

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CIVIL APPEAL NO 20/2015

**BEFORE: THE HON MISS JUSTICE PHILLIPS P (AG)
THE HON MR JUSTICE F WILLIAMS JA
THE HON MISS JUSTICE EDWARDS JA**

BETWEEN	ERROL CAMPBELL	APPELLANT
AND	PATRICIA JOHNSON	1ST RESPONDENT
AND	PJ'S DISTRIBUTORS LIMITED	2ND RESPONDENT

Andrew Campbell for the appellant

Ewan Thompson for the respondents

15, 16 January and 8 February 2019

PHILLIPS JA

[1] The appellant (Mr Errol Campbell) challenged the decision of Her Hon Mrs Sonya Wint-Blair, Parish Court Judge for the parish of Saint Elizabeth (as she then was), wherein she ordered him to pay to the respondents (Ms Patricia Johnson and PJ's Distributors Limited (PJ's)) money he had owed for various items. This challenge was made on grounds that the learned Parish Court Judge had: (i) made various erroneous findings of fact in relation to the number of hours Mr Campbell had worked, the calculation of his weekly salary and the existence of compulsory savings; and (ii) erred

when she admitted two Valentine's Day cards into evidence as they were irrelevant and prejudicial and therefore void of probative value.

Background

[2] Mr Campbell had filed a claim, on 27 August 2013, with plaint no 497/2013 against Ms Johnson and PJ's for termination and redundancy payments amounting to \$400,000.00, made up as follows: \$100,000.00 for four weeks notice pay and \$300,000.00 for 12 weeks vacation pay between 2005 and 2011.

[3] He claimed that, although he was employed by the Ministry of National Security as a District Constable, sometime in 2005 he was employed as a security guard to PJ's of which Ms Johnson was the owner and a director. From time to time he would also work as a bodyguard for Ms Johnson, escorting her to and from her home at nights. In fulfilment of this job as a bodyguard, he lived at Ms Johnson's home between 2009 and 2011. He testified that his remuneration for all those services rendered was \$17,000.00 per week or \$400.00 per hour. He stated that he was promoted to supervisor in 2006 and his salary was increased to \$500.00 per hour. He received a further increase in 2013 to \$625.00 per hour, so that at that time he was earning \$25,000.00 per week.

[4] He also claimed that the nature of his employment with Ms Johnson and PJ's required him to work in excess of 50 hours per week, but that it was mutually agreed that his pay would be calculated on the basis of 60 hours per week. He claimed further that it was also mutually agreed that Ms Johnson would pay him directly for 40 hours of work per week, and the salary for the additional 20 hours would be placed into

compulsory savings. He claimed that he had in excess of \$4,000,000.00 in compulsory savings at the time of his termination.

[5] He said she took no holidays nor did he obtain any pay in lieu thereof, and was therefore entitled to \$300,000.00 for 12 weeks vacation pay between 6 May 2005 and 5 June 2011. He further stated that his services were abruptly terminated in June 2013 when Ms Johnson replaced him with someone else, and told him that she no longer needed his services. He received no notice of this dismissal or payment in lieu thereof, and so he was entitled to \$100,000.00 for four weeks' pay in lieu of notice. As indicated, the total amount he claimed was \$400,000.00.

[6] Mrs Nadine Williams-Elliott, a representative from the Ministry of Labour and Social Security, testified on Mr Campbell's behalf. She indicated that she had prepared the worksheet with his notice pay entitlement of \$100,000.00 for four weeks pay in lieu of notice (exhibit 14B) and the vacation leave worksheet for 12 weeks pay in lieu of vacation leave amounting to \$300,000.00 (exhibit 14C) at \$25,000.00 per week.

[7] Ms Johnson and PJ's filed a defence and counterclaim to Mr Campbell's claim. Mrs Johnson, on behalf of PJ's and herself, denied that Mr Campbell was ever employed as a bodyguard, as he was always a security guard employed to PJ's. His salary, Mrs Johnson stated, was \$17,000.00 per week. She submitted three petty cash vouchers: one dated 19 February 2011 in the amount of \$17,000.00 (exhibit 6A); a voucher dated 9 April 2011 for \$18,000.00 (exhibit 6B); and another dated 4 June 2011 for \$18,000.00, which Mr Campbell had signed as payment for his weekly salary. She

stated that he was a temporary worker and so was not entitled to vacation pay. In any event, she indicated that PJ's had paid him \$51,000.00 for three weeks' vacation pay from 2009 to 2011 as evidenced by exhibit 5 (a cheque dated 31 March 2011 issued by PJ's to Mr Campbell), when he started to complain in March 2011. She denied that Mr Campbell had worked in excess of 40 hours per week or that she had ever held any compulsory savings on his behalf. She further testified that both parties shared an intimate relationship, and that Mr Campbell was at her home pursuant to that relationship and not as a bodyguard. She further contended that Mr Campbell, on his own volition, left PJ's employ sometime in June 2011 after a domestic dispute with her, and so was not entitled to notice pay.

