IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Public Law Division

Claim No: PUB/jrv/00005 of 2022

IN THE MATTER of an application by THE BAHAMAS UNION OF TEACHERS (*By Vernincha Simmons and Vernon Rogers in their capacities as Trustees*) for leave to apply for Judicial Review. AND IN THE MATTER of the purported Determination and Decision of the 3rd Respondent by Certificate of Determination and letter, dated the 1st day of April A.D. 2022, issued by Minister of Labour & Immigration the Honourable Keith R. Bell, that: "*The Bahamas Educators, Counsellors and Allied Workers Union is entitled to be recognized as the Bargaining Agent for all teachers, guidance counsellors and teacher aids* (sic) *employed by the Ministry of Education, Technical & Vocational Training in the districts identified as Grand Bahama, Bimini and the Cays*. [And that] …*The Bahamas Union of Teachers (BUT) will no longer be recognized as the Bargaining Agent for the above-mentioned bargaining unit*." (*the Decision*)

AND IN THE MATTER of the Industrial Relations Act (*the Act*).

BETWEEN

THE BAHAMAS UNION OF TEACHERS
(*By Vernincha Simmons and Vernon Rogers in their capacities as Trustees*)

Applicant

V.

THE ATTORNEY GENERAL
OF THE COMMONWEALTH OF THE BAHAMAS

1st Respondent

AND

THE BAHAMAS EDUCATORS COUNSELLORS AND ALLIED WORKERS UNION

2nd Respondent

AND

THE MINISTER OF LABOUR AND THE PUBLIC SERVICE

3rd Respondent

AND

THE MINISTER OF EDUCATION AND TECHNICAL AND VOCATIONAL TRAINING

4th Respondent

Before: The Hon. Madam Justice Carla D. Card-Stubbs

Appearances: Kahlil Parker KC with Roberta Quant and Lesley Brown for the Applicant
Antoine Thompson for the 1st Respondent
Obie Ferguson KC with Keod Smith for the 2nd Respondent

JUDGMENT

INTRODUCTION AND BACKGROUND

1. This is the Application of the 2nd Respondent, Bahamas Educators' Counsellors and Allied Workers Union, ('BECAWU') for dismissal of Judicial Review Proceedings brought by the Applicant, the Bahamas Union of Teachers ('BUT').

2. The Application is stated to be brought pursuant to Rule 42.7(2)(b)(i) of the Supreme Court Civil Procedure Rules, 2022 *('CPR 2022')* and/ or the inherent jurisdiction of the Court particularly having regard to the Court's Overriding Objective as set out in Rule 1.1(1) *(matters to be dealt with justly)* and Rule 1.1(2)(d) *(address matters expeditiously and fairly)* of the CPR-2022.

3. That Application, filed, January 25, 2024, seeks several declarations and orders. It is supported by the affidavit of Keysha Laroda filed on January 25, 2024.

4. The grounds of the application are set out as:
    a. The named Applicant herein, the BUT, is not a registered trade union in The Bahamas pursuant to Section 12 of the IRA-1970; and
    b. The RTU (Registrar of Trade Unions) never issued a Certificate of Registration to the BUT in 1965 as sworn to Ms. Belinda Wilson in her Affidavit filed herein on 6th April 2022 as being the year in which the BUT was formed as a trade union in The Bahamas; and
    c. The BUT is not able to produce any documentation by which it can rely on as proof evidencing that it had complied with Section 12 of the IRA-1970 in being determined as a trade union in The Bahamas; and

d. The BECAWU, as the 2nd Respondent of this Notice of Application herein reserves the right to add to or subtract from these grounds.
e. The BUT collective agreement referred to in the Notice of Application for Leave to Apply for Judicial Review that was filed herein by the Applicant herein on 6th April 2022 had expired on 30th June 2018, and cannot be relied on.
f. The Attorney General is not a proper part of this action/proceedings.

5. In this ruling a reference to BECAWU, without more, is a reference to the 2nd Respondent. In this ruling a reference to BUT, without more, is a reference to the Applicant in the application for judicial review and the Respondent in the current application.

6. The thrust of the BECAWU's submissions on its application are that:
(1) The BUT is not a registered trade union in The Bahamas and therefore cannot properly invoke the court's jurisdiction for judicial review proceedings and
(2) The 1st Respondent, viz, "The Attorney General of the Commonwealth of The Bahamas", is not a proper party to the action, not being the decision maker for purposes of these proceedings.

7. These constitute the main issues to be dealt with in this application.

ISSUES

8. The main issues for determination are:
(1) Whether the BUT can properly invoke the court's jurisdiction for judicial review proceedings and
(2) Whether the 1st Respondent, "The Attorney General of the Commonwealth of The Bahamas", is a proper party to this action.

