REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2011-01631

BETWEEN

1. **EON HEWITT, LINUS PHILLIP, AINSLEY CAESAR and KELVIN PIERRE on behalf of themselves and on behalf of the ASSOCIATION OF MAXI TAXI TRINIDAD AND TOBAGO**
2. **EON HEWITT, RORY CHAMBERS and KELVIN ARNEAUD on behalf of themselves and on behalf of the ROUTE 1 MAXI TAXI ASSOCIATION**
3. **LINUS PHILLIP, BRENTON KNIGHT and ALBERT LEE YOUNG on behalf of themselves and on behalf of the ROUTE 2 MAXI TAXI ASSOCIATION**
4. **KELVIN PIERRE, EVEROLD ROY and JAWENZA AMINATA of behalf of themselves and on behalf of the ROUTE 3 MAXI TAXI ASSOCIATION**
5. **ARJOON SINANAN, SHAM MOHAMMED and RONNIE SINGH on behalf of themselves and on behalf of the ROUTE 4 MAXI TAXI ASSOCIATION**
6. **AINSLEY CAESAR, DHANAM BISSOON and GEORGE THOMAS on behalf of themselves and on behalf of the ROUTE 5 MAXI TAXI ASSOCIATION**

CLAIMANTS

AND

THE MINISTER OF WORKS AND TRANSPORT

FIRST-NAMED RESPONDENT

THE TRANSPORT COMMISSIONER OF TRINIDAD AND TOBAGO

SECOND-NAMED RESPONDENT

BEFORE THE HON. MADAME JUSTICE JOAN CHARLES

Appearances:

For the Claimants:	Mr. K. Walesby led by Mr. R.L. Maharaj Instructed by Mr. V. Maharaj and Ms. N. Badal
For the Respondents:	Mr. K. Scotland and Mr. K. Ramkissoon led by Mr. R. Martineau, Instructed by Mr. S. Julien

REASONS

[1] Before me was the Claimants' Application for leave to file a claim for Judicial Review of the following decisions of the Respondents:

i. The decision of the First-named Respondent, dated 1st February, 2011, to remove the restrictions on the registration of owners of maxi taxis;
ii. The decision and/or action of the First-named Respondent to give instructions on the 1st February, 2011 to the Second-named Respondent to remove the restrictions on the registration of owners of maxi-taxis;
iii. The continuing failure on the part of the First-named Respondent to decide and/or appoint an Advisory Committee pursuant to **SECTION 4** of the **MAXI TAXI ACT, CHAP. 48:53**;
iv. The decision of the Second-named Respondent, dated the 1st February, 2011, to accept the instructions of the First-named Respondent to remove the restrictions on the registration of owners of maxi taxis;

[2] The Claimants also sought Orders appointing persons to represent the various Maxi Taxi Associations who were the Claimants herein.

[3] By the said Application, the Claimants also sought leave to file a claim for the following reliefs, as against the First and Second-named Respondents respectively:

Against the First-named Respondent -

i. A declaration that the decision of the First-named Respondent dated the 1st February, 2011, to remove the restrictions on the registration of owners of maxi taxis is unlawful, illegal and of no effect;

ii. A declaration that the decision of the First-named Respondent dated the 1st February, 2011, to give instructions to the Second-named Respondent for him to remove the restrictions on the registration of owners of maxi taxis is unlawful, illegal and of no effect;

iii. An order of certiorari quashing the said decisions;

iv. An order of mandamus compelling the First-named Respondent to re-consider the said decision dated the 1st February, 2011, to remove the restrictions on the registration of owners of maxi taxis;

v. An interim order staying the implementation of the decision of the First-named Respondent dated the 1st February, 2011 to remove the restrictions on the registration of owners of maxi taxis pending the final determination of this matter or until further order;

vi. A declaration that the continuing decision of the First-named Respondent to fail to appoint an Advisory Committee pursuant to **SECTION 4** of the **MAXI TAXI ACT, CHAP. 48:53** is unlawful, illegal and of no effect;

vii. An order of mandamus compelling the First-named Respondent to appoint an Advisory Committee pursuant to **SECTION 4** of the **MAXI TAXI ACT, CHAP. 48:53**.

