COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

COMMON LAW AND EQUITY DIVISION

2023/CLE/gen/00346

B E T W E E N

DR. BETRAM SEARS

Claimant

AND

BAHAMAS MEDICAL COUNCIL

Defendant

Before:	**The Honourable Madam Senior Justice Deborah Fraser**
Appearances:	**Mr. Kahlil Parker K.C., and Ms. Lesley Brown for the Claimant**
	Mrs. Gail Lockhart-Charles K.C. for the Defendant
Hearing Date:	**18 March 2024**

Conversion of action from Standard Claim Form Action to Judicial Review Proceedings – Rule 26(9)(3) and (4) of the Supreme Court Civil Procedure Rules, 2022 – Court's General Powers to Rectify Matters

RULING

FRASER, SNR. J:

[1.] This is an application brought on behalf of the Claimant, Dr. Betram Sears ("**Dr. Sears**") requesting this Court to convert his filed Standard Claim Form action to a Judicial Review Application.

[2.] The application is challenged by the Defendant, The Bahamas Medical Council ("**BMC**").

Background

[3.] This application took place at the very first hearing of this matter at the first Case Management Conference. The facts of this case are highly contested. Accordingly, I shall refer to facts relevant for the purposes of this application and make no findings of fact at this time.

[4.] Dr. Sears is purportedly a qualified medical doctor.

[5.] The Bahamas Medical Council ("**BMC**") is a public authority established under the Medical Act, Ch. 224 as a body corporate with regulatory responsibility.

[6.] The BMC suspended Dr. Sears' license to practice medicine pursuant to section 31(c) of the Medical Act, 2014, effective 01 June 2017, purportedly pursuant to a report of its Disciplinary Committee dated 10 day March 2017, which recommended:

"Dr. Sears to be reprimanded documented in the Medical Register. In addition, it should be mandated that he attends an intensive course in Medical Ethics Boundaries and Professionalism conducted by the National Centers for Personalized Evaluation and Education in which he should enroll by June 1st and complete. Failure to enroll and complete the course should result in the suspension until he conforms."

[7.] Dr. Sears successfully completed the requisite Intensive Course in Medical Ethics, Boundaries and Professionalism on 27 and 28 February 2000, which Course was conducted by Case Western Reserve University School of Medicine, which is accredited by the ACCME (Accreditation Council for Continuing Medical Education) to provide continuing medical education for physicians. Such completion was confirmed by a letter from the Case Western Reserve University School of Medicine to the BMC dated 20 March 2020. The letter provided, inter alia, as follows:

"Bertram Sears, MBBS participated and successfully completed the Intensive Course in Medical Ethics, Boundaries and Professionalism on February 27-28, 2020. A certificate of attendance for 15.75 AMA PRA Category 1 Credits was mailed to Bertram Sears, MBBS.

Thank you again for supporting our Intensive Course in Medical Ethics, Boundaries and Professionalism. If you have questions, comments or feedback for us about the course please do not hesitate to call any time…

Sincerely,

Ted Parran, MD, FACP
Program Director
Director of Addiction Fellowships
Associate Clinical Professor of Medicine
Case Western Reserve University School of Medicine

Cc: Bertram Sears, MBBS"

[8.] By letter from the BMC to Dr. Sears dated 14 July 2021, the BMC advised Dr. Sears of the following:

"Dear Dr. Sears,

Re: Reinstatement

The Bahamas Medical Council discussed the report of the Review Committee's review documentation submitted to The Bahamas Medical Council by Ms. Romona Farquharson on your behalf.

The Bahamas Medical Council endorses the recommendations of the Review Committee that you provide more evidence to determine if the courses completed by you are equivalent to the PROBE course that you failed. You were made aware in previous communication from the Council, that you should seek approval by the Council before enrolling in a Physicians Reentry Program

Regards,
Dr. Merceline Dahl Regis
Registrar"

[9.] On 27 October 2022, Dr. Sears' counsel sent a letter to the BMC in the following terms:

"Bahamas Medical Council (the Council)

79 Collins Avenue

P.O. Box N-9802

Nassau, The Bahamas

Attention: Dr. Merceline Dahl-Regis, Registrar

Dear Madam,

Re: Dr. Bertram Sears, Reinstatement

We represent Dr. Sears and write further to your letter to Dr. Sears of the 14th day of July 2021.

Be advised that we have received the information submitted by Dr. Sears in support of his application for reinstatement and are satisfied that the courses completed by him are not only equivalent to the requisite PROBE courses but also demonstrate that he has fully satisfied all of the requirements for the reinstatement of his registration and licensure to practice medicine under the Act.

Should the Council have a reasonable and lawful basis for determining otherwise we hereby request its substantive decision and the written reasons therefor within twenty-one (21) days of the date hereof.

