THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

No. CV 2019-02219

IN THE MATTER OF THE JUDICIAL REVIEW ACT CHAP 7:08 AND PART 56 OF THE CIVIL PEOCEEDINGS RULES 1998

AND

IN THE MATTER OF AN APPLICATION BY WILD GOOSE LIMITED FOR JUDICIAL REVIEW OF: A DECISION BY SENIOR SUPERINTENDENT OF POLICE GARTH NELSON AND THE ENVIRONMENTAL MANAGEMENT AUTHORITY TO UNLAWFULLY SHUT DOWN THE EVENT TAILGATE CARNIVAL ON THE 27TH FEBRUARY 2019

BETWEEN

WILD GOOSE LIMITED

Claimant

AND

THE ENVIRONMENTAL MANAGEMENT AUTHORITY

OF TRINIDAD AND TOBAGO

First Defendant

SENIOR SUPERINTENDENT OF POLICE GARTH NELSON

Second Defendant

Date of Delivery 25 June 2021

Before the Honourable Madam Justice Margaret Y Mohammed

Appearances:

Mr Christophe Rodriguez instructed by Rhyjell Ellis Attorneys at law for the Claimant

Mr Kelvin Ramkissoon instructed by Ms Rhea Robinson Attorneys at law for the First Defendant

Mr Lester Chariah instructed by Mr Joel Roper Attorneys at law for the Second Defendant

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JUDGMENT

Introduction

1. The First Defendant is the statutory body in this jurisdiction which is charged with the responsibility of co-ordinating, facilitating and overseeing the execution of the national environmental policy and programmes; promoting public awareness of environmental concerns, establishing an effective regulatory regime to protect, enhance and conserve the environment and taking appropriate action for the prevention and control of pollution and the conservation of the environment. A common feature of Trinidad and Tobago's Carnival is outdoor parties where the number of patrons vary from a few hundred to a few thousand. A staple at these events are live performances and DJ music. The Claimant is an event management and entertainment company. On 26 February 2019, the Claimant hosted an event, at the Paddock area of the Queen's Park Savannah ("the venue") entitled Tailgate Carnival ("the event"). This claim arose from the decision of the officers of the First Defendant and the Second Defendant to shut down the event.

The Claimant's Case

2. The Claimant's position was set out in two affidavits of Khama Taylor-Philip[1] ("Mr Philip"). Prior to the event, a Noise Variation ("the Noise Variation") was procured for and on behalf of the Claimant in accordance with Section 51 (2) of the Environmental Management Act[2] ("the EM Act"), and the Noise Pollution Control Rules, 2001 ("the NPCR") . The Noise Variation permitted the Claimant to play music at the event at 85 decibels from 6:00pm-8pm and then at 75 decibels from 8pm- to 2:00 am on the 27 February 2019.

[1] Affidavit filed on 27 May 2019 and exhibited as 'B' in the Fixed Date Claim filed 10 June 2019; and Affidavit filed 10 March 2020
[2] Chapter 35:05

3. Prior to the event, the Claimant also procured the relevant Theatre and Dancehall License, an Occasional Spirit Retailer's and a Copyright Music Organization License.

4. At the venue, on the night of the event, around 8:30 pm, Mr Philip who was one of the Claimant's representative, was approached by two police officers, one of whom identified himself as PC Hume ("PC Hume"). He was asked to accompany PC Hume and the other officer to the location where they were taking readings of the Noise levels at the event. Mr Philip, PC Hume and the other officer, proceeded towards the roadway at the front of the Queen's Park Savannah and headed in an easterly direction for about 200 meters and stopped at the corner of Dere Street and Queen's Park Savannah.

5. PC Hume took Mr Philip to a device on top of a tripod stand which he described as the sound monitoring device and asked Mr Philip to produce his Noise Variation. PC Hume then looked at the device again and told Mr Philip that the noise coming from the event was supposed to be no more than 75 decibels at this time. Mr Philip was then instructed to observe the device and saw that the reading was fluctuating between 84-88 decibels. PC Griffith ("PC Griffith") joined Mr Philip and PC Hume and informed Mr Philip that he should call the sound engineer and have him adjust the sound. Mr Philip contacted Mr Kwasi Taylor ("Mr Taylor") another representative of the Claimant who was in the venue at the time, and informed him that the Claimant needed to turn down the volume level.

6. During the conversation with Mr Taylor, Mr Philip kept an eye on the device and observed the levels were fluctuating between 83 and 76 decibels, with the lowest being 76 decibels. At that point, according to Mr Philip, PC Griffith suggested to him that if the Claimant was unable to achieve the required noise level in accordance with the Noise Variation, they could impose a fine on the Claimant instead of shutting down the event and the Claimant could continue at the current level which was approximately 85 decibels.

7. Mr Philip indicated to PC Griffith that the Claimant would continue to make efforts to decrease the volume levels before accepting the fine. Those efforts continued without success resulting in Mr Philip indicating to PC Griffith that the Claimant would accept the previously discussed fine. PC Griffith responded “Paying it don’t make this okay but it’s carnival time, you all could stay at that level, we will not shut down the event”.

8. Mr Philip returned to the venue. At around 10:50pm, a skit/dialogue was being performed on stage and the master of ceremonies, went onto the stage and said to the crowd words to the effect that "they asked us to take the volume down but its carnival and I don't care" in an attempt to energize the crowd.

9. Soon after the execution of this skit, three officers, including PC Griffith and PC Hume approached Mr Philip in the backstage area. Both PC Griffith and PC Hume indicated that the representatives of the Claimant were being disrespectful.

10. Mr Philip explained to the officers that the skit was pre-planned and it had nothing to do with them and it was just a way to energise the crowd. The Second Defendant then asked whether everything was now okay, to which PC Griffith replied in the affirmative.

11. The Second Defendant then left but both PC Hume and PC Griffith stayed. PC Griffith then said to Mr Philip that the Claimant was over the approved decibel limit for the event and that if it went over the limit again the event would be stopped. Mr Philip reassured the officers that he would personally continue to oversee the noise levels, and both PC Hume and PC Griffith proceeded to another part of the venue.

12. At approximately 11:40 pm as the execution of the final pre-planned skit began, the DJ announced that the First Defendant had shut down the event and proceeded to apologise to patrons. At this time two big, black, tinted Special Utility Vehicles proceeded to the front of the venue through the crowd. When the vehicles got to the front, three popular soca artistes Voice, Lil Natty and Thunda emerged from the

sunroof of the vehicles and started to perform their hit song entitled “Pandemonium” which caused the crowd to erupt into a frenzy.

13. Within seconds, PC Hume ran onto the stage and indicated to Mr Philip that the event would be stopped in 2 minutes. Mr Philip attempted to find out why the event was being shut down before the scheduled end time of 2:00am. However, PC Hume indicated that it would be shut down in 1 minute.

14. Mr Philip met with all the officers who were gathered backstage. According to Mr Philip, PC Hume, indicated that the skits would make the Trinidad and Tobago Police Service (“TTPS”) and the First Defendant be seen in a negative manner by the public. He demanded an immediate public apology to the First Defendant or the event would be shut down. Mr Philip begged PC Hume to be reasonable, as the performance by Voice, Lil Natty and Thunda was still on-going at the time and assured him the apology would be made after.

15. Mr Philip also assured all the officers that the noise level would be reduced to the agreed 85 decibels again. In response PC Hume indicated that the members of the Claimant were being disrespectful to the officers.

16. According to Mr Philip, PC Hume indicated while the other officers were present, that the event was over and then went onto his phone and disappeared from backstage. At the conclusion of the performance by Voice, Lil Natty and Thunda, the DJ and master of ceremonies requested that the artistes thank and apologize to the authorities which they did.

17. After the apology some of the First Defendant’s officers present claimed that the artistes deliberately said "authorities" and not "EMA". PC Hume directed that the Claimant make a better public apology or the event would be shut down, however, by this time another prominent soca artiste was already on the stage performing. Mr Philip asked PC Hume if the Claimant would be allowed to re-issue the apology after the performance to which the officers agreed.

18. Mr Philip then immediately instructed the DJ to give a better apology. The music was stopped and the DJ apologized on behalf of the Claimant to the "EMA" for the skits and thanked them for allowing the event to continue. He also gave the assurance that there would be compliance with the noise levels.