Against the Second-named Respondent –

i. A declaration that the decision of the Second-named Respondent dated the 1st February, 2011, to accept the instructions of the Minister of Works and Transport to remove the restrictions on the registration of owners of maxi taxis is unlawful, illegal and of no effect;

ii. An order of certiorari quashing the said decision;

iii. An order of mandamus compelling the Second-named Respondent to reconsider the decision dated the 1st February, 2011 to accept the

instructions of the First-named Respondent to remove the restrictions on the registration of owners of maxi-taxis;

iv. An interim order staying the said decision of the Second-named Respondent dated the 1st February, 2011, to remove the restrictions on the registration of the owners of maxi taxis pending the final determination of this matter or until further order.

Against both the First and Second-named Respondents:

i. Damages;
ii. Interest;
iii. Costs.

HISTORICAL BACKGROUND

[4] The background to this matter began in 1979 when by an Act of Parliament, maxi taxis, comprising in the main twelve-seater buses, were introduced to Trinidad and Tobago. In 1992, the **MAXI TAXI ACT, CHAP. 48:53** ("the Act") and Regulations under the said Act became Law.

[5] **SECTION 3(1)** of the Act provides that the "*Administering Authority*" has responsibility for implementing and regulating the maxi taxi system. The Administering Authority is defined in **SECTION 2** of the Act as the Licensing Authority of Trinidad and Tobago appointed in accordance with **SECTION 4** of the **MOTOR VEHICLES AND ROAD TRAFFIC ACT**. The Second-named Respondent is the said Licensing Authority under **SECTION 4** of the **MOTOR VEHICLES AND ROAD TRAFFIC ACT** and is accordingly the Administering Authority responsible for the regulation of the maxi taxi system.

SECTION 3(2) of the Act provides that in the exercise of its functions, the Second-named Respondent shall collaborate with the Advisory Committee appointed by the First-named Respondent, the Police Department, the Transport Board, the Highways Division, the Public Transport Service Commission and the Ministry of Legal Affairs.

SECTION 4 of the Act provides that the First-named Respondent shall appoint an Advisory Committee to be made up people with relevant qualifications or experience, for the purpose of assisting the Second-named Respondent in the exercise of its functions. The Act gives the Second-named Respondent the following powers, *inter alia*:

i. Under **SECTION 6(1)** of the Act, to compile and maintain a register of maxi taxi owners;
ii. Under **SECTION 6(5)** for the purposes of regulating the number of maxi-taxis operating on a route with the approval of the First-named Respondent, to suspend in respect of that route the registration of additional maxi taxi owners for such period as it thinks fit;
iii. Under **SECTION 13(1)** with the approval of the First-named Respondent to make such regulations as it thinks necessary for the purposes of this Act.

[6] In or around 1996 or 1997, the Second-named Respondent suspended the registration of new maxi taxi owners, imposing a limit on the number of maxi taxis operating in Trinidad and Tobago. Since 1997, the limit has been maintained at around the same level by the Second-named Respondent. Successive governments have acted on, adopted and implemented this decision.

[7] In 2005, the Minister of Works and Transport, Mr. Franklyn Khan, met with representatives of the maxi taxi owners and operators, and held discussions on increasing the capacity of the maxi taxi system. The said Minister informed the representatives that the Government's aim was to increase capacity without increasing the number of maxi taxis, so as not to add to the traffic congestion in the country. The said Minister encouraged the maxi taxi owners to increase their carrying capacity and offered incentives, in the form of a rebate on purchase tax and VAT, to maxi taxi owners to trade up from twelve-seater vehicles to twenty-five seaters.

[8] Many maxi taxi owners did as the said Minister encouraged, and bought twenty five seater maxi taxis at a considerable increase in cost. The average cost of a twelve seater maxi taxi is approximately $300,000.000, while a twenty five seater is approximately $558,000.00.

