

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. **CV2018-01418**

BETWEEN

JASMINE ALEXANDER

Claimant

AND

SHAZAM MOHAMMED

First Defendant

WARNERVILLE GRAIN MILLS LIMITED (WGM)

Second Defendant

MINISTRY OF AGRICULTURE, LANDS AND FISHERIES

Third Defendant

Before the Honourable Mr. Justice V. Kokaram

Date of Delivery: Wednesday 22 May 2019.

Appearances:

Ms. Jasmine Alexander, Self- Represented.

Mr. Terrence Bharath instructed by Ms. Marina Narinesingh, Attorneys at Law for the Second Defendant.

JUDGMENT-

SECOND DEFENDANT’S PROCEDURAL APPLICATION TO STRIKE OUT THE CLAIM

1. Ms. Jasmine Alexander is a self-represented Claimant. All her efforts to obtain legal representation has been either futile or ended with “under representation”. She has now valiantly taken up the battle of her own cause to bring before this Court her claims concerning damages and losses in excess of thirty six million dollars allegedly sustained at

her farm in Coalmine, Sangre Grande. She claims that the Defendants have caused this loss with both the poor management of the First Defendant's chicken farm resulting in an influx of corbeaux in the area which has now infested her own property and the failure of the Second Defendant¹ as that farm's contractor to cease supplying chickens to it. WGM has applied to strike out her claim as being unsustainable and an abuse of process.

2. Self-represented litigants deserve special attention in our legal system. The new Civil Proceeding Rules 1998 (CPR) was designed to make civil litigation less complicated and less costly than prevailed under the 1975 Rules of Supreme Court². However, there is no doubt that civil litigation still comes with a high price tag and still remains complex for the untrained person seeking access to justice.
3. One of the pillars of giving effect to the overriding objective is the principle of equality, of maintaining parties on an equal footing. It is the Court's duty to evenly hold the balance between both parties: the self-represented on the one hand in this case and the parties with legal representation on the other. In matters such as this and with this Court's continued thrust to humanise the delivery of justice, accommodation must be made for the self-represented litigant to achieve that "equality of arms" in these proceedings so that both parties can be on an equal footing in this case. To this extent, Ms. Alexander was allowed to sit at the bar table and allowed to address me clearly and openly without limitations both in writing and orally. At the end of the hearing of WGM's application, she submitted further submissions without any direction by this Court to do so. Those submissions have been taken into account in preparing this judgment. All her questions as to process were answered by the Court. I paused before delivering this judgment to explain some elements of the civil litigation process so that Ms. Alexander can feel more comfortable with the materials and this forum.
4. It is important that both parties "feel" that justice is done with their respective cases. To that extent, both parties must be given full opportunities to be heard, given voice to articulate their concerns that give rise to this dispute so that the Court can be better

¹ **Warnerville Grain Mills Limited (WGM)**

² See the Forward of the Civil Proceeding Rules 1998 (CPR)

appraised of the merits and methods by which those concerns and issues can be peacefully addressed.

5. To this extent, my judgment on this procedural application is addressed to both Ms. Alexander and WGM directly. I have structured this judgment in three parts. The first dealing with Ms. Alexander's complaints concerning her farm in Sangre Grande. Second, her claim against WGM and thirdly the application to strike out her claim as against WGM.

Ms. Alexander's farm in Sangre Grande

6. Ms. Alexander, I understand that you are a livestock farmer who for the past twenty (20) years owned and operated a forty seven (47) acre farm located at LP 54 Cunapo Junction Road, Jairasingh Village, Coalmine, Sangre Grande. The commercial activities on the farm included a 30,000 broiler farm together with rearing and breeding of free ranging sheep and their lambs. You have developed additional lands over the years for the livestock operation to include major mechanical infrastructural works including perimeter fencing and pasture fencing and the restructure of the sheep pens to include grass racks in each of the pens. You also sought to bring the lands opened and to grazing status.
7. In 2011 you encountered difficulty in securing good and adequate labour. In the end of 2011 you let out your broiler farm to be operated by the serviceman of your contractor but the contract failed and you were forced to seek legal intervention. You were however, unable to reinstate your broiler farm. In 2013, your only source of income was from your livestock operations.
8. You contend that before your farm was established, there was a broiler farm operating at the location of the First Defendant's farm. Subsequently, that farm was sold and you were informed that the First Defendant was the agent appointed by the owners to manage that farm and continue the broiler operation.
9. Ms. Alexander, you have initiated several proceedings in our Courts in relation to your farm which came up for hearing before various judges:

- a) **Jasmine Alexander v Keith Parkinson and Master Mix of Trinidad Limited CV2015-**

- 03074 which is a claim for damages for breach of contract. By order dated 14th June 2018, by Justice Donaldson-Honeywell, the Re Re Amended Claim Form and Statement of Case were struck out as it disclosed no grounds for the claim was unintelligible and could not be pleaded to.
- b) **Jasmine Alexander v Richard Louis** CV2018-01854 in which you claimed against the Defendant for complete demise of your livestock operation and damage to your farm. The Defendant filed an application for Summary Judgment on 6th February 2019. The hearing of the application is scheduled for 30th April 2019.
 - c) **Jasmine Alexander v Nicola Tessa Alexander-Sloane Seale and Republic Bank Limited** CV2018-01855 in which you claimed damages for breaches committed in the role of the First Defendant as executrix of a Will and against the Second Defendant for negligence in facilitating the First Defendant's action. The Case Management Conference is adjourned to 2nd October 2019 by order of Justice Wilson dated 1st May 2019. You appealed the Judge's decision to strike out your reply.
 - d) **Jasmine Alexander v Gitanjali Gopeesingh** CV2018-04651 in which your complaint was your disagreement with the steps taken by the Defendant as her former attorney in High Court Proceedings. On 16th January 2019, the Defendant filed an application to strike out your Claim Form and Statement of Case which was to be heard on 23rd March 2019.

10. In this case you have argued that the management of the First Defendant's farm began to deteriorate in 2013. There was the presence of corbeaux and stench being emitted from that farm. You decided to investigate the situation and noted that labourers were disposing carcasses inappropriately which attracted the corbeaux to the area.

11. You requested that the labourers provide the First Defendant's contact information but they refused to do so. You informed them that your livestock and livelihood were under threat from the corbeaux due to their practice of dumping the carcasses in the open.

12. The situation continued to deteriorate. The number of carcasses resulted in an increase in

the presence of corbeaux and the stench became unbearable. A main contention in this case is that the First Defendant was aware of what was occurring at your farm and had the support of WGM who was also aware of the situation through their serviceman. Importantly, the case against WGM is that under any level of good corporate governance it ought to have exercised a duty of care to the community to investigate the allegations made by the villagers in relation to the First Defendant's farm.

13. The corbeaux population began to increase, entered your farm and compromised your livestock, causing the death of some of the lambs. It is your contention that the First Defendant was negligent and "created the disaster at the farm he managed." With all of this happening, your farm subsequently became the corbeaux's feeding and resting ground after the grow out in the First Defendant's farm came to an end which further compromised your livestock. The large numbers of corbeaux never left your farm until July, August 2014. To date, your farm remains under threat from the corbeaux every lambing season which is twice per year.

14. You contend that the demise of your farm, livestock and livelihood began with the First Defendant, was condoned by WGM's irresponsible corporate conduct and governance and the Third Defendant failed to intervene in the situation either due to the absence of a policy or the mismanagement of the said policy. Your claim in damages is in the sum of \$5,892,000.00 against the First Defendant, \$17,361,626.00 against WGM and \$13,500,000.00 against the Third Defendant.

15. The First Defendant has filed a defence. Briefly, the contention raised by the First Defendant include the following. He contends that he has no interest in the farm located at LP 50 Cunapo Junction Road, Jairasingh Village, Sangre Grande. Rather, the First Defendant is the Real Estate Agent that facilitated the sale of the farm to Mr. Kemraj Persaud and Mr. Pradeep K.M Persaud who reside in Canada. These owners of the farm requested the First Defendant to source a farm manager and assistant willing to reside on the farm. He did the necessary checks to ensure that the relevant persons were competent to undertake the tasks requested or job requirements on the farm. Over the years there were several managers and assistants hired by the owners of the farm. In short, he contends that he had

no part in the management of the farm and did not possess any sole authority to implement any procedures. He acted as an agent to the owners for the sole purpose of dealing with the employee's wages and locating and hiring employees when necessary.