[8] In her counterclaim, Ms Johnson and PJ's sought a set off of the \$51,000.00 PJ's had paid to Mr Campbell in 2011 for vacation pay from 2009-2011. She also sought \$250,000.00 as the balance on the purchase price for a Toyota Starlet motor car. She testified that PJ's had issued exhibit 7 (a cheque dated 21 April 2010 to Mr Campbell in the sum of \$300,000.00) for the Toyota Starlet. He later sold the said car without delivering it to her or PJ's, and only refunded her \$50,000.00. She also sought \$3,780.00 as the balance from a loan of \$72,780.00 by PJ's to Mr Campbell to purchase parts for a Toyota Rav4 licensed 6886FZ, which was made via cheque dated 25 March 2013 (exhibit 10), and in respect of which Mr Campbell had paid \$69,000.00. Another \$11,336.26 was claimed as a loan to Mr Campbell via cheque dated 19 March 2013 (exhibit 16) to purchase parts for the said Rav4; \$9,802.00 paid to Mr Campbell using a cheque dated 20 March 2013 (exhibit 17) for expenses associated with the said motor

vehicle; and \$10,000.00 loaned to him via cheque dated 7 April 2011 (exhibit 18) for motor vehicle repairs, which all remained unpaid.

[9] PJ's filed a claim against Mr Campbell on 11 March 2014 with plaint no 149/2014 to recover \$839,764.80 which represented a loan made to Mr Campbell to settle a car loan he had taken out from the Bank of Nova Scotia Jamaica Limited (BNS). This loan was made by PJ's on condition that Mr Campbell would transfer the title of the Rav4 licensed 6886FZ into PJ's name, and that \$3000.00 was to be deducted from his salary each week as payment towards that loan. It was Ms Johnson's contention on behalf of PJ's that no payments had ever been made towards this loan.

[10] Mr Campbell denied that he had ever been involved in an intimate relationship with Ms Johnson. He further denied owing \$838,764.80 for the Rav4 licensed 6886FZ as according to him, Ms Johnson had in excess of \$4,000,000.00 in compulsory savings for him, and so she could have deducted the money from that amount to settle the loan. He testified that he did not trust Ms Johnson as she had purchased a 1997 Rav4 licensed 4793FV for him in PJ's name, but had later seized it from him. He stated further that when he had previously approached her to buy another Rav4 (before purchasing the Rav4 licensed 6886FZ), he had told her that he wanted everything from his compulsory savings and not just the amount for another car, because he could no longer trust her. He stated that he told Ms Johnson that he wanted something in writing and so she wrote a note (exhibit 4) stating "I Patricia V Johnson will be more truthful to you Errol A Campbell" and signed it. He said that he wrote on the reverse side "Princess be more truthful to me Errol Campbell" and he also signed it. It was only after Ms

Johnson wrote that note that he trusted her enough to take the cheque from her in the amount of \$839,764.80 to repay the loan with BNS.

[11] Ms Johnson denied this claim. She indicated that the note came about following a dispute they had over two Valentine's Day cards she had found in the Rav 4 licensed 4793FV, addressed to him from another woman, and her failure to respond to BNS concerning the purchase of the said Rav4. Mr Campbell wrote "Princess, be more truthful to me Errol Campbell" and signed it, and then he asked her to write the same on the back of the note which she did. She indicated that there was no truth to the claim that Mr Campbell had any compulsory savings, as he would often borrow money and thereafter repay it.

The findings of the learned Parish Court Judge

[12] These varying contentions were tested in a trial before the Parish Court Judge.

[13] While the learned Parish Court Judge found that Mr Campbell was an employee within the meaning of section 2 of the Employment (Termination and Redundancy Payments) Act, she nonetheless rejected his argument that he had continuously worked fulltime for Ms Johnson and PJ's. She found that given the nature of business at PJ's, it is unlikely that Mr Campbell would have worked, as he told the court, from 8:00 am to 12:00 am, seven days per week. The learned Parish Court Judge examined the discrepancy between what Mr Campbell had told the court, and the information he had provided to Mrs Williams-Elliot, that is, that he had worked eight hours per day, and found that Mr Campbell had worked eight hours per day, six days per week. She also

rejected Ms Johnson's claim that he was only a temporary worker and that he worked only two to three days per week.

[14] The Parish Court Judge rejected the claim that Mr Campbell was a bodyguard and found that "[t]he lines of professional and personal interaction are blurred". She made this finding based on exhibit 25 which was a memorandum from Ms Johnson to Mr Campbell, tendered into evidence by Mr Campbell, which described the services he performed as "supervision, security and protection where needed". The learned Parish Court Judge found that parties engaged in a relationship may or may not go to the same residence at nights, and accepted that Mr Campbell was in a relationship with Ms Johnson and that he wanted to ensure her safety. The Parish Court Judge also found as disingenuous, Mr Campbell's suggestion that Ms Johnson needed to take a bodyguard with her on vacation to Negril. The Parish Court Judge indicated that there was no evidence that Mr Campbell was ever a supervisor at PJ's and any increase in duties resulted from his relationship with Ms Johnson.

