

**WEDNESDAY – 31<sup>st</sup> MARCH, 2004**

**IN COURT**

**ACTION NO. 132 of 2004**

**MARIA ROCHES**

**Applicant**

**v.**

**CLEMENT WADE  
(Representing Management of  
Catholic Public Schools)**

**Respondent**

**APPLICATION ALLEGING DISCRIMINATION ON ACCOUNT OF SEX.**

**APPEARANCES:**

Dean Barrow S.C. with M. Marin Young for Applicant.  
P. Zuniga S.C. for Respondent.

**BARROW:**

Application for Constitutional Redress pursuant to section 20(1) of Constitution and Rule 3 of Constitution. Redress Rules by Notice of Motion dated 2<sup>nd</sup> March 2004.

Motion is supported by affidavit of Applicant of 1<sup>st</sup> March 2004.

Respondent filed affidavits in reply on 31<sup>st</sup> March 2004 by Wade and Juarez.

Takes issues with Juarez's affidavit – replete with hearsay.

Paras. 11, 12, 13, 15, 16, 17, 18 – scandalous etc. – contrary to O.39, r. 3.

Applies that these paragraphs be struck out.

**ZUNIGA:**

The purpose of paragraphs objected to only relate to grounds of action, not the truth of what is said in paragraphs.

**COURT:** I will in the light of the Rules of the Supreme Court, Ord. 39, rule 3, hold paragraphs 11, 12, 13, 15, 16, 17 and 18 of Juarez's affidavit in abeyance as they tend to be scandalous and report matters which available witness could testify to, and should not be allowed in on hearsay.

**Adjourned to 11:00 a.m. for Barrow to put Wade's and Juarez's affidavit to Applicant as she had not seen them before – only filed this morning.**

**11:10 a.m. - HEARING CONTINUES**

Barrow calls Maria Roches, the Applicant, to the stand.

**MARIA ROCHES s/s:**

Of 33 West Street, Punta Gorda Town, Toledo District.

Was a teacher with Roman Catholic Church, first in September 1999. Then a temporary teacher September through November 1999 at Silver Creek Roman Catholic School in Toledo District.

In January to June 2000 I continued at San Pedro Roman Catholic School, Toledo District.

In September 2000 I taught at Santa Cruz, Toledo District for three years.

In 2000 I was permanently employed by Assistant Local Manager of Catholic Schools in Main Street, Punta Gorda, Toledo District.

I am not now teaching at Santa Cruz Roman Catholic School.

I am not currently teaching anywhere.

I ceased teaching at Santa Cruz Roman Catholic School in June 2003 when I was released.

In April of 2003 I went to see Benjamin Juarez. I informed him I was pregnant and that I would be on maternity leave effective August and that I intended to continue working with Roman Catholic School in November.

I saw Juarez in Punta Gorda, Toledo District, in his office. Mr. Juarez's first words were "you noh done till you get it."

Juarez told me if anything he would have to think about suspending me.

He told me to come back two weeks later.

When I went to see him two weeks later I went with my BNTU representative, Anthony Fuentes.

We were told by Juarez's secretary that he was not in, but that I could continue to work until end June that year, that is, end of school year.

I continued to work until end of school year.

I went back to see Juarez on 26 June 2003 and he first asked me about my relation with a John Newport. I then told him that he was my best male friend.

Juarez then asked me about my relation with a Gabriel Pate. I told him Pate was my current boyfriend.

That was end of conversation as regards my male friends.

Juarez then told me he would do what he had to do.

He then presented me with letter of release – **Exhibit MR 2**.

I read it and questioned him about it. I asked him to explain it to me.

Juarez then said the letter spoke for itself.

I asked him for a copy of the contract he said I had signed. He said he did not have time to look for it as he had a meeting to attend. He got up and that was end of our conversation.

I understand from the letter that I would not be able to work with Catholic Management after my pregnancy.

I had my baby in September 2003.

I then appealed to Chief Education Officer.

There is a Toledo Regional Council that would get together to discuss issues affecting teachers. I was invited to a meeting of Regional Council.

Mr. Juarez is a member of the Council and he was present at meeting representing Catholic Management.

I went with my agent, the BNTU President and George Frazier, the secretary of BNTU.

The Regional Council recommended my reinstatement. Juarez was present at this meeting.

Because I was not reinstated, there was an arbitration panel held.

