[2022] JMCA Civ 2

JAMAICA

IN THE COURT OF APPEAL

BEFORE: THE HON MR JUSTICE BROOKS P
THE HON MRS JUSTICE V HARRIS JA
THE HON MR JUSTICE E BROWN JA (AG)

SUPREME COURT CIVIL APPEAL NO COA2021CV00021

BETWEEN LATOYA HARRIOTT APPELLANT

AND UNIVERSITY OF TECHNOLOGY JAMAICA RESPONDENT

Written submissions filed by Lemar Neale and Chante' Green instructed by NEA|LEX for the appellant

Written submissions filed by Matthew Royal instructed by Myers Fletcher & Gordon for the respondent

14 January 2022

(Considered on paper pursuant to rule 1.7(2)(j) of the Court of Appeal Rules, 2002)

BROOKS P

[1] Ms Latoya Harriott is a graduate student of the University of Technology Jamaica ('the University'). She successfully concluded her course of study for a Master's degree at the end of the academic year 2014/2015. Her financial obligations to the University were, however, still unfulfilled, at that time, and she was making payments up to May 2019. She though that her payment made in that month was her final, but a dispute then developed between her and the University, as to whether she had fulfilled her financial obligations to it. The University said that there were still monies outstanding, and that it would not confer her with the degree until she had paid those sums.

[2] She sought legal advice. After unproductive communication with the University, her attorneys-at-law asked it to refer the dispute to its Visitor, the Honourable Governor-General ('the Visitor'). After almost nine months had passed and the University had not responded to the letter of request, the attorneys-at-law wrote, giving it an ultimatum. They demanded that the University refer the matter to the Visitor within 14 days or face litigation. The attorneys-at-law stipulated that if the University did not make the referral within that time, it would be deemed to have refused to do so. The University did not respond within the time.

[3] Another two months passed without a response from the University, and Ms Harriott took action. She filed an application for leave to apply for judicial review, with the aim of having the court compel the University to refer the dispute to the Visitor. A judge of the Supreme Court denied her leave. This court granted her permission to appeal from the learned judge's decision.

[4] Ms Harriott complains that, although the decision to grant or refuse leave to apply for judicial review fell within the learned judge's discretion, the learned judge erred in the exercise of that discretion. The University contends that there was no flaw in the exercise of that discretion, and accordingly, this court has no jurisdiction to disturb the decision.

[5] The issue between the parties before this court is whether the learned judge erred in finding that the University did not refuse to refer the dispute to the Visitor, and therefore, there was no "decision" by the University that could be the subject of an application for judicial review.

[6] As a background to analysing the issue, there will first be:

1. an outline of the jurisdiction of the University's Visitor;
2. a consideration of whether a decision by the University is subject to judicial review:

3. a consideration of refusals as being subject to judicial review; and
4. a chronology of the events in the dispute between the parties.

The University's Visitor

[7] Unlike the other cases that have been decided in this jurisdiction about the role of a Visitor of an educational institution, there is no dispute, in this court, between these parties, as to whether it is the Visitor who has exclusive jurisdiction to investigate their dispute. The Visitor holds his position by virtue of section 5 of the University of Technology, Jamaica Act ('the Act'). The jurisprudence in this jurisdiction, concerning the role and authority of a visitor to an educational institution, is of relatively recent vintage. Nonetheless, the decided cases, culminating in the recent comprehensive decision of **Lynch (Dr O'Neil) v Minister of Labour and Social Security** [2021] JMCA Civ 43, reveal some, now established, principles. Certain aspects of the decision of this court in **Duke St John-Paul Foote v University of Technology and Elaine Wallace** [2015] JMCA App 27A ('**Foote v UTECH'**) reflect those principles. They are particularly relevant to the University and to this case. These include the following:

1. the Visitor of the University has exclusive jurisdiction over domestic disputes at the institution, including disputes between students, or members of staff, and the institution, concerning the interpretation, application and administration of the statute, ordinances and internal regulations of the university;
2. the Visitor has exclusive authority over disputes concerning the payment of fees and the issue of degrees; and
3. the court will decline to hear matters involving disputes which fall within the jurisdiction of the

> Visitor, although it will consider applications for judicial review of decisions made by the Visitor.

[8] The University is, therefore, obliged, upon demand, to refer to the Visitor, genuine disputes that it has with any student, over the payment, or non-payment, of tuition and other fees, and the issue of academic degrees.