[15] With regard to the salary owed the Parish Court Judge made the following finding:

"Mr. Campbell was paid according to Exhibits 6A to C the amounts of \$17,000 at a maximum of \$18,000. This was up to June 2011 when he claimed to be working as a Supervisor earning \$25,000.00 per week. These Exhibits demonstrate that Mr. Campbell has falsified his earnings both with the Ministry of Labour and in his evidence as the exhibits all bear his unchallenged signature evidencing payment received for hours worked. The calculations as to wages owed will be for \$17,000.00 per week."

[16] The Parish Court Judge rejected Mr Campbell's evidence on compulsory savings as she deemed it "untruthful and unreliable". She found that that claim could have only been true if he had worked 60 hours per week, which she rejected. Moreover, in her view, he had generally misrepresented the hours worked, since he had told the Ministry of Labour that he earned \$625.00 per hour, which for a 60 hour work week would total \$37,500.00 and not the \$43,750.00 that he had claimed in his evidence. She found, as a fact, that Mr Campbell had not proved the assertion that there was an agreement for compulsory savings.

[17] The learned Parish Court Judge found that Mr Campbell was entitled to vacation leave based on exhibit 5, which was the cheque issued by PJ's to Mr Campbell for payment in lieu of vacation leave for \$51,000.00. In the Parish Court Judge's opinion, this was recognition and acceptance that Mr Campbell was an employee, and so having worked more than 220 days per year, he would therefore have been entitled to vacation leave or payment in lieu thereof, and also to termination of his employment with notice. At paragraph 38 of her reasons for judgment, the learned Parish Court Judge found that Mr Campbell was entitled to vacation leave for the years 2005-2010 at a rate of \$17,000.00 per week for 12 weeks amounting to \$204,000.00. Since he had been paid the sum of \$51,000.00 in lieu of vacation leave in 2011, one week of that payment was set-off against 2010, and so the amount owing for vacation pay was \$187,000.00.

[18] The Parish Court Judge stated that Mr Campbell's services had not been terminated, but he had left the job on his own accord after a "lovers quarrel". She

stated that “[h]e was not dismissed from his job, he was dismissed from [Ms] Johnson’s home”. She found that there was no evidence of a summary dismissal. He was not therefore entitled to any notice pay and she awarded none.

[19] The learned Parish Court Judge indicated that Mr Campbell had not repaid the loan of \$839,764.80 to BNS; it was agreed that he owed \$3,780.00 as the balance on the loan for car parts; and that he had even failed to address whether he owed \$250,000.00 with respect to the Toyota Starlet. She found that although Mr Campbell denied that \$11,336.26 (exhibit 16) and \$9,802.00 (exhibit 17) had been paid to Dencol Auto Parts on his behalf, he had failed to indicate whether any sums claimed were repaid.

[20] At paragraph 45 of her reasons the learned Parish Court Judge made the following orders:

“Claim:

Judgment on plaint # 497/2013 for Errol Campbell in the amount of \$187,000 for vacation pay in lieu of leave.

The claim for notice pay fails. The claim for compulsory savings fails.

Costs on plaint #497/2013 to Mr. Campbell in the amount of \$20,000.00.

Counterclaim:

1. Judgment on plaint # 149/2014 (counterclaim) for PJ’s Distributors in the amount of \$839,764.80 rounded up to \$839,765.00 and the following awards are made:

2. \$3,780.00 as the balance on loan of \$72,800 awarded to PJ's Distributors Ltd.
3. \$11,336.26 paid to Dencol Auto Supplies for parts.
4. \$10,000.00 paid to Mr Campbell for repairs to the Rav4.
5. \$10,000.00 paid to Mr Campbell for repairs to the Rav4.

\$ \$9,802.00 paid to Dencol Auto Supplies for parts.

Total award \$884,683.00

Costs on the counterclaim \$20,000."

[21] The learned Parish Court Judge made the following orders, as stated on the
plaint no 149/2014:

"On 4/9/2016

Judgment on plaint # 497/13 for Errol Campbell in the amount of \$187,000 for vacation pay in lieu of leave.

The claim for notice pay fails.

The claim for compulsory savings fails.

Costs on plaint # 497/13 to Mr Campbell in the amount of \$20,000.00.

Counter claim

I Judgment on Plaint #149/2014 (counter claim) for PJ's Distributors in the amount of \$839,764.80 rounded up to \$839,765.00 and the following orders are made:

II \$3,780 as the balance on the loan of \$72,800 awarded to PJ's Distributors Ltd.