I have not to this day been reinstated.

I was never given a copy of contract Juarez said I signed.

**Witness shown Exhibit BAJ 4 (contract with Respondent) and says signature on document is not hers.**

**The Identification card of witness containing her signature is produced.**

**Witness shown a copy of an I.D. of UB card, containing she claims, her usual signature and picture. I.D. issued in September 2000.**

**Tendered and marked Exhibit MR 8.**

When I went to teach at Santa Cruz I stayed at the teacher's house. It had two rooms. The house is owned by the Catholic Management.

There were five teachers when I started. I did not have house all by myself. There was another female teacher.

By time of my release, I had stopped living in teacher's house in 2003. I was later commuting from Punta Gorda Town to Santa Cruz.

All the time I lived in the teacher's house I never lived alone. I shared with another teacher, Ms. Rosalie Thompson.

Mr. Newport slept only one time in the teacher's house while I was there. I was sharing the house with another teacher at the time.

Newport did not sleep with me. Three persons slept in the house that night.

Newport is a VSO volunteer and a teacher trainer. He worked in Santa Cruz that day. He asked us if he could stay the night because he did not want to go to Punta Gorda Town. So he slept the night in the hall of the house.

The purpose of meeting of Toledo Regional Council was to discuss my reinstatement or not.

I was given a hearing in which I presented my case along with my B.N.T.U. representative.

Juarez presented his side of the case later.

The Council then discussed among themselves.

**Adjourned to 2:00 p.m. for lunch.**

**2:00 p.m. - HEARING RESUMES**

**CROSS-EXAMINATION OF MARIA ROCHES BY ZUNIGA FOR RESPONDENT**

Attended primary School in Punta Gorda at St. Peter Claver School - a Roman Catholic School, to Std. 6.

Attended Toledo Community College, Punta Gorda.

Applied in August 2000 to be permanent teacher. I filled out an application form.

I went in and asked Juarez about vacancy for coming school year. He told me if there was any space available he would consider me. He gave me interview dates.

I filled out an application form which I got from the Mission. I gave the form to Juarez.

I filled out an interview form in my own handwriting. I gave it to Juarez.

I gave Juarez two forms. I filled out **Exhibit BAJ 3**.

**Witness is shown BAJ 3 and says she recognizes it and that she filled it out.**

I understand I was to teach at a Roman Catholic institution.

I am aware of Catholic teaching on marriage and sex. I became aware of this when Juarez said I signed a contract and when he handed me the release letter in June 2003.

Before this I was not aware of Catholic teaching on sex and marriage.

I had religious teaching in school but nothing was said about marriage, sex or sin.

Yes, I am baptized Roman Catholic. Yes, I am Roman Catholic.

I took First Holy Communion when I was at school. I understand it to be first time one takes communion.

I wasn't taught at school that sex is only for marriage.

Juarez said to me "You never done till you get it."

I don't remember a BNTU in September 2000.

I did not on 28 September 2000 visit Juarez's office. I was not aware my name was posted on Juarez's office door.

**Witness shown BAJ 4 (contract) and says it is not her signature.**

I did not sign that document.

BNTU, along with Regional Council, invited me to meeting. This was in writing but I don't have it now with me.

I appealed after I found out I was released, immediately after, a week to two weeks after. I appealed in writing to Chief Education Officer. I did not send a copy to Juarez or Wade.

I have not made any attempts to contact the Roman Catholic Bishop about my release.

My case was put by me and BNTU representative to Regional Council.

I did not hear Juarez put any case to Council.

Yes, I know Diana Mendez at Santa Cruz Roman Catholic School, is more than 20 miles from Punta Gorda.

I was released and dismissal was not mentioned.

**NO RE EXAMINATION.**

**Barrow applies to cross-examine Mr. Juarez on affidavit.**

**BENJAMIN A. JUAREZ s/s:**

Fifty two years old. Assistant Local Manager for Toledo Catholic Schools since 1986.

I swore to an affidavit.

**CROSS-EXAMINATION BY BARROW FOR APPLICANT:**

Para. 2 of my affidavit – I released Applicant and did not dismiss her. Applicant did not ask me to release her from her job.

I knew she wanted to continue teaching.

The release was from Toledo Catholic Management. Applicant was not free to come back. It was permanent.

Applicant's pay on release ceased to come through.

