



In The Supreme Court of Bermuda

CIVIL JURISDICTION

2026: No. 34

BETWEEN:

JUSTICE NICOLE STONEHAM

Applicant

- and -

THE CHIEF JUSTICE OF BERMUDA

Respondent

RULING

Date of Hearing: 23 July 2026

Ruling Delivered: 15 October 2026

Appearances: *Victoria Greening* of Resolution Chambers Ltd. for the
Applicant

Ben Adamson of Conyers for the Respondent

HEADNOTE

The contractual provisions governing paid sick leave for judges are Constitutional.
Their application on the facts was lawful.

Introduction

1. This is an application for judicial review that I listed for a rolled-up hearing. This application essentially raises two related issues. Those are: (a) the legality of

decisions taken regarding the Applicant's leave entitlements; and (b) the constitutionality of a document described as the Applicant's 'Employment contract'.

2. The Applicant's written submissions were wide ranging and appeared at times to raise issues not raised in the Form 86a. However, there was no application to amend the Form 86a and, during oral argument, nobody appeared to suggest that the application was wider ranging than that set out in the Form 86a and summarised in paragraph 1 above.
3. I thank all of the parties for their helpful written and oral submissions.

Factual background

4. On 28 April 2016, the Applicant was appointed by the Governor as a Puisne Judge of the Supreme Court of Bermuda. Her appointment took effect on 1 June 2016.
5. On 28 April 2016, a letter was written to the Applicant by the Director of the Department of Human Services. This stated that:

On behalf of the Governor and the Bermuda Government, I am authorized to offer you the terms and conditions contained herein. This contract shall become effective from the date of your appointment as a Puisne Judge by instrument under the Public Seal.

Under the heading of 'Leave' the letter stated that:

Unless otherwise directed by the Chief Justice leave entitlements shall be the same as those detailed in the Conditions of Employment and Code of Conduct and the Collective Agreement between the Bermuda Government and the B.P.S.U¹.

Under the heading of 'Agency Shop' the letter stated that:

Judges are not public officers and accordingly are not formally bound by the Agency Shop agreement between the Government and the B.P.S.U.

Under the heading of 'Employment contract' the letter stated that:

¹ The Bermuda Public Services Union

The Instrument of Appointment dated on such date as may be agreed between His Excellency the Governor and yourself, together with this letter of contract, constitute your contract of employment with Government. This contract shall supersede any other contract previously made between the parties.

6. On 10 May 2016, the Applicant signed to indicate her agreement to the terms set out in the letter dated 28 April 2016.
7. I have been provided with a number of documents that set out the agreements reached by the Bermuda Government and the BPSU regarding leave. Relevantly:
 - a. The conditions of employment and code of conduct provided for absence to be referred to the staff medical board where that absence would compromise the effective operation of the public service. The conditions of employment and code of conduct also provide that leave arrangements are described in greater detail in the collective bargaining agreement.
 - b. The collective bargaining agreement provides that employees with over 4 years of completed service are entitled to 14 weeks paid sick leave.
 - c. The Cabinet Office has issued extended sick leave guidelines. These are said to apply to posts represented by the BPSU as well as other posts. These provide for the approval of extended paid sick leave by the staff medical board. They also provide that an application should only be made after an employee has been asked to use unused annual leave first.

I will refer to these documents as the Agreements later in this judgment.

8. It appears to me that in simple terms, the documents summarised in paragraph 7 do two things. Firstly, they provide a limit to the maximum period of sick leave that an employee is entitled to. In addition, they provide a procedure for applications to be made for the grant of additional paid sick leave.
9. The Applicant's evidence is that from 29 April 2025 to 30 January 2026 (the date of the affidavit), she had been on medical leave during the following periods: 12 - 17 September 2025; 24 September - 1 October 2025; 17 - 31 October 2025; 3 - 14 and 17 - 30 November 2025; 3 - 31 December 2025; 1 - 30 January 2026. Her evidence states that all of these periods of medical leave have been supported by medical certificates.

