

**THE REPUBLIC OF TRINIDAD AND TOBAGO
IN THE HIGH COURT OF JUSTICE**

CV 2016 – 03575

**IN THE MATTER OF AN APPLICATION BY
TOWHEED BAKSH FOR JUDICIAL REVIEW PURSUANT
TO PART 56 OF THE CIVIL PROCEEDINGS RULES, 1998,
AS AMENDED**

AND

**IN THE MATTER OF THE CO-OPERATIVE SOCIETIES
ACT, CHAP. 81:03 AND THE REGULATIONS**

MADE THEREUNDER

AND

**IN THE MATTER OF THE DECISION AND/OR OPINION
OF THE COMMISSIONER FOR CO-OPERATIVE
DEVELOPMENT FOR THE COMMISSIONER TO
ADJUDICATE ON ISSUES OF LAW CONTAINED IN ITS
LETTER DATED THE 7TH JULY, 2016 (WHICH WAS
RECEIVED BY THE APPLICANT ON THE 20TH JULY,
2016) THAT A DECISION “OPINION” AS PROVIDED IN
HIS LETTER DATED THE 24TH MAY, 2016 IS IN NO WAY
A DECISION OR AN ORDER AS CONTEMPLATED BY
PARLIAMENT**

BETWEEN

TOWHEED BAKSH

Claimant

AND

COMMISSIONER FOR CO-OPERATIVE DEVELOPMENT

Defendant

Before the Honourable Mr Justice Ronnie Boodoosingh

Appearances:

Ms Leisa Kisto instructed by Ms Jennifer Rogers for the Claimant

Ms Mary Davis instructed by Mr Nairobi Smart and Ms Nisa Simmons for the Defendant

Date: 7 December 2017

JUDGMENT

1. The claimant has applied for judicial review of the Commissioner of Co-operatives' statement in a letter that his "opinion" stated in a previous letter is not a decision within **section 68 (1) of the Co-operative Societies Act, Chap. 81:03** and is illegal, irrational, unreasonable, disproportionate etc. He further claims that such "opinion" was arrived in a procedurally improper manner or in breach of natural justice or was a deprivation of legitimate expectation. He further seeks a declaration that an opinion of the Commissioner is a decision within **section 68 (1)** of the Act.
2. The **Co-operative Societies Act, Chap. 81:03 ("the Act")**, is expressed in its long title to be "An Act to amend, consolidate and re-enact the laws relating to co-operative societies, credit union societies and agricultural credit societies". Wide powers are given to the Commissioner of Co-operatives to regulate the operations of these organisations which have provided tremendous service over the years to the citizens of the country.

3. Under the heading “Disputes” **sections 67 and 68 of the Act** states:

“67. (1) If any dispute touching the business of a society arises—

- (a) among members, past members and persons claiming through members, past members and deceased members;*
- (b) between a member, past member, or person claiming through a member, past member or deceased member, and the society, its board, or any officer of the society;*
- (c) between a member and the society arising out of or under any bye-law or bye-laws relating to the disposal of the produce of agriculture or animal husbandry, or under any contract, made under section 27;*
- (d) between the society or its board and any officer of the society;*
- (e) between the society and any other society; or*
- (f) between the society and any of its creditors,*

the dispute shall be referred to the Commissioner for decision.

(2) The Commissioner may, before proceeding to hear or determine a dispute, make or cause to be made a preliminary investigation into the dispute with the object of ascertaining the facts, defining the issues and endeavouring to bring about a voluntary settlement between the parties to the dispute.

(3) The Commissioner may, on a dispute being referred to him under subsection (1)—

(a) decide the dispute himself; or

(b) with the consent of the parties refer the dispute to arbitration.

(4) The settlement of any dispute by an arbitration award shall be final and shall not be called in question in any Court of law.

(5) For the purpose of hearing and determining any dispute the Commissioner, or the arbitrator as the case may be, may administer oaths, and may require the attendance of all parties concerned and witnesses, and the production of all books, documents and things relating to the dispute.

(6) The Commissioner, or the arbitrator as the case may be, shall also have power to order the expenses of determining any dispute including fees to legal practitioners to be paid either out of the funds of the society or by such parties to the dispute as he in his absolute discretion may think fit.

(7) The decision given in respect of every dispute under this section shall be recorded in the prescribed form or as near thereto as the circumstances of the case may require and a copy thereof shall be issued to every party to the dispute.

(8) Every order made by the Commissioner and any arbitration award shall be executed by any civil Court in the same manner as a decree or order of such Court.

(9) In this section "dispute" includes a claim by a society for any debt or demand due to it from a member, past

member or the nominee, heir or legal personal representative of a deceased member.

*68. (1) Notwithstanding anything contained in section 67, the Commissioner at any time **when proceeding to a decision under this Act** or the Minister when an appeal has been referred to him against any decision of the Commissioner under this Act **may refer any question of law arising out of such decision** for the opinion of the High Court.*

(2) Any Judge of the High Court may consider and determine any question of law so referred and the opinion given on such question shall be final and conclusive.

Section 74 provides:

“74. A party aggrieved or adversely affected by any order or decision of the Commissioner under this Act may appeal therefrom to the Minister within two months of such order or decision, and a further appeal may lie therefrom to a Judge in Chambers within one month of such order or decision of the Minister.”

4. There were two letters that the claimant seeks to take issue with. These were sent by the Commissioner on 24 May 2016 and 7 July 2016.
5. Those letters related to a letter sent by the claimant's attorney dated 19 May 2016 where certain issues were identified as being matters “of law” which the claimant was asking the Commissioner to refer to the High Court for a judge to give an opinion on the legal points being identified.