BACKGROUND TO THE CLAIM

[9] On the 24th September, 2010, the Minister of Works and Transport (the First-named Respondent) publicly announced that he intended to seek Cabinet's approval to remove the restriction on the registration of owners of maxi taxis, thereby increasing the number of owners and maxi taxis on the road. On the 2nd October, 2010, the First-named Respondent further stated, publicly, that the previous limit on the number of maxi taxis plying the six routes was five thousand. He claimed that that had caused a monopoly to exist and his intention was to remove the restriction so as to allow anyone to own a maxi taxi.

[10] On the 4th October, 2010, the First-named Respondent refuted claims by the Route 2 Maxi Taxi Association that he was refusing to meet with them. On the 5th October 2010, he issued another public statement, this time to deny, *inter alia*,

that anyone from the Route 2 Maxi Taxi Association had ever tried to meet with him.

[11] However, contrary to the assertions of the First-named Respondent, by letter dated the 2nd June, 2010, Mr. Linus Phillip, Vice President of the Route 2 Maxi Taxi Association, wrote to the former, seeking a meeting to discuss several matters affecting the public transportation system. Routes 1 and 4 wrote on the 3rd June 2010 and by letter of 21st June, 2010, the First-named Respondent acknowledged receipt of these letters and promised to arrange a meeting with them. However, Route 3 also wrote a letter to the First-named Respondent on the 1st July, 2010 but this letter never received a response.

[12] On the 10th October, 2010, leaders or representatives of all of the Maxi Taxi Associations attended a meeting with the First-named Respondent at which the Second-named Respondent was also present. The First-named Respondent started the meeting by stating that the Maxi Taxi Associations had been agitating for consultation in respect of matters affecting the maxi taxi drivers. The Maxi Taxi Association presented an agenda for the discussion of twelve issues, which included the question of the establishment of an Advisory Committee pursuant to **SECTION 4** of the Act and the intended removal of the limits on the number of maxi taxi drivers.

[13] In respect of many of the issues on the agenda, discussions were concluded with the parties in agreement; with regard to the question of the establishment of the Advisory Committee, the First-named Respondent agreed that this was necessary and confirmed his intention to do so. However, the discussions on the other two issues were not concluded. The First-named Respondent ended the meeting by saying that another meeting would be held in three weeks time in order to address the outstanding issues.

[14] On the 30th November, 2010, several weeks later, the Executives of all six Maxi Taxi Associations wrote the First-named Respondent to remind him of his promise on the 10th October, 2010 that there would be a further meeting within 2-3 weeks of that date and to seek a date for the further meeting. They also reminded the First-named Respondent that he had not yet established the Advisory Committee required by **SECTION 4** of the Act.

[15] On the 23rd January, 2011, representatives of the Route 2 Maxi Taxi Association attended a meeting with the First-named Respondent which had been arranged to discuss the City Gate facility. However, when they arrived they were surprised to discover that a press conference had been convened. The First-named Respondent then announced, among other things, that as of 1st February, 2011, there would be no more restrictions on maxi taxi rights and anyone who wanted to buy a maxi taxi would be able to do so.

[16] Further, on the 1st February, 2011, the First-named Respondent issued a memorandum to the Second-named Respondent to remove all restrictions on the granting of owners' certificates to people wishing to register as owners of maxi taxis, with immediate effect. The Second-named Respondent acted upon the First-named Respondent's instructions and accordingly changed the existing policy and removed the said restrictions.

[17] Pursuant to this action, the Second-named Respondent on the 10th February, 2011, published a Public Notice setting out the requirements for applying for a certificate to own a maxi taxi. The Public Notice stated that upon approval of an application to own a maxi taxi, an owner's certificate would be issued; upon such issue an applicant can then own a maxi taxi.

[18] By a pre-action protocol letter, dated the 19th April, 2011, the Claimants' Attorneys-at-Law wrote to the First-named Respondent and to the Second-named Respondent requesting a response within seven days thereof, failing which they would be constrained to institute legal proceedings against the Respondents without further notice.