Judicial review of a decision by the University

[9] There is also no dispute between the parties concerning a decision of the University, outside of the jurisdiction of the Visitor, being subject to judicial review.

[10] This is because the University is a public institution. It is a body corporate created by the Act. It receives funding from the public purse and is required to account to the relevant Minister of Government (see sections 14 and 16 of the Act), who may "make rules generally for the better carrying into effect of the provisions of [the] Act" (see section 20 of the Act).

[11] It necessarily follows from its status that a decision by the University, which does not fall within the jurisdiction of the Visitor, would be subject to judicial review. The following statement by the learned authors of Textbook on Administrative Law, 7th Edition, at page 178 is uncontroversial:

> "If an authority acts outside or abuses its powers, or fails to perform a public duty, it will thus act in a manner that is *ultra vires* and the courts may grant a remedy to the aggrieved citizen (although note that the remedies are discretionary)."

The term *ultra vires* is usually used to mean 'beyond the power'.

[12] The next area for general analysis by way of context, is whether, and when, refusals by a decision-maker are subject to judicial review.

Refusals and judicial review

[13] It has long been accepted that a refusal, especially by a public institution, to perform a public duty is subject to judicial review. Lord Diplock, in **Council of Civil Service Unions and Others v Minister for the Civil Service** [1985] AC 374 ('**CCSU v The Minister'**), made that point clear when he said, in part, at page 408:

> "Judicial review…provides the means by which judicial control of administrative action is exercised. The subject matter of every judicial review is a decision made by some person (or body of persons) whom I will call the 'decision-maker' **or else a refusal by him to make a decision**." (Emphasis supplied)

[14] The relief granted by the court, in such circumstances, is alternatively known as *mandamus* or as a "mandatory order". The mandatory order compels the decision-maker to do an act or make a decision, which the decision-maker had previously refused to do or make. Rule 56.1(3) of the Civil Procedure Rules ('CPR') provides:

> "'**Judicial Review**' includes the remedies (whether by way of writ or order) of-
>
> (a)…
>
> (b)…
>
> (c) mandamus, for requiring performance of a public duty, including a duty to make a decision or determination or to hear and determine any case." (Emphasis as in original)

[15] Failure to carry out a duty can constitute refusal to act. It does not necessarily do so, however, and in previous times the courts would not usually issue a mandatory order for the execution of that duty unless it is shown that there has been a distinct demand for the execution that is followed by a refusal. The point was made by Wooding CJ in **Re Maharaj and the Constitution of Trinidad and Tobago** (1966) 10 WIR 149 ('**Re Maharaj'**), at pages 151 to 152. One of the authorities on which Wooding CJ relied in his analysis of the issue is Halsbury's Laws of England (Third

Edition). The learned editors of 'Halsbury's' make it clear that a refusal need not be in as many words. They state, in part, at paragraph 198:

> "Although a mere withholding of compliance with the demand is not sufficient ground for a mandamus, yet it is **not** necessary that there should have been a refusal in as many words. All that is necessary in order that a mandamus may issue is to satisfy the Court that the party complained of has distinctly determined not to do what is demanded." (Emphasis supplied)

[16] There has been a shift in the stance of the court in more recent times, as a distinct demand is sometimes not made an absolute requirement. The learned authors of Textbook on Administrative Law, cited above, at page 436, state:

> "…In earlier case law, it was thought that the individual who wished to obtain the remedy [of *mandamus*] should first have to demand that the authority perform the duty and that proceedings could follow only where the authority refused to do so. However, the so-called 'demand and refusal' requirement has featured less prominently in the modern case law, and its relevance may for that reason be doubted."

It is not necessary to dilate on that opinion at this time as there was a demand in this case.

[17] The concept that there should be a clear indication of a refusal was discussed and emphasised in this jurisdiction in **Milton Baker v The Commissioner of FINSAC Commission of Enquiry Warwick Bogle and Another** [2013] JMSC CIV 137. In that case, it was held that there was no refusal for the purposes of judicial review, for a number of reasons, including the fact that there was no specific time for compliance. (It is noted that there is an important clerical error at paragraph [75], point (6), of the judgment in that case, where the word "not", emphasised in the above quotation from Halsbury's, is omitted. The error, however, seems clear from the context.)

[18] A method of eliminating uncertainty as to whether there has been a refusal, is for the person making the demand to stipulate:

1. the task required of the decision-maker;
2. a time or period for compliance with the demand; and
3. that failing compliance, a refusal will be presumed for the purposes of an application for a mandatory order.

