



## Trinidad & Tobago Court of Appeal delineate the jurisdiction of a University Visitor - Robert-Jan Temmink KC

12 February 2024

### Summary

Robert-Jan Temmink KC and Catherine Doran appeared in the Trinidad & Tobago Court of Appeal for the successful appellant. In a decision which will be relevant to certain other Commonwealth and former Commonwealth countries, the Court of Appeal rejected the University of West Indies' contention that the Court's jurisdiction had been ousted by the University Visitor.

### Facts

The Claimant, a retired lecturer, issued a claim against the University of West Indies ("the University") seeking to establish her entitlement to a pension superannuation hardship scheme, and for payment of sums outstanding under the scheme. The University applied to strike out the claim on the basis that its Visitor had sole and exclusive jurisdiction.

The University was established by Royal Charter in 1949. In 1962 a Revised Charter provided for Her Majesty Queen Elizabeth II to be the University's Visitor:

*'We, our Heirs and Successors, shall be and remain the Visitor and Visitors of the University and in the exercise of the Visitatorial Authority from time to time and in such manner as We or They shall think fit may inspect the University, its buildings, laboratories and general work, equipment, and also the examination, teaching and other activities of the University by such person or persons as may be appointed in that behalf.'*

In the UK, the Education Reform Act 1988, the Higher Education Act 1992 and subsequent statutes have largely removed employment disputes from the jurisdiction of university visitors. However, no such legislation has been passed in the Republic of Trinidad and Tobago.

In 2018 the University's Charter was amended:

*'The Council reserves until itself the right to appoint a regional figure of high judicial office as Visitor of the University, upon the recommendation of the President of the Caribbean Court of Justice... with such duties and powers as the Council shall see fit, and his or her decisions on matters within his or her jurisdiction shall be final.'*

Justice Rolston Nelson was appointed as the University's Visitor in May 2019.

The University contended that in order to determine the dispute as to the Claimant's pension entitlement, it would be necessary to construe the terms of the University's internal governing documents, something only the Visitor could do.

Robert-Jan Temmink KC, of Quadrant Chambers, previously acted for the Claimant's husband in a successful claim which went to the Privy Council. In the present case, Robert-Jan Temmink KC is leading Catherine Doran, of Radcliffe Chambers. Both counsel are called to the Bar of Trinidad and Tobago.

In response to the strike out application, they submitted on behalf of the Claimant that a question as to which set of terms was incorporated into an employment contract was one of general contract law, and therefore no interpretation of the University's constitutional documents was required. Furthermore, as the Claimant was no longer a member of the University (by virtue of her retirement) she was no longer subject to the jurisdiction of the Visitor.

### First instance

The application to strike out the claim first came before the Honourable Justice Joan Charles. After considering the written submissions and conducting a short remote hearing in June 2023, the learned judge struck out the claim. The judge held

that in order to determine the Claimant's entitlement it would be necessary to consider the University's internal governing documents, as such the matter fell squarely within the province of the Visitor and so was not a matter for the Court.

## Court of Appeal

The Claimant's appeal came on in July 2023 before two Justices of Appeal: Madame Justice Lucky and Mr Justice Aboud. The hearing took place by video, so – whilst they might have preferred otherwise – Robert-Jan Temmink KC and Catherine Doran addressed the court remotely from London.

In September 2023 the Court of Appeal handed down a written judgment, overturning the first instance decision. Citing **Thomas v University of Bradford** [1987] 1 AC 795, it was held that, following her retirement, the Claimant was 'a stranger' to the University and so the Court, rather than the Visitor, had jurisdiction:

*'...If the provisions of [the Claimant's] 2007 contract incorporated terms found in UWI's Charter, Statutes, Ordinances, Regulations and other governing instruments, no mysterious or enigmatic Visitorial jurisdiction or expertise can be invoked by that fact alone.*

*[50] If the determination of a contractual claim by a stranger involves an interpretation of the contractually incorporated words found in UWI's Charter, Statutes, Ordinances, Regulations and other governing instruments there is no special or exclusive Visitorial aptitude in doing so. It is a straightforward question of determining contractual rights between a stranger and the corporation based on the plain meaning of the contract documents.'*

The claim has therefore been reinstated and will now proceed.



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Robert has a wide-ranging and international practice in commercial and chancery law. He is known for being a talented and intellectually-agile advocate equally at home in fraud and financial services cases as in aviation and shipping matters. He has a strong practice in construction, energy and infrastructure disputes and is often asked to advise and act in complex insolvency and cross-border actions.