PRELIMINARY ISSUE – the preliminary objection

9. As a preliminary issue, it is necessary to consider how the 2nd Respondent BECAWU purports to invoke the court's jurisdiction for the determination of this application. The Application is said to be brought "pursuant to Rule 42.7(2)(b)(i) of the Supreme Court Civil Procedure Rules, 2022 *("CPR- 2022")* and/ or the inherent jurisdiction of the Court".

10. Part 42, CPR 2022, as amended, makes provisions for "Judgments and Orders". Rule 42.7 deals with "consent judgments and orders". That rule provides as follows:

> 42.7. Consent judgments and orders.
>
> (1) This rule applies where —

(a) none of these Rules prevents the parties agreeing to vary the terms of any court order; and

(b) all relevant parties agree upon the terms in which judgment should be given or an order made.

(2) Except as provided by paragraphs (3) and (4), this rule applies to the following kinds of judgment or order —

(a) a judgment for —

(i) the payment of a debt or damages, including a judgment or order for damages or the value of goods to be assessed;

(ii) the delivery up of goods with or without the option of paying the value of the goods to be assessed or the agreed value; or

(iii) costs;

(b) an order for—

(i) the dismissal of any proceedings, wholly or in part;

(ii) the stay of proceedings on terms which are attached as a schedule to the order but which are not otherwise part of it (a "Tomlin Order");

(iii) the stay of enforcement of a judgment, either unconditionally or on condition that money due under the judgment is paid on a stated date or by instalments specified in the order;

(iv) the setting aside of a default judgment under Part 13;

(v) the payment out of money which has been paid into court;

(vi) the discharge from liability of any party;

(vii) the payment, assessment or waiver of costs, or such other provision for costs as may be agreed; or

(viii) any procedural order other than one falling within rule 26.7(3), 27.8(1) and (2).

(3) This rule does not apply —

(a) where any party is a litigant in person;

(b) where any party is a minor or patient;

(c) in Admiralty proceedings; or

(d) where the court's approval is required by these Rules or by any enactment before an agreed order can be made.

(4) This rule does not allow the making of a consent order by

which any hearing date fixed by the court is to be adjourned.

(5) Where this rule applies the order must be —

(a) drawn in the terms agreed;

(b) expressed as being 'By Consent';

(c) signed by the attorney acting for each party to whom the order relates; and

(d) filed at the Registry for sealing.

11. I find that Rule 42, including Rule 42.7(2)(b)(i), is inapplicable here as BECAWU's application before me is not premised on a consent judgment.

12. BUT submits that "Rule 42.7(2)(b)(i) SCCPR 2022 affords the 2nd Respondent no reasonable or lawful basis upon which to seek the dismissal of these proceedings and its application ought to be dismissed".

13. By BECAWU's application, the inherent jurisdiction of this court is also invoked and the application is brought as a preliminary objection – preliminary to the substantive hearing. As part of its application, BECAWU submits that BUT has no standing to bring these proceedings before the court.

14. The issue of whether a party has standing to bring proceedings is an issue that ought to be treated with prior to a substantive hearing.

15. I will therefore treat the application as a preliminary objection and consider the entirety of the application.

ISSUE 1. Whether the BUT can properly invoke the court's jurisdiction for judicial review proceedings

2ND RESPONDENT'S BECAWU's SUBMISSIONS

16. The 2nd Respondent BECAWU submits that, in the application for leave to bring judicial review proceedings, the Applicant BUT, failed to exhibit a copy of the BUT's Certificate of Registration that would have been issued under Section 12, Industrial Relations Act, Cap. 321 and that the BUT is not a registered trade union in The Bahamas pursuant to the Act. The 2nd Respondent BECAWU submits that a trade union can only have standing as a juridical entity to be able to commence proceedings if it is registered in accordance with Section 12 of the Industrial Relations Act, Cap. 321. and that the current Registrar of Trade

Unions, Mr. Van Delaney, has issued a letter showing that there was nothing in the records of his office showing that the BUT was ever issued with a Certificate of Registration.

17. The 2nd Respondent BECAWU further argues that the BUT collective agreement referred to in the Notice of Application for leave to apply for Judicial Review that was filed by the Applicant on April 6, 2022 had expired June 30, 2018, and cannot be relied on.

18. Relying on the case of *Freeport Licensees and Property Owners Association v The Grand Bahama Port Authority Limited and Ors*, Court of Appeal, The Bahamas, the 2nd Respondent BECAWU submits that "a Certificate of Registration is akin to a trade union's birth certificate ...and it is only from the date stated [on] that certificate that the [trade union] assumes full [trade union] status and has the requisite capacity to [present itself as a trade union]."