This approach was approved in **Re Maharaj**, by Wooding CJ, at page 150 of the report. He cited authority to support the principle that there should be a distinct demand. This he found in Halsbury's, at paragraph 198:

> "As a general rule the order will only be granted unless the party complained of has known what it was he was required to do, so that he had the means of considering whether or not he should comply, and it must be shown by evidence that there was a distinct demand of that which the party seeking the *mandamus* desires to enforce, and that that demand was met by a refusal."

Wooding CJ also approved a formulation of a demand, for the purposes of granting a mandatory order. He said, at page 150:

> "Thus GRIFFITH'S GUIDE TO CROWN OFFICE PRACTICE sets out, at p 161, as one of the conditions precedent to the court making any such order that:
>
> > 'There has been a distinct demand and refusal to do the act…. It is therefore advisable that the demand should be made in writing, **and should state that failure to comply with such demand within a reasonable time therein specified will be treated as a refusal for the purposes of an application for a *mandamus***.'"
> > (Italics as in original; Emphasis supplied)

[19] It cannot be ignored, however, as has been highlighted in the extract, that the demand for compliance must be reasonable. The reasonableness of the demand will depend on the circumstances of the particular case.

[20] Another factor to be considered in determining whether a refusal is to be subject to a mandatory order is whether the making of the decision lies within the discretion of the decision-maker. The learned authors of Textbook on Administrative Law, cited

above, have opined that courts are slow to grant mandatory orders where the duty being compelled involves an exercise of the decision-maker's discretion. This is because the court's intervention may result in dictating how the decision-maker should make a choice. The learned authors state, in part, at pages 436 to 437:

> "Mandatory orders are granted infrequently in the case law and they tend to issue where there is only one course of action lawfully open to the decision-maker. Where a duty entails the exercise of discretion on the part of the decision-maker, the courts will therefore typically consider that a mandatory order would be inappropriate. Although the extent of any discretion is, at the same time, a matter for judicial interpretation of the relevant statute, the courts consider that the existence of discretion militates against *mandamus* as a remedy. The corresponding rationale is of the need to observe the constitutional limits to the judicial role, as it is perceived that an order of *mandamus* could result in the courts dictating how a particular choice should be made...." (Italics as in original)

[21] That principle was applied in **Medical Council of Guyana v Dr Muhammad Mustapha Hafiz** (2010) 77 WIR 277 at page 283, where the court said, in part:

> "A clear and settled principle of law is that the person compelled to the performance of an act by an order of mandamus must have a clear duty imposed on him as opposed to a mere discretion."

[22] Having set out the relevant legal context in which the facts of this case are to be considered, a chronology of the relevant events may now be canvassed.

The chronology

[23] The following timeline of the relevant events was before the learned judge for her consideration.

[24] After Ms Harriott made, what she considered to be, her final payment, the University issued a statement to her indicating that she still had an outstanding balance. The dispute officially got underway on or about 20 June 2019, when Ms Harriott's

attorneys-at-law wrote to the University demanding that it award the degree to her. The University responded promptly. By letter dated 21 June 2019, it indicated that it would conduct investigations and revert to the attorneys-at-law as soon as the investigations were complete. The University's letter also indicated that late payments to Ms Harriott's fees account would have attracted interest.

[25] By letter dated 20 September 2019, the attorneys-at-law wrote to the University asking for the dispute, surrounding the withholding of Ms Harriott's degree, to be referred to the Visitor. Not having had a response to that letter, Ms Harriott's attorneys-at-law wrote a letter of demand to the University. A portion of the demand letter, dated 5 June 2020, bears quoting:

> "We further demand that the dispute, as outlined in our letter [of 20 September 2019], a copy whereof is enclosed, be referred to the Visitor within **14 days** of your receipt of this letter.
>
> You will appreciate, of course, that your failure to refer the dispute to the Visitor within the time specified herein will be treated as a refusal for the purposes of an application for judicial review by way of an order of mandamus." (Emphasis as in original)

[26] On 26 August 2020, two months after the stipulated deadline, and over 11 months without a response from the University in relation to the referral of her dispute to the Visitor, Ms Harriott filed the application for leave to apply for judicial review.