III \$11,336.26 paid to Dencol Auto Supplies for parts.

IV \$10,000 paid to Mr Campbell for repairs to Rav4.

V \$9,802 paid to Dencol Auto Supplies for parts.

VI \$250,000 balance owed for the Toyota Starlet.

Total award \$1,124,683.26.

Cost on the counter claim \$20,000.”

The appeal

[22] Mr Campbell filed a notice and grounds of appeal 18 September 2015. Amended grounds were filed 1 September 2016 as follows:

- “1. The Learned [Parish Court Judge] erred in fact in finding that the Plaintiff/Appellant had worked a 40 hour week;
2. The Learned [Parish Court Judge] erred in fact in finding that the Plaintiff/Appellant was not entitled to compulsory savings.
3. The Learned [Parish Court Judge] erred in fact in making an award not in keeping with the evidence.
4. The Learned [Parish Court Judge] admitted into evidence an item which was irrelevant and therefore prejudicial for its lack of probative value which undermines the integrity of the said [Parish Court Judge’s] findings.”

[23] Mr Campbell sought orders that the sum awarded to him be varied to \$400,000.00 as claimed in the original suit plus interest; that the judgment entered for the respondents be quashed; costs; and attorney’s costs.

[24] The grounds of appeal, as stated, raise two main issues:

1. Whether the learned Parish Court Judge erred in her findings of fact with regard to:
 - (i) the number of hours per week Mr Campbell had worked having regard to:
 - (a) whether an intimate relationship existed between Mr Campbell and Ms Johnson; and
 - (b) whether he was deployed as a bodyguard;
 - (ii) the calculation of his weekly salary to assess the amount payable as vacation pay; and
 - (iii) his entitlement to compulsory savings.
(grounds 1, 2 and 3)
2. Whether the learned Parish Court Judge erred when she admitted the two Valentine's Day cards into evidence. (ground 4)

Discussion and analysis

Issue 1: Whether the learned Parish Court Judge erred in her findings of fact (grounds 1, 2 and 3)

Submissions

[25] Counsel for Mr Campbell posited that the primary issue to be considered is the sum owed to Mr Campbell. He argued that the learned Parish Court Judge gave little consideration to the fact that the figures cited by Mr Campbell as being owed, were

calculated by the Ministry of Labour and not Mr Campbell himself. He further argued that the learned Parish Court Judge erred in her finding related to Mr Campbell's salary as he had not given conflicting figures to the court since he had been earning different sums at different times.

[26] Counsel also indicated that the learned Parish Court Judge erred when she calculated his salary at \$17,000.00 per week instead of the \$25,000.00 per week he was actually being paid, since \$8,000.00 from that amount was for compulsory savings. That amount, he also contended, failed to take into account payment for overtime, which although not claimed by Mr Campbell, ought to have been awarded by the learned Parish Court Judge as a matter of law, which he stated, stipulates that any person who works in excess of 40 hours ought to be paid overtime. It was accepted on the evidence, he submitted, that Mr Campbell had worked more than 40 hours and that the hours in excess were supposed to have been retained by Ms Johnson as compulsory savings. Counsel noted that at the time of the purchase of the Rav4 licensed 6886FZ, the compulsory savings that Mr Campbell ought to have amassed would have covered all sums claimed in the counterclaim. He submitted that Mr Campbell therefore did not owe the sums claimed, or any sums at all, as he had sufficient compulsory savings to cover any such amounts.

[27] Counsel for the respondents submitted that documentary and viva voce evidence had been adduced that lend support to all the findings of fact made by the learned Parish Court Judge. He posited that Mr Campbell's claim that he was paid hourly had been disputed by Ms Johnson; and Mr Campbell himself, under cross-examination,

stated that he had only been paid for work done. Counsel argued that the evidence given by Mr Campbell as to the hours he had worked for PJ's and Ms Johnson was contradictory, and there were also serious discrepancies on his case as to the hourly rate that he had been paid. In relation to payment for overtime work, counsel argued that this had never been sought in Mr Campbell's claim and had been mentioned for the first time on appeal, and in any event, Mr Campbell had admitted on the evidence that he had only been paid for work done, and had never been paid for work not done.

[28] Counsel submitted further that the learned Parish Court Judge was correct in her finding that Mr Campbell earned \$17,000.00 per week, as this was supported by three petty cash vouchers that Mr Campbell admitted that he had signed (exhibits 6A-6C) which indicated payments of between \$17,000.00 and \$18,000.00 per week.

[29] Counsel also stated that Mr Campbell's contention that he was entitled to compulsory savings was entirely unsustainable, and pointed out that Mr Campbell had not provided any documentary proof to that effect. Mr Campbell, he argued, had misrepresented his salary and so on his own case, there was no indication as to the amount he was paid weekly, nor the amount that was to be placed into compulsory savings. Counsel argued that Mr Campbell's credibility as a witness had been destroyed, and so the Parish Court Judge was entitled to reject his testimony and accept that of Ms Johnson.