All my letters have been one of release.

Termination is done by General Manager.

Usually we release and termination follows.

If a person is released he can't come back.

"Release" means a person's service is not broken.

The release of Applicant meant her service with Toledo Catholic School Management was broken.

**Witness shown BAJ 4 (contract) and says its Applicant's signature on it – it is her printed name.**

It is the printed name rather than signature of Applicant on BAJ 4.

Para. 10 of affidavit – and now say Applicant wrote her name on BAJ 4.

Have been 15 years before. I gave Applicant BAJ 4, Local Manager of Catholic Schools.

There was no witness to BAJ 4 because it is not the practice to have one.

The printed name on BAJ 3 is different from that on BAJ 4. I will say no to suggestion that Applicant did not sign BAJ 4.

Santa Cruz Roman Catholic School is Government-aided school.

I agree the school is bound by Education Act and Regulations.

There is a form of contract provided by Ministry of Education when Management employ teachers. This is different from BAJ 4.

There was an old form which was different from BAJ 4.

BAJ 4 is issued by the Management of Catholic Schools.

I don't know if BAJ 4 is legal.

I am familiar with Education Act and Rules.

I explained letter of release to Applicant when I gave it to her.



Applicant knew what Jesus' teaching on marriage and sex was before letter of release.

I did not elaborate on what the teaching of Christ was on marriage and sex as Applicant already knew.

Applicant had told me she was pregnant but I don't remember exact date. She told me she would like to go on leave and would come back after pregnancy.

I never told her 'she noh done until she had got it.'

I knew Applicant wasn't married and said she had no plans to marry.

I told Applicant I would tell her later after consultation with General Manager.

Yes, I did tell secretary to tell Applicant that she could stay until end of term.

Next time I saw Applicant was when she came to see me and I gave her letter of release.

The letter of release had to do with all the reports I had received.

When Alcalde told me of Applicant's behaviour in early June I went to the school but this was after Applicant had told me she was pregnant.

I went to school and spoke to Applicant about concerns of village regarding her behaviour – in general terms, her relationship with Newport.

It was after Alcalde's report that I had left word with my secretary that applicant could stay till end of school year.

Applicant told me Newport was just a friend. I didn't do anything more about it.

Later when Applicant came to inquire about her status, I gave her letter of release.

Yes, letter of release was provoked by her pregnancy, together with reports about her.

I didn't tell Applicant that reports about her would also determine her fate.

I had no proof that Applicant's relationship with Newport was otherwise.

Yes, it was Applicant's pregnancy that proved the reports and hence the release letter of 26 June 2003.

**RE-EXAMINATION BY ZUNIGA OF JUAREZ:**

When a teacher is released it meant she would not be working with Catholic Management and won't get paid.

On **BAJ 4**, Applicant's name was put on by herself.

**CASE FOR APPLICANT.**

**Adjourned to 9:30 a.m. tomorrow.**

**THURSDAY – 1<sup>st</sup> APRIL, 2004**

**IN COURT**

**ACTION NO. 132 OF 2004**

**MARIA ROCHES**

**Applicant**

**v.**

**CLEMENT WADE  
(Representing Catholic Public  
Schools)**

**Respondent**

**CONSTITUTIONAL APPLICATION FOR REDRESS ALLEGING  
DISCRIMINATION ON GROUNDS OF SEX BY TERMINATION OF  
EMPLOYMENT BECAUSE OF UNMARRIED PREGNANCY.**

**APPEARANCES:**

The same on the adjournment.

**COURT:** Propose to call Applicant to the stand.

Applicant takes the stand.

**MARIA ROCHES:**

Q. Last post as teacher was Santa Cruz Roman Catholic School for three years consecutively.

Q. What subjects taught?

A. Maths, Language Arts, Science, Social Studies, P.E., Arts, Music.

**NO CROSS-EXAMINATION OR RE-EXAMINATION.**

**BARROW ADDRESSES:**

This is a constitutional motion seeking reliefs set out in motion.

1) Declaration that Applicant's dismissal on June 26, 2003 by Respondent from job as teacher is violation of section 16(2) of Belize Constitution.

Respondent is a public institution, therefore amenable to section 16(2) of Constitution.

Paras. 1 and 2 of Applicant's affidavit. The bulk of funding of Respondent's activities relating to employment of Applicant comes from public funds.