Failure by the Council to substantively respond to Dr. Sears' application for reinstatement within the said twenty-one (21) days shall be met with litigation and the costs attendant thereto.

Cedric L. Parker & Co

Kahlil D. Parker K.C."

[10.] Dissatisfied with the contents of the 14 July 2021 BMC letter, Dr. Sears filed a Standard Claim Form on 12 May 2023 against the BMC alleging breaches of its statutory duty and Dr. Sears' Legitimate Expectation by failing to provide Dr. Sears with any reasonable information or substantive decision with respect to his outstanding application. It is further alleged that the BMC unreasonably, unlawfully, arbitrarily, negligently and oppressively failed and/or refused to issue a decision with respect to Dr. Sears' application. Dr. Sears seeks the following relief:

"(i) An Order that the Defendant issue its reasoned Decision forthwith in response to the Claimant's application for reinstatement of his licence and restoration of his name to the register as a fully licensed medical practicioner, which application was duly submitted to, and received by, the Defendant in January, 2021.

(ii) A Declaration that, the Claimant having duly submitted his application for reinstatement and restoration of his registration and licensure to practice medicine, the Defendant is constrained to respond substantively to the said application within a

reasonable time, typically not exceeding sixty (60) days, and provide a reasoned basis for its approval or denial of the said application.

(iii) Such further or other relief as the Court may in the circumstances deem just.

(iv) The costs of and occasioned by this action to be assessed certified fit for two (2) counsel."

[11.] The BMC filed a Defence on 20 June 2023 denying that Dr. Sears is entitled to the relief he seeks. It avers that Dr. Sears' license was lawfully suspended for failing the PROBE program. The BMC further avers that the claim is frivolous and should be struck out on the grounds that the claim is for an order of Mandamus that ought to properly have been brought by means of a Part 54 Judicial Review Application.

[12.] The BMC states that **Part 54.3(1) of the Supreme Court Civil Procedure Rules, 2022** ("**CPR**") provides:

"No application for judicial review shall be made unless the leave of the Court has been obtained in accordance with this rule."

[13.] At the first Case Management Conference, Dr. Sears' counsel made this very application to have the action converted from a Standard Claim Form into a Judicial Review Application, but the BMC's counsel challenged such application and insists that the action be dismissed as being frivolous.

Issue

[14.] The issue that the Court must determine is whether the Standard Claim Form Action ought to be converted into a Judicial Review Application.

Discussion and Analysis

[15.] Counsel made submissions on their feet during the Case Management Conference and I shall take such submissions into consideration.

[16.] The Court is imbued with the power to rectify matters by virtue of Rule 26.9 of the CPR. The Rule provides:

"26.9 General power of the Court to rectify matters.

(1) This rule applies only where the consequence of failure to comply with a rule, practice direction or court order has not been specified by any rule, practice direction, court order or direction.

(2) **An error of procedure or failure to comply with a rule, practice direction or court order does not invalidate any step taken in the proceedings, unless the Court so orders**.

(3) **If there has been an error of procedure or failure to comply with a rule, practice direction, court order or direction, the Court may make an order to put matters right.**

(4) The Court may make such an order on or without an application by a party.

[Emphasis added]"

[17.] The following was noted in the **Supreme Court Civil Procedure Rules, 2022 Practice Guide, January 2024** ("**Practice Guide**") on page 226:

"NOTES - PART 26.9

This rule does not apply where a sanction for non-compliance was imposed. Not all instances of noncompliance will attract a sanction. **In such instances, Part 26.9 allows the rectification of a misstep on an application or on the Court's own initiative.** Since there is no sanction, Part 26.8 is inapplicable. However, even where there was no previous sanction, the court can impose a sanction on a grievous misstep such as striking out a statement of case on application of the other party or the other party may apply for an unless order under Part 26.4(1). Presumably the court can also act under Part 26. 2 on its own initiative.

Any order which the Court subsequently makes can introduce a sanction which would remove subsequent acts of non-compliance from the realms of Part 26.9.

The court's power to rectify only extends to instances where there is no consequence for the noncompliance specified by a rule, practice direction or order. The rule cannot be used to circumvent statutory requirements. **The rule contemplates procedural errors.** The rule cannot be used to bypass another rule that outlines a procedural step to be taken to rectify an error. The rule cannot be used to cure a nullity in law.

There is no time limit on the court's ability to rectify procedural errors under this rule if the interests of justice so require.