The learned judge's decision

[27] The learned judge heard the application on 13 October 2020 and delivered her decision on 13 November 2020. Apart from finding that Ms Harriott had not demonstrated that the University had refused to refer the dispute to the Visitor, the learned judge also found that Ms Harriott had not shown that she had an arguable ground for judicial review, which had a realistic prospect of success. The learned judge said at paragraph [24] of her written judgment:

> "In the circumstances there is no evidence before the court upon which a finding can be made that there was in fact a refusal on the part of the University to trigger a Writ of Mandamus. I am therefore not of the view that Ms. Harriott has a real prospect of success."

[28] The learned judge opined that Ms Harriott should have pursued further discussions with the University. She said at paragraph [23] of her judgment:

> "I am hard pressed to find, based on the Affidavit of Ms. Harriott in support of this application, that there was in fact a refusal on the part of the University as described in the principles as set out in Halsbury's Laws and the cases referred to previously. The non-responsiveness of the University is insufficient to establish that they have refused to do what has been requested of them. Ms. Harriott still has the option of engaging the University in further discussions in respect of this matter."

The grounds of appeal

[29] The grounds of appeal before this court are:

> "a. The learned judge erred as a matter of fact and/or law and/or wrongly exercised her discretion when she refused to grant [Ms Harriott] leave to apply for judicial review in circumstances where [Ms Harriott] has arguable grounds for judicial review with a realistic prospect of success.
>
> b. The learned judge misdirected herself on the law, and erred in insufficiently regarding the totality of [Ms Harriott's] evidence, which caused her to derive an erroneous conclusion that the [University] did not make a decision refusing to refer the dispute between [Ms Harriott] and the [University] to the [University's] Visitor.
>
> c. The learned judge erred in awarding costs against [Ms Harriott] without making a finding that [her] conduct in making or pursuing the application was unreasonable."

[30] Grounds a. and b. may be analysed together. The first issue they raise is whether the learned judge erred in ruling that there was insufficient evidence to find that the University had decided not to refer the dispute to the Visitor. The second issue is whether Ms Harriott has a realistic prospect of success in demonstrating to the court that that decision, if made, was illegal, irrational (in a **Wednesbury** unreasonableness sense - see **Associated Provincial Picture Houses Ltd v Wednesbury Corporation** [1947] 2 All ER 680, [1948] 1 KB 223) or tainted with procedural impropriety. Thereafter, ground c., dealing with the learned judge's order in respect of costs, will be considered.

Whether the University made a decision

[31] This question is a mixture of fact and law. Although this court is usually loath to disturb a finding of fact made by a judge of first instance, that reticence is usually because the court lacks the advantage of seeing and hearing witnesses testify. In this case, this court is not so disadvantaged as it has the same affidavits that were before the learned judge, and there is no indication that there was any cross-examination, before her, on those affidavits.

[32] The evidence shows that the attorneys-at-law and the University were in correspondence for just a few days, shy of a year, before the request for the referral was made. At the beginning of that year the University had asked for time to investigate Ms Harriott's case. By the end of that year, it, therefore, had had more than ample time to familiarise itself with Ms Harriott's case.

[33] It was only four months after the dispute arose (May to September 2019), that the attorneys-at-law introduced the concept of the Visitor's intervention. By the time the University received the letter of 5 June 2020, it had had more than ample time to contemplate the concept of the referral of the issue to the Visitor, and decide on the appropriateness of such a referral.

[34] The attorneys-at-law's letter of 5 June 2020, coming as it did at the end of that year, therefore, raised nothing novel. Their demand for action was not only specific in what it required (the referral to the Visitor), but the time frame for compliance (within 14 days) was not unreasonable, either in respect of the action required or the time for compliance.

[35] Importantly, too, the letter of demand introduced the need for urgency, and communicated to the University, two concepts, namely, that:

1. the failure to refer the dispute would be considered a refusal; and
2. such failure would be the basis for litigation.

It is also important to note that the University did not respond to say that it needed more time.

[36] The learned judge did not seem to have considered these important aspects of the demand letter of 5 June 2020. She did not mention them in her written judgment. The essence of her reason for refusing Ms Harriott's application was that there was no indication that the University was refusing to refer the matter (see paragraph [23] of her judgment, which is quoted above).

[37] The learned judge's failure to consider the aspects mentioned above would be a proper basis for interfering with her decision and ultimately disagreeing with her on her conclusion.

