

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Claim No. CV2009 - 01582**

**IN THE MATTER OF THE JUDICIAL REVIEW ACT 2000**

**AND**

**IN THE MATTER OF THE INDICTABLE OFFENCES  
(PRELIMINARY ENQUIRY) ACT CHAPTER 12:01  
OF THE LAWS OF TRINIDAD AND TOBAGO**

**AND**

**IN THE MATTER OF AN APPLICATION BY KRISHNA PERSAD  
FOR LEAVE TO APPLY FOR JUDICIAL REVIEW OF THE DECISION MADE ON THE  
4<sup>TH</sup> OF MARCH 2009 BY MAGISTRATE RAJENDRA RAMBACHAN THAT THERE IS  
A PRIMA FACIE CASE OF ANY INDICTABLE OFFENCE MADE OUT AGAINST  
KRISHNA PERSAD ON THE EVIDENCE ADDUCED BY OR ON BEHALF OF THE  
COMPLAINANT GEORGE NICHOLAS CHAIRMAN OF MORA OIL VENUTES LIMITED AT  
THE HEARING OF INFORMATION NOS. 3515 OF 2003, 3516 OF 2003,  
3517 OF 2003, 3518 OF 2003, 3519 OF 2003 AND 3520 OF 2003**

**BETWEEN**

**KRISHNA PERSAD**

**Applicant/Claimant**

**AND**

**MAGISTRATE RAJENDRA RAMBACHAN**

**Intended Defendant/Respondent**

**GEORGE NICHOLAS**

**Intended Interested Party/Respondent**

**Before The Honourable Mr. Justice des Vignes**

**Appearances:**

For the Intended Claimant:

Mr. Justin Phelps

Mr. Adrian D. Ramoutar, Instructing Attorney

For the Intended Defendant/First Respondent:

Mr. Safraz Al saran

For the Interested Party/Intended Second Respondent/Defendant:

Mr. Keith C. Scotland

**RULING ON COSTS**

On the 15<sup>th</sup> May 2009, I refused the Applicant leave to apply for judicial review of the decision of the First Respondent made on the 4<sup>th</sup> March 2009 and ordered the Applicant to pay the costs of the Second Respondent.

On the same day, I heard submissions from both parties on the appropriate method for assessing those costs and then adjourned the matter to the 20<sup>th</sup> May 2009. On the 20<sup>th</sup> May 2009, I indicated to both parties that I required their further assistance on this issue and invited them to make further submissions.

Counsel for the Second Respondent submitted that the application for leave to apply for judicial review is a procedural application and that the assessment should be conducted in accordance with Part 67.11 (4).

Counsel for the Applicant, however, submitted that the costs payable by the Applicant to the Second Respondent should be assessed in accordance with the prescribed costs regime set out in Part 67.5. He also submitted that the costs to be awarded to the Second Respondent should not include a fee for Queen's Counsel since the issues raised on this application did not justify the retention of Queen's Counsel

I have considered the submissions made by Counsel and I have concluded that the costs should be assessed in accordance with Part 67.11 and not Part 67.5.

This was an ex parte application for leave to apply for judicial review filed on the 6<sup>th</sup> May 2009. In the application, the Applicant sought, inter alia, a stay of proceedings in Informations Nos. 3514-3520 of 2003 which stood adjourned to 18<sup>th</sup> May 2009 to proceed with the evidence of two witnesses on behalf of the Applicant. Since the application included this claim for immediate interim relief, I directed that a hearing in open Court be fixed and I also directed that notice of the hearing be given to the Attorney General and the Second Respondent and fixed the matter for hearing on the 14<sup>th</sup> May 2009. Having refused the Applicant leave to apply for judicial review on the 15<sup>th</sup> May 2009, the Applicant has not been permitted to file a claim against the Intended Respondents as contemplated by Part 56.7. There is no Claim Form or claim filed by the Applicant and therefore, in my opinion, the regime of computing prescribed costs in accordance with Part 67.5 and Appendices B and C does not apply.

In my opinion, Part 67.11 covers the assessment of costs in situations such as this. It provides as follows:

*“On determining **any application** (emphasis mine) except at a case management conference, pre-trial review or the trial, the court **must**-*

- (a) decide which party, if any, should pay the costs of that application;*
- (b) assess the amount of such costs; and*
- (c) direct when such costs are to be paid.*

In the exercise of my discretion on the issue of costs on this ex parte application, I have already decided that the Applicant should pay the costs of the application to the Second Respondent. In so doing, I took into account that in England a successful defendant on an oral application for permission to apply for judicial review should not generally be awarded costs against the Applicant, except in

exceptional circumstances. **Mount Cook Land Limited v. Westminster City Council [2003] EWCA Civ 1346 at para. 76.** However, in our jurisdiction, Part 66.6 (1) of the Civil Proceedings Rules 1998 expressly provides that “*if the Court.... decides to make an order about the costs of any proceedings, the general rule is that it must order the unsuccessful party to pay the costs of the successful party.*” In accordance with Part 66.6 (4), I have taken into account all the circumstances and, in particular, the following:

- (i) the conduct of the Applicant in persisting in his attempts to stay the proceedings before the First Respondent, notwithstanding the Order of the Privy Council that the matter be remitted to the First Respondent to deal with the matter in accordance with the judgment of the Board;
- (ii) The opportunity given by the First Respondent to both parties to make submissions on the manner in which he ought to proceed in the light of the decision of the Privy Council;
- (iii) The Applicant’s indication to the First Respondent that he wished to call witnesses and the adjournments granted by the First Respondent to the Applicant on the 4<sup>th</sup> March and 20<sup>th</sup> April 2009 to afford the Applicant an opportunity to call his witnesses.

In all the circumstances, therefore, I was of the opinion that the Applicant had not acted reasonably in bringing the application for leave to apply for judicial review and, in the exercise of my discretion on the issue of costs, I decided that the Applicant should be ordered to pay the costs of the Second Respondent who had successfully resisted the application for leave.

Accordingly, the next step in the process is the assessment of such costs.

Part 67.2 provides as follows:

*“(1) Where the court has any discretion as to the amount of costs to be allowed to a party, the sum to be allowed is the amount that the court deems to be reasonable were the work to be carried out by an attorney-at-law of reasonable competence and which appears to the court to be fair both to the person paying and the person receiving such costs.*

*(2) .....*

*(3) In deciding what would be reasonable the court must take into account all the circumstances, including-*

*(a).....*

*(b) the conduct of the parties before as well as during the proceedings;*

*(c) the importance of the matter to the parties;*

*(d) the time reasonably spent on the case;*

*(e) the degree of responsibility accepted by the attorney-at-law;*

*(f) the care, speed and economy with which the case was prepared;*

*(g) the novelty, weight and complexity of the case;*

*(h).....*

Part 67.11 (4) provides as follows:

*“(4) In assessing the amount of costs to be paid by any party the court must take into account any representations as to the time that was reasonably spent in making the application and preparing for and attending the hearing and must allow such sum as it considers fair and reasonable.”*

Accordingly, I am obliged to give the parties an opportunity to make representations to me before deciding how much I should allow as fair and reasonable costs to be paid by the Applicant to the Second Respondent. I direct therefore that the Second Respondent do file and serve its Statement of Costs on or before the 14<sup>th</sup> September 2009 and the assessment of costs shall take place on the 2<sup>nd</sup> October 2009 at 9.15 a.m. in court room POS 17.

Dated the 24<sup>th</sup> day of July 2009.

**André des Vignes**  
**Judge**