APPLICANT'S BUT's SUBMISSIONS

19. The Applicant BUT submits that while section 12 of the Industrial Relations Act provides that a "Certificate of Registration 'shall be conclusive evidence that the provisions of this Act and of any regulations made thereunder with respect to registration have been complied with', section 12 of the Act does not provide that failure to produce such a certificate establishes that a trade union is not duly registered."

20. The Applicant BUT further submits that the 1st Respondent has accepted that the Applicant is duly registered and relies on the affidavit of Gina Thompson, filed on May 16, 2022. Ms. Thompson is the Permanent Secretary in the Ministry of Labour and at paragraph 4 of her Affidavit, she avers that: "The records of the Department of Labour confirm that Ms. Belinda Wilson is the President and member of the duly registered Bahamas Union of Teachers." The Applicant BUT also makes reference to the Industrial Agreement which was relied on at the application for leave. The Affidavit of Belinda Wilson, filed on April 6, 2022, exhibits at Exhibit "BW-2" an Industrial Agreement which the Applicant argues "demonstrates the 1st Respondents' long standing recognition of the Applicant as a duly registered trade union as well as their long standing recognition of the composition of the Applicant's bargaining unit."

21. The Applicant BUT also submits that the expiry of the Industrial Agreement "is irrelevant to the question before the Court on this application".

LEGAL DISCUSSION AND ANALYSIS

22. The amended notice of application for leave to apply for judicial review, filed on July 28, 2022, was made by the Applicant described as "a duly registered and recognized Trade Union, and the duly recognized and lawful Bargaining Agent with Agency Shop for teachers and associated education professionals who are public officers employed by the Respondent in the public school system."

23. The decision sought to be impugned is said to be a decision by Certificate and Determination (and letter) dated April 1, 2022 issued by the Minister of Labour & Immigration which communicated the Minister's decision that: "I hereby determine that The Bahamas Educators, Counsellors and Allied Workers Union is entitled to be recognized as the Bargaining Agent for all teachers, guidance counsellors and teacher aids [sic] employed by the Ministry of Education, Technical & Vocational Training in the districts identified as Grand Bahama, Bimini and the Cays."

24. This was said to be communicated by letter of the same date from the Minister of Labour & Immigration addressed to the President of BUT which read, in part,

> "Please be advised, I have made a determination granting The Bahamas Educators, Counsellors and Allied Workers Union is entitled to be recognized as the Bargaining Agent for all teachers, guidance counsellors and teachers' aides employed by the Ministry of Education, Technical & Vocational Training in the islands of Grand Bahama, Bimini and the Cays.
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> "In light of this decision, I wish to advise that the Bahamas Union of Teachers (BUT) will no longer be recognized as the Bargaining Agent for the of the [sic] above-mentioned bargaining unit."

25. Until the Minister's determination of April 1, 2022, the BUT was recognized as the relevant Bargaining Agent. That fact appears undisputed.

26. The Applicant BUT and the 1st Respondent (the Attorney General) have conceded a relationship where the Applicant was always acknowledged as a duly registered trade union. The 2nd Respondent BECAWU submits that in the absence of evidence of a registration under the current Act, the Applicant has no legal capacity as a trade union to bring these proceedings.

27. Section 12 of the Industrial Relations Act, Cap. 321 reads:

> 12. The Registrar, upon registering a trade union under this Act, shall issue to the union a certificate of registration, which certificate, unless the registration of the union is proved to have been cancelled and subject to the provisions of section 13, shall be conclusive evidence that the provisions of this Act and of any regulations made thereunder with respect to registration have been complied with.

28. By section 12, a certificate is to be issued on registration and that certificate will be conclusive evidence of registration.

29. The 2nd Named Respondent in challenging the BUT's status, relies on a letter from Van Delaney, the current Registrar of Trade Unions, which reads in part,

> "The Registrar of Trade Unions has searched exhaustibly for evidence that Bahamas Union of Teachers was registered in accordance with Industrial Relations Act 1970. We have been unable to confirm that the Bahamas Union of Teachers has any certificate of registration on our file pursuant to Section 12 of the Industrial Relations Act 321.
>
> Further, we have also searched for any registration prior to 1970 and have not found any evidence of registration."

30. The Respondent submits that the letter is to be interpreted to show that the BUT was never registered as a trade union.