[38] It is for convenience only that the quote of Wooding CJ's approval of Griffith's Guide to Crown Office Practice, in **Re Maharaj**, is repeated:

> "Thus GRIFFITH'S GUIDE TO CROWN OFFICE PRACTICE sets out, at p 161, as one of the conditions precedent to the court making any such order that:
>
> > 'There has been a distinct demand and refusal to do the act…. It is therefore advisable that the demand should be made in writing, **and should**

> **state that failure to comply with such demand within a reasonable time therein specified will be treated as a refusal for the purposes of an application for a mandamus**.'"
> (Emphasis supplied)

[39] It appears that Ms Harriott's attorneys-at-law had had the benefit of that learning because their letter of 5 June 2020 utilised that formulation. This is reflected in the following portion of the letter, which is repeated below, again purely for convenience:

> "You will appreciate, of course, that your failure to refer the dispute to the Visitor within the time specified herein will be treated as a refusal for the purposes of an application for judicial review by way of an order of mandamus."

[40] The evidence that was before the learned judge, therefore, showed that:

1. a specific demand was made of the University (to refer the dispute to the Visitor);
2. the demand was not unreasonable, either in what it required, or in the time that it stipulated; and
3. the University was put on notice that failure to refer the dispute within the stipulated time would constitute a refusal for the purposes of litigation.

[41] The learned judge was, therefore, in error when she found that there was insufficient evidence that the University had made a decision not to refer Ms Harriott's dispute to the Visitor.

Whether Ms Harriott has a realistic prospect of success in an application for judicial review

[42] In order to succeed in this appeal, it is not sufficient for Ms Harriott to merely show that the learned judge erred on that mixed question of fact and law. It is also

necessary for Ms Harriott to show that the learned judge erred in deciding that Ms Harriott had no real prospect of success with an application for judicial review.

[43] The established guidance for determining whether an application for judicial review should be granted may be found in **Sharma v Browne Antoine and Others** [2006] UKPC 57 at paragraph [14] (4), where their Lordships said, in part, that the applicant must show a real prospect of success:

> "The ordinary rule now is that the court will refuse leave to claim judicial review unless satisfied that there is an arguable ground for judicial review having a realistic prospect of success and not subject to a discretionary bar such as delay or an alternative remedy: *R v Legal Aid Board, Ex p Hughes* (1992) 5 Admin LR 623, 628; Fordham, *Judicial Review Handbook*, 4th ed (2004), p 426. But arguability cannot be judged without reference to the nature and gravity of the issue to be argued. It is a test which is flexible in its application. As the English Court of Appeal recently said with reference to the civil standard of proof in *R(N) v Mental Health Review Tribunal (Northern Region)* [2005] EWCA Civ 1605, [2006] QB 468, para 62, in a passage applicable mutatis mutandis to arguability:
>
> > '… the more serious the allegation or the more serious the consequences if the allegation is proved, the stronger must be the evidence before a court will find the allegation proved on the balance of probabilities. Thus the flexibility of the standard lies not in any adjustment to the degree of probability required for an allegation to be proved (such that a more serious allegation has to be proved to a higher degree of probability), but in the strength or quality of the evidence that will in practice be required for an allegation to be proved on the balance of probabilities.'
>
> It is not enough that a case is potentially arguable: an applicant cannot plead potential arguability to 'justify the grant of leave to issue proceedings upon a speculative basis which it is hoped the interlocutory processes of the court may strengthen': *Matalulu v Director of Public Prosecutions* [2003] 4 LRC 712, 733." (Italics as in original)

[44] Lord Diplock also gave guidance on this issue in his judgment in **CCSU v The Minister**, where his Lordship said, in part, at page 408:

> "To qualify as a subject for judicial review the decision must have consequences which affect some person (or body of persons) other than the decision-maker, although it may affect him too. It must affect such other person either:
>
> (a) by altering rights or obligations of that person which are enforceable by or against him in private law; or
>
> (b) by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received assurance from the decision-maker will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn....
>
> For a decision to be susceptible to judicial review the decision-maker must be empowered by public law (and not merely, as in arbitration, by agreement between private parties) to make decisions that, if validly made, will lead to administrative action or abstention from action by an authority endowed by law with executive powers, which have one or other of the consequences mentioned in the preceding paragraph…."

[45] Ms Harriott has satisfied these requirements. Firstly, as mentioned above, the University is empowered by public law to make decisions about the administration of its functions. As part of its public functions, the University grants degrees. The University's Charter, created by the Act, specifies that one of the functions of the University is to confer degrees to "persons who pursue courses of study or research approved by the University and attain the prescribed standards in such examinations, tests or other

assessment as shall be prescribed by the University" (paragraph 3(f) of the Charter of the University).