10. On 22 December 2025 the Chief Justice wrote to the Applicant. The letter stated that:

Your letter of contract dated 28 April 2016, at clause 4 in respect of "Leave", provides as follows: "Unless, otherwise directed by the Chief Justice, leave entitlements shall be the same as those detailed in the Conditions of Employment and Code of Conduct ("CECC") and the Collective Agreement ("CBA") between the Bermuda Government and the BPSU." The CBA for the period 1 October 2020 - 31 March 2025 at Article 10.1 sets out that "Leave entitlement shall be as set out in the CECC, and any subsequent amendments, and in Schedule VII - Leave". CBA Schedule VII Sick Leave paragraph 60 sets out that public officers with over 4 years' service are entitled to 14 weeks certified sick leave. That equates to 70 days of paid sick leave.

Our records show that for this year 2025 you will have taken 106 certified sick days as at 31 December 2025. This exceeds your entitlement of 70 days of paid sick leave by 36 days. As a matter of contract, these 36 days should not have been paid since they exceed your entitlement to paid sick leave.

The Head of the Public Service has issued an Extended Sick Leave Guidance dated 26 September 2025 ("Guidance"). The Guidance applies to posts that are represented by the BPSU. Judges are not represented by the BPSU but, as the leave entitlement provisions pursuant to your contract are the same as the BPSU, it seems sensible to apply the Guidance if only by analogy to the current situation.

The Guidelines sets out a procedure for a public officer to apply for additional paid sick leave. This however, first requires that the public officer be invited to apply to use any unused vacation annual leave to cover the periods of absence. You currently have 39 days of outstanding annual leave. Thus, per the Guidance, I invite you to use 36 days of your unused annual leave to cover the earlier periods of absence. I note that, according to the Guidance, if you decline to use your unused annual leave then the period of absence will be unpaid. I would be grateful if you could let me know your thoughts on the above as soon as possible. If don't hear from you within 14 days, your salary will need to have deductions applied to it to cover the 36 days of sick leave. [Emphasis added]

11. The Respondent argues that the letter dated 22 December 2025 was essentially identifying a default position in the event that no representations were received but provide an opportunity for representations. That appears to me to be the effect of the correspondence. As far as I am aware, no representations were made by the Applicant.

12. On 13 January 2026 the Chief Justice wrote to the Applicant. The letter stated that:

As of the date of this letter, I have not received a response from you as requested. Therefore, I am obliged to give instructions to the Acting Registrar to take steps for your salary to have deductions applied to it to cover the 36 days of sick leave as set out in the earlier letter.

13. A 2nd letter dated 13 January 2026 was sent by the Chief Justice to the Applicant saying that:

The present situation is thus that, for prolonged periods since your resumption of your functions as a judge and continuously since 17 October 2025, you have in fact been unable to perform those functions. ...

I would welcome a full explanation on the above and on your ability or inability to discharge the functions of your office.

14. These letters are relied upon by the Applicant to demonstrate that there is both: (a) reliance on the constitutional route for dismissal as a mechanism for dealing with the Applicant's absence; and, (b) a contractual provision enabling a refusal to pay sick pay. It is said that the reliance on the provision enabling a refusal to pay sick pay is not permitted because it undermines the constitutional route for dismissal.

15. On 15 January 2026 the Applicant's attorneys wrote indicating that they intended to apply for judicial review. The letter contained no real detail of the arguments in favour of a grant of leave. On 19 January 2026 attorneys representing the Chief Justice responded.

16. Judicial review proceedings were issued on behalf of the Applicant on 5 February 2026.

17. On 20 February 2026 I issued an order. In light of the limited pre-action correspondence, I essentially wanted to give the Respondent an opportunity to engage with the arguments before I determined leave. I was also uncertain whether there was a need for other Respondents to be added to parties.

18. Later on the same date I received a letter from the Applicant's attorneys challenging my appointment. I issued a second order on the same date. This indicated that I would be willing to consider any formal application that the

Applicant wished to make challenging my independence. No application was received.

