

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV 2018-03932

IN THE MATTER OF THE JUDICIAL REVIEW ACT CHAP 7:08

AND

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO MAKE A CLAIM FOR JUDICIAL REVIEW
PURSUANT TO PART 56.3 OF THE CIVIL PROCEEDINGS RULES**

AND

**IN THE MATTER OF THE DECISION MADE FOR OR ON BEHALF OF THE MINISTER OF LABOUR
AND SMALL ENTERPRISE DEVELOPMENT ON THE 4TH DAY OF JUNE TO FORWARD A
MEMORANDUM OF AGREEMENT TO THE INDUSTRIAL COURT OF TRINIDAD AND TOBAGO
PURSUANT TO SECTION 58 (2) OF THE INDUSTRIAL RELATIONS ACT CHAP 88:01**

AND

**IN THE MATTER OF THE DECISION OF THE REGISTRAR OF THE INDUSTRIAL COURT ON THE 20TH
DAY OF JULY 2018 TO ENTER A MEMORANDUM OF AGREEMENT AS IF IT WAS AN ORDER OR
AWARD OF THE COURT PURSUANT TO SECTION 58 (2) OF THE INDUSTRIAL RELATIONS ACT
CHAP 88:01**

BETWEEN

PETROLEUM COMPANY OF TRINIDAD AND TOBAGO LIMITED

APPLICANT

AND

THE MINISTER OF LABOUR AND SMALL ENTERPRISE DEVELOPMENT

FIRST INTENDED RESPONDENT

THE REGISTRAR OF THE INDUSTRIAL COURT OF TRINIDAD AND TOBAGO

SECOND INTENDED RESPONDENT

Before the Hon. Madam Justice C. Gobin

Date of Delivery: November 1, 2018

APPEARANCES:

Mr. R. Armour SC, Ms. V. Gopaul, Mr. A. Bullock and Ms. L. Abdulah, Ms. M. Ferdinand

Attorneys at law for the Applicant

Mr. F. Hosein S.C for the First Intended Respondent

Mr. D. Mendes SC, Mr. A. Bullock, Ms. L. Abdulah and Mr. M. Haniff, Attorneys at law for the Union

Mrs. C. Alexander-Fraser, Attorney at law for the Second Intended Respondent

RULING/REASONS

1. This application for leave for Judicial Review was filed about 1 pm and came to my attention at about 2.30 pm on October 30th 2018.
2. The Certificate of Urgency of the Applicant's Attorney contained the following statements: -

(1) The Union has filed proceedings in the Industrial Court in GSD-IRO 35 of 2018 complaining of an industrial relations offence

committed by the Applicant Company on the basis of an alleged failure to meet and treat with the Union pursuant to Section 40 of the Act. The substantive proceedings in GSD-IRO 35 of 2018 (the IRO proceedings) are set to be heard by the Industrial Court on the 30th and 31st October, and 1st November, 2018.

(2) I am advised by Counsel that the matters brought before this Court on this Application for Leave derive from the High Court's inherent jurisdiction as a Superior Court of unlimited jurisdiction in addition to the statutory jurisdiction under the Judicial Review Act and, are not matters capable of being adjudicated on by the Industrial Court, albeit a Superior Court but of limited jurisdiction, having regard to the reliefs which the Applicant seeks herein.

(3) I am further advised by Counsel that the ruling of the High Court in this application will have a material bearing on the nature of the reliefs being sought by the Union in the IRO proceedings and, will assist the Industrial Court in its adjudication according to law on the IRO proceedings.

3. In the light of this I ordered service of the leave application on the intended respondents as well as on the Union and fixed the matter for hearing at 12.45 pm on the 31st October, 2018.
4. At the hearing I heard submissions from Senior Counsel for the applicant, from Mr. Hosein who appeared at short notice for the Minister to provide assistance (for which I am grateful), and from Mr. Mendes for the Union. Mr. Allahar appeared out of courtesy to the Court for the Attorney General.