[46] Secondly, the University's refusal to refer the dispute, seriously and adversely affects Ms Harriott. She is unable to utilise the degree for which she has, undoubtedly, worked hard. Thirdly, she would have had a legitimate expectation that the University would abide by the, now established, law, and refer the matter to the Visitor.

[47] Lord Diplock's judgment in **CCSU v The Minister** is also important for his exposition of the classification of the grounds upon which administrative action is subject to judicial review. He said, in part, at page 410 of the report:

> "…Judicial review has I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call 'illegality,' the second 'irrationality' and the third 'procedural impropriety.' That is not to say that further development on a case by case basis may not in course of time add further grounds…."

In addition to those three headings, Lord Diplock also considered that proportionality would be an important category. Professor Albert Fiadjoe, at page 27 of his work, Commonwealth Caribbean Public Law (third edition), further suggests that, for the Commonwealth Caribbean, a heading of "unconstitutionality" would also be an appropriate addition to Lord Diplock's classification.

[48] Ms Harriott has a real prospect of success in demonstrating that the University acted irrationally, in the sense that, on the evidence before the court, a reasonable assessment of the situation should have caused the University to refer the dispute to the Visitor. This assertion is not to be taken as an indication that Ms Harriott should succeed in an application for judicial review. That is a matter for the judicial review court, and, importantly, the University is yet to give any explanation for its failure to accede to the demand made by Ms Harriott's attorneys-at-law.

[49] What is noteworthy is that the University's submission in law before the learned judge was wholly in conflict with the law as set out in **Foote v UTECH**. The learned judge reported, at paragraphs [6] and [7] of her judgment, that the University's position was that the matter was purely contractual, it did not fall under the jurisdiction of the Visitor and that Ms Harriott had an alternative remedy (presumably to sue in contract). Whether the University would maintain that position before a judicial review court will emerge in the fullness of time, but at this juncture, there is nothing that the University has advanced that would hinder Ms Harriott's prospects of success before such a court.

[50] As a matter of completeness, it should be noted that the University would not have the benefit of an argument that it had a discretion whether or not to refer an appropriate dispute to the Visitor. Accordingly, the learning gleaned from the learned authors of Textbook on Administrative Law, cited above, would not be of assistance.

Whether the learned judge should have awarded costs against Ms Harriott

[51] The general rule in respect of costs in applications for judicial review is that "no order for costs may be made against an applicant…unless the court considers that the applicant has acted unreasonably in making the application or in the conduct of the application" (rule 56.15(5) of the CPR, as amended). It is apparent that the learned judge viewed Ms Harriott's application as unreasonable, since she said that she was "hard pressed to find, based on the Affidavit of Ms. Harriott in support of this application, that there was in fact a refusal on the part of the University".

[52] In the light of the disagreement, in this judgment, with the learned judge, on both her bases for refusing Ms Harriott's claim, it necessarily follows, that the learned judge's reasoning on the issue of reasonableness of the claim would also be seen as flawed, and that the learned judge's ruling as to costs should be set aside.

Conclusion and disposal

[53] The learned judge did not demonstrate that she considered the aspect of the demand letter of 5 June 2020, which informed the University that a failure to act within the stipulated time would be deemed a refusal for the purposes of an application for a mandatory order. She also did not consider the bases on which judicial review should be considered in the context of Ms Harriott's complaint. Accordingly, her judgment, including her order for costs, must be set aside. Ms Harriott should be granted leave to apply for judicial review.

V HARRIS JA

[54] I have read the draft judgment of Brooks P. I agree with his reasoning and conclusion and have nothing useful to add.

E BROWN JA (AG)

[55] I, too, have read, in draft, the judgment of Brooks P and agree with his reasoning and conclusion.

BROOKS P

ORDER

1. The appeal is allowed.
2. The orders of the learned judge made on 13 November 2020 are set aside.
3. The appellant is hereby granted leave to apply for judicial review of the decision of the respondent, refusing to refer the dispute between the appellant and the respondent, concerning the issue of outstanding fees and the conferral of a degree, to the respondent's Visitor.
4. The appellant is to file a fixed date claim form and supporting affidavits at the registry of the Supreme Court within 14 days of the date of this order.
5. No order as to costs in the court below.
6. Costs of the appeal to the appellant to be agreed or taxed.