31. In response, the 1st named Respondent filed an affidavit by the said Van Delaney, current Registrar of Trade Unions. At paragraph 12 of that Affidavit, Van Delaney avers,

> "While I stated in the letter that I was unable to confirm that the Bahamas Union of Teachers has any certificate of registration on our file pursuant to Section 12 of the Industrial Relations Act 321, and that we also searched for any registration prior to 1970 and have not found any evidence of registration, I did not state that one did not exist or was never issued."

32. The Second Affidavit of Belinda Wilson, filed on July 9, 2022, by the Applicant BUT speaks to the matter of registration of the BUT.

33. By the Second Affidavit of Belinda Wilson, there is exhibited, inter alia, a letter dated June 29, 2021 over the hand of John Pinder, then Director of Labour/Registrar of Trade Unions which purports to confirm the registration of the BUT as a duly registered union as of the 6th January 1959. That letter reads:

> "Please accept this letter as confirmation that the records of the Registrar of Trade Unions reflect that the Bahamas Union of Teachers became a duly registered union as of the 6th January, 1959."

34. The fundamental position of the 2nd Respondent BECAWU is that a section 12 Certificate ought to be produced.

35. I hold the view that while a section 12 certificate is conclusive, it is not the only means of evidence of registration. I also hold the view that in the absence of a section 12 certificate in a case where status is in issue, there is an evidential burden on the entity asserting status to prove same.

36. In this case, until the 2nd Respondent BECAWU made an application, there appeared to be no issue as to the status of the BUT. The court granting leave for judicial review, had before it, evidence on which it could act regarding the status of the BUT. BUT had been acknowledged, and treated, as a registered trade union and produced documents evidencing same, including the registered Industrial agreement.

37. Having been met with the assertions of the 2nd Respondent BECAWU, the Applicant BUT sought to rely on the documentary evidence exhibited in its filed affidavits.

38. The 2nd Respondent BECAWU puts much store on the letter issued by Van Delaney, current Registrar of Trade Unions. However, a subsequent affidavit of Delaney, speaks to his being unable to confirm the existence of the registration. He does not dispute the possibility that BUT was registered. His position is that he cannot find the evidence.

39. The Applicant BUT produced a letter from the former Director of Labour and Registrar of Trade Unions, John Pinder, who affirmatively speaks to the registration of the Applicant.

40. Considering a battle of the affidavits, and having reviewed the documents relied on, it seems to me that the issue of registration ought to be resolved in favour of the Applicant BUT for purposes of the current proceedings.

41. However, it is also my view that in the absence of a dispute as to status between the Applicant BUT and the decision-maker as represented by the 1st Respondent, then

the current objection mounted by the 2nd Respondent BECAWU is misplaced. If the 2nd Respondent were correct on its submissions, then it would mean that the decision of the 1st Respondent could not undergo scrutiny and that, by default, a decision of the 1st Respondent in BECAWU's favour could proceed without challenge.

42. As a reminder, these are judicial review proceedings. The supervisory jurisdiction of the court is invoked to review the decision-making process. A party affected by the decision-making is entitled to invoke the jurisdiction of the court.

43. In the case of *City Markets Limited v Bahamas Commercial Stores, Supermarkets and Warehouse Workers Union*, Bahamas Civil Appeal No. 33 of 2000, Lord Justice of Appeal Ganpatsingh confirmed:

> "Now the prerogative writs were concerned with reviewing, not the merits of the decision in respect of which, in public law application for relief could be made, but the decision making process itself."

44. In *City Markets Limited v Bahamas Commercial Stores, Supermarkets and Warehouse Workers Union*, the court applied the determination of Lord Bingham in *Chief Constable of the North Wales Police v Evans* [1982] 3 All ER 141. I find it useful here to reproduce Lord Bingham's explanation of the purpose of judicial review.

45. In *Chief Constable of the North Wales Police v Evans* [1982] 3 All ER 141, at page153 Lord Bingham determined:

> I turn secondly to the proper purpose of the remedy of judicial review, what it is and what it is not. In my opinion the law was correctly stated in the speech of Lord Evershed ([1963] 2 All ER 66 at 91, [1964] AC 40 at 96). His was a dissenting judgment but the dissent was not concerned with this point. Lord Evershed referred to—
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> > 'a danger of usurpation of power on the part of the courts … under the pretext of having regard to the principles of natural justice … I do observe again that it is not the decision as such which is liable to review; it is only the circumstances in which the decision was reached, and particularly in such a case as the present the need for giving to the party dismissed an opportunity for putting his case.'
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> Judicial review is concerned, not with the decision, but with the decision-making process. Unless that restriction on the power of the court is observed, the court will in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power.

46. Those cases confirm the well-established principle that judicial review concerns the decision-making process and not the merits of the decision, as it were.