19. Following my first order, an amended Form 86a was filed on 27 February 2026. This sought to add the Governor of Bermuda and the Government of Bermuda as Respondents.
20. On 17 March 2026 I issued a third order. This listed this matter for a leave hearing on 29 April 2026.
21. At the leave hearing on 29 April 2026, I refused leave to apply for judicial review against the Governor of Bermuda and the Government of Bermuda. I ordered a rolled-up hearing in the application against the Respondent. I made provision in my order for the Governor of Bermuda and the Government of Bermuda to be added as interested parties. The Governor of Bermuda and the Government of Bermuda did not take advantage of that provision.
22. On 17 June 2026 an e-mail was sent by the Applicant's attorney to the Chief Justice. This contained a letter from the Applicant's treating psychiatrist. This letter stated that:

Justice Stoneham has described symptoms consistent with the diagnosis of Major Depression (according to the DSM-5-TR) including low mood with diurnal mood variation, reduced enjoyment, insomnia, fatigue, mental exhaustion, loss of interest in normal activities, irritability, and symptoms of anxiety ...

Ms Stoneham's symptoms are stress-related, and she is capable of making a full recovery and return to functional ability. However, due to the stress of the ongoing proceedings, she is unlikely to be well enough to return to her previous role in Bermuda until ... proceedings [against the chief justice among others] have concluded.

The application

23. The Applicant lodged an application for leave to apply for judicial review. The Form 86A stated that the decision challenged was:

The Respondent's decisions to 1) invite the Applicant to use her unused vacation leave or else he will have her pay deducted to cover her sick leave and 2) to instruct the Acting Registrar to take steps to apply deductions to the Applicant's pay to cover the 36 days of sick leave ("the decisions").

24. The relief sought included:

An Order for a declaration that the Applicant's contract of employment is unconstitutional; ...

An Order for a declaration that the Respondent's decisions are unconstitutional;

25. The grounds state, among other matters, that:

9. Judges are not public officers and cannot participated in negotiations about or be bound by the Collective Agreement between the Government and the B.P.S.U. This includes terms and conditions for leave entitlement and any subsequent guidance issued on extended sick leave entitlement for public officers.

10. In light of the above, the "contract" is not enforceable and is void.

11. Further, it is inconsistent with the principles of judicial independence, including security of tenure, for a judge to be subject to the same terms and conditions as a public officer. ...

13. In Bermuda there is no specific constitutional scheme with deals with leave entitlement. However, in other similar jurisdictions, such as Cayman Islands, there is a specific framework for judges separate and distinct from public officers which deals with leave entitlement and which are more generous. We must look to these jurisdictions for guidance.

26. As mentioned above, it appears to me this application challenges the decision of the Respondent set out in his letter dated 22 December 2025 regarding leave. Linked to this are arguments that the terms set out in the letter dated 28 April 2016 are unconstitutional.

Submissions of the parties

27. I have considered with care the oral and written arguments of the parties in this matter. I will engage with a number of them when I set out my reasoning later. A failure to engage with specific argument in either my summary below or in my reasoning does not mean that I have ignored it. I have simply focused on the arguments that are necessary to understand my reasoning.

28. The Applicant argues that:

- a. Given that section 74 of the Bermuda Constitution (enacted by schedule 2 to the Bermuda Constitution Order (BX182/1968)) ('the Constitution') provides a scheme for the suspension and removal of

judges, there is no separate mechanism that enables judges to be denied remuneration.

- b. Judges cannot be bound by terms of employment that have been negotiated by the Government and public service unions. Judicial contracts cannot incorporate the provisions of the public service contracts as they are not public servants.

29. The Respondent argues that:

- a. The letter challenged was merely asking for the Applicant's thoughts and so was not a final decision. It set out a contractual position if the Applicant did not respond. She did not respond.
- b. The scheme for payment of judges as set out in the letter dated 28 April 2026 has nothing to do with the Respondent in his capacity as Head of Department or his role as Chief Justice.
- c. In any event, the contractual provisions regarding leave are constitutional. They merely set the entitlement to paid sick leave by reference to another document. That is not objectionable.

Constitution

30. Section 6 of the Constitution provides that:

(1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

(8) Any court or other adjudicating authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other adjudicating authority, the case shall be given a fair hearing within a reasonable time. [Emphasis added]

31. Unsurprisingly, section 6 of the Constitution makes clear that judicial independence is a key right enjoyed by parties to litigation. As was said in *Al Jedda v Secretary of State for Defence* [2011] QB 773:

The independence of the judiciary is an essential element of the rule of law and of the very essence of the right of liberty. [68]

It appears to me that the importance of judicial independence means that any claim that there is an interference with judicial independence must be reviewed with care.

