

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV 2014-04785

Consolidated with

Claim No. CV 2015-00554

IN THE MATTER OF THE DECISION OF THE COMMISSIONER FOR CO-OPERATIVE DEVELOPMENT
MADE UNDER SECTION 18(1) AND 18(2) OF THE CO-OPERATIVE SOCIETIES ACT CHAPTER 81:03
TO CANCEL THE REGISTRATION OF THE NATIONAL TRANSPORTATION CO-OPERATIVE SOCIETY
LIMITED

AND

IN THE MATTER AN APPEAL MADE UNDER SECTION 18(3) OF THE CO-OPERATIVE SOCIETIES ACT
CHAPTER 81:03 TO THE HONOURABLE MINISTER OF LABOUR AND SMALL AND MICRO
ENTERPRISE DEVELOPMENT OF THE DECISION OF THE COMMISSIONER FOR CO-OPERATIVE
DEVELOPMENT TO CANCEL THE REGISTRATION OF THE NATIONAL TRANSPORTATION CO-
OPERATIVE SOCIETY LIMITED CO-OPERATIVE SOCIETY LIMITED

AND

IN THE MATTER OF AN APPEAL OF THE DECISION OF THE HONOURABLE MINISTER OF LABOUR
AND SMALL AND MICRO ENTERPRISE DEVELOPMENT MADE UNDER SECTION 74 OF THE CO-
OPERATIVE SOCIETIES ACT CHAPTER 81:03

BETWEEN

JONAS DUKHEDIN LALLA

Claimant

AND

COMMISSIONER FOR CO-OPERATIVE DEVELOPMENT

Defendant

BEFORE THE HONOURABLE MADAM JUSTICE M. DEAN-ARMORER

APPEARANCES

Mr. Khristendath Neebar and Mr. Haresh Ramnath, Attorneys-at-law on behalf of the Claimant
Ms. Josefina Baptiste- Mohammed, Mr. Ryan Grant and Ms. Andella Ramproop, Attorneys-at-
law on behalf of the Defendant

REASONS

Introduction

1. In October, 2015, the Honourable Minister of Labour and Small and Micro Enterprises¹, Mr. Errol McLeod pursuant to powers conferred by section 74 of the ***Co-operative Societies Act*** Chap 81:03, affirmed a decision of the Commissioner of Cooperative Development (CCD) to de-register the National Transportation Co-operative Society Limited (NTCS). The NTCS and its member shareholder, Jonas D. Lalla, in consolidated appeals², now seek to set aside the decision of the Honourable Minister.
2. Having considered the facts, the grounds of appeal, the Reasons provided by the Honourable Minister, Mr. McLeod, written submissions of the parties before the Minister, and the verbatim notes of the proceedings before the Minister, it is my view that the appeal ought to be dismissed. My reasons for arriving at this conclusion are set out below.

Facts

3. The National Transportation Co-operative Society (NTCS), was formed in 1987, by 45 former employees of Aziz Ahamad Limited (Aziz), which had gone into receivership.
4. The NTCS purchased 52 units from the receiver of Aziz. These included Tractor Units, Ridged Tank Wagons, and Tank Trailers. The NTCS also secured the contract, previously held by Aziz, with the National Petroleum Marketing Company Limited for the transportation of gasoline, diesel, kerosene, Jet Oil and Bituminous Products, throughout Trinidad and Tobago.

¹ The Minister

² CV2014-04785 and CV2015-00554 consolidated by order dated the 18th March, 2015.

5. The members of the society endured a long period of hard work and sacrifice, with a view to liquidating the loan, by which they had purchased their equipment.
6. They were regularly under the supervision of a Senior Officer of the department of the CCD. Such officers visited the society regularly, attended its meetings, requested and obtained information from the officers and staff of the society.
7. In the years which followed, the NTCS prospered. They acquired property at No. 80-82 Ciperro Street. They also expanded their business remit. They obtained a Peddler's Licence and began retailing dieseline and kerosene to various contractors and government bodies.
8. In 1995, the NTCS also began offering repair services of mechanical, electrical and welding. They opened a tyre and radiator shop and received approval from the Ministry of Works and Transport to open a vehicle testing station for the inspection of private cars and motor bikes.
9. In April, 2001, the CCD increased the maximum liability of NTCS from \$3M to \$6M. This enabled the NTCS to purchase additional equipment and vehicles and to hire non-members on a casual basis.
10. Between the years 2007 to 2008, however, the NTCS fell on hard times, which were brought about, in part, by changes in the petroleum industry. These were listed at paragraph 12 of the affidavit of Jonas Lalla and included: NP's laying of pipelines from Point-a-Pierre to Piarco, removing the need for transport; NP's change of fuel tanks to bottom loading.
11. Additionally, the Society's fleet of vehicles was aging and in need of repairs, and its productivity was retarded by traffic congestion.