47. The purpose of these proceedings is to give "to the party dismissed an opportunity for putting his case". Such a party, in this case, is the Applicant BUT.

48. In the instant case, it seems to me that if this court were to go further to investigate and to determine, during these proceedings, whether the Applicant BUT was a duly registered trade union with a section 12 Industrial Relations Act certificate (and therefore entitled or not to consideration by the decision-maker), then such a determination would be outside the scope of these proceedings and would be a "usurpation of power".

49. The Applicant has been treated as duly registered. This is the position of the 1st Respondent whose decision is challenged. If the 2nd Respondent BECAWU wishes to challenge the status of the Applicant BUT and its entitlement to be so treated or recognized, then that is a challenge to be mounted elsewhere. These proceedings, to my mind, are limited to a review of the decision-making process whereby the 2nd named Respondent BECAWU was recognized as the Bargaining Agent in place of the Applicant BUT.

50. It is clearly the position that until the Minister's determination of April 1, 2022, the status of the BUT as a registered trade union did not arise and did not affect their entitlement to act as Bargaining Agent. To that extent, had the Minister not made the determination of April 1, 2022, the Applicant would have retained the position of bargaining agent.

51. Therefore, for the purposes of these proceedings, the Applicant is entitled to bring the proceedings as a registered trade union formerly recognized by the Minister and as a registered trade union affected by the decision of the Minister.

52. Further, for the purposes of challenging the decision-making process, I find that the expiry of the Industrial Agreement is irrelevant.

ISSUE 2. Whether the 1st Respondent, "The Attorney General of the Commonwealth of The Bahamas", is a proper party to this action.

2ND RESPONDENT'S BECAWU's SUBMISSIONS

53. The 2nd Respondent BECAWU submits that judicial review proceedings concern the Supreme Court, "inter alia, reviewing the decision-making of an official who had taken the

decision complained about by the Applicant in the proceedings." They pray in aid the case of *Bahamas Hotel Maintenance and Allied Workers Union v Bahamas Hotel Catering and Allied Workers Union and others* [2011] UKPC 4, Privy Council [an appeal from The Bahamas] and *City Markets Limited v Bahamas Commercial Stores, Supermarkets and Warehouse Workers Union*, Bahamas Civil Appeal No. 33 of 2000.

54. The 2nd Respondent BECAWU notes that after leave to commence judicial review proceedings has been granted, there is a procedural requirement for the Applicant, according to Rule 54.6(1) of the CPR-2022, to settle an Originating Application and may not rely on any ground or seek any relief not set out in the statement in support of the leave application. The 2nd Respondent submits that the reliefs sought in BUT's 2022 Leave Application are couched in terms of the First named Respondent, the "The Attorney General of the Commonwealth of The Bahamas". They argue that BUT added 2 new Respondents, namely "The Minister of Labour and the Public Service" and "The Minister of Education and Technical and Vocational Training" without leave of the court and that this was wrong. They argue that this amounts to amending the identity of who the decision maker was in respect of which reliefs were being sought and that the BUT is not entitled to amend any aspect of the BUT's 2022 Leave Application including the referenced Statement.

55. The 2nd Respondent further submits that the reliefs sought as against the Attorney General will automatically fail.

APPLICANT'S (BUT's) SUBMISSIONS

56. The Applicant BUT submits that the "1st Respondents have not challenged or disputed the status of the Attorney General as a reasonable or necessary party to these proceedings." In relation to the addition of the Minister of Labour and The Public Service and the Minister of Education and Technical and Vocational Training, the Applicant argues that the addition was made in accordance with Rule 19.2 (2) of the Supreme Court Civil Procedure Rules 2022.

57. The Applicant prays in aid Rule 8.5(1) and (2) CPR which they say protects the proceedings from failing on a technicality in the addition of the parties.

58. The Applicant submits that it is in keeping with its duty "to help the Court to further the overriding objective" that the additional Respondents were added because "the 2nd Respondent … expressed concern that the Minister of Labour and Minister of Education ought properly to have been parties to this action and …. to assuage the 2nd Respondent's

concern and to ensure that all reasonable and necessary parties were before the Court pursuant to the overriding objective."

1st RESPONDENT'S SUBMISSIONS

59. Counsel for the Attorney General indicated a readiness to proceed with the substantive hearing. No challenge was being made to the status of the Applicant as a duly registered trade union. Having recently had sight of the letter of Van Delaney exhibited by, and relied on, by the 2nd Respondent, the 1st Respondent filed an affidavit by Van Delaney. That affidavit purports to clarify the meaning and intention of Mr. Delaney in the letter as noted earlier.