[19] By letter, dated the 26th April, 2011, the First-named Respondent through its legal officer acknowledged receipt of the said letter and requested a period of 48-hours within which to respond. By letter dated, 27th April, 2011, the Instructing Attorneys-at-Law for the Claimants granted the request.

[20] By a faxed letter dated the 26th April, 2011 but received on the 28th April 2011, the legal officer of the First and Second-named Respondents provided a response to the pre-action letters denying that the said decision on the 1st February, 2011, to remove the restrictions on the registration of owners of maxi taxis was unlawful. The Respondents acknowledged that there were in place certain restrictions with respect to the issuance of permits to own maxi taxis in Trinidad and Tobago at the Licensing Authority.

[21] The letter further stated that it was the Ministry's view that the restrictions imposed by the Licensing Authority from the 1990s until recently were *ultra vires*, null and void, since the procedures outlined by **SECTION 6(5)** of the Act were never adhered to or observed. The letter went on to state that as a public body, committed to the rule of law, a decision was taken by the Administering Authority with the approval of the Minister to remove the said illegal restrictions. Consequently, the Ministry was of the view that it did not act unlawfully as alleged.

GROUNDS FOR REVIEW

[22] The Claimants submitted firstly, that the decisions of the First and Second-named Respondents on the 1st February, 2011 were unlawful in that:

i. They were *ultra vires* the provisions of the Act, since the First-named Respondent did not have the authority thereunder to make the decision. **SECTION 6(5)** of the Act gives the power to the Second-named Respondent with the approval of the First-named Respondent to suspend the registration of new owners of maxi taxis. Additionally by **SECTION 3(1)** of the Act, the Second-named Respondent is given the responsibility for administering and implementing the maxi taxi system.

ii. It was made without observing proper procedure as indicated above under the Act; the decision was that of the Second-named Respondent's and not the First-named Respondent's. Secondly, by **SECTION 3(2)** of the Act the Second-named Respondent is required in the exercise of his functions thereunder to collaborate with a number of other bodies, *inter alia*, the Advisory Committee appointed by the Minister under **SECTION 4** of the Act. The First-named Respondent in breach of the provisions of **SECTION 4** of the Act and contrary to his assurance given to the Maxi Taxi Associations on the 10th October, 2010, has not established the Advisory Committee. Accordingly, the Second-named Respondent could not comply with the provisions of the Act to make decisions in collaboration with the Advisory Committee because no such committee was established.

iii. The decision was made without proper consultation because both the First and Second-named Respondents were under a duty to

consult with the Claimants, or alternatively, the Claimants had a legitimate expectation that they would be consulted about the decision.

iv. The Respondents' duty to consult with the Claimants arises out of their duty to act fairly to those whose interests are affected by a decision, by giving those persons an opportunity to be heard and to state their reasons for objecting to that decision. The Claimants' interests are related to their livelihood and income to be derived therefrom and their future earnings from that livelihood.

v. The Claimants had a legitimate expectation that they would be consulted having regard to the fact that in 2005, the then Minister consulted with them on the issue of increasing capacity in the maxi taxi system. In the circumstances, the maxi taxi owners and operators had a legitimate expectation that they would be consulted before the policy to keep vehicle numbers the same was changed. Many of them had expended significant sums of money in reliance on the previous policy.

vi. The Claimants had a legitimate expectation that they would be consulted because the First-named Respondent had promised to do so at a meeting that he held with the representatives with the six associations on the 10th October, 2010.

vii. The First-named Respondent's consultation with the Claimants was grossly insufficient in that there was no opportunity to consult when the proposal was at the formative stage; sufficient reason for the change in policy so as to allow for intelligent consideration and response by the Claimants had not been given to them. The Claimants contended that none of the above requirements had been met. The First-named Respondent presented his decision fully formed and without consultation. At the meeting of 10th October,

2010, the matter had not been discussed and indeed the First-named Respondent had promised a further meeting with the Claimants to deal with the issue. No such meeting was held before the First-named Respondent took the decision on the 1st February, 2011.