5. After I had heard the submissions I indicated my ruling that leave was refused on the ground of delay and that I would consider the submissions on alternative remedy and deliver my ruling as well as short reasons by the end of November 1st 2018. I have now considered the submissions more closely and I am satisfied that leave should be refused for the additional reason that there is an alternative remedy.

Delay

6. It is trite that delay and the availability of alternative remedies are grounds for refusal of the grant of leave even in cases which are not wholly unmeritorious (Kangaloo JA **in Ferguson & Anor v The Attorney General Civ App 207 of 2010 at paragraph 5**)
7. On the issue of delay the history of the IRO proceedings through the Court of Appeal is relevant. It is not necessary for me to rehearse all the facts and the chronology of events. These are set out in detail in the affidavit of PETROTRIN's chairman Mr. Wilfred Espinet at paragraphs 16 to 24 and in the affidavit of Mr. Mohamed Haniff one of the Union's attorneys. Suffice it to say the Industrial Court granted an injunction in the Union's favour. PETROTRIN filed an appeal, Pemberton JA granted a stay of the injunction order and the full court heard the Company's appeal.
8. Those proceedings so far, at the levels of the Industrial Court, the single Judge of the Court of Appeal and the full Court, have been treated with the greatest degree of urgency. Hearings have been convened at short notice, and have proceeded well beyond usual Court hours. The delivery of Rulings and Judgments have been expedited at all levels. This is because PETROTRIN intends to close its operations on November 30, 2018 and the Union is concerned about the loss of employment of five thousand, five hundred (5500) members if it does so. That matter concerns matters of public importance. All involved have therefore been concerned to allow access to the judicial process but with a view to managing the matters so as to allow for a determination before PETROTRIN'S November 30, 2018 deadline.

9. Indeed in his Judgment dated October 18, 2018 delivered after the hearing of the appeal from the order granting injunctive relief against the company, the Hon. Chief Justice, alluded to the timetable, to justify the Court's refusal to reinstate the injunction. He stated:

"We are not persuaded that the refusal to reinstate the injunction is likely to cause irreparable harm to the Union because the termination process can be arrested. Further, the Industrial Court, cognisant of the importance of the matter, gave early dates for trial. The Industrial Court docketed the matter to be heard on 30, 31 October and 1 November, and undertook to deliver judgment by 5 November. These dates are well before 30 November, 2018, that is, the date of closure of operations of PETROTRIN. The refusal to grant the injunction would not irreparably affect the status quo because the Company's closure is still some time away from the date of decision in the substantive IRO application."

10. Following the decision of the Court of Appeal, and no doubt with a view to keeping the above schedule the parties submitted evidence and arguments in writing in the IRO on October 26, 2018, in accordance with the Industrial Court's directions. On that very day Mr. Espinet received advice from Senior Counsel and gave instructions for the filing of these proceedings for Judicial Review. It turns out that at the time of filing, GSD IRO no 35 of 2018 between the OWTU and PETROTRIN was in progress. I would later learn that at about that time the Union's President was being cross examined by Senior Counsel for PETROTRIN. While according to the certificate of urgency counsel believed a ruling on the intended Judicial Review application would "assist the Industrial Court in its adjudication according to the law" in the proceedings which were actively engaging their attention at the time of filing, the intention to approach the High Court was not disclosed to the Court or to the Union's Counsel at any time on that day. This was so even after the matter had actually been filed.