16. While he admits that there was an underground leak in one of the pens on the farm resulting in a stench, he claims it was rectified by digging a proper drain to resolve the stench problem. WGM worked with the manager and assistant to assess the growth and development of the chickens and rectify any areas of issue in relation to the farm. The First Defendant was never given any notification of any disposal issues or dissatisfaction with the premises by WGM and further, WGM never mentioned a corbeaux presence or issue on the farm.

17. The First Defendant contends that he had no part in the management of the farm and did not possess any sole authority to implement any procedures. He acted as an agent to the owners for the sole purpose of dealing with the employees' wages and locating and hiring employees when necessary.

18. He also contends that for the duration of the operation of the farm, there was never any health risks or violations reported to the First Defendant's office by any Health Inspector. There was also never indication as to the presence of corbeaux on the said farm by any of the employees on the farm.

19. The First Defendant therefore contends that he is not responsible for the demise of your farm, livestock and livelihood or damages suffered by you, Ms. Alexander. At the appropriate stage we will investigate these rivalling claims between you, Ms. Alexander and the First Defendant. For the moment, however, our focus is on the claim you have brought against WGM.

Ms. Alexander's Claim against WGM

20. Ms. Alexander, you claim that WGM condoned the breaches by the First Defendant because they should have noticed the increase of corbeaux on the First Defendant's farm but instead they facilitated another growout by the First Defendant. It is your contention that WGM'S irresponsible corporate conduct and governance caused damage and loss to your farm. You

state that WGM was repeatedly alert to the poor management of the First Defendant's farm and had the ability to remedy the situation and chose not to do so. They further ignored the complaints from members of the pre-existing community, permitted operations at the First Defendant's farm to continue, refused to acknowledge the poor management and should have discontinued placement of chicks at the farm until the farmer was willing to follow the operational procedures established by the contractor. Therefore, you contend that WGM continued to cause stress and personal injury to you after being advised of the destruction of your livestock by supplying the First Defendant's farm with the inputs necessary to finish that growout when they had the opportunity to partially remedy the situation and chose not to do so.

The application to strike out

21. WGM has not yet filed a defence and has now applied³ to strike out the Claim Form and Statement of Case⁴ pursuant to Rules 26.1 and 26.2 of the CPR. The grounds for the application are:

- (i) The Claimant has advanced a matter which constitutes an abuse of the Court's process as it fails to identify a cause of action against the Second Defendant.
- (ii) The incident which the Claimant complains is not founded on any arguable principle of law whether in tort or otherwise.
- (iii) The claim is statute barred.
- (iv) There is no cause of action disclosed between the Claimant and the Second Defendant which can be founded on corporate responsibility and governance.
- (v) The pleading that profits are placed above the negative consequences to the villagers and society at large do not found a cause of action against the Second Defendant.
- (vi) The pleading is confusing as it moves from the first person to the third person and is

³ Second Defendant's Application Filed 25th June 2018

⁴ Claim form and Statement of Case filed 24th April 2018

otherwise confusing.

(vii) The pleading seeks to find fault with the Second Defendant and to marry that fault with the effect on villagers that cannot found a cause of action in the Claimant.

(viii) The claim for damages in addition to not being attached to any arguable cause of action has no relationship to the pleaded claim. There is no pleading of any facts upon which the Claimant can rely to found a claim for \$17,361,626.00.

(ix) The Claimant has no contractual relationship with the Second Defendant.

(x) There are no facts upon which the Claimant can claim pure economic loss from the Second Defendant in the law of tort.

(xi) The pleading is a letter of complaint which is unable to found a legal cause of action.