19. PC Hume indicated that the second apology was still was not adequate. Mr Philip offered to apologise personally but PC Griffith refused. At the end of the soca artiste's performance, he expressed his disappointment with the low volume levels to Mr Philip who then apologised. Mr Philip indicated to the officers the said soca artiste's disappointment. Mr Philip also indicated to the police officers that there were a lot of moving pieces in an event, a lot of people had to do their job and try to perform at their best for the patrons, from time to time there is a breakdown in communication and the volume levels will spike in some instances. However, the police officers' response was negative.

20. At approximately 12:50am, the Second Defendant instructed that the event be stopped by turning off the music. The music was immediately turned off and the task force of the TTPS was called in to disperse the crowd. At that time there were between 2500-3000 persons at the venue.

21. Subsequent to the event, Mr Philip requested from the First Defendant, and the Police officers who were present at the time of the shutdown of the event, a readout of the noise level readings for the duration of the event and in particular the reading at the time the decision to shut down the event was made, however, no readout was provided.

22. PC Hume explained that the device which recorded the noise levels would have to be taken to an office where the readings would be extracted on a computer and printed out. Mr Philip was then informed that the readings would be provided to the Claimant the next day. However, Mr Philip stated that they were not provided with those readings on the next day.

23. Mr Philip deposed that he became angry, saddened and embarrassed by the decision of the Police to shut down the event because throughout the course of the night he had continuously worked with the officers of the First Defendant to maintain the noise levels at the agreed upon 85 decibels, he accepted a fine and responded to all of their requests. He also observed that several of the patrons were complaining loudly as they were being ushered out of the venue by the TTPS task force.

24. Mr Philip stated that he was also angry because of the losses that the Claimant would suffer as a result of the First and Second Defendants' decision to shut down the event before the scheduled end time. The Claimant's expenses were in the sum of TTD $352,657.50 and as a result of the decision(s) and/or action(s) of the First and Second Defendants to prematurely shut down the event and disperse the crowd gathered the Claimant suffered pecuniary losses in the sum of $44,082.19, which represented the cost~~s~~ of hosting the event per hour. Additionally, the Claimant suffered the loss of at least 1 hour of event time and the expenditure associated with that hour.

25. The Claimant also asserted that it suffered injury to its brand, reputation and loss of goodwill at a time when the Tailgate event was poised for growth in the Trinidad and Tobago entertainment industry.

26. Based on the aforesaid facts the Claimant sought declarations against the Defendants that their decision to shut down and/or stop and/or terminate the event before the scheduled end time of 2am was:

    (a) illegal, unlawful, ultra vires, unauthorized, contrary to law and in any event infringed the Claimant's liberty and property rights under section 4(a) of the Constitution of the Republic of Trinidad and Tobago ("the Constitution");

    (b) in excess of jurisdiction as they failed to satisfy or observe conditions or procedures required by law in particular the EM Act and/or Police Service

Act[3]("the Police Service Act") prior to the exercising of their power or authority;

(c) breached the principle of natural justice and due process;

(d) an irregular and/or an improper exercise of discretion;

(e) was an abuse of power and/or disproportionate exercise of authority in the circumstances of the case;

(f) actuated by fraud, bad faith and/or an improper purpose or irrelevant consideration;

(g) conflicted with the policy of the EM Act and the NPCR;

(h) made despite absence of evidence on which a finding or assumption of fact could reasonably be based;

(i) in breach of or the omission to perform a duty;

(j) a deprivation of a legitimate expectation;

(k) so unreasonable that no reasonable person could have so exercised the power.

27. The Claimant has also sought damages and costs.

The First Defendant's Case

28. The First Defendant's position was set out in five affidavits. Three affidavits were from its officers of the Environmental Protection Unit[4] ("EPU"), one from its Information Technology Manager[5] which annexed the Session Report[6] for the event and the other from an attorney at law at the First Defendant[7].

29. The First Defendant contended that on the evening of the 26 February 2019, it detailed its EPU officers PC Griffith, PC Hume, PC Burke and PC Gopaul to monitor the sound

[3] Chapter 15:01
[4] Affidavits of PC Griffith, PC Hume, PC Burke
[5] Affidavit of Sanjay Persad
[6] The Session Report was generated by downloading the information generated from the noise meter used to monitor the event (see paras. 8-10 of the affidavit of Sanjay Persad)
[7] Affidavit of Rachel Ramoodith

levels at the event to ensure compliance of sound emission[8]. The instrument was set up and monitoring began around 9:11pm[9]. From the inception, the sound emission was higher than that permitted under the Noise Variation. The First Defendant's officers located Mr Philip and he accompanied them to the noise meter where he looked at the readings and saw the fluctuation in the mid-80s peaking at 119 decibels[10].

30. Mr Philip promised to take steps to bring the sound level down but those steps were unsuccessful. Mr Philip asked PC Griffith about the fines and the only response the latter gave was that it could be up to $10,000.00, but that was a matter for the First Defendant's Legal Department and the EPU officers' only responsibility was to ensure compliance[11]. Between 10:42pm and 10:48pm the noise levels spiked and three of the EPU officers left the monitoring equipment to find the senior police officer of the TTPS on duty. The sound levels continued to be above that permitted in the Noise Variation and spiked exponentially in the course of certain performances. It was during one of these performances that there was an announcement that the First Defendant had said to shut down the event.

31. The EPU officers were mindful of the surrounding residential areas, the zoo and the hospital and the public in general. A loud voice came over on the amplifying equipment saying *"I don't give a shit about the authorities so raise the volume… This is Trinidad and Tobago"*[12]. When these utterances were made, the EPU officers became concerned for their safety because the crowd could have been incited to target them as they were in the First Defendant's marked attire. Additionally, patrons had begun to walk out of the event following that announcement and hurled obscenities at the EPU officers[13].

[8] Paragraph 10 of the Affidavit of PC Burke
[9] Session Report – SP1
[10] SP1 reading at 9:13pm
[11] Paragraph 25 of the affidavit of PC Burke
[12] Paragraph 43 affidavit of PC Griffith
[13] Paragraph 54 of the affidavit of PC Griffith

32. Throughout the night and early hours of the morning, the EPU officers constantly advised Mr Philip about the sound levels and he repeatedly promised to deal with it but blamed his engineers. Nonetheless, the EPU officers continued to plead with to Mr Philip to comply. He did not and at 12:20am, he was again told of the reading[14]. PC Griffith told the Second Defendant, who was the Senior Superintendent of the TTPS on duty of the non-compliance of the promoter and after discussions with him, Mr Philip was directed by PC Griffith to turn off the sound[15].

The Second Defendant's Case

33. The Second Defendant filed an affidavit wherein he set out his position of the material events. According to the Second Defendant, on the night of 26 February 2019, he was assigned to the event which was being hosted by the Claimant. As part of the Claimant's event license, it was a standard requirement that the Claimant would pay to have a "strength" of police presence at the event to ensure security. The "strength" is the number of police officers present for security and was decided based on the estimated amount of patrons and the overall magnitude of the event, that being whether it is small, medium or large. The Second Defendant was the Senior Police Officer at the event which was part of the strength of the police and his duties (like his fellow officers) were to maintain peace, law and order and the general security and safety of those persons at the event.

34. According to the Second Defendant, officers assigned to the First Defendant were also present but they were not considered part of the "strength" of police presence (either for the purpose of the Claimant's license or at all), as those officers formed and operated the EPU and they operated as part of the remit of the First Defendant. The officers of the EPU received specialized training for the use of certain devices to read noise levels and enforce the laws, rules and regulations governing the EM Act. The

[14] Ibid 58
[15] Paragraph 59 of the affidavit of PC Griffith and paragraphs 12 and 13 of the affidavit of the Second Defendant

Second Defendant did not personally perform any role with regard to the monitoring of noise levels at the event as he was not trained in that regard and he relied solely on the EPU officers at the event for their specialized skill and expertise.

35. Throughout the night, the Second Defendant received information relative to breaches of the Noise Variation for the event, by the Claimant and or its agents and his intervention was requested by the officers of the EPU to address the noise level and the type of language used by the Claimant and or its agents in an announcement. Thereafter, the Second Defendant spoke to Mr Philip and told him of the information he received from Officers of the EPU with respect to breaches of the noise level as well as the announcement made via the PA system. Some time later Mr Philip was instructed to turn off the music and stop the event.

Conflicts in the evidence

36. Disputed questions of fact do not normally arise in judicial review cases, but they can of course arise and they may be crucial.[16] In the instant case, there were disputed facts which concerned the legality of the decision to turn off the music at the event and the person who made this decision. In order to resolve the conflicts in the evidence the Court permitted limited cross-examination on the said matters. I will deal with the conflicts in the evidence at the appropriate parts in this judgment.