[Emphasis added]"

[18.] The Court also notes the pronouncements made by **Barrow JA in Reeves v Platinum Trading Management Ltd** - (2008) 72 WIR 195:

"…it is not every instance of noncompliance that will result in sanctions, express or implied. …. It will sometimes be the case that noncompliance is so trifling that the court is justified in rectifying the error in a summary manner, as r 26.9 permits, without resorting to the provisions and criteria in r 26.8"

[19.] I also draw counsel's attention to **Rule 26.1(2)(v) of the CPR**:

"26.1 Court's general powers of management.

(2) Except where these rules provide otherwise, the Court may —

(v) **take any other step, give any other direction, or make any other order for the purpose of managing the case and furthering the overriding objective**, including hearing an Early Neutral Evaluation, or directing that such a hearing take place before a Court appointed neutral third party, with the aim of helping the parties settle the case."

[Emphasis added]"

[20.] I must also bear in mind the overriding objective (Rule 1.1 of the CPR) when considering this and any other matter placed before me. **Rule 1.1 of the CPR** provides:

"1.1 The Overriding Objective.

(1) **The overriding objective of these Rules is to enable the Court to deal with cases justly and at proportionate cost**.

(2) Dealing justly with a case includes, so far as is practicable:

(a) **ensuring that the parties are on an equal footing**;

(b) saving expense;

(c) dealing with the case in ways which are proportionate to —

(i) the amount of money involved;

(ii) **the importance of the case**;

(iii) the complexity of the issues; and

(iv) the financial position of each party;

(d) **ensuring that it is dealt with expeditiously and fairly**;

(e) allotting to it an appropriate share of the Court's resources, while taking into account the need to allot resources to other cases; and

(f) enforcing compliance with rules, practice directions and orders.

[Emphasis added]"

[21.] In relation to striking out, Rule 26.3 of the CPR expressly states:

"26.3 Sanctions – striking out statement of case.

(1) In addition to any other power under these Rules, the Court may strike out a statement of case or part of a statement of case if it appears to the Court that —

(a) there has been a failure to comply with a rule, practice direction, order or direction given by the Court in the proceedings;

(b) the statement of case or the part to be struck out does not disclose any reasonable ground for bringing or defending a claim;

(c) the statement of case or the part to be struck out is frivolous, vexatious, scandalous, an abuse of the process of the Court or is likely to obstruct the just disposal of the proceedings; or

(d) the statement of case or the part to be struck out is prolix or does not comply with the requirements of Part 8 or 10.

(2) Where —

(a) the Court has struck out a claimant's statement of case;

(b) the claimant is ordered to pay costs to the defendant; and

(c) before those costs are paid, the claimant starts a similar claim against the same defendant based on substantially the same facts, the Court may on the application of

the defendant stay the subsequent claim until the costs of the first claim have been paid.".

[22.] Based on the foregoing, Dr. Sears' counsel's misstep appears innocuous and unintentional. No evidence or witness statements have been admitted or provided to the Court as yet – only the pleadings have been filed thus far. The material issues and relief sought are, in essence, clear. Dr. Sears seeks an order of the Court regarding certain relief to be granted relating to the BMC's decision to purportedly suspend him. In my view, striking out the entire claim is an extreme step, especially because it appears that there may be a legitimate issue that the Court should investigate and make a proper determination after considering all of the relevant evidence.

[23.] The filing of a Standard Claim Form indeed was not the proper court filing to make, particularly because it is not in dispute that the BMC is a statutory public body who has made certain comments/decisions relating to Dr. Sears' alleged suspension from the practice of Medicine. It is clear that this matter ought to have been initiated by means of a Judicial Review Application, in compliance with Part 54 of the CPR. I am not prepared to penalize Dr. Sears for such a mistake. This warrants the Court's discretionary powers to make matters right. I am comforted in my decision, bearing in mind the overriding objective of the CPR, coupled with the very early acknowledgement of the error and request to have the matter converted to the appropriate proceedings.

[24.] I must emphasize that, though the matter has been converted to Judicial Review Proceedings, Dr. Sears is still required to apply for leave for judicial review of the matter.

CONCLUSION

[25.] Based on the aforementioned principles, I exercise my powers under Rule 26.9 of the CPR and convert these proceedings from that of a Standard Claim Form action to Judicial Review Proceedings.

[26.] In the premises, I make an order in the following terms:

(a) These proceedings are hereby converted from a Standard Claim Form Action to Judicial Review Proceedings, in compliance with Part 54 of the Supreme Court Civil Procedure Rules, 2022.

(b) Dr. Sears shall file the required Notice of Application requesting leave for Judicial Review within fourteen (14) days from the date of this Ruling.

(c) A hearing for the requisite leave for Judicial Review shall thereafter take place on a date convenient to both counsel and the Court.

(d) I make no order as to costs.

[27.] This is my ruling.

Dated this 20th day of June 2024

Deborah E. Fraser
Senior Justice