22. WGM also seeks an extension of time to file its Defence pending the determination of this application.

Striking Out a Statement of Case

23. I will briefly set out some of the principles that the Court will take into account in considering an application to strike out a claim pursuant to Rule 26.2 (1) of the CPR. The rule confers a discretion on the Court to strike out a claim if it discloses no ground for bringing the claim or is prolix or is an abuse of process. It is a draconian remedy and one of last resort. A Court must be sure that there is no justification for investing the Court's and litigant's resources in continuing with further pre-trial and trial process to interrogate the claim where the outcome can be seen to be a foregone conclusion. See **Zuckerman on Civil Procedure, Third Edition**, paragraph 9.36⁵.

24. The Court is not assessing the merits or strengths of the Claimant's case as it would in a summary judgment application. The exercise is confined at looking at the Claimant's case

⁵ "The full pre-trial and trial process is appropriate and useful for resolving serious or difficult controversies, but not where a party advances a groundless claim or defence, or abuses the court process. There is no justification for investing court and litigant resources in following the pre-trial and trial process where the outcome is a foregone conclusion. Nor is it appropriate to do so where a litigant effectively refuses to engage in a legal process by setting out to abuse or subvert it. In such cases the court has therefore the power to strike out the offending claim or defence and thereby avoid unnecessary expense and delay."

as presented and asking the simple question is this doomed to fail without any further investigation of the facts. See **Kadir Mohammed v The Attorney General of Trinidad and Tobago** CV2013-04647⁶.

25. The Court must therefore be convinced that it is just to stop the proceedings now. That the claim is unwinnable. That to do so is a more economical use of the parties' and Court's resources, and it is a proportionate response based on the available evidence. While in **Real Time Systems Limited v Renraw Investments Limited** [2015] UKPC 6 Lord Mance commented that the Court can consider any alternatives, there is no application made to amend the Statement of Case to cure what appears to me to be an unwinnable case for the reasons set out in the judgment.

26. The Court must therefore be mindful of the principles of proportionality, equality and economy in the exercise of its discretion to strike out a claim at such an early stage. While a Court would be reluctant to shut you out, Ms. Alexander, from pursuing a claim against WGM, equally the Court must be satisfied that your claim is actionable and deserves further investigation using the forensic tools available in our civil process. Ms. Alexander, I am unfortunately not satisfied that your case against WGM is actionable. While I understand your frustration over the underperformance of your farm, the atrocities committed by the corbeaux and the tragic story you have painted of your ewes and lambs, your case against

⁶ In **Kadir Mohammed v The Attorney General of Trinidad and Tobago** CV2013-04647 it was noted:

"14. The Court in exercising its discretion to strike out a claim must give effect to the overriding objective....."

15.The claims that will be filtered out of the system by striking out under this rule will be the hopeless and unwinnable cases and those cases where there are no triable issues. Weak cases do not justify the use of the Court's draconian measure of shutting the litigant out of Court. The Court must be astute in exercising this power to bear in mind the intrinsic justice of the case and to give effect to the overriding objective and principles espoused therein of equality, proportionality and economy....

.....

17. The Court must be careful therefore to only resort to striking out a claim if it is satisfied that such a response is economical, fair and proportionate. Would it be a more economical use of the Court's and parties' resources and time? Would it be fair to the Defendant if it is called upon to answer the claim balanced against the right of the Claimant to pursue his claim? Would it be proportionate to the nature of the allegations made and the nature of the matter, in this case essentially one of calling on the prosecutor in the criminal justice system to account for the use of prosecutorial powers. Such a decision calls for a broad judgment after considering the available possibilities and concentrating on the intrinsic justice of the case in light of the overriding objective and against the backdrop that this is a draconian remedy to be used sparingly."

WGM seems more of complaints about moral responsibility which are not actionable in any recognised action in tort, negligence, common law, equity or corporate law.