viii. The decision was made without taking into account relevant considerations and without proper enquiry in that he failed to acquaint himself with the relevant information needed to make a rational and reasonable determination.

ix. The First-named Respondent's aim appears to be to increase the number of maxi taxis available to the travelling public but this number is dependent not only on the demand but on the current maxi taxis owned.

x. On the demand side, the First-named Respondent has assumed a demand for extra capacity without identifying any evidence on which he relies. As for the supply side, it is self-evident that allowing an unlimited increase in numbers is likely to have a negative effect on the returns available to suppliers and risks making the provision of a maxi taxi service, uneconomic for many participants. There is an evident risk that before the market equilibrium is reached there will first be too many maxi taxis and then too few when owners are forced out of business.

xi. The maxi taxi system is an integral part of the public transport system in this country. The Claimants contend that the First-named Respondent's decision should not have been taken without careful enquiry and consultation, including but not limited to:

    a. Consideration of its effects on the stability of the public transport system of Trinidad and Tobago;

b. Consultation of expert opinion on the market for maxi taxis and the effect of fares of the introduction of new capacity;
c. Consideration of the costs of running a maxi taxi and providing a maxi taxi service;
d. Consultation with stakeholders, in particular the maxi taxi owners and operators, who will have an expert view on the matters canvassed above;
e. Eliciting the views of other experienced bodies, in particular those bodies named in **SECTION 3** of the Act, with whom the Administering Authority is mandated to collaborate when administering and implementing the maxi taxi system.

xii. By **SECTION 4** of the Act, the First-named Respondent is mandated to appoint an Advisory Committee, with whom the Second-named Respondent must collaborate in order to exercise his powers under the Act. Although the First-named Respondent assumed Office in June 2010, to date he has not appointed any such Committee.

xiii. As regards the Second-named Respondent, the Claimants also rely on the foregoing grounds. In addition, they submit that the Second-named Respondent surrendered his discretion and independent judgment and acted at the dictation of the First-named Respondent in breach of **SECTIONS 3(1)** and **6(5)** of the Act.

[23] On the hearing of this Application for leave, after Mr. Maharaj had completed his submissions on behalf of the Claimants, Mr. Martineau, for the Respondents, indicated to the Court that he would not object to the application of the grant for leave. He explained that he was not consenting to the application; he was just not objecting and did not concede on the substantive claim that in fact the Claimants

had a case. The Court is also of the view that Claimants had established a *prima facie* case or an arguable case that they ought to be given leave for Judicial Review against these decisions. Accordingly, I granted leave to the Claimants to file a claim for Judicial Review of the decisions of the Respondents outlined above.

[24] Therefore, what remains to be determined by the Court is the issue of a stay. The Claimants have sought interim orders as against the First and Second-named Respondents against their decision to remove restrictions on the registration of owners of maxi taxis pending the final determination of the matter or until further order. Both Mr. Martineau and Mr. Maharaj made submissions before me on the issues. I will now deal with the approach to the grant of an interim remedy and in particular a stay.

THE LAW

[25] In **The Belize Alliance of Conservation Non-Governmental Organizations (BACONGO) v The Department of the Environment and Belize Electricity Company**[1], the Court held that when it is being asked to grant an interim injunction in a public law case, it should approach the matter on the lines indicated by the House of Lords in **American Cyanamid Company v Ethicon Limited**[2], but with modifications appropriate to the public law element of the case. The approach outlined in the latter case is that of the balance of convenience, which states that the basic approach to interim remedies is:

i. To require a *prima facie* (arguable) case for granting judicial review;

[1] Privy Council Appeal No. 47 of 2003
[2] [1975] A.C. 396

ii. To identify and avoid the greater risk of an injustice (from an interim loser becoming an ultimate winner).[3]

The Court looks at the case in the round, taking into account matters such as: the strength of the challenge, whether some monetary order is available providing an adequate ultimate remedy for one side or the other, *the status quo* and the wider public interest.[4]

[26] In the **BACONGO**[5] case, the Court was of the view that it had a wide discretion to take the course which seemed most likely to produce a just result, or rather to minimise the risk of an unjust result; however this cannot be taken too far. The court is never exempted, their Lordships emphasised, from the duty to do its best on interlocutory applications with far-reaching financial implications, to minimise the risk of injustice.

