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 M ATTER OF AN APPLICATION BY KRISHNA PERSAD FOR LEAVE TO APPLY FOR JUDICIAL REVIEW OF THE DECISION MADE ON THE 4TH 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 COMPLAINIANT GEORGE NICHOLAS CHAIRMAN OF MORA OIL VENTURES 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/1st Respondent

GEORGE NICHOLAS

Intended Interested Party/2nd 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 Interested Party/2nd Respondent
Mr. Keith C. Scotland

RULING ON ASSESSMENT OF COSTS

Basis of quantification of costs

Rule 67.2 (1) of the CPR 1998 provides as follows:

> "*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 be a Attorney-at-Law of reasonable competence and which appears to the court to be fair to both the person paying and the person receiving such costs."*

Status of Assessment

On the 15th May 2009, when I refused the Application for leave to apply for Judicial Review, my final Order was for the Applicant to pay the costs of the second Respondent.

On the 24th July 2009, I ruled that the costs of the second Respondent must be assessed under Rule 67.12 and ordered the second Respondent to file a Statement of Costs on or before 14th September 2009, and fixed the assessment for the 2nd October 2009. Unfortunately, the second Respondent failed to comply with the deadline for the filing of his Statement of Costs and only did so on the 28th September 2009. Accordingly, on the 2nd October 2009 the assessment of costs was adjourned to the 20th October 2009.

On the 16th October 2009, the Applicant filed a reply to the second Respondent's Statement of Costs.

On the 20th October 2009, at the assessment of costs, Instructing Attorney for the second Respondent passed to me a speaking note in reply to the Applicant's reply and by letter dated 28th October 2009 Attorney's at Law for the Applicant sought to correct an inaccuracy contained in the speaking note of the second Respondent at "Point of Dispute 4.b" under the heading "Court Stated" it was stated as follows:

> *"des Vignes J stated in the judgment at page 11 costs, costs certified for Senior and Junior Counsel."*

This is incorrect since on the 15th May 2009 I vacated my previous Order with respect to costs being "fit for Junior and Senior Counsel" and ordered the Applicant to pay the second Respondent's costs to be assessed, which is reflected in the Order dated 15th May 2009.

Part 67.2 (3) requires the Court, in deciding what would be reasonable, to take into account all the circumstances including the following:

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

As indicated in my ruling on the method of assessment to be applied herein, I consider that the Applicant had not acted reasonably in bringing the application for leave to apply for judicial review. However, upon a careful review of the affidavit filed on behalf of the second Respondent, I have observed that, in large measure, it is a repetition of the history of the matter which had already been recounted by the Applicant in his affidavit. In fact, having regard to the submissions made on behalf of the second Respondent in resisting the application for leave to apply for judicial review, the facts as set out in the

Applicant's affidavit were sufficient to enable such submissions to be made without filing any affidavit in reply. I also observe that insofar as the second Respondent deposed to more than the historical facts, objections were successfully taken by the Applicant to sections of paragraphs 37, 38, 42 and 43 of his affidavit and those sections were struck out.

(c) The importance of the matter to the parties

The matters before the Magistrate's Court are clearly important to both parties. The Applicant was anxious to stay these proceedings and that anxiety prompted the Applicant to make this application, which I refused. The second Respondent was equally anxious to resist any stay of the magisterial proceedings that have been pending since May 2003. The Applicant quite properly named the second Respondent as an Intended Interested party/Second Respondent and the second Respondent took the lead in resisting the application.

(d) The time reasonably spent on the case

I have no doubt that the Second Respondent's Attorneys spent a considerable amount of time preparing the affidavit of the second Respondent which was filed on the 13th May 2009. However, the question is whether the time actually spent was reasonable. In my opinion, since the facts stated therein were already substantially contained in the Applicant's affidavit, it was not necessary for the second Respondent to have filed such a lengthy affidavit. And if the Attorneys had focused on the important facts not contained in the Applicant's affidavit the time spent in preparing to resist the application would have been greatly reduced. At the hearing of the application on the 14th May 2009, the hearing commenced at 11.00am and continued until 12.30pm. Having then resumed at 1.05pm and concluded at 2.00pm. On the 15th May 2009, the hearing lasted from 10.35 to 11.40am and on the 20th May 2009 the hearing lasted from 1.10pm to 2.55pm.

(e) the degree of responsibility accepted by the Attorney at Law

Successfully resisting this application for leave placed an important responsibility on the second Respondent's Attorney. However, it was not an extremely onerous responsibility since the issue raised by the Applicant was a narrow issue of statutory interpretation, namely, was the Magistrate exercising his powers under Section 23 of the Indictable Offences (Preliminary Inquiry) Act as contended by the Applicant or was he still at the stage of exercising his powers under Section 17 of the said Act. On the facts as recited by the Applicant and confirmed by the second Respondent, the first Respondent was still at the stage of Section 17 and for this reason I was not satisfied that the Applicant had raised an arguable issue with a realistic prospect of succession.

In addition, I am of the opinion that this matter justified the retention of Instructing Attorney and Counsel. However, the question is whether the retention of Junior Counsel, Senior Counsel and Queen's Counsel was justifiable and recoverable. In my opinion, it was not. The issues raised herein did not justify the retention of Senior Counsel or Queen's Counsel and could have been dealt with quite competently by a competent Junior Counsel who was reasonably competent in the area of judicial review. Accordingly, I do not propose to allow any fees for Senior Counsel or Queen's Counsel. The second Respondent may have chosen to retain his entire legal team to seek his interest in this matter but in deciding the quantum of costs payable by the Applicant I am not satisfied that the retention of Senior Counsel or Queen's Counsel was reasonably justified.

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

While it is true to say that the 2nd Respondent's Attorneys were required to act quickly to prepare to resist this application, a careful perusal of the Applicant's affidavit should have led them to realize that a lengthy affidavit repeating

essentially the same historical facts was unnecessary and the focus of their attention should be on the short legal point as stated above.

The succinct submissions made by Counsel for the second Respondent demonstrated that the arguments in opposition to the application fell in a narrow compass.

(g) The novelty, weight, and complexity of the case

This application did not raise any novel points. It was not complex and it was not of great weight. The Applicant sought to argue that the Magistrate was exercising his powers under section 23 but the facts demonstrated that he was still exercising his powers under Section 17. That is why the application was refused.

Computation

I consider that a reasonable period of time for Instructing Attorney and Junior Counsel to take in preparing to resist this application was 5 hours each. The actual time spent in court in the hearing of the application 5hours 20 minutes. Accordingly, the assessed costs allowed on this application will be as follows:

Instructing Attorney:
10 hours 20 minutes @ $650.00 per hour = $6,716.66

Junior Advocate Attorney
10 hours 20 minutes @ $2,000.00 per hour= $20,666.66

Order

Accordingly, I hereby order the Intended Claimant to pay the Second Respondent the assessed costs of $27,383,32 and grant a stay of execution of 14 days. I also grant leave to the Applicant to appeal against this Order for costs.

Dated this 17th day of November 2009

Andrė des Vignes
Judge