IN THE FULL COURT OF THE SUPREME COURT OF JUDICATURE
ON APPEAL FROM DECISION OF THE HONOURABLE CHIEF JUSTICE (AG.)
MADAME JUSTICE GEORGE, S.C.
PROCEEDINGS COMMENCED UNDER THE HIGH COURT ACT, CAP 3:02
SECTION 79
2017-HC-DEM-CIV-FCA-21

BETWEEN:

RAMESH JAIKARAN POONAI

Appellant/Applicant

-and-

MEDICAL COUNCIL OF GUYANA

Respondent

BEFORE THE HON. MR. JUSTICES FRANKLIN D. HOLDER AND NARESHWAR HARNANAN

APPEARANCES:
MS. BETTINA GLASFORD FOR THE APPELLANT
MR. KAMAL RAMKARRAN FOR THE RESPONDENT

UNANIMOUS DECISION OF THE COURT:

HARNANAN, NARESHWAR J:

Brief factual matrix:

1. This is an appeal from the decision of the Honourable Chief Justice Roxane George SC., made on 23 May 2017, to dismiss the Appellant's Claim against the Medical Council of Guyana (the Council) in a Fixed Date Application [FDA] filed on 12 April 2017, on a notice of application brought by the Respondent Council.
2. The latter application sought an order that the Court should not exercise its jurisdiction to determine the FDA as it was being made in violation of

Section 19 of the ***Medical Practitioners' Act, Cap. 32:02 [MPA]***, and it was frivolous and vexatious.

3. The Hon. Chief Justice considered that the Appellant should have filed an appeal to a Judge in Chambers, *per* ***Section 19*** of the ***MPA***, and that the Appellant disclosed in his evidence that he had not been registered as a Medical Practitioner since 2011, even though she noted that it was not necessary for finding that the Council should or should not be a party.

4. The Appellant's main ground of appeal is that the Chief Justice erred in ruling that the Court had no jurisdiction to hear and determine the Appellant's claim against the Council based on ***section 19*** of the ***MPA.*** He seeks an Order from this Court pronouncing that the Court has jurisdiction to include the Council when hearing and determining the substantive FDA.

5. While the Council's application invoked ***Part 9:01*** of the ***Civil Procedure Rules 2016*** disputing the Court's ***jurisdiction***, this Court notes for the record that the Hon. Chief Justice did not so pronounce. It is clear from her concise ruling, why she dismissed the claims against the Council. She declared that the Appellant ought to have invoked his statutory right of appeal. There was no declaration by the Chief Justice that the Court did not have jurisdiction to determine the FDA against the Council.

The Issue:

6. The main question for this Court is whether the Hon. Chief Justice erred in dismissing the Appellant's claim against the Council on the ground that the Appellant ought to have utilised his statutory right of appeal under the ***MPA***.

The Arguments:

7. The Appellant relies substantially on the decision of the Caribbean Court of Justice in ***The Medical Council of Guyana v Jose Ocampo Trueba*** [2018] CCJ 8 (AJ) ("***Ocampo***"). An analogy was made between the circumstances in the Ocampo proceedings, and the instant matter, where the CCJ considered

alternative remedies – that is invoking the statutory right of appeal, as against judicial review applications.

8. Heavy reliance was placed on paragraphs 24 and 25 of the CCJ judgment, in support of the Appellant's contention that the Court has jurisdiction to hear the FDA against the Council. The paragraphs read:

> As indicated, the High Court dismissed Dr Ocampo's application because judicial review was not an appropriate remedy in this situation where a remedy of appeal was available to Dr Ocampo. The written judgment of the Court of Appeal clarified that the Chief Justice should have considered whether judicial review was the appropriate recourse where there existed a right of appeal and she should not have proceeded on the basis that the mere existence of that recourse meant the applicant should not have brought a claim for judicial review.
>
> …The pith of that judgment is that the mere existence of a right of appeal does not preclude judicial review and that an applicant may be permitted to proceed with judicial review ***if he shows there are exceptional circumstances*** which justify so proceeding rather than appealing. (emphasis supplied).

9. The Appellant submitted in this appeal that his exceptional circumstances are that the Council should have investigated why the appellant had not received full registration having been granted institutional registration in September, 2009, and now 9 years later, is yet to be fully registered.

10. The Appellant further argues that the Council acted unlawfully and unconstitutionally in denying him full registration, which deprives him of his livelihood and constitutionally guaranteed right to a fair hearing according to the rules of natural justice, under *Article 144(8)* of the Constitution.