12. The membership of the NTCS agreed unanimously to liquidate its assets. Pursuant to an agreement entered into on the 4th June, 2010, the NTCS agreed to sell its assets to Victor Jattan. The sale was completed on the 26th October, 2010 for the agreed sum of \$20M TTD. The NTCS received \$14M TTD, with a promise of payment of the remaining \$6.5M. A mortgage was taken by Victor Jattan, who directed NTCS to transfer its land to Transtar General Contractors Limited and its vehicles to the Petroleum Transport Company Limited.
13. From December, 2010, the officers of the CCD began an enquiry into the constitution, operations and financial position of NTCS. Ms Germaine Bovell-Pitt., Co-operative Officer II attended a Board meeting of the Society. Ms. Bovell-Pitt prepared a report for the CCD.
14. From that date, the CCD engaged in a series of written correspondence between itself and NTCS. The terms of the correspondence speak for themselves. This court observes however, repeated, unanswered requests by the CCD, including requests for audited accounts for the years 2006 to 2009. The Court observes as well that the NTCS was asked to cease and desist from making payments in a letter dated the 26th May, 2011 and the evidence was that they did not comply with this request.
15. On the 31st October, 2011, the CCD notified NTCS of its intention to cancel its registration as a Co-operative Society.
16. On the 23rd November, 2011, the NTCS filed an appeal to the Minister. Upon being notified by the Permanent Secretary³, Ministry of Labour, that its decision had not been gazetted, the CCD issued a second notification of cancellation on the 4th April, 2012. The second

³ Permanent Secretary in the Ministry of Labour and Small and Micro Enterprises

notice identified “keys” to the decision to cancel the registration of the NTCS. The keys are set out below:

“Key to decision to cancel:

➤ *Failure to have your Co-operative decide on a new Business Model/ Plan since the sale of the Trucks which was used to transport gasoline and which composed the business operations of the Co-operative in October 26, 2010.*

➤ *Failure to adhere to instructions/guidance of the Commissioner for Co-operative Development concerning inter alia:*

-Concerning the Annual General Meeting;

-Constitutionality of Special General Meeting;

-Decisions made at Improperly Convened Special General Meeting;

-The outstanding Financial Statements;

-Decision making without pertinent financial data; and

-Payment of bonus shares and “Top up” severance payments.

17. The NTCS filed a second Notice of Appeal in respect of the decision of the CCD. This was preceded by an appeal by the member, Jonas Dukhedin Lalla.
18. The Minister of Labour and Small and Micro Enterprises, the Honourable Mr. Errol McLeod, heard the submissions in support of, and in opposition to, the appeals. On the 25th November, 2014, the Honourable Minister, dismissed the appeals of Jonas Dukhedin Lalla and the NTCS respectively.
19. The Honourable Minister, provided a written decision which affirmed the decision of the CCD to cancel the registration of the society.

20. It is against the decision of the Honourable Minister, that both Mr. Lalla and NTCS have appealed to this Court.

The Decision of the Minister

21. On the 24th November, 2014, the Honourable Minister delivered his decision in respect of the appeal by Jonas Dukhedin Lalla.
22. In the course of his written judgment, the Minister identified these grounds of the appeal against the decision of the CCD:

“(1) The Respondent erred in fact and in law in making the decision;

(2) The Respondent failed to obey the statutory requirements imposed upon him by s.18 of the CSA;

(3) The decision was made by the Respondent in breach of the rules of Natural Justice;

(4) The decision is harsh and oppressive and/or too drastic having regard to all the circumstances;

(5) No properly directed tribunal could reasonably have made the decision having regard to all the circumstances.”⁴

23. The Minister identified the these issues:

“1. Does failure to deliver the notice of intention to cancel the Society via registered mail as prescribed by s.18(2)(a) of the CSA render the notice void?