Was the decision by the servants and/or agents of the First Defendant to turn off the music at the event illegal, ultra vires, an excess of jurisdiction or beyond their power?

37. It was submitted on behalf of the First Defendant that its servants and or agents had the power to make the decision to turn off the music at the event/shut down the event pursuant to: (a)sections 51, 62, 63 and 68 of the EM Act ; (b) section 25 (c) of the EM Act as it was an exercise of an emergency power; (c) the implied powers under the

[16] Nolan LJ in R v Secretary of State for the Department of the Environment, ex p London Borough of Islington (1991) [1997] JR 121 at 128

EM Act and section 49 of the Summary Offences Act ("the Summary Offences Act")[17] as there was a breach of the peace by the Claimant; (e) section 70 of the Summary Offences Act and the common law as the Claimant had caused a public nuisance.

38. Counsel for the Claimant submitted that there was no express or implied power under the EM Act, which permitted the servants and or agents of the First Defendant to make the decision to turn off the music at the event. Counsel also submitted that the First Defendant's reliance on section 25 (c) of the EM Act is without merit as the violation of a Noise Variation is not sufficient reason to justify the exercising of an emergency power. Counsel further submitted that the Claimant failed to meet the evidential threshold that there was a breach of the peace or a public nuisance committed by the Claimant to warrant the decision to turn off the music and shut down the event.

Provisions under the EM Act

39. I will deal with sections 51,63, 68 and 25 (c) of the EM Act at this juncture.

40. Counsel for the First Defendant argued that: sections 51, 63 and 68 of the EM Act all confer on it the expressed power to call upon a violator of a Noise Variation to turn off the sound which is the source of the violation; at the time PC Griffith took the decision to turn off the music, the Claimant was in violation of the Noise Variation; and under section 68 (c) of the EM Act the First Defendant was entitled to seek remedies available in law which were more immediate than those envisaged under section 70 of the Summary Offences Act and section 45(a) of the Police Service Act.

41. Section 51 provides:

> "(1) No person shall release or cause to be released any air pollutant into the environment which is in violation of any applicable standards, conditions or permit requirements under this Act.

[17] Chapter 11:02

(2) No person shall emit or cause to be emitted any noise greater in volume or intensity than prescribed in Rules made under section 26 or by any applicable standards, conditions or requirements under this Act."

42. Section 63 states:

"(1) Where the Authority reasonably believes that a person is in violation of an environmental requirement, the Authority shall serve a written notice of violation (hereinafter called "Notice") on such person in a form determined by the Board, which shall include—

(a) a request that the person make such modifications to the activity within a specified time, as may be required to allow the continuation of the activity; or
(b) an invitation to the person to make representations to the Authority concerning the matters specified in the Notice within a specified time.

(2) Where a matter specified in the Notice may be satisfactorily explained or otherwise resolved between the person and the Authority—

(a) the Authority may cancel the Notice or dismiss the matters specified in the Notice; or
(b) an agreed resolution may be reduced in writing into a Consent Agreement."

43. Section 68 provides:

"Whenever the Authority reasonably believes that any person is currently in violation of any environmental requirement, or is engaged in any activity which is likely to result in a violation of any environmental requirement, the Authority may in addition to, or in lieu of, other actions authorised under this Act—

(a) seek a restraining order or other injunctive or equitable relief, to prohibit the continued violation or prevent the activity which will likely lead to a violation;

(b) seek an order for the closure of any facility or a prohibition against the continued operation of any processes or equipment at such facility in order to halt or prevent any violation; or

(c) pursue any other remedy which may be provided by law."

44. Sections 51 and 63 of the EM Act when read together do not assist the First Defendant's case, as it deals with the procedure used when there is a violation of a Noise Variation.

45. Counsel for the Claimant argued that the remedy which the First Defendant was required to pursue under section 68 (c) was any other remedy beyond those provided by sections 68(a) and (b) before a Court of law, as a means of enforcing the breach of the environmental requirement. In this regard Counsel relied on the following definition from **Black's Law Dictionary**[18]:

"Remedy, the means of enforcing a right or preventing or redressing a wrong; legal or equitable relief- also termed civil remedy

"A remedy is anything a court can do for a litigant who has been wronged or is about to be wronged. The two most common remedies are judgments that plaintiffs are entitled to collect sums of money from defendants and orders to defendants to refrain from their wrongful conduct or to undo its consequences. The court decides whether the litigant has been wronged under the substantive law; it conducts its inquiry in accordance with the procedural law." Douglas Laycock, Modern American Remedies 1 (3d ed. 2002)

[18] Eight Edition page 1320

Legal remedy, a remedy historically available in a court of law, as distinguished from a remedy historically available only in equity."

46. In my opinion, the interpretation of section 68 (c) which Counsel for the Claimant has submitted is very narrow. The other remedy provided by law in section 68 (c) includes seeking an order for damages before a Court of law and also taking steps under the Police Service Act and the Summary Offences Act, both of which offer remedies in the criminal jurisdiction. I will address whether the police officers had the power under the Police Service Act and the Summary Offences Act to shut down the event based on the evidence in this matter later in this judgment.

Section 25 of the EM Act- Emergency power

47. The First Defendant's contention that given its regulatory status, it was entitled to shut down the event without giving the Claimant notice because the circumstances prevailing at the time were such that it required an emergency type response is without merit. The First Defendant relied on section 25 (c) of the EM Act and the learning from the cases of **R v Secretary of State for Transport, ex parte Pegasus Holidays (London) Ltd and another[19], Kioa v West[20]** and **Century National Merchant Bank v Davies[21].**

48. Section 25 of the EM Act deals with its emergency response activities. It states:

"25. Whenever the Authority reasonably believes that a release or threat of release of a pollutant or hazardous substance, or any other environmental condition, presents a threat to human health or the environment, the Authority may, after consultation with the Minister and in co-ordination with other appropriate governmental entities, undertake such emergency response activities as are required to protect human health or the environment, including —

[19] [1989] 2 All ER 481
[20] (1985) 159 CLR 550
[21] (1998) 52 WIR 361.

(a) the remediation or restoration of environmentally degraded sites;

(b) the containment of any wastes, hazardous substances or environmentally dangerous conditions; and

(c) such other appropriate measures as may be necessary to prevent or mitigate adverse effects on human health or the environment."

49. The First Defendant cannot rely on section 25 (c) as a basis for its decision to turn off the music at the event, as there was no evidence from the First Defendant that there was any consultation with the Minister before the decision was taken to shut down the event.

50. In **R v Secretary of State for Transport, ex parte Pegasus Holidays (London) Ltd and another[22].** T was a Romanian organisation that had been granted a permit to take on-board and discharge passengers in the United Kingdom. The permit was subject to conditions which stipulated, inter alia, that the aircrafts were to be operated by T's Romanian crew and that T was to ensure that the Romanian Civil Aviation Authority's licence requirements were complied with. However, five of the pilots who operated the aircrafts under T's permit failed significant parts of their Civil Aviation Authority examinations. As a result, T's permit was provisionally suspended by the Secretary of State.

51. An action was brought for judicial review of the Secretary of State's decision to suspend the permit. It was contended on behalf of T that the Secretary of State had acted unfairly in arriving at his decision, on the grounds that: (i) he had not given T or any of the other interested parties an opportunity to make any representations to him prior to the suspension; (ii) he had acted irrationally; and (iii) his decision was not in compliance with the Chicago Convention of 1944, as it arbitrarily called into

[22] [1989] 2 All ER 481

question and refused to recognize the validity of Romanian licenses contrary to Art 11 and 33 of the said Convention.

52. The Court dismissed T's judicial review claim and stated at pages 489 and 490 that:

> "… the rules of natural justice do apply but, in the words chosen by counsel for the Secretary of State, in such an emergency as the present, with a provisional suspension being all that one is concerned with, one is at the low end of the duties of fairness.
>
> … so far as the action of the Secretary of State is concerned, it cannot be regarded as unfair in the circumstances of this case that he acted in the speedy way in which he did act. One has in the context of unfairness to bear in mind, on the one hand, the no doubt substantial economic damage to the applicants and perhaps the irritation and inconvenience which I do not doubt the passengers suffered. On the other hand, one has to bear in mind the magnitude of the risk, by which I mean not so much the high percentage chance of it happening but the disastrous consequences of what would happen if something did happen."