[30] Counsel concluded his submissions by reminding this court of the oft cited case of **Watt (or Thomas) v Thomas** [1947] 1 All ER 582, which illustrates the principles

to be considered by an appellate court when reviewing findings of fact of a judge sitting alone. He argued that since all the findings of fact made by the learned Parish Court Judge were supported by evidence, her findings ought not to be disturbed, and the appeal ought to be dismissed with costs to the respondents.

Analysis

[31] Mr Campbell had challenged various findings of fact by the Parish Court Judge. Recently, the Judicial Committee of the Privy Council in **Paymaster (Jamaica) Limited and Another v Grace Kennedy Remittance Services Limited (Jamaica) and Another Appeal** [2017] UKPC 40, restated the principles an appellate court ought to consider when reviewing findings of fact by a trial judge. At paragraph 29, Lord Hodge on behalf of the Board said:

“The Board is mindful of the constraints on an appellate court when called upon to review the findings of fact of the judge at first instance who has heard and seen the witnesses give oral evidence in court. In *Thomas v Thomas* [1947] AC 484 the House of Lords and more recently in *McGraddie v McGraddie* [2013] 1 WLR 2477 and *Henderson v Foxworth Investments Ltd* [2014] UKSC 41; [2014] 1 WLR 2600; 2014 SC (UKSC) 203 the United Kingdom Supreme Court have given guidance on the circumstances in which an appellate court may interfere with the findings of fact by a trial judge. In *Thomas v Thomas*, 487-488 Lord Thankerton stated:

[T]he principle ... may be stated thus: I. Where a question of fact has been tried by a judge without a jury, and there is no question of misdirection of himself by the judge, an appellate court which is disposed to come to a different conclusion on the printed evidence, should not do so unless it is satisfied that any advantage enjoyed by the trial judge by reason of having seen and heard the

witnesses, could not be sufficient to explain or justify the trial judge's conclusion; II. The appellate court may take the view that, without having seen or heard the witnesses, it is not in a position to come to any satisfactory conclusion on the printed evidence; III. The appellate court, either because the reasons given by the trial judge are not satisfactory, or because it unmistakably so appears from the evidence, may be satisfied that he has not taken proper advantage of his having seen and heard the witnesses, and the matter will then be at large for the appellate court.'

In *Henderson* (para 67) Lord Reed stated:

'in the absence of some other identifiable error, such as (without attempting an exhaustive account) a material error of law, or the making of a critical finding of fact which has no basis in the evidence, or a demonstrable misunderstanding of relevant evidence, or a demonstrable failure to consider relevant evidence, an appellate court will interfere with the findings of fact made by a trial judge only if it is satisfied that his decision cannot reasonably be explained or justified.'

The Board itself has recently given similar guidance in *Beacon Insurance Co Ltd v Maharaj Bookstore Ltd* [2014] UKPC 21; [2014] 4 All ER 418, paras 11-17 and in Page 11 *Central Bank of Ecuador v Conticorp SA* [2015] UKPC 11; [2016] 1 BCLC 26, paras 4-8."

[32] I would be hard pressed to improve upon Lord Hodge's guidance and will therefore endeavour to apply the principles espoused therein to the instant case.

[33] Mr Campbell claimed that the learned Parish Court Judge erred in her calculation of the number of hours he had worked each week; his weekly salary; and her finding that he had no agreement with Ms Johnson as to compulsory savings. Mr Campbell in

examination-in-chief indicated that he would work in excess of 50 hours per week and that he had a mutual agreement with Ms Johnson for him to be paid for 60 hours of work. Yet, Mrs Williams-Elliot testified that, when he visited the Ministry of Labour, there were discrepancies in the information that he had provided since:

- “- ... [Mr Campbell] said he worked 8 a.m. to 12 a.m. 7 days per week. Based on nature of business he would not have worked 7 days nor from 8 a.m. to 12 a.m. I question [sic] him about date of employment he gave date but no year initially. He gave date on phone he wanted to go to court. He had another job. I told him about working with another entity. He said he worked 8 hours on another job asked to reduce hours to 10 hours.
- He asked me to reduce the hours to 10 hours per day and reduce the number of days from 7 to 6. I reduced it.”

[34] It is evident that there were serious contradictions on Mr Campbell’s case which rendered any evidence with respect to the number of hours he had worked incredulous. Indeed, Mrs Williams-Elliot herself had expressed serious questions about some of his claims, and so he responded by reducing some of the hours he had claimed.

