBELL-EBONG & CO.
CAMPBELL-EBONG & CO.
 Chambers
 No. 51, Infant View Road
 Nassau, The Bahamas

Attorneys for the Plaintiff.

This Writ was issued by CAMPBELL-EBONG & CO., CHAMBERS, whose address for service is, No. 51 Infant View Road, Nassau, The Bahamas, and Attorneys for the Plaintiff

[32] The summons filed January 07th, 2020 and pursuant to Order 20 Rule 5 and Order 15 Rules 6 and 7, seeking to re-add the WSC and the MOPW has attached to it

the amendments it seeks highlighted in green. However, there is no change at all to the SOC. Thus my decision above to deny the application to re-add the MOPW and my decision to remove the Attorney General.

[33] The SOC at paragraph 2 states;

“Sometime on or about 1987 the Defendant employed the Plaintiff in the position of an assistant engineer pursuant to a partly written partly oral indefinite employment agreement.”

[34] At paragraph 5 it states;

“5. The Plaintiff has been in the employ of the First Defendant for more than Thirty-one (31) years and was eligible to retire even though mandatory retirement occurs on attaining the age of Sixty (60) years.”

[35] It therefore becomes quite clear why in the first instance WSC was the First Defendant. Without being able to re-add the WSC, the Plaintiff has no case period, as his alleged employer would not be a party to the action.

[36] The Plaintiff says it was a mistake when the WSC was removed as a party. However, the Plaintiff also says that he is entitled to amend right to trial. Order 20 Rule 5 expressly states that an amendment may be allowed at “any stage of the proceedings.” (See ROE v DAVIES (1876) 2 CH.D. 729 – 733.) Under the applicable rules 5 – 8 it explains the rule). This goes even further in that amendments may be allowed before, or at, or after the trial, or even after judgment or on appeal (See THE DUKE OF BUCCLEUCH [1892] P. 201.

[37] As a general rule, however late the amendment is sought to be made, IT SHOULD BE ALLOWED if it will not do the opposing party some injury or prejudice him in

some way that cannot be compensated for by costs or otherwise. (See **CLARAPEDE V. COMMERCIAL UNION ASSOCIATION (1883) 32 W.R. 262.**)

[38] The WSC was originally the First Defendant and a defence was filed on July 04th, 2018 on its behalf. In this regard I have already taken note that the SOC has not changed at all.

[39] Counsel for the Executive Chairman puts the position that to now re-add WSC would be outside the time allowed pursuant to Section 12 (1) and (2) of the Limitation Act 1995, which said section specifically deals with **“PERSONS ACTING IN EXECUTION OF STATUTORY AND OTHER PUBLIC DUTIES.”**

[40] By paragraph 16 of the Executive Chairman’s skeleton arguments the Executive Chairman says:

“16. The issue for determination in this matter is whether the Plaintiff was engaged As General Manager, a statutory position, under a private contract or a public contract and whether the duty to terminate was a public duty.”

[41] In support of this he cites the case of **AMBER ANDERSON-THOMAS V DEEPA BHATNAGAR 2015/CLE/gen/00282** and **ALVES V THE ATTORNEY GENERAL OF VIRGIN ISLANDS [2017] UKPC 42.**

[42] However, I beg to differ on this point. It is quite apparent that this is a straight forward application which requires the exercise of the courts discretion based on the reason for the amendment and the various authorities which support the application or do not support it. It is my considered opinion that the issue of a statutory duty is a matter for trial.

- [43] The issue as it relates to the application is whether the amendment should be granted as prayed or not. There may be a question as to whether by way of objection that because the WSC is a statutory public body it is caught by section 12 of the Limitation Act 1995. The real question then is whether the sought after amendment is one which ought to be considered as “a party who is a public corporation being joined to an action but is caught by the Limitation Act 1995.
- [44] In that regard we must necessarily make reference to ORDER 20/5-8/6 and 20/5-8/7 of the Rules of the Supreme Court. They come under the rubric, “**GENERAL PRINCIPLES FOR GRANT OF LEAVE TO AMEND**” and “**POWER TO AMEND AFTER EXPIRY OF LIMITATION PERIOD**” respectively.
- [45] In an effort not to enlarge this ruling, I will simply highlight some of these general principles, which are all trite.

20/5-8/6 **“It is a guiding principle of cardinal importance on questions of amendments that generally speaking, all such amendments ought to be made”, for the purpose of DETERMINING THE REAL QUESTION IN CONTROVERSY BETWEEN THE PARTIES to any proceedings or of correcting any defect OR ERROR in any proceedings. (See Jenkins C. J) in the case of G.L. BAKER Ltd V MEDWAY BUILDING & SUPPLIES Ltd [1958] 1. W.L.R. 1216, p. 1231 where Jenkins C. J. stated;**

“It is a well establish principle that the object of the Court is to decide the rights of the parties, and not to punish them for mistakes they make in the conduct of their cases by deciding otherwise than in accordance with their rights I know of no kind of error or mistake which if not fraudulent or intended to overreach, the Court ought not to correct; if it can be done without injustice to the

other party. Courts do not exist for the sake of discipline, but for the sake of deciding matters in controversy, and I do not regard such amendment as a matter of favour or grace It seems to me that as soon as it appears, that the way in which a party has framed his case will not lead to a decision of the real matter in controversy it is as much A MATTER OF RIGHT on his part to have it corrected if it can be done without injustice, as anything else in the case is a matter of right.”