[27] On the arguability of the case their Lordships in the **BACONGO** case, stated that in a case which raises issues of public importance the strengths and weakness of the claimant's case must be weighed[6], as the failure to grant a stay may cause the claimant significant financial loss.

[28] In the case of **Francis v Royal Borough of Kensington and Chelsea**[7], it was held that a court should take whichever course appears to carry the lower risk of injustice if the decision should later be deemed wrong. As well, it was held that there is a need for strong *prima facie* case in order to grant a stay.

[3] Michael Fordham, Judicial Review Handbook, 5th Edition, p. 206, para.20.2
[4] *Ibid*, p. 207
[5] *Op. cit.*, at para. 39
[6] *Ibid*., para. 40
[7] 2003 All E.R. 1052, para. 16

[29] I have to examine the case in the round in order to determine these factors:

i. whether there is a strong *prima facie* case on behalf of the Claimants;
ii. the strength of the challenge to that case;
iii. whether a monetary order would suffice;
iv. how the wider public could be served; and,
v. where the balance of convenience lies.

[30] On the issue of consultation, the case of **Regina v Liverpool Corporation *ex parte* Taxi Fleet**[8] considered facts similar to the present case. In this case there was a clear undertaking that no more than 300 licenses would have been issued until the passing of legislation regarding private hire cars. However, the Liverpool Corporation, advised that the undertaking was not lawful and they were not bound by it, rescinded the earlier undertaking and allowed a further fifty licenses to be issued. The court quoted Sankey J. in **Rex v Brighton Corporation, *ex parte* Thomas Tilling Ltd.**[9], where he opined:

> "*Persons who are called upon to exercise the functions of granting licenses for carriages and omnibuses are, to a great extent, exercising judicial functions; and although they are not bound by strict rules of evidence and procedure observed in a court of law, they are bound to act judicially. It is their duty to hear and determine according to law, and they must bring to that task a fair and unbiased mind.*"

[8] [1972] 2 Q.B. 299
[9] (1916) 85 L.J.K.B 2552, p. 1555

Applying the principle enunciated by Sankey J. the court held:

> *"... it would be [the corporation's] duty to hear the taxicab owners' association: because their members would be greatly affected. They would certainly be persons aggrieved. Likewise ... it is the duty of the corporation to hear those affected before coming to a decision adverse to their interests ... the corporation was not at liberty to disregard their undertaking. They were bound by it so long as it was not in conflict with their statutory duty."*[10]

In discussing the corporation's undertaking to the owners of private cars Lord Denning, delivering the judgment of the court, opined:

> *"So long as the performance of the undertaking is compatible with their public duty, they must honour it. And I should have thought that this undertaking was so compatible. At any rate they ought not to depart from it except after the most serious consideration and hearing what the other party have to say: and then only if they are satisfied that the overriding public interest requires it. The public interest may be better served by honouring their undertaking rather than breaking it."*[11]

ANALYSIS

[31] The foregoing authorities establish that once a *prima facie* case for the grant of leave for judicial review has been established, the courts should also identify and assess where the greater risk of injustice lies, *i.e.* whether it is in granting the stay or not granting the stay. In order to achieve those objectives I must look at the balance of convenience and where it lies. The case of **American Cyanamid**

[10] *Ibid.* p. 308
[11] *Ibid.*

Company v Ethicon Limited[12],*supra*, highlighted the considerations that a court must take into account in order to grant a stay; namely the strength of the challenge to the case; whether an award of damages or monetary award is available as providing ultimate remedy on one side or the other; the maintenance of the *status quo* and the wider public interest.

[32] On the issue of the strength of the case, the grounds upon which the Claimants are seeking relief have already been outlined. I now go on to assess the facts and grounds herein for this limited purpose only. This is no indication as to how this matter would be ultimately decided.

