



**IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION**

CAUSE NO. G169 OF 2020

BETWEEN: **KATTINA ANGLIN** **Plaintiff**
AND **THE GOVERNOR OF THE CAYMAN ISLANDS** **Defendant**
AND **COLOURS CARIBBEAN** **Applicant/Proposed Intervener**

Appearances: **Mr. Hugh Southey QC & Mr. Rupert Wheeler on behalf of KSG Attorneys for the Plaintiff**
Ms. Reshma Sharma QC & Ms. Heather Walker on behalf of the Defendant
Mr. Alex Potts QC & Ms. Sarah McLennan on behalf of Conyers Dill & Pearman LLP for the Proposed Intervener

Before: **Hon. Justice Richard Williams**

Hearing: **19 October 2021**

Draft Judgment

Circulated: **25 October 2021**

Judgment: **28 October 2021**

HEADNOTE

Parties – application to intervene in judicial review proceedings – Intervener permitted to file written submissions, to make oral submission and to file affidavit evidence

JUDGMENT

The parties, the application and the procedural background

1. The Plaintiff is Kattina Anglin. The Defendant is His Excellency the Governor of the Cayman Islands (“the Governor”).



2. The Proposed Intervener is Colours Caribbean. Colours Caribbean is the name used for the purpose of an application to the Cayman Islands Register of Companies for incorporation of the organization, which was known prior to incorporation as “Colours Cayman”. Colours Caribbean was registered as a non-profit organisation in the Cayman Islands on 13 February 2018 and formally incorporated on 28 May 2020 as Colours Caribbean. The organisation was formed in 2015 *“with a mission to advocate for the rights of LGBTQI+ people in the Cayman Islands and to foster a safe and comfortable social environment for the LGBTQI+ community.”*

3. This application is brought by Colours Caribbean and it concerns judicial review proceedings which the Plaintiff has brought to challenge the Governor’s use of his powers under s.81 of Schedule 2 of the Cayman Islands Constitution Order (2009) (“the Constitution”) in the enactment of the Civil Partnership Act 2020 (“the CPA”). The judicial review hearing is listed to be heard by me on 2-3 December 2021 and directions to that hearing were made on 18 June 2021. As the relevant details of those proceedings are contained in my Judgment dated 20 November 2020¹, in which I granted the Plaintiff leave to apply for judicial review, I need not set out the same in any detail again herein.

4. This application was brought by way of a Summons dated 22 September 2021. In the Summons the following orders are sought:
 - (i) Permission be granted to Colours Caribbean to intervene in the proceedings by way of written submissions; evidence; and oral submissions, not exceeding one hour.

¹ *Ex parte* application was heard on 17 November 2020.



(ii) Colours Caribbean is to bear its own costs of the proceedings in any event, and it shall have no liability for the costs of the other parties to the proceedings in any event.

5. By letter dated 22 September 2021, the Proposed Intervener requested that the matter be considered by a Judge either: (i) on the papers or (ii) by listing the matter for hearing on an expedited basis. On 24 September 2021, on my instructions, my Personal Assistant wrote to the parties and the Proposed Intervener and indicated that (i) if the intervention was agreed by the parties, I would likely be willing to make the order administratively on the papers, but (ii) if the order is not agreed, then the parties would need to appear before me. As the Plaintiff did not agree to the orders being sought, on 4 October 2021 the Summons was set down for hearing on 19 October 2021.

6. At the hearing, I received oral submissions from Counsel on behalf of the Plaintiff, the Defendant and the Proposed Intervener. I have considered the written submissions and the note submitted by Counsel for the Defendant as well as all of the material in the filed bundles. At the end of the hearing, I reserved my decision and this is the reserved judgment containing the same.

The parties' positions in relation to the Proposed Intervener's Summons and the Court's conclusion on the application to intervene and submit written submissions

7. Although unclear at certain times post the issuing of the Summons, greater clarity was given about the Plaintiff's position in the letter from her attorneys dated 14 October 2021



and in the oral submissions of Mr. Southey QC delivered at the hearing. Slightly different to the position stated in the Plaintiff's Written Submissions dated 4 October 2021, the Plaintiff does not object to Colours Caribbean intervening in the proceedings by way of written submissions only, but she does still object to them making oral submissions or relying on written evidence.