11. He further submits that by not giving him a hearing, the Council made an illegal and unlawful decision when it refused his application for full registration and removed his name from the register without evidence of how long he had been out of the country.

12. The Respondent Council contends that the Appellant's appeal is misconceived as the Hon. Chief Justice had no option but to dismiss the claim against the Council. The Council argues there were no special circumstances shown by the Appellant justifying the filing of the FDA instead of invoking the statutory right of appeal under ***section 19*** of the ***MPA***.

13. Further, they contend, *inter alia*, that relief under ***Article 144(8)*** of the Constitution is not available against the Council in circumstances of a grant or refusal of registration as a medical practitioner under the ***MPA.***

The Law and Analysis:

14. In the CCJ's decision in ***Ocampo***, *Barrow JCCJ* at paragraph 29 of the judgment, said the following in relation to misplaced applications for judicial review:

> …we do not intend to encourage the bringing of ill-advised judicial review claims ***in the belief that if an unworthy attempt is scotched the applicant loses nothing since the court will not dismiss it but route it properly***. Adventurers should be aware that there may be a costs consequence. ***Rather, the thinking is that a genuinely brought claim for judicial review, if not appropriate, should not result in the loss of all recourse by an applicant on a purely procedural basis***. (emphasis supplied)

15. On the sufficiency of the statutory appeal under the ***MPA***, *Barrow JCCJ* said at paragraph 28 of the judgment:

> …in any future case where the court must consider whether to permit recourse to judicial review where a right of appeal is given, there will be much cogency to the factor, as existed in this case, that the appeal is to a High Court judge in chambers, as per section 19 of the Medical Practitioners Act Cap.32:02. That provision brings the matter into the jurisdiction of the High Court and makes it a civil proceeding in which

the panoply of remedies within the armoury of the court are available regardless of whether the challenge is to the legality or the merits of the decision. ***As a rule of thumb, the safe route to a substantive resolution in a case like this would therefore appear to be to appeal the decision and not to request judicial review***. (emphasis supplied)

16. Therefore, this Court does not interpret the CCJ's decision in ***Ocampo*** to mean where there are statutory appeal procedures, an applicant has a choice whether to invoke them, or proceed to challenge the decision of the tribunal by filing a judicial review application. It is substantially, a procedural error in filing a genuine matter for judicial review, will not result in the loss of a right to be considered for an appropriate remedy.

17. Does the Appellant fall within the latter category? In ***R (on the application of Christopher Willford) v Financial Services Authority*** [2013] EWCA Civ 677 ("***Willford***"), at paragraphs 20—38, *Moore-Bick LJ*, extensively reviewed the authorities showing how courts in England and Wales have treated judicial review applications where there are alternative remedies.

18. At paragraph 36 of the majority judgment in ***Willford***, *Moore-Bick LJ* concluded as follows:

> The starting point, as emphasised by cases such as ***Preston***, ***Calveley***, ***Ferrero***, ***Falmouth*** and ***Davies***, is that ***only in exceptional cases will the court entertain a claim for judicial review if there is an alternative remedy available to the applicant***. The alternative remedy will almost invariably have been provided by statute and where Parliament has provided a remedy it is important to identify the intended scope of the relevant statutory provision. For example, in the context of legislation to protect public health the court is very likely to infer that Parliament intended the statutory procedure to apply, even in cases where it is alleged that the decision was arrived at in a way that would otherwise enable it to be challenged on public law grounds,

because it enables the real question in dispute to be decided. That will be particularly so if the procedure allows a full reconsideration on the merits of a decision which has direct implications for public health and safety. A remedy by way of judicial review, although relatively quick to obtain, simply returns the parties to their original positions. It does not enable the court to determine the merits of the underlying dispute. In a few cases strong reasons of policy may dictate a different approach: see ***R v Hereford Magistrates' Court, ex parte Rowlands***; but such cases are themselves exceptional and do not in my view detract from the general principle. ***Ultimately, of course, the court retains a discretion to entertain a claim for judicial review, but whether it will do so in any given case depends on the nature of the dispute and the particular circumstances in which it arises***. (emphasis supplied)

19. In the judgment of the Court of Appeal in Guyana in the matter of ***Dr Jose Ocampo Trueba v The Medical Council of Guyana***, Civil Appeal No 125 of 2017, delivered on 21 December 2017, which preceded the decision of the Caribbean Court of Justice referred to above, similar considerations were discussed by the *Honourable Chancellor Yonette Cummings-Edwards* ("the Chancellor") who delivered the decision of the Court.