[46] In the case of **TILDESLEY V HARPER (1876) 10 Ch D 393, pp. 396, 397**
BRAMWELL L.J. said;

“My practice has always been to give leave to amend unless I have been satisfied that the party applying was acting mal fide, or that, by his blunder, he had done some injury to his opponent which could not be compensated for by costs or otherwise.”

[47] In yet another principle on the same point **BRETT M.R.** in **CLARAPEDE V. COMMERCIAL UNION ASSOCIATION (1883) 32 W.R. 262, 263** said;

“However negligent or careless may have been the first omission, and however late the proposed amendment, the amendment should be allowed if it can be made without injustice to the other side. There is no injustice if the other side can be compensated by costs.”

[48] In addressing the argument of counsel for the Executive Chairman and the WSC that to re-add the WSC at this stage puts the Plaintiff in breach of Section 12 of the Limitation Act 1995 I opine as follows;

[49] Order 20/5 - 8/7 begins under the rubric; **“POWER TO AMEND AFTER EXPIRY OF LIMITATION PERIOD.”**

[50] Firstly, the provisions of rule 5 empower the Court to grant leave to amend the writ or pleading in the particular circumstances which are mentioned in paragraphs (3), (4) or (5) **EVEN THOUGH THE APPLICATION IS MADE AFTER THE EXPIRY OF ANY RELEVANT PERIOD OF LIMITATION** current at the date of the issue of the writ.

[51] Of particular note is the fact that; it is further stated under Order 20/5 – 8/7 that;

“The principle underlying the powers of the Court under r 5 is that IF THE PROCEEDINGS HAD BEEN, FROM THE BEGINNING, PROPERLY FORMULATED OR CONSTITUTED in the circumstances specified in paras (3), (4) and (5) THE DEFENCE OF LIMITATION WOULD NOT HAVE BEEN AVAILABLE TO THE DEFENDANT; and accordingly, if in its discretion, the Court thinks it just to grant leave to amend defects in the writ or pleadings within the scope of the circumstances specified in these paragraphs, so that such defects in the proceedings are treated as having been cured ab initio, the defendant is not being deprived of the benefit of a defence which he would not have had if the proceedings had been so properly formulated or constituted in the first place. To contend in the cases specified in paragraphs (3), (4) and (5), that the defendant has an existing right which will be prejudiced by the amendment is to argue in a circle, since he only has an existing right if one presupposes that the Court will not use its powers to amend under Ord 20 r. 8 and Ord 15 r. 6, 7, and 8.

[52] I take special note of Order 20 r. 5 (2) –

“Where an application to the Court for leave to make the amendment mentioned in paragraph (3), (4) or (5) is made AFTER ANY RELEVANT PERIOD OF LIMITATION current at the date of issue if the writ has expired, the Court MAY NEVERTHELESS GRANT SUCH LEAVE in the circumstances mentioned in that paragraph if it thinks it just to do so.”

- [53] Originally, WSC was a party to these proceedings. A defence was entered on its behalf. The SOC has not changed. In fact, without WSC being re-added, the Plaintiff has no case as it relates to who his employer was when one looks at the SOC.
- [54] It is to be remembered that the guiding principle of the Court on amendments is that the object of the Court is to decide the rights of the parties, and not to punish them for mistakes they may make in the conduct of their cases by deciding otherwise than in accordance with their rights. Courts do not exist for the sake of discipline but for the sake of deciding matters in controversy.
- [55] I am not satisfied that the Plaintiff is being mal fide or is seeking to overreach the Court. This is a perfect example of why it should be the practice of all counsel to check and re-check every piece of writing which leaves the office. There may come a time when the law is not on counsel's side.
- [56] Therefore, after careful consideration of the objections to the application and in all of the circumstances, I hereby order the following;
1. Adrian Gibson, Executive Chairman be hereby removed as a party to these proceedings. The Plaintiff shall pay Adrian Gibson's costs of the action, to be taxed if not agreed.

2. Leave is granted to the Plaintiff to re-add the Water and Sewerage Corporation as a party. The Plaintiff shall pay the Water and Sewerage Corporation its costs from inception of the action to the date of its removal by substitution of Adrian Gibson, to be taxed if not agreed.
3. The Hon. Desmond Bannister be hereby removed as a party to these proceedings. The Plaintiff shall pay the Hon. Desmond Bannister's costs of the action, to be taxed if not agreed.
4. The application to re-add the Ministry of Public Works as a Defendant in the action is hereby denied. The Plaintiff shall pay the Ministry of Public Works' costs of the action, to be taxed if not agreed.
5. The Attorney-General be hereby removed as a party to these proceedings. The Plaintiff shall pay the Attorney-General's costs of the action, to be taxed if not agreed.

I so Order.

Dated this *18th* day of *September* A.D., 2020.



Keith H. Thompson

Justice