

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CIVIL APPEAL NO 15/2011

**BEFORE: THE HON MRS JUSTICE HARRIS JA
THE HON MR JUSTICE DUKHARAN JA
THE HON MR JUSTICE BROOKS JA**

**BETWEEN NOVELETTE GRAHAM APPELLANT
AND A. S. CAMBRIDGE LIMITED RESPONDENT**

Leroy Equiano for the appellant

Miguel Williams instructed by Livingston Alexander and Levy for the respondent

2 and 4 July 2012

BROOKS JA

[1] The appellant, Ms Novelette Graham, was up to the month of April 2010, employed to the respondent, A. S. Cambridge Limited. In that month, after having been laid off by her employer for 120 days, Ms Graham returned to work. She was told that "nothing going on" and the company gave her a letter. Apparently, her employment was terminated at that time. She had, up to then, been employed to the company for 17 years.

[2] Aggrieved by the treatment meted out to her, Ms Graham filed a claim in the civil division of the Resident Magistrate's Court for the Corporate Area. This was in August

2010. She claimed \$804,604.56 "for Redundancy pay, Notice pay and Vacation leave pay owing". The company did not contest the claim and it came on for default hearing before the learned Resident Magistrate for that court on 2 November 2010. The learned Resident Magistrate gave judgment for Ms Graham in the sum of \$54,928.00 along with costs of \$1,066.00.

[3] Ms Graham is dissatisfied with that decision and has appealed against it to this court. Her grounds of appeal included a ground that the learned Resident Magistrate "erred in not taking into consideration the provisions contained in the Employment (Termination and Redundancy Payments) Act, Part III section 5".

[4] The record of proceedings, which was produced by the Resident Magistrate's Court, contained very terse notes of evidence. The learned Resident Magistrate, in her reasons for judgment, seemed to have acknowledged the deficiency and explained it by saying that "[Ms Graham] was unrepresented and gave very perfunctive [sic] details about her claim". The learned Resident Magistrate explained that she did not consider the claim for redundancy because Ms Graham "insisted that she had not been made redundant even when pressed by the Court as to the claim she had filed".

[5] The learned Resident Magistrate, instead, found that Ms Graham was entitled, in the circumstances, to 4 weeks pay in lieu of notice, by virtue of section 3 of the Employment (Termination and Redundancy Payments) Act (the Act). She therefore calculated the payment at \$54,928.00, mentioned above, based on Ms Graham's weekly salary of \$13,732.00 and entered judgment accordingly.

[6] In advancing the arguments on Ms Graham's behalf, in this court, Mr Equiano submitted that the learned Resident Magistrate erred in failing to give Ms Graham the assistance to which an unrepresented claimant was entitled. He argued that it was for the learned Resident Magistrate, to have determined from the evidence, whether Ms Graham had been dismissed by reason of redundancy. It was his submission, that there was sufficient evidence for the learned Resident Magistrate to have found that Ms Graham had been so dismissed. He also pointed out that the learned Resident Magistrate, in her reasons for judgment, erred in stating that there was no evidence to support the claim for outstanding vacation leave pay.

[7] Mr Williams, for A. S. Cambridge, submitted that Ms Graham did not produce sufficient evidence to prove her claim and that the learned Resident Magistrate did not have the material in order to make an award in the claim for a redundancy payment. In the absence of that evidence, he submitted, the decision of the learned Resident Magistrate ought not to be disturbed.

[8] After perusing the record and having heard from both counsel, we are of the view that the learned Resident Magistrate did not garner sufficient evidence to decide the question of whether Ms Graham had been dismissed from her employment by virtue of redundancy. We find that the issue of whether Ms Graham had been so dismissed, is one of law that the learned Resident Magistrate was obliged to resolve, after having heard the evidence and considering the relevant provisions of section 5 of the Act. It was, with respect to the learned Resident Magistrate, not a statement that Ms Graham

was required to enunciate. The learned Resident Magistrate, recognising that Ms Graham was unrepresented, ought to have demonstrated on the record, that she sought to secure the relevant evidence. This evidence would have included the production of the letter that Ms Graham said that the company had given to her and the relevant information, including the date that Ms Graham commenced her employment, and the information concerning the continuity of her employment over the 17 years spoken of by her.

[9] In the absence of that information, we cannot say whether or not the learned Resident Magistrate was correct in her decision. It does seem somewhat strange, however, that the learned Resident Magistrate awarded 4 weeks pay in lieu of notice, considering, that by virtue of section 3(1)(d) of the Act, a period of employment of 17 years would be entitled to "not less than eight weeks' notice".

[10] In the circumstances, it is our view that the matter should be returned to the Resident Magistrate's Court for the Corporate Area to be tried by another Magistrate.

Order

- [11] (1) The appeal is allowed and the judgment of the learned Resident Magistrate is set aside.
- (2) The claim is remitted to the Resident Magistrate's Court for the Corporate Area to be tried by another Magistrate.
- (3) No order as to costs.