The Submissions

27. Bearing these principles in mind, Ms Alexander, I have studied all of your written materials and oral representations. Among those submissions, you submitted that WGM has established no grounds for the “draconian measure” of striking out. You contend that “Corporate Governance has long been established internationally as statements of fact by the Board of the Company and while not widely legislated, Companies and other institutions have incorporated as part of their modus operandi, various self-regulating policies directed at improving their cognizance and respect for the environment and societies. No longer is it acceptable for Companies to pursue self-interested profit motive leaving the cost to be borne by others.” You have cited the case of **David Brian Chandler v Cape PLC** [2011] EWHC 951.

28. Ms. Alexander, you have referred to the Wikipedia definition of Corporate Responsibility which states:

“Corporate social responsibility (CSR, also called corporate sustainability, sustainable business, corporate conscience, corporate citizenship, conscious capitalism, or responsible business) is a type of international private business self-regulation. While once it was possible to describe CSR as an internal organisational policy or a corporate ethic strategy, that time has passed as various international laws have been developed and various organisations have used their authority to push it beyond individual or even industry-wide initiatives. While it has been considered a form of corporate self-regulation for some time, over the last decade or so it has moved considerably from voluntary decisions at the level of individual organisations, to mandatory schemes at regional, national and even transnational levels.”

29. You submitted that the value of the claim reflects a sum that is less than the value of the farm where through the actions of WGM, the farm has “returned to abandon” after approximately twenty (20) years of committed work from you.

30. With respect to the claim being statute barred, you point out that WGM has failed to acknowledge the extended period between cause and effect and in these proceedings, the period of limitation can only be considered after the cessation of effects which continues to date. You state “the claim is arguable and if such a claim has not arisen in this jurisdiction to date, there is no correlation between an absence of litigation and breaches noted herein where the victims/claimants are disadvantaged to pursue or Counsel is not easily retained to bring such claims to the court.”
31. WGM submitted that to prove a claim in tort a litigant must establish four basic elements: (i) duty of care (ii) breach of the duty (iii) causation and (iv) damage or loss. If a party fails to establish a duty then the claim must fail. See Lord Esher MR in **Le Lievre v Gould** [1983] 1 QB 491 at 49 “A man is entitled to be as negligent as he pleases towards the whole world if he owes no duty to them.”
32. WGM contends that there is no known or recognized “duty of corporate responsibility” in the law of tort. Rather, corporate governance is a framework or set of arrangements that are internal to a corporation. The central tenet of corporate responsibility or governance is that the obligation is internal to the corporation as opposed to the public and therefore, a third party cannot complain if a corporation were to breach its own internal policies and systems. However, even if there was a “duty of corporate responsibility and governance”, they state that you, Ms. Alexander, have not established any ground upon which WGM could be held responsible for the actions of the First Defendant or the offending farm. Nonetheless, WGM submits, Ms. Alexander, that your issue of contempt of WGM towards the villagers, the duty of good corporate governance and the duty of corporate morality do not amount to a claim known to law.
33. WGM lists the following deficiencies in the pleading:
- (i) The ownership of the farm by the First Defendant has not been pleaded nor the relationship of the farms to each other.
 - (ii) The duty of care owed by WGM to Ms. Alexander has not been pleaded.
 - (iii) Particulars of negligence have not been pleaded.

- (iv) The grounds as pleaded throughout the Statement of Case is the duty of good corporate governance and a duty to villagers and the community.
- (v) The trust of the claim of Ms. Alexander seems to appear in paragraphs 34 and 35 of the Statement of Case. In these paragraphs the breach is expressed as an absence of corporate morality and good corporate governance. Also alleged is the issue of WGM having no regard to the interest of society at large. Ms. Alexander must show in her pleading a specific duty of care and breach which causes injury to her farm.
- (vi) Paragraph 46 of the Statement of Case complains of the obligations of WGM to investigate the complaints of villagers. Paragraph 46 also speaks about the contempt towards villagers. That is a plea that cannot found a cause of action.
- (vii) Ms. Alexander has failed to advance any plea and/or ground and/or cause of action which is likely to have any chance of success before the Court.
- (viii) From a reading of the pleading, it is unclear as to whether Ms. Alexander is advancing a claim in nuisance or negligence. The ingredients in either cases have not been pleaded to advance a case.
- (ix) The Statement of Case moves from party to party and is inconsistent in pleading the duties of any party blamed. Ms. Alexander's claim against WGM and the Parties are confusing, inconsistent and often tiring to read.