⁴ See paragraph 1.4 of the written judgment of the Minister annexed as JD 12 to the Statement of Case filed on 18th December, 2014

2. Did the Respondent act in breach of the rules of Natural Justice?

3. Was the Respondent's decision harsh, oppressive and/or too drastic having regard to all the circumstances?⁵

4. Does the Tribunal have jurisdiction to grants Costs and Damages?"

24. The Minister considered the issues seriatim and in respect of each issue upheld the decision of the CCD.

Law

25. The jurisdiction of the High Court, to hear an appeal from the decision of the Minister, is invested by section 74 of the **CSA**⁶ ("the Act"). Section 74, is the last link in a legislative scheme, which empowers the CCD to supervise, conduct inquiries into the affairs of the Society, to inspect the books of, and ultimately, to cancel the registration of Co-operative Societies.

26. Section 4 of the **CSA**⁷ confers general powers of supervision on the Commissioner. This section provides steps to be taken by the Commissioner including holding an enquiry, calling on the society to remedy the situation within three month and ordering the dissolution of the Board of the society. See section 4.

27. By section 18, however, specific power is conferred on the CCD to cancel the registration of the society. Section 18 provides:

⁵ See paragraph 3.0 of the written judgment of the Minister annexed as JD 12 to the Statement of Case filed on 18th December, 2014

⁶ Co-operative Societies Act Chp 81:03

⁷ Co-operative Societies Act Chp 81:03

“18. (1) Subject to this section, the Commissioner may, if he thinks fit, at any time cancel the registration of a society and where such registration is cancelled the society shall be deemed to have been dissolved from the date on which its affairs are wound up.

(2) The Commissioner shall, before exercising the power conferred on him by subsection (1), signify his intention to cancel the registration of a society— (a) by registered letter addressed to the Board; and (b) by notice published in the Gazette.

(3) Any officer or member of a society who is aggrieved by a decision of the Commissioner to cancel the registration of the society, may within three months of the publication of the notice in the Gazette pursuant to subsection (2)(b), appeal therefrom within the periods and in the manner specified in section 74.

(4) On the expiration of the three-month period referred to in subsection (3) or, where there is an appeal, on its determination by means of dismissal, the Commissioner shall commence to wind up the affairs of the society and shall issue a winding-up order.”

28. In the exercise of its power under section 18, it is clear that the CCD does not exercise an unfettered discretion (See: H.W.R. Wade, Administrative Law (6th Edition) page 397 where the learned authors wrote:

“Although Crown’s lawyers have argued in numerous cases that unrestricted permissive language confers unfettered discretion the truth is that in a system based on the rule of law unfettered governing discretion is contradiction in terms.

The real question is whether the legal line is to be drawn. For this purpose, everything depends on the true intent and meaning of the Act.”

29. A person aggrieved by the decision of the CCD had a right to appeal to the line Minister. A further appeal from the decision of the Minister may be made to a Judge in Chambers. The procedure by which one institutes an appeal to the High Court is set out at Part 60 **CPR**⁸. The appellate function of the High Court was considered by Mendonça, J.A. in **Godfrey Raj-kumar v. Medical Board**⁹, where Mendonça, J.A, had this to say:

*“The appeal to a Judge in Chambers is truly appellate and is not supervisory. So too is the appeal to this Court. This Court is therefore fully entitled to substitute its own decision and set aside the decision of the Council and the Court below. It may also amend or vary it.”*¹⁰

30. Mendonça, J.A., also considered the proper procedure to be adopted by a disciplinary body such as the Medical Council and said at paragraph 66:

“The Act does not stipulate the procedure that the Council must follow in an enquiry. Both parties accepted that in those circumstances the Council is the master of its own procedure. What is important is that the Council must act fairly.”

31. At paragraph 67 Mendonça, J.A. relied on the authority of **Doody**¹¹ in stating what is fair:

“(3)The principles of fairness are not to be applied by rote identically in every situation. What fairness demands is dependant on the context of the decision, and

⁸ Civil Proceedings Rules 1998

⁹ Godfrey Raj-kumar v. Medical Board Civil Appeal No 139 of 2005

¹⁰ Godfrey Raj-kumar v. Medical Board Civil Appeal No 139 of 2005

¹¹ R v Secretary of State for the Home Department, ex parte Doody [1994] 1AC 531 at page 560

this is to be taken into account in all its aspects. (4) An essential factor of the context is the statute which creates the discretion, as regards both its language and the shape of the legal and administrative system within which the decision is taken.”

