THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2010-04018

BETWEEN

ROSSI BEEPATH

Claimant

AND

PETROLEUM COMPANY OF TRINIDAD AND TOBAGO

Defendant

Before the Honorable Mr. Justice V. Kokaram

Appearances:

Mr. Roger Ramoutar for the Claimant

Ms. Alicia Neebar for the Defendant

JUDGMENT

1. On 14th December 2012 the Court dismissed an application made by the Claimant for an extension of time for the filing of witness statements and or witness summaries with no order as to costs. The Claimant was seeking to extend the time to comply with the Court's order made on 24th October 2012 for witness statements to be filed and exchanged. By the said order the Court further imposed the sanction that no witness was to give evidence unless they complied with that order. The Claimant's application was very bare, unsupported by any affidavit and devoid of any particulars upon which the Court could

exercise its discretion to extend the time to comply with the Court's order. In giving effect to the Overriding Objective the Court must weigh in the balance the facts of the case and do justice to the case by applying the principles of equality, proportionality and economy as expressed in part 1 CPR. However in this instance the Claimant did itself no favours by putting before this Court an application which took it for granted that an extension would have been automatically granted regardless of the merits of the application.

2. The grounds advanced by the Claimant were that (a) the Claimant's attorney at law, Mr. Yaseen Ali was encountering personal difficulties (b) the Claimant was encountering personal difficulties in having his witness sign their respective witness statements (c) the failure to comply was not intentional (c) there is no prejudice to the parties (d) any likely trial date can still be met as no trial date has been fixed.

3. At the date of hearing Mr. Ramoutar obtained the Court's leave to appear amicus to represent the Claimant. Mr. Yaseen Ali became the attorney on record by notice dated 12th December 2011 yet on all occasions when the matter was called since that time, different attorneys "held" for Mr. Ali. However the Claimant confessed to this Court at previous case management conferences that he never saw Mr. Ali and does not know what he looks like. This proved to be an obstacle in properly managing this case. For instance at an earlier case management conference held on 24th October 2012 convened for the parties to share their opinions on quantum without prejudice to the issue of liability the excuse of Mr. Ali's direct involvement in the case was one of the reasons proffered why the matter could not have been resolved at that stage. Indeed since December 2012 the Court got the impression that the matter became protracted because of the lack of direct involvement of "Mr. Ali" in this matter as several attempts were made by the Defendant's attorney at law to contact Mr. Ali to either pursue settlement discussions or to move the matter forward with regard to having the Claimant medically examined to no avail.

4. I recognized Mr. Ramoutar's difficulty in now coming into the matter but it is against the backdrop of a procedural history. On 17th October 2011 the Defendant indicated that an independent review be conducted of the Claimant and the Court ordered that the Claimant was to be medically examined by Dr. David Coomansingh. The Defendant subsequently revealed that the Claimant failed to inform it that he was being treated by Dr. Coomansingh and so on 9th December 2011 by consent the parties agreed that the Claimant be examined by an independent expert and the matter was adjourned to 3rd February 2012 to consider that expert's report. This was not done due to the difficulty encountered to obtain agreement from the Claimant's attorney at law prior to that date. On 3rd February 2012 it was finally agreed that the Claimant be medically examined by Dr. Judith Henry and provisions made for her to be appointed a joint expert and for parties to put to the expert joint questions for the compilation of her report. This was an important exercise as the parties having agreed to a joint expert it was necessary for them to identify specifically the issues that needed clarification on the Claimant's medical condition.

5. The Claimant failed to agree or even respond to the Defendant's list of questions as ordered by the Court and on the 6th February 2012 only the Defendant had sent to the Court the questions that should be asked of the expert. There being no agreement, the Court made its own order asking the expert to address certain issues in relation to the Claimant's medical condition.

6. On 3rd September 2012 Dr. Henry finally produced her responses to the answers asked by the Court. On 26th September 2012 the Case management conference came on for hearing which was an opportune time for the parties to address the Court on the answers provided by Dr. Henry to either narrow the issues for determination or to resolve the matter altogether. Neither Mr. Ali nor the Claimant appeared and directions were given to prepare for the trial with a pre trial review fixed for 24th October 2012. Importantly the Court ordered the filing of short notes on quantum without admission of liability for the purpose of seeking to resolve the issue of damages by consent and limiting the issue for

trial to one of liability or to settle the matter altogether, as the Defendant was willing to do.