34. Further, WGM submits that there is nothing in the body of the pleading to connect the claim to the damages advanced by you, Ms. Alexander. They contend that your claim against WGM is the disruption to all other farm activities including 30,000 broiler chickens and income from sales, fifty percent (50%) of which is to be placed into a fund. They contend that you also claim damages in the sum of \$17,361,626.00 and using Appendix 2 of your Statement of Case claims loss of annual revenue but you do not state what financial year it is referring to and relies on a figure of \$875,000.00. The sum moves to \$17,361,626.00 by applying a reinvestment rate of 25% compounded annually to 2018 and then adds a further three (3) years to the claim to 2021. This, WGM submits, fails to connect to the pleadings and a claim for negligence cannot succeed without resulting damages.

35. WGM contends that the claim is statute barred since you, Ms. Alexander, first contacted the First Defendant on 21st October 2013 and thereafter on 21st November 2013 submitted a written claim for the losses suffered on her farm. Pursuant to section 3(1) (a) of the Limitation of Certain Actions Act Chap 7:09 actions founded on contract (other than a contract made by deed) on quasi-contract or in tort shall not be brought after the expiry of four years from the date on which the cause of action accrued. Therefore, the claim would have become statute barred by 20th October 2017 or 20th November 2017 and the claim was filed 24th April 2018.

36. WGM also contends that the claim is an abuse of process in that it has referred the Court to several matters which are not known to law and which does not advance a legal position. It is “tantamount to a letter of complaint” and is contrary to the overriding objective of the CPR. They further contend that the Statement of Case suffers from being prolix, is embarrassing, confusing as it moves from first person to third person and contains statements that are scandalous, inappropriate and irrelevant to the claim.

Analysis

37. In this case, the authorities are clear. Ms. Alexander has a right to have her matter heard and WGM has a right not to be burdened by a frivolous claim. This balancing exercise which the Court must undertake is in keeping with the overriding objective of dealing with cases justly and giving effect to the principles of equality, economy and proportionality.

38. Is this Court convinced that the proceedings against WGM should stop, that this case is “unwinnable”? In examining Ms. Alexander’s claim and submissions and that of WGM, I can see no basis why these proceedings should continue against WGM. I say so for the following reasons:

- Ms. Alexander’s Statement of Case of eighty one (81) paragraphs is incoherent and has not identified a cause of action for WGM to answer nor has it disclosed a recognizable claim against WGM. The pleading of her claim against this WGM is unduly prolix.
- She has not pleaded the particulars of negligence and has failed to identify a specific

duty of care and breach of that duty owed to her by WGM which caused injury to her farm. Instead, she contends that WGM breached its duty of corporate responsibility and governance which is not justiciable in the law of tort or any recognised cause of action.

- Her claim for damages is not supported by her pleadings to demonstrate how she has arrived at the figures claimed.
- From an examination of Ms. Alexander's pleadings, she first contacted the First Defendant on 21st October, 2013, the date on which the cause of action would have accrued. Her claim was filed in 24th April 2018 and is therefore statute barred.
- She claims that WGM was unjustly enriched from the operations of the farm of the First Defendant. However, there is no relationship between an unjust enrichment and a duty of care owed to Ms Alexander. At best, unjust enrichment can only represent a claim as between the farm and its contractor.
- All of the complaints of Ms. Alexander emanate from the poor management and the negligent management of the First Defendant's farm. There is no cause of action known as bullying, harassment and discrimination in relation to the conduct of WGM and Ms. Alexander.
- A duty of care and duty of the corporate citizen will be more relevant to the claim Ms. Alexander has against the operators of the First Defendant's farm and not its contractor. The relationship between the two are too remote to ascribe any liability to WGM for losses sustained by Ms. Alexander.
- Ms. Alexander has identified in her written submissions that her causes of action are breach of duty of care, discrimination of lesser people, breach of civil rights, inflation of emotional distress, negligence, unjust enrichment and private nuisance. None of these claims are actionable against WGM based on the facts as set out in her Statement of Case.
- At best, her claim relies on an absence of corporate morality and duty to the

villagers at large. No specific duty has been alleged against WGM either in negligence or nuisance. It is difficult to see how based on these pleadings, even if it goes to trial, how the actions of WGM in supplying chickens has caused a loss to her due to the poor management of the First Defendant's farm which is not the responsibility of WGM.