60. There was no objection to the Attorney General being a proper party to these proceedings.

LEGAL DISCUSSION AND ANALYSIS

61. The case of *Bahamas Hotel Maintenance and Allied Workers Union v Bahamas Hotel Catering and Allied Workers Union and others* [2011] UKPC 4, Privy Council [an appeal from The Bahamas], relied on by the 2nd Respondent BECAWU, is instructive in several ways.

62. Briefly, the facts in that case are that the Registrar of Trade Unions issued a certificate of registration in respect of the Bahamas Hotel Maintenance and Allied Workers Union ('Maintenance') as a trade union under the Industrial Relations Act. At that time, another trade union, Catering, had been registered as a trade union in the name Bahamas Hotel Catering and Allied Workers Union ('Catering'). Catering was subsequently informed by the Director of Labour that Maintenance had applied to be recognized as bargaining agent for the non-management employees of the hotel concerned and that the Minister intended on to take a poll pursuant to Industrial Relations Act to determine which of the two unions should be so recognised. The instituted judicial review proceedings that followed sought an order for certiorari to quash the registration of Maintenance as well as an order for prohibition prohibiting the Minister from conducting the poll.

63. It is in that context, that the issue of the proper Respondent to the proceedings arose.

64. Lord Walker, in reading the judgment of the court, stated at paragraphs 35 - 36

> [35] Judicial review is directed to official decision-making, and the official who took the relevant decision is the natural Respondent to such proceedings. The Registrar (who happens to be a senior official in the Ministry, but holds a statutory office in his own right) would have been the proper Respondent to a challenge to any decision of his in the exercise of his statutory powers (such as the registration of a union with an objectionable name, or

> a refusal to exercise his powers under s 15). The Minister was the proper Respondent to any challenge to his decision, in exercise of his statutory powers, to order a ballot.
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> [36] The Attorney-General was therefore correct in submitting to the Board, through Mr Guthrie QC, that he should not have been made a party. The President was in error in referring to s 12 of the Crown Proceedings Act, Ch 68, since proceedings by way of judicial review are not "civil proceedings" within the meaning of s 12 (see Lord Oliver of Aylmerton in *Minister of Foreign Affairs, Trade and Industry v Vehicles and Supplies Ltd* [1991] 4 All ER 65, [1991] 1 WLR 550, 555, [1991] 22 LS Gaz R 36, the corresponding restrictive definition being s 17 of the Crown Proceedings Act). The Attorney-General would therefore only very rarely be a proper Respondent to judicial review proceedings, since most decisions taken by the Attorney-General himself are not amenable to judicial review (*Gouriet v Union of Post Office Workers* [1977] 3 All ER 70, [1978] AC 435, 487-488, [1977] 3 WLR 300).

65. Nevertheless, the Court considered the actions of the Attorney General and proceeded with him as a party. At paragraph 37, Lord Walker continued:

> [37] The Attorney-General cannot however be said to have adopted a consistent course in these proceedings. He entered an appearance without objection, and took an active part in the proceedings (on 24 January 2007 he issued a notice of motion to strike out some of the Applicants' evidence). He also failed to protest when Maintenance's summons to add the Registrar was withdrawn. The occasions when it is proper, and when it is not proper, to join the Attorney-General are not an easy matter for many litigants, and the Attorney-General should, if joined incorrectly, take active steps to rectify the position as quickly and inexpensively as possible.

66. That case is clearly distinguishable here. Here the complaint is made of the decision of the Minister of Labour. Any suggestion that the Registrar is the proper party is misconceived. There is no decision taken by the Registrar that is the subject of these proceedings.

67. In the proceedings before me the decision complained of is the decision of the Minister of Labour & Immigration. There is no allegation of a decision made by the Attorney General. There appears to be no misapprehension of the role that the Attorney General plays in these proceedings. To date, the Attorney General has played an active role in these proceedings. The Attorney General has made no demur on being named as a Respondent. The Attorney General is purporting to represent an officer of the Crown in these proceedings. I see no value in declaring the Attorney General as an improper party.

68. Registration of Trade Union in dispute

I also note that the court in *Bahamas Hotel Maintenance and Allied Workers Union v Bahamas Hotel Catering and Allied Workers Union and others*, refused to entertain submissions on the question as to whether Catering was a registered trade union in circumstances where this had not been in dispute between the parties in the court below.