32. In **Brian Moore v. Public Services Credit Union**¹², Rahim J considered the role of the High Court in considering the appeals from the Minister, under section 74 **CSA**¹³. Justice Rahim had this to say:

*“...it is a well settled principle of law, that the role of an appellate court in reviewing the exercise of a lower court or body’s discretion is limited to the appellant proving that the decision was plainly wrong. ...”*¹⁴

33. The concept of a decision being “*plainly wrong*” was defined by Jamadar, JA **Christianne Kelsick v. Dr. Ajit Kuruvilla**¹⁵ Justice Jamadar JA identified three (3) ways in which a decision may be plainly wrong: “where there is an error in principle; where the decision is against the weight of the evidence and where the Judge is required to balance multiple considerations and the balancing exercise is plainly wrong.

34. I therefore proceed to consider whether the decision of the Minister was plainly wrong.

35. In doing so, I shall consider each ground of appeal. The grounds of appeal are set out below:

a) That the Minister was in breach of the Statutory duty imposed on him by section 78(j) of the Act by failing to make regulations for the procedure to be followed in

¹² CV2010-3257

¹³ Co-operative Societies Act Chp 81:03

¹⁴ Brian Moore v. Public Services Credit Union CV2010-3257 at paragraph 11

¹⁵ Civil Appeal No. P 277 of 2012

presenting and disposing of appeals made to him against the decision or orders of the CCD thereby making it impossible and/or wrong to hear and determine the Claimant's appeal.

- b) That the Minister's said affirmation was made without hearing any evidence for, or on behalf of, the parties and is therefore unsound or unlawful and/or made in breach of natural justice.*
- c) That the minister wrongly directed himself when he proceeded to hear and/or determine the Claimant's appeal of the CCD's decision without prescribing regulations under Section 78(j) of the Act for the procedure to be following in presenting and disposing of appeals.*
- d) The Minister wrongly directed himself, in all the circumstances by giving directions to the parties to make submissions,*
- e) The Minister wrongly directed himself by making findings of fact from the submissions of the parties.*
- f) That the procedure applied by the Minister at the hearing of the Claimant's appeal was unlawful and/or in breach of the Act and/or was inadequate to deal with the appeal.*
- g) The Minister misdirected himself in construing section 18 of the Act as not requiring the CCD to present or lead evidence to support this said decision and/or as not requiring the CCD's decision to be just and/or in the interest of the Society and/or its members and/or creditors.*

h) The Minister misunderstood his role as an appellate tribunal by not probing or seeking to probe, into the veracity and/or justice of the CCD's said decision and/or conclusion, that is to say, the 'keys' which formed the basis of CCD's said decision.

i) That:

- i. The CCD erred in fact and in law in making his said decision and/or the said decision was made in breach of the statutory requirements imposed upon him by Section 18(1) and (2) of the Act.*
- ii. The CCD's said decision was made in breach of the Rules of Natural Justice,*
- iii. The CCD's said decision was made in breach of the duty imposed upon him by the Constitution of the Republic of Trinidad and Tobago and/or by the Act to treat all persons and/or societies registered under the Act equally and/or fairly.*
- iv. The CCD gave no consideration to the solvency of the Society and/or the member's interest.*
- v. The CCD's said decision was harsh and/or oppressive and/or too drastic having regard to all the circumstances.*
- vi. No properly directed tribunal could reasonably have made the decision to cancel the registration of the Society, having regard to all the circumstances.*
- vii. The Society CCD, having commenced an inquiry into the constitution, , operations and financial position of the Society,*

viii. It was unfair and/or unlawful for the CCD to abandon the inquiry commissioned by him into the constitution, operations and financial position of the Society and/or the Claimant had a legitimate expectation that the CCD would not do so without notice to the Society and/or without good reasons.