[35] On the issue of his salary, there were manifest discrepancies, inaccuracies, and it seems, blatant untruths. Mr Campbell stated that when he commenced working at PJ’s he was employed as a security guard for \$400.00 per hour. He stated that he had later been promoted to supervisor where he earned \$500.00 per hour, and that at the time of his termination in 2013, he was earning \$625.00 per hour, with a salary of \$25,000.00 per week. When he visited the Ministry of Labour, although he was claiming

payment in lieu of vacation leave and notice pay between 2005 and 2011, he gave his salary at \$625.00 per hour. According to Mr Campbell's testimony, \$625.00 per hour would have been his salary in June 2013. This must be contrasted with the claim that he made to the Ministry that his salary was \$625.00 per hour throughout the period from 2005-2011 when he ceased employment at PJ's, which would therefore be inconsistent with his prior testimony.

[36] Under cross-examination at pages 14-15 of the notes of evidence, the following exchange took place between counsel for the respondents and Mr Campbell:

- "- Question: How much was deducted for compulsory savings?
- Answer: When I was getting \$25,000, \$18,750 was compulsory savings per week.
- Question: You earned \$43,750 per week?
- Answer: Yes.
- Question: Every week?
- Answer: Yes.
- Question: How many hours per week was that?
- Answer: 60 hours.
- Question: At what rate or week?
- Answer: \$425 per hour.
- Question: You worked \$425 per hour for how many hours per day?
- Answer: 10 hours.
- Question: That's \$4,250 per day?

- Answer: Its \$525 per hour, my mistake.
- Question: So its \$525 per hour.
- Answer: Now I say its \$625 per hour."

[37] This exchange represents another example of discrepancies in Mr Campbell's testimony with regard to salary. What is even more glaring is the fact that in 2011, he admitted to signing three petty cash vouchers for \$17,000.00 to \$18,000.00 for his salary. Under cross-examination at page 13 of the transcript, Mr Campbell agreed that he was only paid for work he did, and so if he had worked for five hours he would only be paid for those five hours, and if he had not worked any hours he would not get paid at all. Interestingly, when Mr Campbell made his complaint to the Ministry of Labour and when he filed his claim against the respondents, he sought no payment for overtime work. These factors all give credence to Ms Johnson's testimony that Mr Campbell was indeed paid weekly for work done.

[38] Mr Campbell's defence to the claim for \$839,764.80 which was a loan to him to repay a loan at BNS for the purchase of the Rav4 licensed 6886FZ, was that Ms Johnson held money on his behalf in compulsory savings which she had deducted from his salary weekly, and it was agreed that she would have deducted that amount from his savings. He testified that he had been saving consistently for seven year, which at the time of his termination would be in excess of \$4,000,000.00. Yet he provided no documentary proof of these savings, nor could he identify the specific balance in these savings. Mr Campbell had filed a claim and had not sought to recover any portion of his

so-called compulsory savings. The evidence was that he often took loans from Ms Johnson and PJ's which he would repay without any reference to any compulsory savings. By his version of events, the money in the alleged compulsory savings was substantial, and yet he never enquired of Ms Johnson as to where this money was kept; whether the funds were earning interest; and what was the balance after all the deductions he had authorised had been made. Based on all these factors, the learned Parish Court Judge could not be faulted for her finding that Mr Campbell's testimony about the existence of compulsory savings being kept by Ms Johnson was indeed a fabrication.

[39] Mr Campbell's evidence in relation to the number of hours he had worked, his salary and the existence of compulsory savings was indeed dubious, unreliable and untruthful and the learned Parish Court Judge, in not accepting the same, acted reasonably in the circumstances. She had documentary proof in the form of petty cash vouchers (exhibits 6A-6C) signed by Mr Campbell that he was earning \$17,000.00 to \$18,000.00 per week in 2011. This was supported by Ms Johnson's sworn testimony. She rejected Mr Campbell's claim that he had worked 60 hours per week, but found that he had worked 40 hours per week based on a payment of \$51,000.00 for three weeks pay in lieu of vacation leave, which for the learned Parish Court Judge, confirmed her acceptance and finding that Mr Campbell was indeed an employee. There was no documentary proof to support the findings with regard to compulsory savings, and the viva voce evidence relating to that defence was not credible. It cannot therefore be said that these findings had "no basis in the evidence", or reflected a "demonstrable

misunderstanding of relevant evidence, or a demonstrable failure to consider relevant evidence". In all the circumstances, the learned Parish Court Judge's findings of fact were all reasonably explained and justified. Grounds of appeal 1, 2 and 3 are therefore without merit and ought to fail.

Whether the learned Parish Court Judge erred when she admitted the Valentine's Day cards into evidence (ground 4)

Submissions

[40] Mr Campbell's counsel argued that the learned Parish Court Judge ought not to have admitted the Valentine's Day cards into evidence as they were irrelevant and prejudicial. Since it was Mr Campbell's contention that there was no relationship, counsel argued that the cards were produced with malicious intent; confirmed a feeling of jealousy and fixation on the part of Ms Johnson towards Mr Campbell; and had no probative value. The admission of the cards, counsel submitted, may have negatively impacted the learned Parish Court Judge's finding as to whether there was indeed compulsory savings by Mr Campbell.