69. At paragraph 12 of the judgment in *Bahamas Hotel Maintenance and Allied Workers Union v Bahamas Hotel Catering and Allied Workers Union and others*, Lord Walker said:

> [12] Catering was registered as a trade union on 1 December 1958, long before the enactment of the 1970 Act. It was registered under Pt III of the Trade Union and Industrial Conciliation Act 1958 (No 30 of 1958), the provisions of which were similar to the corresponding provisions in Pt III of the 1970 Act except that the register was to be kept by the chief industrial officer. Counsel were unable to draw the Board's attention to any transitional provisions equating registration under the 1958 Act with registration under the 1970 Act, but it was common ground in the courts below that Catering was a registered trade union. The Board declined to hear submissions on an entirely new point, contradicting this common ground, that Mr Ferguson attempted to raise in limine.

70. At paragraphs 39 to 40 of the judgment, Lord Walker continued:

> [39] In any event, as events have moved on mere delay has ceased to be a determinative issue in the matter. The unchallenged poll held following the unchallenged order of Adderley J has in the Board's view changed everything. The President was, with great respect, wrong to ignore these events and to take the view that everything that happened since the flawed registration of Maintenance in 2001, so far as it depended on that registration, could be treated as a nullity.
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> [40] All relief granted by way of judicial review is discretionary, and the principles on which the court's discretion must be exercised take account of the needs of good public administration. In *Caswell v Dairy Produce Quota Tribunal for England and Wales* [1990] 2 AC 738, 749, [1990] 2 All ER 434, [1990] 2 WLR 1320, Lord Goff of Chieveley quoted Lord Diplock in *O'Reilly v Mackman* [1983] 2 AC 237, 280-281, [1982] 3 All ER 1124, [1982] 3 WLR 1096:
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> > "The public interest in good administration requires that public authorities and third parties should not be kept in suspense as to the legal validity of a decision the authority has reached in purported exercise of decision-making powers for any longer period than is absolutely necessary in fairness to the person affected by the decision."
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> > Lord Goff continued:
> > "I do not consider that it would be wise to attempt to formulate any precise definition or description of what constitutes detriment to good administration. This

> is because applications for judicial review may occur in many different situations, and the need for finality may be greater in one context than in another. But it is of importance to observe that section 31(6) [of the Supreme Court Act 1981] recognises that there is an interest in good administration independently of hardship, or prejudice to the rights of third parties, and that the harm suffered by the Applicant by reason of the decision which has been impugned is a matter which can be taken into account by the court when deciding whether or not to exercise its discretion under section 31(6) to refuse the relief sought by the Applicant. In asking the question whether the grant of such relief would be detrimental to good administration, the court is at that stage looking at the interest in good administration independently of matters such as these. In the present context, that interest lies essentially in a regular flow of consistent decisions, made and published with reasonable dispatch; in citizens knowing where they stand, and how they can order their affairs in the light of the relevant decision."

Order 53 of the Supreme Court Rules is in rather different terms, but the same principle applies. The members of Maintenance are entitled to know where they stand, and for more than a year they have, on the strength of an unchallenged poll, been treated as members of a union recognised as a bargaining agent. Fairness and good administration requires that they should be confirmed in that position.

71. In *Bahamas Hotel Maintenance and Allied Workers Union v Bahamas Hotel Catering and Allied Workers Union and others*, the Court considered how to treat with the admittedly flawed registration of the trade union, Maintenance. In relation to Maintenance, the evidence was that no notice of its proposed registration had been published in the Gazette and that, therefore, its registration process had been flawed. Despite the flawed registration, the Board determined that, given the events that had transpired since its registration (which included its recognition as a registered trade union and a poll by staff in its favour), fairness and good administration required that such a trade union be confirmed in its position.

72. Notably, in that case, the flawed registration of a trade union did not disentitle it to the benefit of judicial proceedings, or indeed, to a determination in its favour.

ADDITION OF NEW RESPONDENTS/PARTIES

73. In judicial review proceedings, the parties are usually the Applicant and the Respondent, the decision-maker. In judicial proceedings, it is in the interest of justice that the relevant

parties are brought before the court in relation to the matter before it. This aids in efficiency and persons with vested interests will be heard. It is also important to the administration of justice and rule of law that persons who may be affected by a court ruling become aware of that ruling. For such reasons rules of court usually allow for a certain latitude in the addition substitution and removal of parties in a matter.

74. In judicial review proceedings, even a non-party may be heard in opposition to the application at the hearing of the judicial review. By virtue of Rule 54.9, an interested person may be heard.

> Hearing of application for judicial review.
>
> 54.9 On the hearing of any application under rule 54.5, any person who desires to be heard in opposition to the application, and appears to the Court to be a proper person to be heard, shall be heard, notwithstanding that he has not been served with the originating application.