20. As in ***Willford***, the Court of Appeal thought the Court should consider the particular circumstances of a matter, which makes an application for judicial review preferential to a statutory appeal, in order to determine whether to allow a claim for judicial review, when there was an adequate alternative remedy.

21. In noting that it was the duty of the applicant for judicial review to bring these circumstances to the attention of the court, the *Hon. Chancellor* said at paragraph 26 of the judgment of the Court of Appeal:

> It seems that some inquiry, however cursory, must be done by a judge considering an application in the circumstances. ***The***

applicant must satisfy the court of these factors in his/her affidavit. The applicant should distinguish his case from the type of case for which the appeal procedure was provided. (emphasis supplied)

22. This Court notes that the record of appeal reveals no such factors or particular circumstances which made the application by way of FDA claiming the remedies sought, preferential to the statutory appeal under ***section 19*** of the ***Medical Practitioners' Act***.

23. Page 28 of the record exhibits the Appellant's Licence of Institutional Registration issued by the Respondent Council valid for a period of 18 months from the 11th September, 2009. Therefore, the Appellant's Institutional Registration would have expired on the 11th March 2011.

24. The record is also devoid of any subsequent registration of the Appellant by the Council, as a registered medical practitioner. Therefore, if there was any period after the 11th March, 2011, he practiced as a medical practitioner, barring any evidence of lawful registration, such practice would have been unlawful and contrary to the provisions of the ***Medical Practitioners' Act***. This is the same record which was before the Hon. Chief Justice when she dismissed the claims against the Respondent Council.

25. Up to the time of filing the FDA in April 2017, the Appellant would have been unregistered for approximately 6 years. During those 6 years, he wrote 2 letters to the Respondent Council. The first on the 5th July, 2013 (approximately 2 years, 4 months after his institutional registration expired), and the second letter on the 17th July 2015 (approximately 4 years, 4 months after his institutional registration expired).

26. It is this 2nd letter which activated a response from the Council, and that response is the subject of the instant proceedings. The Court challenge to the response was filed approximately after one year and 8 months had elapsed.

27. The Appellant's 2015 letter to the Council was an application for full registration, where he relied on his successful completion of 18 months as an

institutionally registered GMO. This institutional registration expired some 4 years, 4 months before this application for full registration.

28. The Respondent Council considered the application and conveyed their view that with regard to the record of him being unregistered for such a long period of time, that he should undergo a period of supervised rotation before being considered for registration as a medical practitioner. The Council requested his response to their suggestion and the record is silent as to any such response, only that the FDA was filed a year and 8 months after.

29. ***Section 6*** of the ***Medical Practitioners' Act*** provides for the registration of a medical practitioner. It also empowers the Council to submit an applicant to examination as it sees fit if it is not satisfied that he/she can practice independently. Clearly the logical inference which this Court is entitled to draw from the record is that Council was not satisfied, having regard to the period the Appellant remained unregistered. The Council has an obligation to the public to safeguard their safety in ensuring that in granting the privilege of registration as a medical practitioner is done in a transparent and responsible manner.

30. The decision by the Council is subject to the statutory appeal procedure as set out in ***Section 19*** of the ***Medical Practitioners' Act***, which was not invoked by the Appellant.

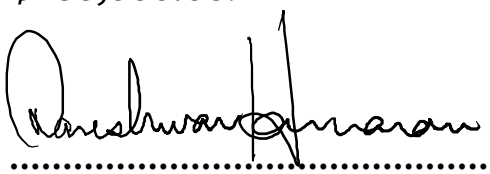
31. This Court considers trite that relief under *Article 144(8)* of the Constitution is not available in circumstances where registration of a medical practitioner is granted or refused under the ***Medical Practitioners' Act***. This is because registration as a medical practitioner is akin to being granted a licence, a term used throughout the Act, as opposed to a civil right or obligation in ***Article 144(8)***. See ***FORM 6*** of the ***'Licence of Annual Registration as a Medical Practitioner'*** in the Second Schedule to the Act.

Conclusion:

32. The decision of the Hon. Chief Justice therefore cannot be faulted when she considered it appropriate that the statutory right of appeal of the decision

by the Council ought to have been invoked in the instant circumstances when no constitutional challenge could lie against the decision of the Medical Council.

33. The decision of the Hon. Chief Justice is therefore affirmed. The appeal filed is dismissed with costs to the Respondent Council in the sum of ***$150,000.00***.



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Nareshwar Harnanan
Puisne Judge
3 August 2018