

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE  
Port of Spain**

CLAIM NO. CV2018-01783

**In The Matter Of Judicial Review Act No. 60 Of 2000**

**And In The Matter Of An Application By Animals For Education Limited For Leave To Apply For  
Judicial Review Of:**

**The Refusal Of The Chief Game Warden To Grant An "Intention To Import" Permit For The Importation  
Of Two Female Red Kangaroos Into Trinidad And Tobago From Ontario, Canada**

Between

**Animals For Education Ltd**

Applicant/Claimant

And

**Chief Game Warden**

Respondent/Defendant

**Before the Honourable Madam Justice Donaldson-Honeywell**

Delivered on April 10, 2019

**Appearances**

Mr. Rajiv Persad, Mr. John Heath, Ms. Laurissa Mollenthiel, Ms. Elena Da Silva and Mr. Lionel M. Luckhoo, Attorneys at Law for the Claimant

Ms. Karlene Seenath, Ms. Ronelle Hinds, Ms. Kendra Mark and Ms. Amrita Ramsook Attorneys at Law for the Defendants

**Ruling**  
**on Application to Cross-Examine**

**A. Introduction**

1. The Claimant has filed a fixed date claim form against the Defendant seeking judicial review of its decision to refuse to grant the Claimant and Intention to Import Permit for the importation of two kangaroos on the grounds that:
  - i. The decision took into account irrelevant considerations/failed to take into account relevant considerations
  - ii. That the decision was irrational
  - iii. That the decision was unlawful, null and void
  - iv. That the decision was procedurally unfair/procedurally improper
  
2. The Defendant has filed an affidavit of Mr. Courtenay Park, Chief Game Warden/Conservator of Forest in response to the claim, setting out the reasons for the decision.
  
3. The present decision concerns an application by the Claimant to cross-examine the Defendant's deponent, Mr. Courtenay Park. The Claimant wishes to cross-examine on paragraphs 2, 3, 4, 5, 8 and 9 of the affidavit of Courtenay Park and has set out in submissions its reasons for the request.

**B. Issue**

4. Whether the Claimant should be allowed to cross-examine Mr. Courtenay Park on:
  - i. Paragraph 2 of his Affidavit
  - ii. Paragraph 3 of his Affidavit
  - iii. Paragraph 4 of his Affidavit
  - iv. Paragraph 5 of his Affidavit
  - v. Paragraph 8 of his Affidavit
  - vi. Paragraph 9 of his Affidavit

**C. Law and Analysis**

5. The Claimant submits that the law on this area is neatly encapsulated in the decision of Mr Justice Robin Mohammed in **Pamela Hunt v Jennifer Daniel and Others CV 2014 - 02496** [Tab 1]. They cite paragraphs 21 to 24 of the decision as follows:-

*“[21] The authorities submitted by both parties make it clear that cross-examination in judicial review proceedings is rare and will only be allowed if there is a dispute on a critical factual issue and it is necessary to resolve that issue by cross-examination.*

*The local case of **Gopichand Ganga and Ors v Commissioner of Police** referred to the Court of Appeal decision of **Patrick Manning v Sharma** which stated that cross-examination in judicial review proceedings would be allowable if:*

- i. There are glaring omission which amount to a failure to observe the duty of frank disclosure of a party in judicial review; and/or*
- ii. There needs to be a resolution of disputes of fact which is necessary for determining jurisdiction to grant judicial review relief.*

*[22] The English Court of Appeal in **Jones & Jones v Secretary of State for Wales** stated that cross-examination would be allowed when the justice of the case requires and the decision whether justice so requires is a matter for the discretion of the judge.*

*In Jones supra, the case of **George v Secretary of State for the Environment** was cited in which Forbes J stated:*

*“However, where you have a complete conflict over a question of fact, and it is accepted that the case would turn on whose version is to be accepted, then it does seem that justice can only be done by allowing cross-examination.”*

*[23] Balcombe L.J. in **Jones**, however, warned of the dangers of too frequently allowing cross-examination in judicial review matters:*

*“While there is jurisdiction to order cross-examination in such proceedings as this, it is to be exercised extremely sparingly, only where the justice of the case requires*

*it. One of the principal reasons for this is if it is sought to cross-examine an inspector or a magistrate, it is, in general, undesirable that such application should be acceded to because inspectors and magistrates occupy, in one case, quasi-judicial, and, in other, judicial office. There are great risks and dangers in bringing about a state of affairs where officers of that kind may be required to justify what they have said in later proceedings in the witness box. The Court would only accede to an application of this kind if the justice of the case so compellingly pressed for that result that there was no proper alternative.”*

*[24] In analyzing the application for Zorisha to be cross-examined, the Court must therefore consider (i) whether there is a complete conflict over a question of fact between the Claimant and the 1st and 2nd Defendants; (ii) if so, does the case turn on this conflict of fact; and (iii) whether there is no proper alternative to resolve this material conflict other than by cross-examination.”*

6. The Defendant also cites the case of **Gopichand Ganga v Commissioner of Police CV2006-01420** which considers that aside from the preliminary considerations of whether there are conflicts of facts central to a material issue in the case or whether there was infringement of the duty of full and frank disclosure, cross-examination in judicial review is only permissible when it is *relevant to an impugned decision and linked to a ground of challenge of procedural impropriety*.