53. **Century National Merchant Bank v Davies**[23] concerned the lawfulness of action taken by the Minister of Finance on 10 July 1996 under statutory powers, to assume temporary management of three financial institutions, namely Century National Bank Ltd, Century National Merchant Bank and Trust Company Ltd and Century National Building Society. Subsequent to the Minister's decision these institutions had been experiencing such serious financial and managerial problems, that the Bank of Jamaica deemed their practices unsafe and unsound. Despite undertakings by these institutions to remedy matters they became progressively worse and by 1996 they were several billion dollars in debt. The potential fallout if swift action was not taken would have had far-reaching and devastating effects on the nation's economy and its citizens.

[23] [1998] UKPC 12; [1998] AC 628

54. In **Century National Merchant Bank,** counsel argued that the Minister ought to have given reasonable prior notice before his assumption of temporary management and as such the notice of immediate assumption was invalid and in breach of the standards of procedural fairness. The Board of the Privy Council rejected this argument and stated at paragraph 14 that:

> "The sustainability of this argument must be judged in the light of the language and scheme of the statute. Paragraph 1(1) of Part D provides for a "notice, announcing his intention of temporarily managing the bank from such date and time as may be specified".
>
> As a matter of ordinary language this provision does not seem to contemplate a requirement of prior notice. This impression is reinforced by the express provisions requiring prior notice in the case of Part C (Cease and Desist Orders) and in the case of Part E (Suspension or Revocation of Licence). But, if, contrary to their Lordships' view, it is assumed that the language is capable of letting in more than one meaning, the contextual scene removes any doubt.
> A prior notice of an intention to assume temporary management may cause grave problems. Would it be appropriate for the directors who are given prior notice of the Minister's intention to continue to accept deposits or honour cheques? The directors would be in a most invidious position in regard to carrying on the operations of the bank. The risk of advance notice of the Minister's intention leaking out, once it is communicated to the bank, must also be substantial. Such a leak would be headline news in Jamaica. It would tend to alarm depositors. It might very well lead to a run on the bank.
>
> Confidence is the lifeblood of banking. A run on a bank may not only finally destroy any prospect of reconstruction of a bank but it may have systemic consequences in the sense of adversely affecting the banking sector as a whole and thus the national economy. Finally, there is the risk that directors or other insiders, who have been responsible for unsound practices, may destroy

incriminating records. The context therefore supports their Lordships' view that paragraph 1 of Part D does not require prior notice."

55. In **Kioa v West**[24] the appellants sought an order to review a decision made on 6 October 1983 by a delegate of the respondent, the Minister for Immigration and Ethnic Affairs, to order the deportation of Mr and Mrs Kioa under section 18 of the Migration Act 1958 (Cth), as amended ("the Migration Act"). The appellants argued that the decision of the Minister's delegate was vitiated by a failure to abide by the rules of natural justice and by a failure to have regard to relevant considerations. The Court allowed the appeal on the ground that a breach of natural justice had occurred in connexion with the making of the decision. Mason J stated at paragraph 28 that:

> "It is a fundamental rule of the common law doctrine of natural justice expressed in traditional terms that, generally speaking, when an order is to be made which will deprive a person of some right or interest or the legitimate expectation of a benefit, he is entitled to know the case sought to be made against him and to be given an opportunity of replying to it … The reference to "right or interest" in this formulation must be understood as relating to personal liberty, status, preservation of livelihood and reputation, as well as to proprietary rights and interests."

56. Mason J stated further at paragraphs 31-33 that:

> "[31] The law has now developed to a point where it may be accepted that there is a common law duty to act fairly, in the sense of according procedural fairness, in the making of administrative decisions which affect rights, interests and legitimate expectations, subject only to the clear manifestation of a contrary statutory intention ... But the duty does not attach to every decision of an administrative character. Many such

[24] [1985] HCA 81; (1985) 159 CLR 550

decisions do not affect the rights, interests and expectations of the individual citizen in a direct and immediate way…

[32] Where the decision in question is one for which provision is made by statute, the application and content of the doctrine of natural justice or the duty to act fairly depends to a large extent on the construction of the statute...What is appropriate in terms of natural justice depends on the circumstances of the case and they will include, inter alia, the nature of the inquiry, the subject matter, and the rules under which the decision-maker is acting.

[33] In this respect the expression "procedural fairness" more aptly conveys the notion of a flexible obligation to adopt fair procedures which are appropriate and adapted to the circumstances of the particular case. The statutory power must be exercised fairly, that is, in accordance with procedures that are fair to the individual considered in the light of the statutory requirements, the interests of the individual and the interests and purposes, whether public or private, which the statute seeks to advance or protect or permits to be taken into account as legitimate considerations (cf. Salemi (No. 2), at p.451, per Jacobs J.).”

57. In my opinion, the cases of **Pegasus Holidays** and **Century National Merchant Bank** both demonstrated that a public authority can only breach due process on the basis of an emergency, if the said emergency has far reaching and devastating consequences on the nation’s economy or human life. In the instant case, there was no cogent evidence from the First Defendant that as a consequence of the Claimant being in violation of the Noise Variation, there was a threat to the life of persons at the event or in surrounding areas, a public disaster or economic ruin of the country. Therefore, the First Defendant’s basis for asserting that it was an emergency is without merit.

Implied power under the EM Act

58. It was submitted on behalf of the First Defendant that Rule 20 of the NPCR provides the circumstances under which it may revoke a Noise Variation and that it does not preclude the First Defendant from stopping an event in instances where there was a continuing violation of a Noise Variation for an event spanning only a few hours.

59. Counsel also argued that it could not have been the intention of Parliament, before whom the NPCR was laid, not to have conferred a power to call upon a violator of a Noise Variation to cease doing the act and to do so immediately as this accords with common sense and logic. Counsel further submitted that it would be an absurdity in construing the provisions of the NPCR to find that the First Defendant has no such power, as Parliament intended that the mischief of excessive sound levels emanating from a public entertainment event could be dealt with by the taking of immediate action under the NPCR and to construe Rule 20 otherwise would seriously violate the rights of affected persons in the surrounding areas. Therefore, as a matter of logic a breach of the conditions of the Noise Variation required the officers of the EPU to take immediate steps to deal with clear violations of the standards generally and especially at night time.

60. Counsel for the Claimant submitted that that to shut down an event for a breach of a Noise Variation is a coercive power and such powers are bestowed expressly by legislation. Counsel also submitted that Parliament devoted an entire Part of the EM Act and NPCR to Compliance and Enforcement. In so doing Parliament created a complete self-contained code for compliance and enforcement of environmental requirements which included a Noise Variation. The First Defendant's action to shut down the event was totally inconsistent with the expressed methods of enforcement which Parliament clearly delineated in the EM Act and the NPCR. It was also argued on behalf of the Claimant that a power to shut down events for a breach of a Noise Variation could only be implied out of necessity and not because it is convenient, desirable or profitable.

61. The Court of Appeal in this jurisdiction in the case **Attorney General of Trinidad and Tobago v Tobago House of Assembly**[25], examined the extent to which a statutory body can imply certain powers. In that case, the Tobago House of Assembly ("the THA") argued that there was an implied power under the THA Act which permitted the THA to enter into certain types of contracts (BOLT). Mendonca JA stated:

> [22] As a matter of general law a body established by statute would have only such powers as are expressly conferred upon it and, as a matter of implication, those that can fairly be regarded as incidental or consequential upon them (See **AG v Crayford [1962] Ch 246**) …
>
> [23] …What the section does (25(2)) is that it gives the THA the power to do such acts and take such steps as may be necessary or incidental to the exercise of its powers or the discharge of its duties. Expressed in other words, section 25(2) (b) gives to the THA the power to do all such acts and take such steps as may be necessary for or incidental to the exercise of its functions.
>
> [24] There is no suggestion by anyone that a BOLT agreement is necessary to the exercise of the THA's power or for the discharge of its duties. The relevant question is whether it is an incidental power. Incidental in this context does not mean "in connection with" or simply related to but has a narrower meaning that might be derived by reasonable implication from the language of the THA Act (See **AG v Crayford** (supra)). It is also not enough if the proposed power is convenient, desirable or profitable. Further, a power cannot be incidental if it would be contrary to or inconsistent with any expressed or implied statutory provision.