7. On 24th October 2012 another attorney "held" for Mr. Ali but the Claimant's note on quantum was not filed nor was a draft of it shared with the Defendant's attorney at law. The Defendant had complied with the Court's order. Again the Claimant and his attorney's attitude was quite unhelpful to the process of case management. Directions of the Court are meant to be complied with. Both parties must assist the court to give effect to the Overriding Objective. On these occasions the Claimant and/or his attorney at law was being unhelpful in this process.

8. As no meaningful discussions could have been held that morning, although the Court gave both parties time by standing the matter down, directions were given for the filing and exchange of witness statements. Again this case management activity would have brought the parties closer to understanding the issues for resolution or to be realistic as to their respective claims. The Claimant seemed to me satisfied to have his matter tried and the Court was careful to obtain from both parties what they considered a reasonable time period for completing this phase of case management. For this reason the Court imposed an express sanction.

9. To my surprise the Claimant in spite of his eagerness to press on with the trial failed to file his witness statement and filed an application for an extension of time.

10. The application itself treated the Court as merely a facilitator of an extension of time as though it would have been granted as a matter of course and no real attempt was made to put cogent reasons for failing to file the witness statements. The Claimant forgets that civil litigation is Court driven and some material should be before the Court to exercise its discretion. In **Alloy Wong and Anor. v Republic Finance and Merchant Bank Ltd. and Ors.** the Court of Appeal making reference to Order 3 rule 5 held:

    10 Given that Order 3, rule 5 of the RSC, 1975 governs applications of this nature and given the opinions stated by Hamel-Smith J.A. at paragraphs 47 and 49 of his

judgment in ***Krishna Persad,*** *I think the following observations are pertinent. First, what is involved is the exercise of a judicial discretion. Second, for that discretion to be exercised favourably some material must be before the Court to justify it. Third,* ***as a general rule, where the sole reason is the inadvertence or error of attorneys, the greater the time lapse the more reluctant a court will be to exercise its discretion favourably.***

11. Further in **Ratnam v Cumarasamy:**

"The rules of court must, prima facie, be obeyed, and, in order to justify a court in extending the time during which some step in procedure requires to be taken, there must be some material on which the curt can exercise its discretion. If the law were otherwise, a party in breach would have an unqualified right to an extension of time which would defeat the purpose of the rules which is to provide a time table for the conduct of litigation."

12. In this application no particulars were given as to the difficulty encountered by Mr. Ali or how many witnesses were required or what attempts were made to get those witnesses to sign the statement. Further for a witness summary no compliance with the requirement to produce evidence showing why it is not possible to obtain a witness statement. See rule 29.6 (3) CPR.

13. It was another instance of the matter dragging along without any real attempt by the Claimant to assist the court in managing the issues for determination or to resolve it completely. It is not enough to say that no trial date was set as the pre trial dates was fixed for the purpose of examining the witness statements and I expressly told the parties this at the previous pre trial review. The parties were well aware of the Court intention to deal with this case on the next occasion. The pre trial review became a wasted exercise and a waste of the Court's resources.

14. Striking out the application was a proportional response to the nature of the application, bereft of evidence or any good reasons. In my view the Claimant's prejudice of having the

matter struck out is a consequence of referring the application must be balanced against the prejudice of lingering litigation against the Defendant, the court's proper allocation of resources, the administration of justice. Further no reasons were offered why such a long time was required and no guarantee of the Claimant filing witness statements in a shorter period.

15. Also coming up for hearing on that day was the Defendant's application for the enlargement of time for the filing of its witness statements. However as a consequence of the dismissal of the Claimant's application, the claim itself was dismissed and it was therefore not necessary to deal with the Defendant's application.

16. Parties must understand that they must act and make responsible choices in the conduct of their litigation under the CPR. They must appreciate the high standards that are being set by the Court to change the existing culture of civil litigation. Where parties fail to properly prosecute their matter and fail to provide good reasons for doing so they will have no one other to blame than themselves.

Dated this 14th December 2012

Vasheist Kokaram
Judge