Paragraph 2 of the Defendant’s Affidavit

7. This paragraph concerns the duties of the deponent. He has stated that these include the duty to approve import and export permits and renewal permits for keeping protected animals in captivity. The Claimant is seeking to challenge by cross-examination, that this responsibility indeed belongs to him. The main point of the challenge is that the governing legislation of grant if import permits for animals vests authority to grant such permits in the Chief Technical Officer (Agriculture) [“CTO”]. The issue that has not been addressed

by this deponent is whether he is the CTO and if not on what basis he has authority to grant or refuse import permits.

8. The Claimant submits that there has been non-disclosure by the Defendant on this issue, therefore requiring clarification. This lack of clarity can be addressed by the Court directing that further disclosure be made in a supplemental Affidavit of the deponent. The Respondent must answer whether the Courtenay Park, the Chief Game Warden is the person deemed to be CTO for purposes of Sections 3(2) and 16 of the Act and Regulation 4 or whether if he is not the CTO he was authorized by him/her in writing to perform the functions. The answer to this question, provided in an Affidavit, will be of assistance to the Court because under the Act "Chief Technical Officer" is defined as "the Chief Technical Officer (Agriculture) or any officer of the Ministry authorised by him in writing"
9. Apart from the need for clarity as to whether the deponent properly functioned as CTO, Counsel for the Defendant has pointed out that any issue as to the extent of the authority of the CTO or a person performing those functions is an issue of law. It is noted that there appears to be no provision in the Act for grant of an "intention to import permit". Further the CTOs functions regarding animal importation appear from the legislation to be intended to relate to protection against diseases that may be introduced by such importation.
10. It may be that other considerations deponed to as having been taken into account were irrelevant and/or Mr Park had no authority to grant a particular type of permit. However, the Court cannot be assisted in determining the unlawfulness of the exercise of these functions by the deponent through questioning. It is a matter for legal submissions.
11. The Claimant in reply submissions further suggests that the function of granting an import licence is not codified by law. That point can be more appropriately addressed by way of legal submissions than by further questioning the deponent.

12. Accordingly, permission is not granted to cross-examine on paragraph 2. However I will issue a direction for the deponent to file a supplemental affidavit providing further disclosure. Further, the parties will be permitted to make legal submissions in due course to include submissions on the extent of the CTOs functions under the Act.

Paragraph 3 of the Defendant's Affidavit

13. The deponent here sets out the factors he took into consideration namely 1) that an unnamed former Conservator of Forests requested that a joint inspection be conducted by the Forestry Division, the Ministry of Health and the Zoological Society and 2) that he received a letter from the Head of the Wildlife Section indicating that the Ministry of Planning and Development was reviewing the operations of the Claimant's site.

14. The Claimant submits that the deponent's contention is that his decision to withhold the permit was not unreasonable, the he did not fail to take into account relevant considerations and that he did not take into account any irrelevant considerations. These statements are made at paras. 10, 12, 13 and 20 of the deponent's affidavit. The Claimant asserts that what operated in the deponent's mind is in direct issue in determining whether he took into account irrelevant considerations. The Claimant suggests that clarification can be achieved through cross-examination on the relevance of the factors outlined in para. 3 in the deponent's consideration.

15. The Defendant's response to this is that the deponent has already fully disclosed his reasons for refusal and outlined what operated in his mind. However, it is clear that this is a significant fact in issue in relation to the pleaded case. These points can be clarified through cross-examination of the deponent.

16. There has not been full disclosure as to at least the name of the Conservator who requested an inspection in 2016, whether it was a written request and so on. The Claimant suggests that cross-examination on who the former Conservator of Forests was and

questions regarding the previous grant of permits to the Claimant in relation to kangaroos would be useful to the Court in understanding what considerations the deponent took into account. The Claimant submits that this could be derived through cross-examination.

17. Contrary to the Defendant's submission, this information is clearly relevant in dealing with the challenged decision of the current Conservator of Forests. This is so because alleged denial of entry for that alleged inspection is one of the reasons said to have caused the deponent to withhold permission for importation. This is relevant to the history of the considerations taken by the Defendant regarding permits and whether there was a difference in considerations between the present decision and previous ones.
18. However, some of the information can be elicited otherwise than through cross-examination by the provision of further and better particulars in a supplemental affidavit. The Claimant will be allowed to cross-examine on this paragraph. The Defendant must also make full disclosure by including the required clarification regarding the former Conservator and his request, in a Supplemental affidavit.