62. The English case of **R (on the application of New London College Ltd) v Secretary of State for the Home Department; R (on the application of West London Vocational Training College) v Secretary of State for the Home Department**[26] addressed the issue

[25] Civil Appeal No. P 169 of 2014 CV No. 2013-00135
[26] [2013] 4 All ER 195

of whether a coercive power can be implied where specific legislation granted expressed powers. In that case, the Home Secretary argued that by virtue of sections 1(4) and 3(2) of the Immigration Act she had an implied power to take administrative measures for identifying suitable sponsors, even if those measures did not fall within the express power provided by section3(2). In dealing with the doctrine of implied power, Lord Sumption stated at paragraph 29:

> [29] The 1971 Act does not prescribe the method of immigration control to be adopted. It leaves the Secretary of State to do that, subject to her laying before Parliament any rules that she prescribes as to the practice to be followed for regulating entry into and stay in the United Kingdom. Different methods of immigration control may call for more or less elaborate administrative infrastructure. It cannot have been Parliament's intention that the Secretary of State should be limited to those methods of immigration control which required no other administrative measures apart from the regulation of entry into or stay in the United Kingdom. If the Secretary of State is entitled (as she plainly is) to prescribe and lay before Parliament rules for the grant of leave to enter or remain in the United Kingdom which depend upon the migrant having a suitable sponsor, then she must be also be entitled to take administrative measures for identifying sponsors who are and remain suitable, even if these measures do not themselves fall within s 3(2) of the Act. <u>This right is not of course unlimited. The Secretary of State cannot adopt measures for identifying suitable sponsors which are inconsistent with the Act or the Immigration Rules. Without specific statutory authority, she cannot adopt measures which are coercive; or which infringe the legal rights of others (including their rights under the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 (as set out in Sch 1 to the Human Rights Act 1998)); or which are irrational or unfair or otherwise conflict with the general constraints on administrative action imposed by public law.</u>
>
> [36] **…**In each case the source of the incidental power was found in a specific provision conferring specific functions. (Emphasis added)

63. In another English case of **Issa and another v Hackney London Borough Council**[27], the Court considered whether certain powers can be implied where there is a self-contained code which expressly gave certain powers. In that case the issue for determination was whether section 94(2) of the Public Health Act 1936 which dealt with the power of the court to make a nuisance order if an abatement notice was disregarded, thus making it a criminal offence to default in complying with the notice, also rendered the person guilty of the offence liable in a civil action for damages at the suit of any person who thereby suffers loss or damage. Nourse LJ was of the view that Part 3 of the 1936 Public Health Act was a self-contained code dealing with the abatement of statutory nuisances and that there was no ground for construing it so as to incorporate the creation of a civil cause of action. The Court expressed its position at page 1004, where it stated that:

> "Part III of the 1936 Act is a self-contained code dealing with the abatement of statutory nuisances, and that there is no ground for construing it so as to incorporate the creation of a civil cause of action… since this is not a case where the only method of enforcement provided by the Act is prosecution for the criminal offence of failure to perform the statutory obligation, the principles stated by Lord Diplock in Lonrho Ltd v Shell Petroleum Co Ltd (No 2) [1981] 2 All ER 456, [1982] AC 173 do not come into play."

64. In my opinion, it cannot be implied that the First Defendant has the power to shut down an event for the violation of a Noise Variation for the following reasons.

65. First, the shutting down of an event is a coercive action and there is a self-contained code within the EM Act and the NPCR which expressly bestows specific powers on the First Defendant to deal with the violation of a Noise Variation and the revocation of a Noise Variation. The expressed provisions are sections 25, 66 and 68 of the EM Act and Rules 20 and 21 of the NPCR.

[27] [1997] 1 All ER 999

66. I have already addressed the type of coercive powers which are expressly set out in sections 25 and 68 of the EM Act. Section 66 deals with the types of orders which the First Defendant can make against a person who is found to be in violation of an environmental requirement; the factors which it must take into account in determining the amount of damages and more importantly the maximum of fines which can be imposed.

67. Rule 20 of the NPCR deals with the circumstances when a Noise Variation can be revoked. It states:

> "Where a variation granted by the Authority is in force, the Authority may revoke the variation if it appears to the Authority that —
>
> (a) the grantee has committed persistent breaches of environmental requirements;
>
> (b) the continuation of the emission authorised by the variation would cause serious harm to the environment or human health that cannot be avoided by varying the conditions of the variation;
>
> (c) the grantee has made a misrepresentation or wilful omission in obtaining the variation or in any report submitted to the Authority;
>
> (d) there has been a violation of any fundamental condition of the variation;
>
> (e) there has been any other change in circumstances relating to the variation that requires a permanent reduction in the emission."

68. Rule 21 of the NPCR sets out the procedure for the revocation of a Noise Variation. It states:

> "The Authority shall not revoke a variation unless it has—
>
> (a) given written notice to the grantee that it intends to do so;
>
> (b) specified in the notice the reasons for its intention to do so;
>
> (c) given the grantee a reasonable opportunity to make submissions in relation to the revocation; and

(d) taken into consideration any submissions made by the grantee within five working days of service of the notice prescribed in paragraph (a)."

69. Under Rule 20 (a) it is clear that the First Defendant is empowered to revoke the Noise Variation where the grantee has committed persistent breaches of environmental requirements. However, before the First Defendant can take the decision to revoke the Noise Variation, the procedure set out in Rule 21 of the NPCR must be followed. One of the material steps in the process set out in Rule 21 is the giving of written notice to the Claimant, so that it could have an opportunity to put its position before a decision is taken to revoke the Noise Variation.

70. The First Defendant submitted that the Claimant was given adequate notice as its representative Mr Philip was informed on more than one occasion that the Claimant had exceeded the limit stated in the Noise Variation.

71. There was no dispute that Mr Philip was told that the Claimant had exceeded the limit set out in the Noise Variation. However, there was a dispute on the evidence as to the time in which Mr Philip accompanied the EPU officers to the SPU where he was shown the reading for the noise level at the event. Mr Philip stated that was around 8:30pm. PC Griffith deposed that Mr Philip was approached by two police officers closer to 9:45 pm or thereabouts and not 8:30 pm since the actual measurement commenced around 9:11 pm. PC Hume deposed that the monitoring of the actual measurements started around 9:12 pm and that twenty minutes later PC Griffith looked at the meter and instructed him and PC Gopaul to make contact with the promoter and to indicate that the noise level was above that permitted in the Noise Variation.

72. Mr Philip was cross-examined on the time at which he accompanied the EPU officers to the SPU. He was shown the sound pressure readings at Exhibit KTP 8 which recorded that the commencement of monitoring was at 9:13pm. In my opinion, PC Griffith's evidence that Mr Philip was approached closer to 9:45 pm and not 8:30pm was more probable, as the note in the Session Report showed that the monitoring started after

8:30 pm and therefore it was more plausible that Mr Philip first saw the readings well after 9:13pm and possibly closer to 10:00pm.

73. Mr Philip has disputed how many times he was taken. He stated that he was taken to the sound pressure monitoring device by officers of the First Defendant and shown the readings on only one occasion. He insisted in his cross-examination that he was taken to the device once, but the First Defendant maintained that Mr Philip was taken at least twice. PC Griffith's and PC Hume's evidence was that Mr Philip was taken to the sound pressuring monitoring device around 9:45 pm and that afterwards they were in constant communication with him while he was at the event about the noise fluctuation levels exceeding the level in the Noise Variation.

74. In my opinion, it was more probable that Mr Philip use of the words "first" on two occasions during his cross-examination was in the context of how many times he was informed that the noise level readings exceeded the Noise Variation and not an indication of the number of times he was taken and shown the readings. I therefore find that Mr Philip was taken once and shown the readings on the SPU device.

75. However, Mr Philip being orally informed on more than 1 occasion that the Claimant had exceeded the limit set in the Noise Variation did not meet the procedural requirement for written notice to the Claimant under Rule 21 of the NPCR. Therefore, there is no merit in the First Defendant's submission that the Claimant had notice under Rule 21 before the decision was taken to shut down the event. Indeed, this position by the First Defendant must fail as there was no evidence that the Noise Variation was revoked pursuant to Rules 20 and 21 of the NPCR.

76. The evidence of Rachel Ramoodith of the First Defendant was that after she reviewed the Session Report, the readings at the event exceeded the maximum permissible sound pressure level in the Noise Variation. She drafted a Notice of Violation which was issued to the grantee of the license which was the NCC. The said Notice of Violation[28] pointed out the conditions of the Noise Variation which were violated and

[28] Exhibit "R.R 1"

invited the NCC to provide oral or written representation within 7 working days from service or attend the office of the First Defendant to provide evidence of the alleged violations. Notably the Notice of Violation pointed out that the powers of enforcement available to the First Defendant were under sections 64,65 and 68 of the EM Act.