6. An analysis of those matters raised in the attorney's letter, notwithstanding the apparent legalistic manner in which they were framed, were, in the main, factual matters which the Commissioner as part of his hearing and determination of the dispute before him was empowered under the Act to decide.
7. What is more the Commissioner's decision was subject to appeal first to the Minister, then to a judge in chambers.
8. In fact, the claimant, through his attorney accepts that he filed an appeal against the decision of the Commissioner to rule that the matters before him did not call for him to refer the matter to the High Court for an opinion on the law as contemplated by section 68.
9. The fact of the appeal of the "decision" of the Commissioner was itself a concession that that these judicial review proceedings were unnecessary. The appeal goes first to the relevant Minister. Thereafter it can come to the High Court as an appeal of the decision of the Minister. There was an available remedy to the claimant to get to the High Court in the resolution of the issues before the Commissioner. He therefore had a clear alternative remedy.
10. **Section 9 of the Judicial Review Act, Chap. 7:08** provides that:

"9. The Court shall not grant leave to an applicant for judicial review of a decision where any other written law provides an alternative procedure to question, review or appeal that decision, save in exceptional circumstances."

11. There really are no exceptional circumstances presented here to justify the judicial review court's intervention. This in itself is sufficient to dispose of this claim. There are a few additional matters which bear some comment.
12. Section 68 (1) in any event gives the Commissioner power to refer any question of law arising from a decision to a judge for the opinion of the High Court. The use of 'may' is permissive and empowering: **Sullivan on the Construction of Statutes, 5th edition, p. 68 at para 14.2.** The Commissioner is not obligated to refer every such legal issue arising.
13. An application was made to strike out the affidavit filed in reply by the Commissioner of Co-operatives as not being "pleadings" within the meaning of the **Civil Proceedings Rules, 1998**, as amended. I have considered the contents of the affidavit of the Commissioner and there is little that is offensive about its contents. The affidavit just sets out the process which the Commissioner follows and what he did in this instance. I therefore decline to strike it out.
14. What the Commissioner's affidavit did was to set out the events as they occurred culminating in paragraph 15 where he stated: "by letter dated the 27th October 2016, I wrote to Ms. Rogers and informed her that if there was consensus by the parties to refer the issues of law to a Judge in Chambers then I would do so however to date the attorney for the Hindu Credit Union has not sent a request that a case stated application be sent to a Judge in Chambers".
15. This indication would essentially have settled the effective remedy being sought by the claimant in this application. The pre-action protocol letter was sent on 18 October 2016 and the application for leave to apply for judicial review was filed only 2 days later on 20 October 2016. For the claimant

to proceed after this letter of 27 October 2016 was wholly unnecessary in all the circumstances.

16. The contents of the affidavit filed on behalf of the claimant in support of his fixed date claim do, however, bear some comment. First, the affidavit was sworn by the attorney at law who represented Mr Baksh at the hearing and who is the filing attorney of this claim. This is not a formal affidavit, but one of merit, where contested facts are being set out. It was wholly inappropriate for the filing attorney of the claim to be acting as both witness and attorney for the claimant. The claimant himself ought to have gone on affidavit to support his claim. The affidavit is headed as the affidavit of Mr Baksh, but the deponent is really Ms Rogers.

17. Second, an affidavit must not be any longer than it has to be. This affidavit was 22 pages long of single space. It contained detailed arguments of law and matters of opinion of the attorney at law, both of which were inappropriate. It was prolix for the issue which it sought to bring before the court.

18. Third, Ms Rogers allowed herself to become personally invested in the claim with descriptions of the Commissioner's conduct as "grossly taken aback", "completely ignoring my request", "based on my research... I was left to conclude", "sadly the decision", "what I was trying to achieve... was", "in the hope that good sense would have prevailed", "to add insult to injury", "I was admonished", "to my dismay" and "as he would be bound by an unjust decision". Ms Rogers' commentary appears to smack of some personal issue with the Commissioner. It is wholly inappropriate for an attorney at law on record.

19. Having given the evidence in the claim, Ms Rogers then went on to sign the written legal submissions. Thus, as an

attorney at law, she gave both the evidence and what she considered to be the law relevant to the determination of the claim.

20. These matters put Ms Rogers in an unfortunate position to say the least.

21. In this regard attention is drawn to **Part A of the Code of Ethics of the Legal Profession Act, Chap. 90:03** which states:

“35. (1) An Attorney-at-law should not appear as a witness for his own client except as to merely formal matters or where such appearance is essential to the ends of justice.

(2) If an Attorney-at-law is a necessary witness for his client with respect to matters other than such as are merely formal, he should entrust the conduct of the case to another Attorney-at-law of his client’s choice.

...

37. An Attorney-at-law shall endeavour always to maintain his position as an advocate and shall not either in argument to the Court or in address to the jury assert his personal belief in his client’s innocence or in the justice of his cause or his personal knowledge as to any of the facts involved in the matter under investigation.

22. There is no issue arising here about procedural impropriety or breach of natural justice or any breach of legitimate expectation. The claimant has thrown the whole bus at the defendant hoping it would strike.

23. In making the determination that he did, the Commissioner was acting within the powers conferred on him by the legislation. In light of the request before him it cannot be said that the course he adopted was so unreasonable as to fall within Wednesbury unreasonableness. His decision not to send a case stated to the judge was not irrational, in defiance of logic, nor so outrageous that a sensible person would not have done.

24. It follows from my findings above that the claim is misconceived and must be dismissed. The claimant must pay the costs of the claim to the defendant to be assessed in default of agreement.

Ronnie Boodoosingh

Judge