75. While it is important that the necessary parties are before the court, Rule 8.5 CPR provides that, as a general rule, a claim will not fail because of the failure to add a necessary party or because of the addition of a party who ought not to have been added. That rule provides:

> 8.5 Claim not to fail by adding or failing to add parties.
>
> (1) The general rule is that a claim will not fail because a person —
>
> (a) who should have been made a party was not made a party to the proceedings; or
>
> (b) was added as a party to proceedings who should not have been added.
>
> (2) Notwithstanding paragraph (1) —
>
> (a) where a claimant claims a remedy to which some other person is jointly entitled, all persons jointly entitled to the remedy must be parties to the proceedings, unless the Court orders otherwise; and
>
> (b) if any such person does not agree to be a claimant, that person must be made a defendant, unless the Court orders otherwise.
>
> (3) This rule does not apply in probate or administration proceedings.

76. Rule 19.2 provides for the addition, removal and substitution of parties. Rule 19.2 deals with the Change of Parties.

> 19.2 Change of parties.
>
> (1) The Court may add, substitute or remove a party —
>
> (a) on application by a party; or
>
> (b) without an application.

(2) A claimant may add a new defendant to proceedings without permission at any time before the case management conference by filing at the court office, an amended claim form and statement of claim.

(3) Parts 5, 7, 9, 10 and 12 apply to an amended claim form referred to in paragraph (2) as they do to a claim form.

(4) The Court may add a new party to proceedings without an application, if —

(a) it is desirable to add the new party so that the Court can resolve all the matters in dispute in the proceedings; or

(b) there is an issue involving the new party which is connected to the matters in dispute in the proceedings and it is desirable to add the new party so that the Court can resolve that issue.

(5) The Court may by order remove any party if it considers that it is not desirable for that person to be a party to the proceedings.

(6) The Court may order a new party to be substituted for an existing one if —

(a) the Court can resolve the matters in dispute more effectively by substituting the new party for the existing party; or

(b) the existing party's interest or liability has passed to the new party.

(7) The Court may add, remove or substitute a party at the case management conference.

(8) The Court may not add a party, except by substitution, after the case management conference on the application of an existing party unless that party can satisfy the Court that the addition is necessary because of some change in circumstances which became known after the case management conference.

77. Rule 54.6 makes provision for the statements and affidavits to be relied on in the substantive judicial review proceedings. Once leave is given to proceed, no amendment is to be made to the case without the leave of the court.

54.6 Statements and affidavits.

(1) Copies of the statement in support of an application for leave under rule

54.3 shall be served with the originating application and, subject to paragraph (2) no grounds shall be relied upon or any relief sought at the hearing except the grounds and relief set out in the statement.

(2) The Court may on the hearing of the application allow the applicant to amend his statement, whether by specifying different or additional grounds of relief or otherwise, on such terms, if any,

as it thinks fit and may allow further affidavits to be used if they deal with new matters arising out of an affidavit of any other party to the application.

(3) Where the applicant intends to ask to be allowed to amend his statement or to use further affidavits, he shall give notice of his intention and of any proposed amendment to every other party.

(4) Any respondent who intends to use an affidavit at the hearing shall file it in the Registry as soon as practicable and in any event, unless the Court otherwise directs, within six weeks after service upon him of the documents required to be served by paragraph (1).

(5) Each party to the application shall supply to every other party on demand copies of every affidavit which he proposes to use at the hearing, including, in the case of the applicant, the affidavit in support of the application for leave under rule 54.3.

78. It is important that the addition of the parties do not change the nature of the case for which leave was given. I do not think that this is so in the matter before me. I do not accept that the addition of the parties in this case equate to allowing the Applicant BUT additional grounds of relief.

79. In any matter, the addition of the parties ought to serve to clarify and not obfuscate issues. If the addition of parties later proves unnecessary and if such addition causes extra effort on a responding party's behalf in the preparation of a case, then that may be cause for a sanction such as a sanction in costs. However, the addition of a party who ought not to have been added is not reason, as a general rule, for the claim to fail.

CONCLUSIONS AND DECISION

80. For the reasons already stated, the status of the registration of the Applicant BUT, is not a matter fit for these proceedings.

81. As a party affected by the decision complained of, the Applicant BUT can properly invoke the court's jurisdiction for judicial review proceedings.

82. There is no misapprehension as to the decision-maker in this case. The Attorney General is entitled to represent the decision-maker in this case.

COSTS

83. I make no order as to costs.

ORDER

84. The order and directions of this Court are as follows.

1. The Application of the 2nd Respondent BECAWU, filed January 25, 2024 is dismissed.
2. No order as to costs.

Dated this 4th day of December, 2024

Carla D. Card-Stubbs, J