77. Second, the shutting down of the event was inconsistent with the penalty for the breach of a Noise Variation and it was not necessary or incidental to the discharge of its duties. The penalty prescribed by section 66 of the EM Act is the imposition of an order for damages. Section 66 of the EM Act states:

> "(1) For the purposes of sections 65 and 81(5)(d), the Authority or the Commission may make an administrative civil assessment of —
>
> (a) compensation for actual costs incurred by the Authority to respond to environmental conditions or other circumstances arising out of the violation referenced in the Administrative Order;
>
> (b) compensation for damages to the environment associated with public lands or holdings which arise out of the violation referenced in the Administrative Order;
>
> (c) damages for any economic benefit or amount saved by a person through failure to comply with applicable environmental requirements; and
>
> (d) damages for the failure of a person to comply with applicable environmental requirements, in an amount determined pursuant to subsections (2) and (3).
>
> (2) In determining the amount of any damages to be assessed under subsections (1)(c) and (d), the Authority or the Commission shall take into account —
>
> (a) the nature, circumstances, extent and gravity of the violation;
>
> (b) any history of prior violations; and
>
> (c) the degree of willfulness or culpability in committing the violation and any good faith efforts to co-operate with the Authority.

(3) The total amount of any damages under subsection (1)(d), shall not exceed—

(a) for an individual, five thousand dollars for each violation and, in the case of continuing or recurrent violation, one thousand dollars per day for each such instance until the violation is remedied or abated; or

(b) for a person other than an individual, ten thousand dollars for each violation and, in the case of continuing or recurrent violations, five thousand dollars per day for each such instance until the violation is remedied or abated."

78. Mr Philip admitted in cross-examination that the Claimant paid a "fine" by consent to the First Defendant after the event. Therefore, the Claimant was penalised based on the expressed provisions of the EM Act for the violation of the Noise Variation. I accept that the First Defendant is a statutory body with certain regulatory powers. However, the First Defendant's reliance on the following learning in **Wade and Forsyth's Administrative Law**[29] is misguided. The learning states:

> "But the Court of Appeal has held that in reviewing a regulatory body the courts should allow a margin of appreciation and intervene only in the case of a manifest breach of principle. It has been recognized that 'the [judicial review] courts [can] play a role in overseeing the decision-making process [of regulators] from the perspective of rationality and legality, and ensuring that decisions are made which are not simply pandering to special interests at the expense of wider public policy goals. It may be expected, however, that the courts will recognize the expertise of the regulators and be cautious before quashing their decisions and that they will view sympathetically the dilemmas faced by regulators…. Challenges based upon the irrationality of regulators' decisions have generally failed."

[29] 11 ed at pages 124-125

79. The aforesaid learning is applicable for challenges to the rationality of a regulator's decision but it is not relevant in this case where the challenge is to the power of the regulator, the First Defendant, to make a decision. The First Defendant is a creature of statute and should be cautious when seeking to exercise powers which are not expressly stated in its governing statute. In my opinion, there is a danger in allowing the servants or agents of the First Defendant to be able to summarily make a decision to shut down an event due to an alleged violation of Noise Variation before the Session Report is generated, because this lends itself to an arbitrary exercise of a discretion as there are no guidelines in the NPCR, at which point in excess of the violation of the Noise Variation such a decision can be taken.

80. Third, section 45 (2) and 45 (3) of the Interpretation Act[30] do not assist the First Defendant in implying a coercive power to shut off the music at the event. Section 45 (2) states:

> "Where a written law empowers any person or authority to do any act or thing, all such powers shall be deemed to be also given as are reasonably necessary to enable that person or authority to do that act or thing."

81. Section 45 (3) provides:

> "Without prejudice to the generality of subsection (2), where a written law confers power —
>
> (a) to provide for, prohibit, control or regulate any matter, such power shall include power to provide for the matter by the licensing of it and by the imposition of fees and charges with respect to it and power to prohibit acts whereby the prohibition, control or regulation of the matter might be evaded;
>
> (b) to grant a licence, State lease, permit, authority, approval or exemption, such power shall include power to refuse to make such grant, power to impose reasonable conditions subject to which such

[30] Chapter 3:01

grant is made and power to suspend or cancel such grant; but nothing in this paragraph shall affect any right conferred by law on any person to appeal against any decision with respect to such grant;

(c) to approve any person or thing, such power shall include power to withdraw approval thereof;

(d) to give directions, such power shall include power to couch the directions in the form of prohibitions."

82. Those sections were interpreted by the Privy Council recently in **The Minister of Energy and Energy Affairs v Maharaj and anor**[31]. In that case the Board had to determine whether the act/decision of the Minister of Energy and Energy Affairs to suspend the operations of two petrol stations was illegal, procedurally improper and unfair, in breach of the legitimate expectation of the owners and unreasonable. The Board upheld the first instance decision which had been overturned by the Court of Appeal of Trinidad and Tobago on the basis that section 45(3) of the Interpretation Act permitted wide powers to be implied into the Petroleum Act. The Board stated in relation to section 45(3) of the Interpretation Act:

> "56. In the Board's judgment, similar reasoning provides the answer to the Minister's point (ii), based on section 45(3)(b) of the Interpretation Act. That provision sets out a general rule for implication of terms in any statute or other form of written law, which by virtue of section 2(1) of that Act is excluded where a contrary intention appears from the specific statute (ie the relevant "written law") in relation to which it is sought to be implied. The lex specialis nature of the regime in sections 17 to 22 of the Petroleum Act demonstrates such a contrary intention. It would be inconsistent with that regime to construe the Petroleum Act as including a general power for the Minister to suspend a licence for petroleum operations to operate alongside it. That would undermine the policy apparent from section 17 of the Act that a licence should set out in clear terms the circumstances in which a licensee might lose the

[31] [2020] UKPC 13

benefit of the licence and would also undermine the protections in relation to suspension written into section 17(6). Further, in relation to this latter point the appellants are entitled to rely on the general principles of construction of expressio unius exclusio alterius (specific mention of one thing indicates an intention to rule out others) and generalia specialibus non derogant (general provisions should not undermine the intended effect of provisions specifically drafted to deal with the particular case), which are preserved in relation to the Petroleum Act by virtue of section 3 of the Interpretation Act."

83. There are expressed provisions in the EM Act which prescribe how it is to deal with any violation of the Noise Variation. To imply the power to shut down an event summarily would be inconsistent with the expressed provisions of the EM Act which provides for due process or an emergency under section 25 of the EM Act.

The Police Service Act and the Summary Offences Act

84. I now turn to whether section 45 (a) of the Police Service Act and sections 49 and 70 of the Summary Offences Act empowered the officers of the First Defendant to make the decision to turn off the music at the event. In my opinion, the First Defendant cannot seek refuge under those provisions as neither empowered the officers of the First Defendant to make a decision to turn off the music at the event.

85. Section 45 of the Police Service Act deals with the general duties of a police officer. It was not in dispute that the officers of the EPU who were monitoring the noise levels at the event were police officers under the Special Reserve Police Act[32] and were able to exercise powers under the Police Service Act. Section 45 (a) of the Police Service Act states that one of the duties of a police officer is to preserve the peace and detect crime and other breaches of the law. It states:

"45. A police officer-

(a) shall preserve the peace and detect crime and other breaches of the law."

[32] Chapter 15:03

86. Section 46 of the Police Service Act sets out the circumstances in which a police officer can arrest a person without a warrant. Section 46 (1) (b) of the Police Service Act provides:

> "46 (1) A police officer may arrest without a warrant —
>
> …
>
> (b) A person who commits a breach of the peace in his presence."

87. Section 49 of the Summary Offences Act deals with the offence of breach of the peace. It states:

> "Any person making use of any insulting, annoying or violent language with intent to, or which might tend to, provoke any other person to commit a breach of the peace, and any person who uses any obscene, indecent or profane language to the annoyance of any resident or person in any street, or of any person in a place in which the public is admitted or has access, or who fights or otherwise disturbs the peace, is liable to a fine or two hundred dollars or to imprisonment for thirty days."