[41] Counsel for the respondent posited that the Valentine's Day cards were necessary, relevant and indeed admissible. They were utilised to prove that there was indeed a relationship between Mr Campbell and Ms Johnson. They were also utilised to disprove assertions made by Mr Campbell with regard to exhibit 4 which was a note written by both himself and Ms Johnson relating to both parties stating that they would be more truthful to each other. Counsel contended that the learned Parish Court Judge

was correct to have admitted the cards into evidence, and so this ground of appeal must also fail.

Analysis

[42] The learned authors of Halsbury's Laws of England, Volume 11, 2015, at paragraph 691 have encapsulated the trite principle as to what constitutes admissible evidence. They state that:

"The prime requirement of anything sought to be admitted in evidence is that it is of sufficient relevance. What is relevant (namely what goes to the proof or disproof of a matter in issue) will be decided by logic and human experience, and facts may be proved directly or circumstantially. Exclusionary rules may, however, provide that certain kinds of evidence are inadmissible notwithstanding that they may be logically relevant. Admissible evidence is thus that which is relevant and not excluded by any rule of law or practice..."

In order to determine whether the Parish Court Judge, when she admitted the Valentine's Day cards into evidence, was correct in law, I must therefore determine whether the cards were relevant to prove or disprove a matter in issue, in the instant case.

[43] Exhibit 4 was tendered into evidence by Mr Campbell. On one side was a note written and signed by Ms Johnson to Mr Campbell saying "I Patricia V Johnson will be more truthful to you Errol A Campbell", and on the other side was a note written and signed by Mr Campbell to Ms Johnson saying "Princess be more truthful to me Errol Campbell". Mr Campbell testified that he had approached Ms Johnson about repaying the loan to BNS. He said Ms Johnson said she would do so with some of the money

from his compulsory savings. He stated that he had asked her to write that note and give him all the money from his compulsory savings since he no longer trusted her because she had seized the Rav4 licensed 4793FV from him. At page 32 of the transcript, Mr Campbell denied being in an intimate relationship with Ms Johnson despite living at her house, and could not remember how long he had lived there. Mr Campbell admitted that the Valentine's Day cards were addressed to him from a woman whom he knew.

[44] Ms Johnson's case, on the other hand, was that both parties had shared an intimate relationship since 2009. She stated that when the Rav4 licensed 4793FV was returned to her, she found two Valentine's Day cards under the seat from a woman addressed to Mr Campbell. She recognised that name as the woman who had answered Mr Campbell's phone some time previously. She stated that they had argued about the presence of these cards, and Mr Campbell asserted that she had not been truthful about having located the cards. They had also argued about her delay in responding to BNS regarding the purchase of the Rav4 licensed 4793FV. In her version, Mr Campbell had written the note first and signed it, and then he had asked her to write on the reverse side of the note and sign it. He asked her to do so because he thought she was not being truthful about having found the cards, as she had refused to show them to him. They both agreed to write exhibit 4 in order to solidify their intent to be more truthful to each other.

[45] The Valentine's Day cards were clearly relevant and of significant probative value. They tended to prove that there was indeed a personal relationship between Mr

Campbell and Ms Johnson. The admission of the cards into evidence raised questions as to why there would have been any discussion or dispute between Mr Campbell and Ms Johnson in relation to the cards; why would Ms Johnson have kept them and not showed them to him, if they had a mere professional relationship; and why would there have been a serious argument over the existence of these cards, so much so that it resulted in the production of exhibit 4. A finding of an intimate relationship between the parties would of necessity affect the finding in relation to whether Mr Campbell was really Ms Johnson's bodyguard, and that finding would similarly affect the hours he worked and his entitlements as a consequence thereof. In my view, the Valentine's Day cards were admissible, and the Parish Court Judge was correct to admit them into evidence. Ground of appeal 4 would therefore also fail.

Accidental errors and omissions

[46] At paragraphs [19] and [20] herein, I made specific reference to the orders stated in the reasons for judgment and those stated on plaint no 149/2014. When I examined the orders contained in the reasons for judgment, delivered to this court, compared to the orders stated on plaint no 149/2014, they are inconsistent. In her reasons for judgment, Ms Johnson was awarded two \$10,000.00 payments which were errors as only one \$10,000.00 payment was claimed by Ms Johnson and PJ's for repairs to the Rav 4 licensed 6886FZ, and only one \$10,000.00 payment was stated in the orders on plaint no 149/2014. Additionally, the award for the payment of \$250,000.00 which related to the purchase of the Toyota Starlet, was omitted in the orders stated in the reasons for judgment, despite the fact that the learned Parish Court Judge

specifically referenced Mr Campbell's failure to address the fact that Ms Johnson claimed that he owed that amount, and it was also stated as being awarded to Ms Johnson and PJ's on the said plaint.