8. The Defendant does not oppose the application and submits that Colours Caribbean "*as an entity representing the interests of persons who may be directly affected by the outcome of the Court's decision in this matter...is a "proper person to be heard" within the meaning of GCR Order 53 rule 9(1).*"

9. The Defendant highlights that any risk of repetition as between the Defendant and the Proposed Intervener will be mitigated as there will be communication between their attorneys to enable those representing the Proposed Intervener to tailor their submissions accordingly. The Defendant also "*sees no reason*" in preventing the Defendant from delivering oral arguments limited to one hour and for the Court to refuse to admit evidence filed by the Proposed Intervener, as the latter is relevant to the question of relief.

10. The Proposed Intervener, following receipt of the Plaintiff's above-mentioned letter dated 15 October 2021, made clear in its letter of 18 October 2021 and at the hearing that leave to intervene is still sought on the basis that it (i) be allowed to rely on written evidence, (ii) be allowed to make oral submissions for up to one hour, and (iii) be allowed to rely on



written evidence. The Proposed Intervener has indicated that it will communicate with the parties to avoid repetition/duplication in its submissions.

11. All of the parties agree that consideration of the orders sought in paragraph 2 of the Summons in relation to costs should not be dealt with at this hearing, but could be dealt with at the final hearing.

12. Claims for judicial review often raise issues of public significance that go beyond the interests of all or some of the parties involved. Many of these cases affect disadvantaged or vulnerable groups whose interests are represented by voluntary sector organisations. Because of their specialist knowledge about how particular decisions impact the group they represent, these organisations have the ability to make informed submissions that could assist the Court. Third party interventions are a method by which a person or organisation not otherwise involved in the litigation may submit specialist information or expertise to the Court. A third party intervention therefore offers a route by which such organisations may make an effective contribution to the court's decision-making process.² In the words of Lord Slynn in ***Re Northern Ireland Human Rights Commission (Northern Ireland)*** [2002] UKHL 25 at [24]:

“... Whether as amicus curiae, keeping within the limits of a non-partisan view of the particular case, or advocating as intervener where there is a danger that an important principle of law favouring one party or the other has not been brought to the attention of the court, the [Commission] would have the possibility of promoting understanding by the courts of human rights law. Courts can gain much from such interventions...”

² The Public Law Project Third Party Interventions – A Practical Guide.



13. I recognise that I must consider any application to intervene on its own merits. I am satisfied, having regard in particular to the content of paragraphs 11 to 16 of the Affidavit of Leonardo Javier Raznovich sworn on 14 September 2021, that Colours Caribbean is “*a proper person to be heard*”³ in the judicial review proceedings. I am satisfied that Colours Caribbean represents the interests of a group of persons who may be affected by the outcome of this case. Further it will be able to provide information and a perspective over and above that which can be provided by the parties. Accordingly I grant, at the very least, Colours Caribbean permission to intervene in these proceedings by way of written submissions.
14. The Court, of course, may make permission to intervene subject to conditions as the intervention is subject to its control. What I must now go on to determine is whether Colours Caribbean also be permitted to rely on written evidence and to present oral submissions limited to one hour at the hearing. When I do so, I am conscious that I must balance the benefits which are derived from a certain type of intervention against inconvenience, any delay, and additional expense which an intervention may cause to the Plaintiff and to the Defendant.

Arguments concerning the Proposed Intervener making oral submissions at the December hearing and the Intervener filing evidence

15. The Proposed Intervener seeks to make legal submissions on the correct interpretation of s.55 and s.81 of the Constitution and whether the Governor’s actions were *intra vires*. It

³ GCR O.53, r.9.



also seeks to provide factual evidence and legal submissions as to the appropriate remedy in the event that the Plaintiff's judicial review application is found to have merit. It is contended that in such circumstances, if any relief is to be granted, that it should only be declaratory relief.