88. Section 70 of the Summary Offences Act deals with the crime of public nuisance. It provides:

> "Any person who cause a nuisance to the public, and any person who at any time takes any part in causing such a nuisance, and any person occupying or having control over any house, yard or premises of whatever nature who permits such nuisance in such house, yard or premises, is, without prejudice to anything contained in any other law, liable on summary conviction to a fine of one thousand five hundred dollars or to imprisonment for six months."

89. In my opinion, the cumulative effect of sections 45 (a), 46 (1) (b) of the Police Service Act and section 70 of the Summary Offences Act did not empower the officers of the First Defendant to instruct that the music at the event be turned off even if there was

a violation of the Noise Variation. At best those remedies in law authorised the said officers '*to arrest without a warrant'*, any person at the event if they had reasonable and probable cause to believe that the said person had committed the offence of a breach of the peace, a public nuisance, or any other crime or breaches of the law. Upon arrest the criminal prosecution is triggered.

Lack of evidence for breach of peace and public nuisance

90. In any event, even if the First Defendant had such powers which I am not of the view it had, its seems to me that the evidence in support of this assertion is weak.

91. In **Jonathan Moore et al v The Attorney General of Trinidad And Tobago**[33], Charles J referred to the following authorities which dealt with the offence of breach of the peace. At paragraphs 55, 57 and 58 Charles J stated:

> "[55] In the case of **Percy v Director of Public Prosecutions 3 All ER 124 (1995)** it was held that:
>
> > "...a breach of the peace ... had to involve violence or the threat of violence. The violence did not have to be perpetrated by the defendant himself; it was sufficient if his conduct was such that violence from some third party was a natural consequence of his action, thus giving rise to a real risk, rather than a mere possibility, of some actual danger to the peace. It followed that a civil trespass could not of itself amount to a breach of the peace unless the circumstances were such that violence would be the natural consequence as, for example, where trespassers made continued incursions in the face of threats to use violence to remove them..."

[33] CV 2011-02270

[57] In **Dolly Kendall and others v. Mohamed Khan (1979) 26 W.I.R. 433**, a judgment of the Appeal Court of Guyana at page 36 paragraphs f, g and h Chief Justice Crane opined that:

> "…It seems to me it is a fundamental principle in the law that one to whom is entrusted the keeping of the peace cannot be heard to urge the court in order to secure the conviction of another that he was so provoked by that other that there was a likelihood he would have committed a breach of the peace…Were the law to permit him to do so, it would only be in mockery of justice."

[58] In **Jarrett v. Chief Constable of West Midlands Police Service [2003] EWCA Civ 397** where the police sought to justify an arrest on the ground that the claimant's conduct and behaviour in her presence – i.e. that of becoming excited and wielding her bags - was conduct that amounted to a breach of the peace the Honourable Lord Justice Potter in giving his decision in the Court of Appeal held at paragraph 23 of the judgment stated that:

> "The conduct of the claimant relied on by Sergeant Reece in this case involved no questions of injury or possible threat of injury to any member of the public, save, arguably, Sergeant Reece herself. The words amounted to nothing. No verbal threats were said to have been made. Mere agitation does not involve a breach of the peace. So far as the waving of the bags was concerned, the officer did not in her evidence suggest that they were being wielded at her or were more than a symptom of the claimant's agitation. In relation to none of those matters did the officer suggest she feared imminent violence to herself or her property or that there was any reason or necessity for public alarm.""

92. Sedley LJ in the English case of **Redmond-Bate v Director of Public Prosecution**[34] described the approach a police officer ought to take in determining whether there is a breach of the peace. At paragraphs 5 and 6 he stated:

> "[5] The test of the reasonableness of the constable's action is objective in the sense that it is for the court to decide not whether the view taken by the constable fell within the broad band of rational decisions but whether in the light of what he knew and perceived at the time the court is satisfied that it was reasonable to fear an imminent breach of the peace. Thus although reasonableness of belief, as elsewhere in the law of arrest, is a question for the court, it is to be evaluated without the qualifications of hindsight.
>
> [6] A judgment as to the imminence of a breach of the peace does not conclude the constable's task. The next and critical question for the constable, and in turn for the court, is where the threat is coming from, because it is there that the preventive action must be directed."

93. Sedley LJ stated further at paragraphs 16 and 20 that:

> "[16] A police officer has no right to call upon a citizen to desist from lawful conduct. It is only if otherwise lawful conduct gives rise to a reasonable apprehension that it will, by interfering with the rights or liberties of others, provoke violence which, though unlawful, would not be entirely unreasonable that a constable is empowered to take steps to prevent it.
>
> [20] Mr Kealy for the prosecutor submitted that if there are two alternative sources of trouble, a constable can properly take steps against either. This is right, but only if both are threatening violence or behaving in a manner that might provoke violence."

[34] (1999) 7 BHRC 375

94. In **Sigrid Alexandra Nilsson v Scott McDonald** [35] the Court described the high threshold which has to be met in order for action to be perceived as a breach of the peace. At paragraph 7 Crawford CJ stated as follows:

> "…I am unaware of any authority in which it was held that a breach of the peace can occur in circumstances where the person concerned is merely argumentative or making excessive noise, without a consequent likelihood of violence or harm to any person or property, or of persons being put in fear of such violence or harm."

95. PC Griffith stated in his affidavit at paragraphs 53, 54, 59 and 65:

> "[53] As to paragraph 30 of the KTP affidavit, at approximately 11:40 p.m. the sound from the event was somewhat reduced from the noise level that had persisted throughout the night and I observed that the reading from the Noise Meter was 78.8dBA which was still above the permitted decibel level. I heard a male voice over the sound system saying to the crowd "We apologize, the EMA said shut down the fete!" This announcement was repeated about 2 or 3 times. I neither saw nor heard anything like a skit being performed.
>
> [54] I was shocked at this since this was untrue as my officers and I had been in contact with Mr. Philip repeatedly that night so as to ensure his compliance with the Noise Variation which was not achieved. I also became concerned for the safety of my officers with this announcement which could have incited the crowd to target my officers. Patrons then started making their way out of the event and hurled obscenities at us since PC Hume was dressed in marked EMA attire….
>
> [59] I discussed with the Ag. Senior Superintendent the noise level and the continuous breaches of the Noise Variation. I told him we will have no option

[35] [2009] TASSC 66

but to stop the music for failure to observe the permitted sound levels in the Noise Variation, since repeated promises and statements by Mr. Philip that he will make efforts to reduce the sound did not materialize. I was guided by, among other things, the fact that there are nearby residential communities, a hospital and animals in the zoo….

[65] As to paragraph 48 of the KTP Affidavit it is correct that the music was turned off at around 12:50 a.m. on 27th February 2019. This was after my team and I spoke to Ag. Senior Superintendent Nelson and we agreed that since there was continuous non-observance of the permitted levels under the Noise Variation and no meaningful attempt to abide by it, that the sound should be turned off. I instructed PC Hume to inform Mr. Philip and the DJ to turn off the music for continuous non-conformance with the Noise Variation."

96. PC Griffith, stated in cross-examination that the only reason the event was shut down was because the Claimant was in breach of the Noise Variation. PC Hume also stated that the event was shut down as the Claimant was not complying with the Noise Variation despite it being brought to Mr Philip's attention.

97. The evidence from the Second Defendant also corroborated the evidence of PC Griffith that the reason the decision was taken to turn off the music was due to the continuous breach of the Noise Variation by the Claimant. The Second Defendant stated at paragraphs 9, 12 and 16 of his affidavit that:

"[9] Later that night around 11.40pm I heard the words uttered over the PA system "We apologize, the EMA said shut down the fete!" I found this strange given the interaction with the EPU and Mr. Philip earlier that night, the announcement was also made quite suddenly, at which point, based on my experience, I became concerned for the safety of EPU officers as they are dressed in marked EMA attire in the party charged atmosphere.

[12] Around 12.20am that I again received information from PC Griffith who informed me and I verily believe same to be true and correct that the event was still in breach of the noise variation and that the noise level was around 83dBA and at times over that. I was also informed by PC Griffith that since repeated promises and statements were made by Mr. Philip to reduce the sound but there was still breaches of the noise variation, the music would have to be stopped.

[16] Having issued no instruction and received no training from the EPU, I had no part to play in making the decision to turn the music off, my duties at the event in question are that I was part of the strength of police officers present and I was only able to assist in that regard."