[33] With respect to the ground that the decisions were unlawful in that the First-named Respondent was not empowered under the Act to make these decisions – **SECTIONS 3(1)** and **6(5)** of the Act are clear and self-explanatory; the Second-named Respondent was the one charged with the responsibility of deciding whether to lift the restrictions on the registration of owners of maxi taxis.

[34] The Second-named Respondent swore to an affidavit in these proceedings ("the said affidavit"). By paragraph 25 of the said affidavit, he asserted that he was the one that made the decision to lift the restrictions in consultation with the Ministry of Works and Transport and after "the meeting was held with the relevant stakeholders". He also stated that this decision had been made as a result of complaints made to him at the Licensing Office by members of the travelling public about the inadequacy of the current maxi taxi service in the districts where they lived. He also became aware that there were corrupt practices in that the owners of certificates to operate maxi taxis were selling these certificates to persons at a very high price. He deposed further that he had received these complaints since assuming Office in 2007.

[12] *Op. cit.*

[35] The Court notes that although the Second-named Respondent had been in receipt of complaints from the travelling public for over a period of years, he took no steps to address the complaints until sometime after the First-named Respondent assumed office. Indeed the decision was made shortly after the First-named Respondent made several public statements about **his** intention to lift the restrictions on the ownership of maxi taxis.

[36] As part of his reasons for removing the restriction on the number of maxi taxi owners, the Second-named Respondent cited the need to have a maxi taxi service in areas where currently there are none. However, there is no evidence before me that in removing the restriction he imposed any requirement upon these new owners to service these areas. He has also deposed that since he has lifted the ban on the registration of new maxi taxi owners over 200 new owners have come into the system. In the absence of the creation of new routes and the assignment of recent maxi taxi owners to these routes, it is reasonable to conclude that these additional maxi taxis are being plied on existing routes.

[37] There is no evidence before me of the Second-named Respondent taking any steps to consult with maxi taxi associations or indeed any other stakeholders as a prerequisite to changing the policy with respect to increasing the number of maxi taxi owners. He has not deposed to complying with **SECTION 3(2)** of the Act which required him to consult with the Advisory Committee, the Traffic Division of the Police Service, the Transport Board, the Highways Division, the Public Transport Service Commission or indeed the Ministry of Legal Affairs. Additionally, no evidence has been adduced before me at this stage to indicate that he undertook any or any proper enquiry to inform himself of relevant matters and issues which could form the basis of a reasonable and fair decision.

[38] On the issue of the failure to consult with the Maxi Taxi Association, the case of **Regina v Liverpool Corporation *ex parte* Taxi Fleet**[13] established that where a party's interest stands to be affected negatively by a decision of a public authority, that party must be consulted before a decision is made. Michael Fordham in Judicial Review Handbook, opines that the legal standard of proper consultation includes 'consultation':

> "*i. at a time when proposals are still at a formative stage;*
> *ii. with sufficient information and reasoning to allow a proper and informed response;*
> *iii. with adequate time; and,*
> *iv. resulting in conscientious and open-minded consideration."*[14]

[39] There is no evidence that either the Second or First-named Respondent consulted with the Claimants on the issue of removing the restriction on the number of maxi taxi owners. In my view, the Claimants were interested parties who stood to be affected by any such decision since a significant increase in the number of maxi taxis would cause a decrease in income for them. Fairness therefore demanded that the Second-named Respondent in the purported exercise of his function under the Act consult with them before making the decision on the 1st February, 2011.

[40] I must also determine whether damages would be an adequate remedy when considering where the balance of convenience lies. The authors of the text Judicial Remedies in Public Law opine that:

[13] *Op. cit.*
[14] 4th Edition, para. 60.6

> "*The balance of convenience in public law cases must take account of the wider public interest and cannot be measure simply in terms of the financial consequences to the parties.*"

The issue of whether the Claimants can be adequately compensated in damages is not likely to play a significant part in public law cases if only because damages are awarded in very limited circumstances. An award is not made simply because the public authority or body acted *ultra vires*, the Claimants must establish misfeasance or a recognised tort which is not applicable in the instant case. Accordingly, I held that damages would not be an appropriate remedy in this case.