- The claim in damages is confusing and does not properly connect the claim of the damages advanced.

39. It will be unfair, therefore, to subject WGM to defend this claim in its present form. To do so will be a misuse of the parties' and Court's resources and contrary to the overriding objective of the CPR. Short of the Court giving legal advice to Ms. Alexander on any potential claim against WGM, there is no possible amendment that could cure this claim.

40. I am therefore satisfied Ms. Alexander's Claim Form and Statement of Case should be struck out as they disclose no ground for bringing the claim, are an abuse of process and are prolix.

The Court's Guide for Self-Represented Litigants/Litigants in Person

41. The Court is mindful that Ms. Alexander is a self-represented litigant who has passionately tried to litigate this claim to best of her knowledge and reach of her resources. In the Judicial Education Institute (JEI) handbook "**Exploring the Role of the CPR Judge**"⁷ it was noted that self-represented and under-represented litigants are a growing occurrence in Trinidad and Tobago and further:

"Both self- and under-represented litigants must be treated no differently from all other litigants, in that they must be the beneficiaries of an objective standard of fairness. They are equally entitled to have their matters dealt with justly and certain accommodations may be necessary in order to do so."

42. Reference is made to the "Statement of Principles on Self-Represented Litigants and Accused Persons" adopted by the Canadian Judicial Council where the following important principles were pronounced:

⁷ "Exploring the Role of the CPR Judge" Justice Peter Jamadar JA, Kamla Jo Braithwaite, page 50

- Self-represented persons are generally uninformed about their rights and about the consequences of choosing the options available to them; they may find court procedures complex, confusing and intimidating; and they may not have the knowledge or skills to participate actively and effectively in their own litigation.
- Given these factors, it is important that judges, court administrators and others facilitate, to the extent possible, access to justice for self-represented persons.
- Judges must exercise diligence in ensuring that the law is applied in an even-handed way to all, regardless of representation.
- It is clear that treating all persons alike does not necessarily result in equal justice. The Ethical Principles for Judges also cites **Eldridge v. British Columbia (Attorney General)** [1997] 3 S.C.R. 624 on a judge’s duty to “rectify and prevent” discriminatory effects against particular groups.
- In the same manner as with other litigants, self-represented persons may be treated as vexatious or abusive litigants where the administration of justice requires it.
- Members of the Bar are expected to participate in designing and delivering legal aid and pro bono representation to persons who would otherwise be self-represented, as well as other programs for short-term, partial and unbundled legal advice and assistance as may be deemed useful for the self-represented persons in the courts of which they are officers.
- Members of the Bar are expected to be respectful of self-represented persons and to adjust their behaviour accordingly when dealing with self-represented persons, in accordance with their professional ethical obligations.

43. I also took notice of the guidance provided for litigants in person from the White Book:

- The provisions of this Guide in general apply to litigants in person. Thus, for example, litigants in person should, unless they have good reason for not doing so:

- 1) Prepare a written summary of their argument in the same circumstances as those in which a represented party is required to produce a skeleton argument;
 - 2) Prepare a bundle of documents in the same way that a represented party is required to produce a bundle of documents; and
 - 3) Be prepared to put forward their argument within a limited time if they are directed to do so by the court.
- This means that litigants in person should identify in advance of the hearing those points which they consider to be their strongest points and that they should put those points at the forefront of their oral and written submissions to the Court.
 - It is not the function of court officials to give legal advice. However, subject to that, they will do their best to assist any litigant.
 - Where a litigant in person is the applicant, the court may ask one of the represented parties to open the matter briefly and impartially, and to summarise the issues.
 - It is the duty of an advocate to ensure that the court is informed of all relevant decisions and enactments of which the advocate is aware (whether favourable or not to his or her case) and to draw the court's attention to any material irregularity.
 - Representatives for other parties must treat litigants in person with consideration. They should where possible be given photocopies of any authorities which are to be cited before the case starts in addition to the skeleton argument. They should be asked to give their names to the usher if they have not already done so. Representatives for other parties should explain the court's order after the hearing if the litigant in person does not appear to understand it.