Grounds of Appeal

36. By grounds (a) and (c), the Appellants address the absence of Regulations and contend that the Minister acted in breach of the statutory duty imposed upon him by section 81(j) **CSA** to make regulations prescribing the procedure to be followed in presenting and disposing of appeals.
37. It is my view that this ground is without merit for two reasons. The first reason is that this ground had not been ventilated before the Minister, whose decision is being challenged. It would therefore be wrong to find that the Minister was plainly wrong, in respect of arguments which had not been raised for his consideration.
38. Even if I am incorrect in this finding, the merit in this ground depends on the proper interpretation to be placed on section 81(j). It is my view that section 81, when given its literal meaning, does not impose an obligation on the Minister but invests in him regulation-making power. The failure of the Minister or his predecessors to make such regulations does not vitiate the power conferred at section 74 to hear appeals.
39. At grounds (b) and (g) the Appellants argue that the Minister was wrong not to hear evidence. In my view, it is incorrect to say that the Minister heard no evidence, since the

witness statement of Mr. Lalla and Mr. McKenzie Hajanie were before him. The Minister did not permit cross examination, but considered the witness statements.

40. Grounds (d), (e), and (f) impugn the procedure adopted by the Minister. In this regard, the Court is guided by the authority off **Godfrey Raj-kumar v. Medical Board**¹⁶ where the Honourable Justice of Appeal Mendonça, had this to say at paragraph 66:

“The Act does not stipulate the procedure that the Council must follow in an enquiry. Both parties accepted that in those circumstances the Council is the master of its own procedure. What is important is that the Council must act fairly.”

Justice of Appeal Mendonça, proceeded to cite and rely on the authority of **R v. Secretary of State ex parte Doody**, in which it was held that *“what fairness demands is dependent on the context including the statutory context of the decision”*.

41. I considered the procedure adopted by the Minister and have found same to be fair. His provision of directions were clearly patterned on the procedure which obtains before the Civil High Court. Parties were duly notified of the date of hearing. The verbatim notes suggest that the Minister was meticulous in hearing both sides. As to the absence of cross-examination, it was my view that the Honourable Minister cannot be faulted in this regard, since there were no major issues of fact. The pre-de-registration history of the NTCS was not disputed by the CCD and the events which occurred between the commencement of the inquiry and the CCD’s final decision to de-register are fully documented in

¹⁶ Godfrey Raj-kumar v. Medical Board Civil Appeal No 139 of 2005

correspondence passing between the parties. In all the circumstances, it was my view that the procedure adopted by the Minister cannot be faulted for unfairness.

42. At ground (i) of the grounds of appeal, the Appellants direct their attack to the CCD, and contended that its decision was made in error of fact and of law; that it was contrary to the rules of natural justice; that it was in breach of the obligation to treat all persons fairly.
43. The Appellants contend as well that the CCD's decision was hard and oppressive, that it was irrational and that it was unfair to abandon the enquiry.
44. It is to be noted, at the outset, that ground (i) constitutes an expansion of the grounds which were listed before the Minister.
45. I will however consider each ground in turn. In respect of the allegation that the CCD erred in fact and in law, the Appellants have failed altogether to identify what constituted the errors. Accordingly, I find this ground to be unsound.
46. In respect of the allegation of unfairness, it is my view that the CCD was not bound to employ any specific procedure and was governed by the demands of fairness as identified in *Doody supra* and relied upon by Mendonça in in *Godfrey Raj-kumar v. Medical Board Civil Appeal No 139 of 2005*. The two major pillars of natural justice are the rule against bias and the rule of *audi alteram partem*. There has been no allegation of bias in these proceedings. In my view, the CCD honoured the requirements of natural justice by its long and patient engagement of the Society and by virtually pleading with NTCS to provide documents and comply with the rules.
47. Similarly, it was my view that the actions of the CCD could not be regarded as harsh and oppressive in its decision to end the enquiry. The documents before this Court demonstrate

that in May, 2011, the CCD issued a stern warning, requesting the NTCS to desist from making payments to its members. It was clear that the CCD acted, when every chance that had been given to NTCS to get its affairs in order was met by nonchalant, non-responsiveness by NTCS.

48. In respect of the complaint of irrationality, it is my view that the Appellants have not met the **Wednesbury** test of irrationality by showing that the CCD acted as no reasonable authority would have acted.
49. Accordingly, it is my view and I hold that the Appellants have failed to show that the decision of the Honourable Minister was plainly wrong. The appeals are therefore dismissed.

Date of Delivery: March 22, 2019

Justice Mira-Dean Armorer