[41] In **Smith and Others v Inner London Educational Authority**[15], it was held that where the defendant is a public authority performing duties for the public one must look at the balance of convenience more widely and take into account the interests of the public in general to whom these duties are owed.

[42] Mr. Martineau, in the course of his submissions, argued that this was a case of public interest against private interest - the travelling public as against a few individuals determined to maintain the *status quo*. He elaborated this point by submitting that the purpose of lifting the restrictions or the numbers of persons who can own maxi taxis was in order to ease the pain of the travelling public who are not being adequately serviced by the maxi taxis plying the existing routes. He cited cases in different parts of the country where there was no maxi taxi service or very inadequate service and argued that the lifting of the restriction sought to cure this problem. He urged the court not to exercise its discretion in favour of a stay because the public interest would be affected in that if the stay were to be granted greater hardship would endure as follows:

[15] [1981] 1 AER 411 at p. 422

i. there would be the inconvenience to the public because of the existing shortfall of maxi taxis;
ii. the decision had already been made and was in the course of being implemented;
iii. there were persons who had applied for and obtained certificates to operate maxi taxis and had gone on to buy these maxi taxis.

He suggested in the round that the balance of convenience lay in not granting the stay.

[43] Mr. Maharaj, on the other hand, submitted to the court that it was in the public interest that the law be obeyed; that the First and Second-named Respondents were in breach of the provisions of the Act and the Court should take that into account in determining where the balance of convenience lies.

[44] Having heard the submissions of counsel, I looked at the issue of what the wider public interest demanded on the facts of this case. In my view the service of the public interest is not limited to increasing the number of maxi taxis on the road so that persons who hitherto did not own maxi taxis can now do so, or even that the areas where they do not now ply their taxis can now enjoy this service. In my view, the wider public interest also requires that:

i. additional maxi taxis be introduced after a proper study is undertaken to ascertain whether they are needed and if they are, the routes which can properly accommodate them;
ii. if it is determined, after proper investigation, that there are members of the public who do not have access to a maxi taxi service then new routes could be created and the new maxi taxi owners be assigned to these routes;

iii. new maxi taxi owners are not allowed to determine for themselves where they would ply their taxis in the absence of the aforementioned study, since they might flood the already congested routes that they consider profitable which will significantly reduce the income of existing maxi taxis on that route;

iv. it is in the interest of the travelling public that they get to and from their place of work and school in a timely manner without increased traffic congestion.

[45] In **Queen v Secretary of State for Transport, *ex parte* Factortame Limited (No.2)**[16], Lord Goff at opined:

> *"In this context, particular stress should be placed upon the importance in upholding the law of the land, in the public interest, bearing in mind the need for stability in our society and the duty placed upon certain authorities to enforce the law in the public interest. This is of itself an important factor to be weighed in the balance when assessing the balance of convenience."*

CONCLUSION

[46] In all the circumstances, applying the case of **Francis v Royal Borough of Kensington and Chelesa**[17] I hold that the Claimants have made out a strong prima facie case so as to justify the grant of a stay. Additionally, granting the stay in my view carries the lower risk of injustice if the decision was later deemed to be wrong. Should I not grant the stay however and the Claimants are ultimately victorious then they may not be able to enjoy the fruits of their judgment since

[16] [1991] A.C. 603, p. 673C
[17] *Op. cit.*

the financial losses caused by an unregulated influx of maxi taxis into the system may have already occurred.

[47] I therefore made the following orders:

1. An interim order staying the implementation of the decision of the First-named Respondent, dated the 1st February, 2011, to remove the restrictions on the registration of owners of maxi taxis pending the final determination of this matter or until further order;
2. An interim order staying the decision of the Second-named Respondent, dated the 1st February, 2011, to remove the restrictions on the registration of owners of maxi taxis pending the final determination of this matter or until further order.

JOAN CHARLES
JUDGE