32. The test to be applied when determining whether a judge lacks independence has been restated in many cases. For example, in *Lawal v Northern Spirit Ltd* [2004] 1 All ER 187 Lord Steyn cited with approval earlier case law holding that:

The question is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased. (Lawal at [14])

33. In *Starrs v Ruxton* 2000 JC 208 in the Scottish High Court Lord Reed held that:

Judicial independence can be threatened not only by interference by the executive, but also by a judge's being influenced, consciously or unconsciously, by his hopes and fears as to his possible treatment by the executive. It is for that reason that a judge must not be dependent on the executive, however well the executive may behave: 'independence' connotes the absence of dependence (p248).

34. The Basic Principles on the Independence of the Judiciary agreed by the UN states that '[t]he judiciary shall have jurisdiction over all issues of a judicial nature' [3].

35. Section 15(1) of the Constitution provides that:

If any person alleges that any of the foregoing provisions of this Chapter has been, is being or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the Supreme Court for redress.

36. Section 100 of the Constitution provides that:

(1) There shall be paid to the holders of the offices to which this section applies such salary or other remuneration and such allowances as may be prescribed by or under a law enacted by the Legislature. ...

(3) The remuneration prescribed in pursuance of this section in respect of the holder of any such office and his other terms of service (other than allowances that are not taken into account in computing, under any law in that behalf, any pension payable in respect of his service in that office) shall not be altered to his disadvantage after his appointment. ...

(5) This section applies to the offices of Governor, Chief Justice, Puisne Judge, President of the Court of Appeal, Justice of Appeal, Chairman or other member of the Public Service Commission, Attorney-General, Auditor, and Chairman and judicial member of Constituency Boundaries Commission. [Emphasis added]

37. One matter that appears clear about section 100 of the Constitution is that it prevents the remuneration of a judge being reduced. That is not surprising as the ability to reduce a judge's remuneration could undermine judicial independence. Without safeguards judges may become concerned that their remuneration may depend upon whether the way in which they exercise functions meet approval.
38. Despite the provisions of section 100, I am told that there is no statutory scheme for payment of puisne judges and I am not aware of any statutory scheme. I will consider below the consequences of this.
39. Section 73 of the Constitution, provides among other matters, that:

(2) ... Provided that the office of a Puisne Judge shall not, without his consent, be abolished during his continuance in office.

40. Section 74 of the Constitution, provides among other matters, that:

(2) A judge of the Supreme Court may be removed from office only for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour; and shall not be so removed except in accordance with the provisions of subsection (3) of this section.

(3) A judge of the Supreme Court shall be removed from office by the Governor by instrument under the Public Seal if the question of the removal of that judge from office has, at the request of the Governor, made in pursuance of subsection (4) of this section, been referred by Her Majesty to the Judicial Committee of Her Majesty's Privy Council under section 4 of the Judicial Committee Act 1833 or any other enactment enabling Her Majesty in that behalf, and the Judicial Committee has advised Her Majesty that the judge ought to be removed from office for inability as aforesaid or misbehaviour.

(4) If the Governor considers that the question of removing a judge of the Supreme Court from office for inability as aforesaid or misbehaviour ought to be investigated, then—

(a) the Governor shall appoint a tribunal, which shall consist of a Chairman and not less than two other members selected by the Governor from among persons who hold or have held high judicial office;

(b) the tribunal shall inquire into the matter and report on the facts thereof to the Governor and advise the Governor whether he should request that the question of the removal of that judge should be referred by Her Majesty to the Judicial Committee; and

(c) if the tribunal so advises, the Governor shall request that the question should be referred accordingly. ... [Emphasis added]

41. The Applicant argues that section 74(2) protects judicial independence by limiting the circumstances in which a judge can be removed and ensuring that there is an independent procedure that must be used if a judge is to be removed. It appears to me that this is correct. It appears to me that section 74(2) links with other provisions of the Constitution intended to ensure that there is effective protection of judicial independence. In particular, it prevents arbitrary dismissal of a judge by the executive.
42. In *Kaur v MG Rover Group Ltd* [2005] ICR 625 the English Court of Appeal held that contracts of employment can incorporate the terms of other documents provided that they are apt ([9] – [10]).
43. In *Braganza v BP Shipping Ltd* [2015] 1 WLR 1661 the court considered the approach to be adopted by courts to the interpretation of contracts that grant ‘one party a power to make decisions under the contract which may have an effect on both parties’ [102]. In this context, Lord Neuberger noted that:

... there is considerable force in the notion that this approach is, and at any rate should be, the same as the approach which domestic courts adopt to a decision of the executive [103]

In other words the exercise of a power by one party to a contract that impacts on another party can be reviewed by the courts applying standards similar to those applied in judicial review.

Comparative materials relied on by the Applicant

44. In relation to England and Wales, the Applicant’s evidence states that:

Full-time and part-time salaried judges do not experience deductions in salary during medically certified absences. If a judge is continuously ill for 12 months with no realistic prospect of returning, then their case may be reviewed for medical retirement pursuant to section 34 of the Constitutional Reform Act 2005, but fixed, short-term sick pay limits do not apply.

The material submitted by the Applicant in support of this evidence is not entirely clear. An article from the Law Society Gazette dated 29 January 2026 suggests that some judges have been on sick leave for over 12 months. As a consequence, the Ministry of Justice has consulted about removal following long-term sick leave.

45. I should make it clear that I sit as a part-time judge in England and Wales. That means that in principle I am entitled to sick leave. However, I am unclear what the arrangements for long term sick leave are.
46. The Cayman Islands judiciary have standard terms of employment. These state that:
 - a. *An appointee is entitled to sick leave as follows-*
 - i. *in the event of illness or injury to the appointee, the appointee is entitled to 10 working days paid sick leave per leave year, together with sufficient additional unpaid sick days as necessary; and*
 - ii. *in the event of serious illness or injury to the appointee, the treatment of which would normally occur over a period of 10 calendar days or more, the appointee, upon providing a medical certificate from a registered medical doctor, is during the period of that illness or injury entitled to additional sick leave as required (as required) up to a maximum of 125 working days sick leave on full pay and a further 135 working days of half-pay.*
 - b. *If required to do so by the Appointing Officer, an appointee shall provide a medical certificate from a registered medical doctor to support any period of sick leave. [Emphasis added]*

The Appointing Officer is defined as the Governor. The dismissal of a judge is governed by section 106 of schedule 2 of the Cayman Islands Constitution Order 2009 (2009/1379).

47. The Applicant has also supplied a body of material that emphasises the importance of judicial welfare. While I can readily accept the importance of judicial welfare, I struggle to see how it is relevant to this application. The arguments in this case do not appear to me to be that the Respondent (or any other

public authority) has unlawfully failed to safeguard welfare. They are about a narrower issue, which is entitlement to sick pay.

48. It appears to me that the comparative materials do not assist. They only relate to 2 jurisdictions. I would require information from a lot more jurisdictions before I could determine that there is some sort of consensus as to what judicial independence requires in this context. Further, the Cayman material suggests that limits can be imposed on paid sick leave. That is not surprising in a modern society. In *Marcia Ayers-Caesar v The Judicial and Legal Service Commission* [2025] UKC PC 15 Lord Reed endorsed the preamble to the *Bangalore Principles of Judicial Conduct* (2002) which states that:

... it is essential that judges, individually and collectively, respect and honour judicial office as a public trust and strive to enhance and maintain confidence in the judicial system (Marcia Ayers-Caesar at [32]).

Public confidence could potentially be undermined if judges were entitled to unlimited paid leave.