11. It is against this peculiar background that I had to consider the issue of delay. The more recent of the two impugned decisions was made on the 20th July 2018. The recent decision of **Fishermen and Friends of the Sea v EMA & Ors [2018] UKPC 24** has confirmed that time began to run from that date whether or not the applicant had notice of the registration of the MOA. The application was therefore out of time. I then had to consider whether there was good reason to extend the time. I considered that the Notice of Registration of the MOA came to PETROTRIN's attention on the 1st October 2018. The MOA featured in the evidence in support of the injunction application which was filed in the IRO proceedings. References to the issue of its validity were made by the applicant throughout the appeals process and again in the evidence and arguments filed in the Industrial Court on the 26th October 2018.
12. In my opinion the applicant failed to act with sufficient promptitude even after it became aware the MOA on the 1st October 2018. When pressed for the explanation for the delay between October 1, 2018 and October 30, 2018 – Counsel stated that it was that pressure of work, Counsel's workload in relation to this litigation. The demands on Counsel's time for compliance with directions and tight deadlines rendered it "humanly impossible". This in the circumstances of this case falls far short of a good reason.
13. Indeed it was only after I had the opportunity to more closely read the judgement of the Chief Justice that I became aware that the Industrial Court had undertaken to deliver judgement in the IRO on 5th November 2018. Had I been informed of this timetable I would have had to accept that it was "humanly impossible", for this court to deliver a ruling on a substantive claim for "the assistance of the Industrial Court in its adjudication according to the law on the IRO proceedings" before 5th November 2018, when it was being suggested that I would have to resolve issues of fact as to what was operating in the mind of the Minister's delegate and the Registrar at the time they made their respective impugned decisions. This begs the question why was this application filed at all.
14. In refusing leave I considered that the IRO raises matters of wider public importance because of the alleged "possible effects" on the national economic landscape of the continued

operations of PETROTRIN. In addition to the private interest of the 5500 PETROTRIN workers there can be no doubt that their termination of employment will also have wider social and economic repercussions. Given the public importance of the matter and given the commitment of the Industrial Court to expediting the hearing of the matter, the grant of leave would have had a detrimental effect on the administration of justice and the entitlement of the immediate parties and the public given the wider interest to the urgent determination of the IRO.

Alternative Remedy

15. This is an unusual case in which on the face of it, the applicant has an alternative remedy in the proceedings before the Industrial Court. The Industrial Court does not have the power to grant an order of certiorari but it does as the applicant has recognised at all times have the power to determine the “status of the MOA”. The record produced by the applicant shows that it has at all times and even now continues to avail itself of the alternative remedy through its participation in the proceedings before the Industrial Court and in proceedings before the Court of Appeal which arose out of the grant of an interim injunction in the Union’s favour.
16. The affidavit of Mohamed Haniff indicates the several occasions on which the applicant has raised the “status of the MOA” in proceedings at every level. Pemberton JA, noted the relevant additional ground on appeal in her Judgment. In the judgement of the full court, the Hon. Chief Justice indicated that the “status of the MOA” was one of the issues before the Court. In the ongoing proceedings the issue of the status of the MOA remains live.
17. The failure of Pemberton JA and of the full Court to rule on the issue in the circumstances of the urgency of the matters which they prioritised, does not support the applicant’s submission that the Appeal Court does not have jurisdiction. In his oral submission Senior Counsel for PETROTRIN accepted that he did not abandon the ground of the status of the MOA nor did he represent either to the single judge or the full Court that neither had jurisdiction to deal with the jurisdiction point. Not surprisingly neither indicated that the matter was outside their jurisdiction.

18. The foregoing observations when taken together with the deliberate introduction of an amended ground of appeal at para 3 (b) to raise inter-alia the want of jurisdiction Under S.58 of the IRA is in my opinion a clear indication that the applicant accepted that the Industrial Court as well as the Court of Appeal on an appeal from an order of the Industrial Court, does have the jurisdiction to deal with the “status of the MOA”.
19. I accept the submissions of Mr. Mendes that the decision of the Court of Appeal in Civ App No. 9 of 1995 **Bank Employees Union v Republic Bank Limited** sufficiently establishes and confirms that the jurisdiction of the Court of Appeal to review decisions of the Industrial Court which arise on the latter’s interpretation or application of section 58 (2) as indeed it appears that counsel for PETROTRIN must have been seeking to invoke through the amended grounds of appeal.

Disposition

20. The applicant’s application for an extension of time to file the application for leave for judicial review is refused.

Dated November 01, 2018

Carol Gobin

Judge