Sumayyah Mohamed v Moraine & Another 49 W.I.R. 370.

Respondent is Government-aided institution in receipt of public funds.

2) A Declaration that refusal of Respondent to reinstate Applicant after being requested to do so by Chief Education Officer is illegal and it is a violation of the right of Applicant to work as provided for in section 15(1) of Constitution.

3) An Order restoring Applicant to her position.

4) In the alternative, damages for Applicant's dismissal.

The evidence is in affidavit of Applicant – para. 21.

Refers to CEDAW Convention Article 11(2)(a).

Belize ratified this Convention.

Prohibition of discrimination for pregnancy out of wedlock.

Pregnancy per se without being married does not justify discrimination.

Also Article 16(1)(d) of CEDAW – on marital status.

The evidential burden on Applicant is met by evidence of Applicant and cross-examination of Juarez as well as **Exh. MR 2**.

Failure to live according to Jesus' teaching on sex and marriage is non-specific. Respondent should be told what exactly was involved.

Juarez admitted that Applicant was dismissed because she became pregnant.

Applicant, it is submitted, was fired because she became pregnant.

This, submitted, is discrimination.

Although Constitution does not talk of pregnancy, but CEDAW talks of pregnancy.

Matadeen v Pointu (1998) 3 W.I.R. 18 at p. 31.

Chopra (2000) 1 L.R.C. 565 on sexual harassment as discrimination contrary to CEDAW.

Submit therefore that on evidence that Applicant was dismissed because she was pregnant out of wedlock. She is entitled to Declarations sought for violation of her constitutional rights.

As well as mandamus to Respondent to carry out its duty and reinstate Applicant.

**ZUNIGA FOR RESPONDENT IN REPLY:**

Is Respondent a public authority?

Submit Respondent is not a public body.

Affidavit of Wade at para. 2.

Alonzo 1 B.L.R. 82 at 88.

Receipt of public funds does not make Respondent a public body.

Submit Respondent is not a public body.

To become a public authority, Respondent must be shown explicitly to have become one such by law.

None of the definition in Education Act and Rules makes Respondent a public body.

Receipt of public funds does not make an entity a public body.

Sumayyah at p. 383 – the school in that case was expressly made into a public authority.

Alonzo

Even if **BAJ 3** is thrown out, the Applicant would have only a private contract unaffected by constitutional provisions.

The Applicant's case is misconceived on basis of Alonzo at p. 85, at 86, 87.

All the cases cited by Barrow deal with public bodies.

The remedy of Applicant is against the state to ensure Respondent does not infringe her Constitutional rights.

Submit that Applicant was released and not dismissed.

Flynn v Power (1985).

Submit that even if Applicant was released or dismissed on authority of Alonzo, her present application is bad.

Jaroo – only question of law for constitutional motion on disputed facts.

CEDAW is not relevant as Applicant was not discriminated against.

**BARROW IN REPLY ON RESPONDENT NOT BEING A PUBLIC AUTHORITY:**

Rely on Education Act – sections 14, 15, 16.

Submit that Respondent is a public authority for the purposes of Act and Rules.

And the functions of Respondent in relation to teachers are given by Education Act.

Rule 103 of S.I. 92 of 2000 – 104(3).

It is clear that school perform public functions, receive public monies and are subject to Rules made by Government.

Alonzo case is not applicable.

D.F.C. does not occupy same position as Respondent.

What is important for determining public authority is indicia applicable such as public funding, hiring and firing.

Aston Canterlaw (2003) U.K.H 2 – 1218.

Submit Respondent meets all indicia set out at p. 1218 (per Lord Nicholas) at para. 12.

Submit that given the functions and rights as per Act and Rules, the Respondent is a public authority.

R v Partnership in Care Ltd. (2002) 1 W.L.R. 26110.

Elridge (1998) 1 LRC 35.

Respondent are performing public functions and with respect to education act as agent of Government with public funding to a considerable degree.

Respondent school is not private.

Submit that it is indisputable that Respondent is a public body against which constitutional redress would lie.

**ZUNIGA ON AUTHORITIES CITED:**

Refers to paras. 13 to 15 of affidavit.

Aston Canterlaw.

Regina v Partnership in Care.

Para. 14.

Eldrige.

**HEARING CONCLUDED.**

**Judgment reserved.**

A. O. CONTEH  
Chief Justice