Discussion of the issues

49. It appears to me that the starting point is to determine the meaning of the agreement contained within the letter dated 28 April 2016. It appears to me that the key provision is that headed ‘leave’. That states that ‘leave entitlements shall be the same as those detailed in the Conditions of Employment and Code of Conduct and the Collective Agreement between the Bermuda Government and the B.P.S.U’. So the agreement within the letter dated 28 April 2016 focuses on ‘entitlements’. It does not incorporate the full scope of the Agreements.
50. It is important to note that the provision headed ‘leave’ makes clear that the leave arrangements agreed between the Bermuda Government and the BPSU are the starting point. They can be modified by the Chief Justice. That is a matter that I will return to.
51. When the letter dated 28 April 2016 is read with the Agreements, it appears to me to be clear that the letter should be read as meaning that the Applicant was entitled to the period of paid sick leave provided for in the Agreements. In this case that is 14 weeks (or 70 days). However, the provisions in the Agreements for obtaining extended sick leave from the staff medical board do not apply. I have reached that conclusion for the following reasons:

- a. As I have pointed out in paragraph 49 above, the letter dated 28 April 2016 focuses on ‘entitlements’. The 14 weeks can be properly described as an entitlement. It is a fixed right of employees subject to the Agreements. The ability to apply for additional extended sick leave cannot be said to be an ‘entitlement’. It is the existence of a discretion to grant additional sick leave.
 - b. My conclusion reached in sub-paragraph a is supported by the fact that the letter dated 28 April 2016 makes clear that the power to vary sick leave is a power enjoyed by the Chief Justice. That suggests that there is no need for the staff medical board to engage with applications for additional sick leave.
 - c. There is nothing to prevent the Agreements being incorporated into the letter dated 28 April 2016 providing that it is not inapt (*Kaur v MG Rover Group Ltd* [2005] ICR 625). It would be inapt to incorporate the provisions regarding the power of the staff medical board into the agreement for 2 reasons. Firstly, that would create uncertainty as it would mean that both the Chief Justice and the medical board could award additional sick leave. It would be unclear what would happen if the Chief Justice and the medical board reached contradictory conclusions. In addition, it would potentially raise issues about the independence of the judiciary. As noted below, it appears to me that in the context of discretionary decisions about judges, it is important that they are taken by the judiciary or some other body independent of the executive.
 - d. The Applicant argues that there is a tension between the provisions regarding paid sick leave and the provisions making it clear that ‘[j]udges are not public officers’. It appears to me that there is no tension. Specifying entitlement to paid sick leave by reference to the entitlement of some public officers does mean that the Applicant was being treated as a public officer. The discretion enjoyed by the Chief Justice demonstrates she was not being treated in that manner.
52. The next issue that I need to consider is whether my interpretation of the letter dated 28 April 2016 results in a breach of the Constitution. I conclude that it does not for the following reasons:

- a. I start by emphasising a point already made. Judicial independence is a key constitutional right. That means that any alleged interference with judicial independence must be considered with great care.
- b. It appears to me that it is unfortunate that there is no statutory scheme established for the remuneration of judges as required by section 100 of the Constitution. However, it appears to me that this does not raise an issue in this case for 3 reasons:
 - i. Section 100 does not expressly state that a statutory scheme must be enacted. It states what the consequences of enacting a scheme are.
 - ii. It appears to me that it cannot have been intended that judges cannot be paid or employed if there is no statutory scheme for their remuneration. Such an approach would be unworkable. It would undermine the rule of law if the judiciary was unable to function. It appears to me that the remedy for anyone dissatisfied with the absence of a statutory scheme for remuneration is that they could challenge that under section 15(1) of the Constitution.
 - iii. The key matter that a statutory scheme would address is the risk identified in section 100(3) of the Constitution. That is the risk that judicial remuneration could be reduced to penalise judges. The terms of section 100(3) mean that there is no risk that judicial salaries will be reduced as any reduction will be unconstitutional.
- c. I can see no objection in principle to a judge's terms of employment referencing another document to make clear how many days of paid sick leave the judge is entitled to. In effect it makes no difference to the number of days of paid sick leave being specified in the terms of employment.
- d. I can also see no objection in principle to there being a limit to the number of paid days of sick leave. A limit on sick leave does not enable a judge to be penalised for rulings that the state disputes. If anything certainty about the limits of paid sick leave ensures that there cannot be use of paid sick leave to influence a judge.