16. It is contended that Colours Caribbean *"as a leading LGBTQI+ advocacy group in the Cayman Islands, ...is well-placed to provide important evidence as to the logistical difficulties and significantly detrimental effect to third parties, including children, that a quashing order would create in this case."* It intends to make submissions and provide evidence to show that the repeal of the rights, acquired by the enactment of the CPA and by the related amendments to other relevant Acts which would result from a quashing order, would be *"catastrophic"* to same-sex couples and their children and *"pose a serious threat to good administration"*. It is submitted that the *"significant harm"* caused is a relevant factor to the Court's exercise of its discretion.
17. It is submitted that the issues surrounding relief are arguable and that they should not and cannot be pre-determined at the short intervention hearing. It is contended that the issue and applicable law could only be properly canvassed and determined at the substantive judicial review hearing with the benefit of full argument and evidence. The Defendant agrees with this contention.
18. The Plaintiff questions the relevant expertise of Colours Caribbean and whether the submissions they seek to make are relevant or may duplicate the submissions being made



primarily by the Defendant. In relation to the first concern, especially in relation to any possible issues of relief, I am satisfied that they do have the expertise which will be of assistance to the Court. Colours Caribbean, likely more than any other group in the Cayman Islands, is aware of the potential consequences for those whose interests and rights it seeks to represent and protect. Colours Caribbean has also played an active role in the development of relevant legislation by its contributions at the consultative stages.

19. The Plaintiff rightly highlights the concern of duplication of submissions. I am satisfied that the Proposed Intervener recognises this, and that is why they have agreed to limit any oral submissions to only one hour during the two day hearing. I accept Counsel's indication made on behalf of Colours Caribbean that it will work constructively with the parties to avoid duplication and that it will be in a better position to do that after it has reviewed the material already filed in these proceedings. In his Reply Skeleton Argument, Counsel states: *"There is no reason to think that (Colours Caribbean) will not comply with its undertaking to avoid duplication"*, so if it becomes necessary, that is something that he will be reminded about at the hearing. As mentioned in paragraph 10 above, the Defendant has indicated its intention to communicate with the Proposed Intervener to address this concern.
20. The Plaintiff accepts that legal submissions regarding relief are potentially relevant, but adds that the submissions do not need evidence to be adduced, especially as the same would invite the Court to speculate about what might happen if the judicial review is found to be meritorious and if the relief she seeks is granted. It is suggested that there are ways to



address the situation that would arise and that Colours Cayman is asking the Court to speculate because the consequences may not be as they suggest. The Plaintiff states that the United Kingdom Authorities could decide to act via an Order in Council (s.125 of the Constitution) and that would address the effects of any relief that could be ordered. The Plaintiff also highlights the principle expressed in *Boddington v BTP* [1999] 2 AC 143 at page 172 that actions taken on the basis of laws subsequently held to be unlawful are not necessarily unlawful. It is suggested that this principle could, if it needed, be relied upon in individual cases to address the unfair effect of any relief that could be ordered by the Court. I note that such approaches would not happen immediately and that there would be a period of time in the interim if the Governor's actions were quashed.

21. The Plaintiff is concerned that if evidence is permitted, then it could be extensive and potentially require a response which could cause inconvenience, delay and increase expense. Therefore, the Plaintiff does not agree with the Defendant and with the Proposed Intervener that issues regarding relief can wait until the substantive hearing.
22. The Plaintiff, with some force, submits that, if she is successful at the hearing, the CPA will have no legal effect and the Court cannot make orders that have the effect of allowing unlawful legislation to continue. It is submitted that, consistent with the Court of Appeal's approach in *Deputy Registrar and Attorney General v Day and Bush* [2020] (1) CILR 99 this Court cannot act as if was the Legislature and refuse relief to ensure compliance with the ECHR and Bill of Rights. Counsel refers to the Supreme Court decision *Ahmed v HM Treasury* [2010] 2 AC 534 at [4] (p690) in support of this contention. There is a dispute



between the parties about the application of *Ahmed* in the Cayman Islands and in this case. Both the Defendant and Colours Caribbean submit that this is not the time to determine this issue in the absence of fuller submissions, which should take place at the same time as the substantive hearing rather than at this interlocutory hearing. Where the consequences of any relief that may be granted could so disadvantage a group of individuals in the community, I have noted the dissenting judgment of Lord Hope of Craighead in *Ahmed* (p691) where he indicated that he would suspend orders made to enable steps to be taken when needed to give effect to an obligation by which the United Kingdom was bound. I accept that this was a dissenting judgment, but I agree with the Defendant, that it is still something that needs to be properly argued and considered in the Cayman Islands and in this case.