[47] Pursuant to section 251 of the Judicature (Parish Court) Act, the Court of Appeal, when determining appeals, has the power to affirm, reverse or amend a judgment, decree or order of the Parish Court, or *inter alia*, order the judgment decree, or order to be entered for either party as the case may require. In my view, in the orders stated in her reasons for judgment, the inclusion of the second payment of \$10,000.00 seems to be an error, and the exclusion of \$250,000.00 was an accidental slip or omission. I am also of the view that the judgment of the court is properly stated on plaint no 149/2014. No prejudice could be caused to Mr Campbell by removing the second payment of \$10,000.00, as only one payment for \$10,000.00 was sought on the counterclaim, and only one payment was awarded on plaint no 149/2014. Additionally, no prejudice could be caused to Mr Campbell in respect of the award of \$250,000.00 relating to the Toyota Starlet since a counterclaim was indeed filed to recover that amount; the suggestion that he owed that sum was put to him in cross-examination; and the order for that payment is also reflected on the said plaint note.

[48] Accordingly, in my view, the orders stated in the reasons for judgment should similarly reflect what is stated in the orders on the plaint no 149/2014 which correctly reflect the intention of the court, and is duly signed by the learned Parish Court Judge as follows:

"On 4/9/2016

Judgment on plaint # 497/13 for Errol Campbell in the amount of \$187,000 for vacation pay in lieu of leave.

The claim for notice pay fails.

The claim for compulsory savings fails.

Costs on plaint # 497/2013 to Mr Campbell in the amount of \$20,000.00.

Counter claim

I Judgment on plaint #149/2014 (counter claim) for PJ's Distributors in the amount of \$839,764.80 rounded up to \$839,765.00 and the following orders are made:

II \$3,780 as the balance on the loan of \$72,800 awarded to PJ's Distributors Ltd.

III \$11,336.26 paid to Dencol Auto Supplies for parts.

IV \$10,000 paid to Mr Campbell for repairs to Rav4.

V \$9,802 paid to Dencol Auto Supplies for parts.

VI \$250,000 balance owed for the Toyota Starlet.

Total award \$1,124,683.26.

Costs on the counter claim \$20,000."

Conclusion

[49] In all the circumstances, the findings made by the learned Parish Court Judge were all based on a proper interpretation and understanding of the evidence before her. She carefully analysed the evidence and gave reasoned justifications for the aspects which she accepted and those which she rejected. The main issue was one of credibility and the learned Parish Court Judge resolved that in Ms Johnson's favour. She cannot

therefore be faulted for any of the findings of fact that she made and those findings ought not to be disturbed. As indicated, she was correct to admit the Valentine's Day cards into evidence as they were relevant to prove that an intimate relationship existed between Mr Campbell and Ms Johnson as the cards formed the reasons for the creation of the note (exhibit 4) signed by both parties and ultimately to disprove Mr Campbell's claim in relation to compulsory savings. There was indeed a divergence between the orders stated in the reasons for judgment and those stated on plaint no 149/2014, and so the orders to be affirmed are those stated on plaint no 149/2014 which correctly reflect the intention of the court and are duly signed by the learned Parish Court Judge. I would therefore dismiss the appeal, and award costs to the respondents in the amount of \$50,000.00.

F WILLIAMS JA

[50] I have read in draft the judgment of my learned sister Phillips JA and I agree with her reasoning and conclusion. There is nothing I wish to add.

EDWARDS JA

[51] I have also had the opportunity to read in draft the judgment of my learned sister Phillips JA. I too agree with her reasoning and conclusion and have nothing that I wish to add.

PHILLIPS JA

ORDER

1. The appeal against the decision of Her Honour Mrs Sonya Wint-Blair delivered on 4 September 2016 is dismissed.
2. The orders stated on the plaint no 149/2014 are affirmed as follows:

“On 4/9/2016

Judgment on plaint # 497/13 for Errol Campbell in the amount of \$187,000 for vacation pay in lieu of leave.

The claim for notice pay fails.

The claim for compulsory savings fails.

Costs on plaint # 497/13 to Mr Campbell in the amount of \$20,000.00.

Counter claim

I Judgment on plaint #149/2014 (counter claim) for PJ's Distributors in the amount of \$839,764.80 rounded up to \$839,765.00 and the following orders are made:

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III \$11,336.26 paid to Dencol Auto Supplies for parts.

IV \$10,000 paid to Mr Campbell for repairs to Rav4.

V \$9,802 paid to Dencol Auto Supplies for parts.

VI \$250,000 balance owed for the Toyota Starlet.

Total award \$1,124,683.26.

Cost on the counter claim \$20,000.”

3. Costs to the respondents in the amount of \$60,000.00.