- If a litigant in person wishes to give oral evidence he or she will generally be required to do so from the witness box in the same manner as any other witness of fact.
- A litigant in person must give an address for service in Trinidad and Tobago. If he or she is a claimant, the address will be in the claim form or other document by which the proceedings are brought. If he or she is a defendant, it will be in the acknowledgement of service form which he or she must send to the court on being served with the proceedings. It is essential that any change of address should be notified in writing to the Court Office and to all other parties to the case. Notice of hearing dates will be given by post to litigants at the address shown in the court file. A litigant in person will generally be given a fixed date for trial on application. A litigant in person who wishes to apply for a fixed date should ask the listing office for a copy of its guidance notes for litigants in person.

44. Reference must also be made to our own guides applicable to litigants in person from Judicial Education Institute (JEI) handbook **“Exploring the Role of the CPR Judge”**⁸:

- Begin by introducing yourself, and explaining the court’s protocols and expectations (be case specific);
- Be cordial and courteous at all times, even when being firm and decisive;
- Ensure equal treatment of all parties; even in the simplest things, such as the way parties, witnesses and attorneys are addressed. As discussed throughout this publication, equality of treatment depends on the individuals involved and does not mean that everyone receives the same treatment;
- Pay attention to courtroom communication: written, verbal and non-verbal. It should be clear, easily understood by all parties and unbiased;
- Confirm whether English is a first language or sufficiently understood. If not, find an effective means of communication;

⁸ “Exploring the Role of the CPR Judge” Justice Peter Jamadar JA, Kamla Jo Braithwaite, pages 53-54

- Quality focused and clear and decisive pre-trial management will facilitate the adequacy of case management and pre-trial explanations;
- Information should be given in small amounts at a time. Too much information can result in information overload. Clarification about understanding should constantly be sought;
- Practice active listening. Avoid the excessive use of legalese, and explain all legal jargon. Check to confirm that there is understanding;
- Take the time to explain the procedure for each discrete event throughout the entire process;
- Take the time to explain the purpose of the process; doing so for each discrete event throughout the process;
- Be clear in explaining what the issues are, explaining what is required to prove and disprove each issue;
- Explain the necessity for proof and the types of proof that are permissible (e.g. oral testimony, documentary evidence, expert evidence), including what evidence is admissible and inadmissible. Also, explain the difference between facts and opinions and when the latter are of probative value. Do this before disclosure and witness statements/summaries are ordered;
- Explain before the trial begins what are the relevant protocols and procedures, and the kinds of questions that can be asked (giving examples of what is and is not permissible);
- Explain the burden of proof and standard of proof in clear and understandable language. Check to confirm that there is understanding;
- Be astute to the possibility of a lack of or impaired mental capacity for the purposes of conducting litigation (a general threshold being the ability to be able to understand what is happening and to meaningfully participate in the proceedings);
and
- Give an assurance (and follow through on it) that throughout the proceedings

there will be explanations given and the permission that questions can be asked as and when the need arises.

45. A final note on communicating with self-represented litigants. Like Ms. Alexander, some self-represented litigants may not have an email address or communicate electronically. This poses a challenge in the expeditious serving of notices and documents required under the CPR. The Court may consider providing a help desk to facilitate such communication by self-represented litigants by using, for instance, computer stations in the Court Office assigned for such use with the requisite protocols.

Conclusion

46. I have noted Ms. Alexander's claim against the First Defendant and her strong criticism of that defence and her submission that she should have summary judgment against the First Defendant. Her claim against the First Defendant will now be investigated in our first CMC. For the moment her claim against WGM will be struck out.

Vasheist Kokaram
Judge