Paragraph 4 & 5 of the Defendant's Affidavit

19. The Claimant submits that information about who advised the deponent not to approve any applications for intention to Import Permit in relation to the applicant is needed and can be elicited through cross-examination. The Defendant submits that this information has already been produced by the Claimant, in his affidavit filed in support of his application for judicial review at R.H.8 i.e. a letter from the Ministry of Agriculture stating that the Forestry Division should approve no applications for Intent to Import due to a review being undertaken by the Ministry of Planning and Development. For similar reasons considered re para. 3 of the affidavit, the relevance of this letter to the deponent's decision remains to be clarified. This is a question of fact that has not been disclosed by the Defendant that lends itself to questioning under cross-examination. As

an alternative however the information can be provided in a supplemental Affidavit. Directions will be given accordingly.

20. The Claimant further submits that questions on why the Defendant chose not to communicate the position to the Claimant until litigation was initiated have not been answered and should be elicited through cross-examination. However, these are also questions that can be clarified first by seeking further and better particulars through a supplemental affidavit.

Paragraph 8 of the Defendant's Affidavit

21. The applicant wishes to cross-examine the respondent on his assertion that the legality of the lease between the applicant and the Chaguaramas Development Authority was relevant to his making a decision on whether an import permit for two kangaroos should be granted. The Claimant's argument is that this is an irrelevant consideration and the Court would be assisted by cross-examination on why the deponent considers it relevant. The Defendant's assertion is that this has already been answered in the deponent's affidavit and the cross-examination would be an exercise in futility. However, in my view further clarification is required and can be achieved by cross-examination on the Defendant's reasons for considering the legality of the lease relevant to the decision not to grant the Intention to Import licence.

Paragraph 9 of the Defendant's Affidavit

22. The Claimant suggests that the issue of the alleged dispute between the Claimant and the Chaguaramas Development Authority should be examined to determine whether the person who informed the deponent about the said dispute may have been tainted with bias, that then impacted on the deponent. However, the Defendant raises the objection that the issue of bias does not fall within the Claimant's pleaded case, is not set out in the relief sought by the Claimant and was raised for the first time in the Claimant's affidavit in reply.



23. Notably, this point made by the Defendant was not responded to in the Claimant's reply submissions. As the issue was not raised in the fixed date claim, cross-examination on the issue of bias in relation to evidence given at paragraph 9 of the Affidavit will advance the case no further. It will therefore not be allowed.

**D. Conclusion**

24. The Claimant's proposed use of cross-examination as to paragraphs 2, 3, 4 and 5 to obtain better particulars regarding information not fully disclosed by the Defendant will be addressed by a direction for filing of supplemental affidavit evidence.

25. There is a conflict as to questions of fact regarding information in other paragraphs of the affidavit. In particular, the Defendant's evidence concerning an alleged denial of permission to inspect the premises and the alleged existence of a lease dispute, is in conflict with the Claimant's case. The case turns on these factual conflicts because it is on this basis that the Defendant says the decision was made.

26. The Court requires clarity on exactly what basis the decision was made. In light of the factual dispute the said basis may be clarified under cross-examination. There is no better alternative to achieve clarification for the Court to determine these issues central to the pleaded case. Accordingly, the Claimant has succeeded in proving the need for cross-examination of the Defendant's deponent Mr. Courtenay Park on the following parts of his Affidavit:

- i. Paragraph 3 in relation to reasons for refusal of the Intention to Import permit;  
and
- ii. Paragraph 8 in relation to the relevance of the legality of the lease on the deponent's decision not to grant the Intention to Import permit.

27. Permission is not granted for the deponent to be cross-examined as to paragraph 9 of the Affidavit.

E. Order

IT IS HEREBY ORDERED THAT:

- i. The Respondent/Defendant is to file and serve a Supplemental Affidavit on or before May 10, 2019 in relation to information highlighted in the submissions of the the Applicant/Claimant as not having been fully disclosed in paragraphs 2,3,4,5 of the Affidavit filed on October 17, 2018.
- ii. The Applicant/Claimant is granted leave to have the Respondent/Defendant attend court thereafter on 26<sup>th</sup> June 2019 at 1 p.m. POS 18 and be cross-examined in respect of paragraphs 3 and 8 of his Affidavit dated and filed on October 17, 2018.
- iii. If the Respondent/Defendant fails by Supplemental Affidavit to provide the required disclosure ordered at (i) above, the Applicant/Claimant will also be permitted to cross-examine the Respondent/Defendant as to the non-disclosed information on 26<sup>th</sup> June, 2019.
- iv. No order as to costs.

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Eleanor J. Donaldson-Honeywell

Judge

Assisted by: Christie Borely JRC I