Conclusion

23. Although I accept that there may be some force in the Plaintiff's submissions about the *ultra vires* effect, I recognise the force in the contention of the Defendant and Proposed Intervener that it would not be proper to reach a decision on the issue at this stage, and that the better time to decide is at the substantive hearing. It is desirable to have the case prepared to enable that full argument to take place, rather than any restrictions being placed on Colours Caribbean today which could prevent it being properly canvassed by the parties at the substantive hearing if the Court then felt it needed the parties to do that.
24. Having regard to my observations at paragraphs 12 and 13 above, Colours Caribbean's involvement may well assist the Court's understanding of the wider impact that the case



might have and the interests of justice will be promoted by allowing the wider intervention they seek. This includes it being able to give oral submissions limited to one hour. I have reviewed the evidence that has been filed to date, and acknowledging that any additional evidence to be filed by Colours Caribbean is to be evidence in reply to the evidence already filed, I am satisfied that the evidence already filed may be relevant to the issue of relief, including arguments about the suspension of any order to be made.

25. My decision, although it will require additional work for particularly the Plaintiff, will not affect the December hearing date. I have modified the draft directions which were submitted on behalf of Colours Caribbean, and I have re-timetabled the actions to be taken by the parties leading up to the December hearing.

Order

26. The order and directions I make⁴ are:
- (i) The Judicial Review hearing remains listed to be heard on 2-3 December 2021 before Williams J.
 - (ii) Colours Caribbean be granted leave to intervene in these proceedings by way of written submissions, evidence, and oral submissions at the substantive hearing on 2 and 3 December 2021 not exceeding one hour.
 - (iii) Colours Caribbean is directed to actively communicate with the Defendant to mitigate duplication or repetition in its submissions and evidence.

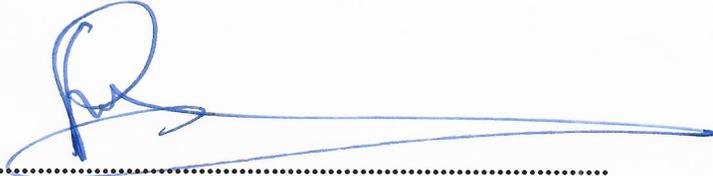
⁴ A copy of these orders was provided to the parties on 21 October 2021.



- (iv) The Plaintiff and the Defendant shall serve copies of all of their evidence filed and served to date on Colours Caribbean's attorneys by 4:00 p.m. on 20 October 2021.⁵
- (v) Colours Caribbean does have permission to rely on the evidence already filed and served in support of the applications contained in the Summons, and Colours Caribbean shall have leave to file and serve any further evidence in response to the Plaintiff's and Defendant's evidence, by 4pm on 27 October 2021.
- (vi) The Plaintiff and the Defendant do have leave to file evidence in response to Colours Caribbean's evidence, if so advised, by 4:00 p.m. on 8 November 2021.
- (vii) The Plaintiff's Skeleton Argument, List of Authorities, and Hearing Bundle, shall be served on Colours Caribbean's attorneys at the same time as on the Defendant (by 4:00 p.m. on 8 November 2021).
- (viii) The Defendant's Skeleton Argument and List of Authorities shall be served on Colours Caribbean's attorneys at the same time as on the Plaintiff (by 4:00 p.m. on 16 November 2021).
- (ix) Colours Caribbean's Skeleton Argument, and List of Authorities, shall be filed and served on the Plaintiff and the Defendant by 4:00 p.m. on 23 November 2021.
- (x) The hearing bundle (with the skeleton arguments) and bundle of authorities, to be prepared by the Plaintiff, are to be provided to the Court by 4pm on 24 November 2021.

⁵ This specific direction was made by consent at the hearing.

- (xi) Costs are reserved and consideration of paragraph 2 of Colours Caribbean's Summons dated 22 September 2021 may be considered at the hearing on 2-3 December 2021.



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The Honourable Mr. Justice Richard Williams
JUDGE OF THE GRAND COURT