- e. I can see that in principle there might be issues with independence if a judge's paid sick leave were to be open to reduction by the executive or some other non-judicial body. When this matter first came before me, I was concerned that the Government and the BPSU could in principle reduce paid sick leave. However, on the facts it appears to me that the possibility of a reduction in paid sick leave being agreed by Government and the BPSU does not in this context undermine independence. I have reached that conclusion for the following reasons:
- i. There is no reason to believe that the Government and the BPSU will agree to a reduction of paid sick leave to penalise a judge. It seems unlikely that the BPSU would agree to this when it will disadvantage their members.
 - ii. Were paid sick leave to be reduced in a manner that potentially undermined independence, the Chief Justice has a discretion to increase paid sick leave in a manner that addresses the issues.
- f. It appears to me that the role of the Chief Justice raises no issues. It appears to me that there are good reasons why there should be a discretion to extend paid sick leave. It potentially enables decisions taken in appropriate circumstances that will avoid a judge being pressured to return to work prematurely. *Starrs* demonstrates that in principle such a discretion might undermine independence if the executive could use it to influence judges. That is presumably why the Basic Principles on the Independence of the Judiciary states that it is important that the judiciary has jurisdiction over issues of a judicial nature. That implies that it is important that decisions which might impact on judicial independence are taken by judges. As a consequence, the Chief Justice safeguards independence when he decides on paid sick leave.
- g. It appears to me that the Chief Justice's role does not undermine the disciplinary procedures set out in section 74 of the Constitution. Deciding whether a judge should be paid for sick leave does not determine whether they should or should not be permitted to continue as a judge. It does not pre-determine the outcome of any proceedings commenced under section 74.

- h. In light of the matters above, it appears to me that there is no prospect that the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the contractual provisions regarding paid sick leave would result in a lack of independence (*Lawal*).
53. I should add that I have not found it necessary to consider whether the Applicant waived any rights to complain about the constitutionality of the letter dated 28 April 2016 when she apparently accepted its terms by accepting the role of Puisne Judge and/or when she signed to indicate her agreement to the terms and conditions of employment on 10 May 2016. However, there are good reasons to believe that she did. In *Miller v Dickson* [2002] 1 WLR 1615 the Privy Council held that judicial independence can be waived by a party to litigation when they make ‘a voluntary, informed and unequivocal election’ [31]. The Applicant was not a party to litigation but that cannot mean that she cannot waive her own rights to complain about matters restricting her independence. In this case it appears to me that there is a strong argument that the Applicant made a voluntary, informed and unequivocal election when she agreed to terms of employment.
54. If it is correct that the letter dated 28 April 2016 was constitutional, then it appears to me that the letter dated 22 December 2025 was lawful. The Chief Justice had a discretion to exercise once the entitlement to paid sick leave had been used up. He indicated that he was minded to adopt a particular approach but sought representations before reaching a final conclusion. I don’t see how that can be challenged. The Chief Justice did not appear to regard himself as bound by the Agreements. He expressly sought representations as to whether the approach in the Agreements should be departed from.
55. The Applicant has suggested that the approach adopted by the Chief Justice was too prescriptive. I don’t accept that argument. It appears to me that there was nothing objectionable to him using the Agreements as a starting point but then seeking a response. The Agreements demonstrated the approach taken in other public sector roles. Referencing the Agreements potentially assisted the Applicant to understand the Chief Justice’s initial thinking so that she could respond to it. It seems to me that there is no reason why the initial thinking should not be based on the Agreements.
56. I should add that I have had concerns about whether the issues in paragraphs 54 and 55 above are genuinely issues of public law or whether they are contractual issues. I heard no argument about this and I can see it is not a straightforward

issue. However, it appears to me that the role of the Court will not be materially different applying *Braganza*. As I hope is clear, I have applied public law principles.

57. It also appears to me that the letter dated 13 January 2026 was lawful. As I understand it, no representations were made following the letter dated 22 December 2025. As a consequence, it is not surprising and entirely lawful for the Chief Justice to maintain his previous decision.

Conclusion

58. I grant leave to apply for judicial review. In *Ramdass v Minister of Finance* [2025] UKPC 4 the Privy Council noted that:

Leave will be granted where there is an arguable ground for judicial review with a realistic prospect of success that is not subject to a discretionary bar or other knockout blow. [5]

Having applied this test, it appears to me that leave should be granted.

59. Despite my finding that leave should be granted, the matters above demonstrate that the application should be refused.

Dated this 16th day of **October 2026**



HUGH SOUTHEY KC
ASSISTANT JUSTICE