98. Mr Philip stated at paragraph 5 in his affidavit in Reply:

"[5] As to paragraphs 9 and 10 of the Affidavit of the Second defendant, Senior Superintendent of Police Garth Nelson, specifically:

'I became concerned for the safety of the EPU officers as they are dressed in marked EMA attire in the party charged atmosphere' and 'PC Griffith also expressed concerns for the safety of his officers.'

I was never approached or informed by either the Second Defendant or PC Griffith that there was any concern for the safety of any of the officers present at the venue during the course of the event. I personally observed that there was no behaviour by the patrons at the event to suggest that the safety of any officers present was in question. Additionally, I was not told by either the Second Defendant or PC Griffith that the behaviour of the patrons posed a safety threat to any of the officers present or anyone else present at the venue. The behaviour of the patrons at the event on the night was nothing out of the ordinary for a carnival fete."

99. Mr Philip maintained this position in his cross-examination.

100. Therefore, from the evidence of PC Griffith, PC Hume and the Second Defendant, the decision to turn off the music was due to the breach of the Noise Variation and objectively there was no actual violence or real risk of imminent violence at the event. In my opinion, if there was, then the officers from the First Defendant and the Second Defendant would have arrested persons whom they thought were involved in the alleged breach of the peace shortly after 11:40 pm when they asserted the DJ uttered certain words to the crowd and not permitted the event to continue until 12:50 am when the decision was made to turn off the music.

101. The First Defendant's evidence of a public nuisance was also weak. The Court of Appeal in **National Agricultural Marketing and Development Corporation v. Davindra Maharaj**[36] described a nuisance as**:**

> [32] The essence of nuisance is a condition or activity which unduly interferes with the use or enjoyment of land. "Nuisance is an act or omission which is an interference with, disturbance of or annoyance to, a person in the exercise or enjoyment of: (a) a right belonging to him as a member of the public, when it is a public nuisance; or (b) his ownership or occupation of land or of some easement, profit, or other right used or enjoyed in connection with land when it is a private nuisance."

102. In **Attorney General v P.Y.A. Quarries Ltd**[37], the English Court described a public nuisance as :

> "A nuisance is a public nuisance if, within its sphere, which is the neighbourhood, it materially affects the reasonable comfort and convenience of life of a class of Her Majesty's subjects, and the question whether the number of persons affected is sufficient to constitute a class is one of fact. A normal and legitimate way of proving a public nuisance is to prove a sufficiently

[36] Civil Appeal No. 72 of 2015; Claim No. CV2011-04931
[37] [1957] 1 All ER 894

large collection of private nuisances, though it is not necessary to follow this method in every case."

103. One of the issues the Court in **Ramdeo Seewah v Vishnu Siewah**[38] was called upon to determine was whether the prescribed standards of sound emission set by the First Defendant constituted a public nuisance. Rajkumar J (as he then was) stated at paragraphs 39, 44, 45, 46 and 49 that:

> [39] … the measurement prescribed relates to the standard under the rules, which is not necessarily the same issue as whether the noise produced constitutes a nuisance at common law. The observations and measurements in fact corroborate the evidence of the claimant with respect to noise with respect to its level and timing.
>
> [44] 'Nuisance .... causing an interference with enjoyment of land, are, for example creating stenches by the carrying on of an offensive manufacture or otherwise, causing smoke or noxious fumes to pass on to the claimant's property, raising clouds of coal dust, making unreasonable noises, or vibration, using a building as a hospital for infectious diseases**...: Clerk & Lindsell on Torts, 19th Ed paragraph 20-09.'** No precise or universal formula is possible, but a useful test is what is reasonable according to ordinary usages of mankind living in a particular society.
>
> [45] Whether such an act does constitute a nuisance must be determined not merely by an abstract consideration of the act itself, but by reference to all the circumstances of the particular case, including, for example, the time of the commission of the act complained of; the place of its commission; the manner of committing it, that is, whether it is done wantonly or in the reasonable exercise of rights; and the effect of its commission, that is, whether those

[38] CV2009-2498

effects are transitory or permanent, occasional or continuous; so that the question of nuisance or no nuisance is one of fact: paragraph 20-10.

[46] A nuisance of this kind, to be actionable, must be such as to be a real interference with the comfort or convenience of living according to the standards of the average man. An interference which alone causes harm to something of abnormal sensitiveness does not of itself constitute a nuisance. A man cannot increase the liabilities of his neighbour by applying his own property to special uses, whether for business or pleasure: **paragraph 20-11**

[49] …I find that evidence of non-compliance with the standards set out in the noise pollution rules can be an important ingredient in determining whether a case of common law nuisance has been made out, although the common law of nuisance, and in particular, nuisance by noise, has not been eliminated or superseded by the standards set out in the Environmental Management Act.

104. PC Griffith stated at paragraph 59 of his affidavit that he decided to turn the music off at the event because there were continuous breaches of the Noise Variation and he was "guided by, among other things, the fact that there are nearby residential communities, a hospital and animals in the zoo." However, in cross-examination PC Griffith admitted that during the course of the event he did not receive any complaints from any resident, hospital or the zoo about the level of the noise emanating from the event. The Second Defendant's evidence was also similar.

105. Therefore, there was no evidence of any complaints of interference, disturbance, annoyance or injury resulting from the noise emanating from the event by any members of nearby residential communities, the hospital or the zoo. The only evidence was that the Claimant was in breach of the standards as set out in the Noise Variation.

Did the Claimant have a legitimate expectation that the music would not be turned off once the noise level did not exceed 85 decibels and it agreed to pay a fine?

106. It was submitted on behalf of the Claimant that according to Mr Philip's evidence[39], PC Griffith promised or represented to the former that the event would not be shut down once the noise level did not exceed 85 decibels and once the Claimant agreed to pay a fine which he did.

107. Counsel for the First Defendant contended that PC Griffith denied making the aforesaid statements to Mr Philip and even if he did they were incapable of any claim in legitimate expectation, as PC Griffith had no such authority to give such representation and it is founded on an illegality.

108. The law on legitimate expectation was briefly set out by the Board of the Privy Council in **Paponette and others v The Attorney General of Trinidad and Tobago**[40] at paragraph 28 as :

> "[28] In a case where the legitimate expectation is based on a promise or representation, a useful summary of the relevant principles was given by Lord Hoffmann in *R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs (No 2)* [2008] UKHL 61, [2009] AC 453, at para 60, [2008] 4 All ER 1055:
>
> > "It is clear that in a case such as the present, a claim to a legitimate expectation can be based only upon a promise which is 'clear, unambiguous and devoid of relevant qualification': see Bingham LJ in *R v Inland Revenue Comrs, ex parte MFK Underwriting Agents Ltd* [1990] 1 WLR 1545, 1569. It is not essential that the Applicant should have relied upon the promise to his detriment, although this is a relevant consideration in deciding whether the adoption of a policy in conflict

[39] Paragraphs 19 to 21 of the affidavit of Mr Phillip filed on 27 May 2019 and exhibited as 'B' in the Fixed Date Claim filed 10 June 2019
[40] [2010]UKPC 32

with the promise would be an abuse of power and such a change of policy may be justified in the public interest, particularly in the area of what Laws LJ called 'the macro-political field': see *R v Secretary of State for Education and Employment, ex parte Begbie* [2000] 1 WLR 1115, 1131."

109. Subsequently, Lord Neuberger on behalf of the Board of the Privy Council in **United Policyholders Group v The Attorney General of Trinidad and Tobago**[41] described the doctrine of legitimate expectation at paragraphs 37 and 38 as:

"In the broadest of terms, the principle of legitimate expectation is based on the proposition that, where a public body states that it will do (or not do) something, a person who has reasonably relied on the statement should, in the absence of good reasons, be entitled to rely on the statement and enforce it through the courts. Some points are plain. First, in order to found a claim based on the principle, it is clear that the statement in question must be "clear, unambiguous and devoid of relevant qualification", according to Bingham LJ in R v Inland Revenue Comrs, Ex p MFK Underwriting Agents Ltd [19901 1 WLR 1545, 1569, cited with approval by Lord Hoffmann in R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs (No 2) J2009] AC453, para 60.

Secondly, the principle cannot be invoked if, or to the extent that, it would interfere with the public body's statutory duty - see e.g. Attorney General of Hong Kong v Ng Yuen Shiu [1983] 2 AC 629, 636, per Lord Fraser of Tullybelton. Thirdly, however much a person is entitled to say that a statement by a public body gave rise to a legitimate expectation on his part, circumstances may arise where it becomes inappropriate to permit that person to invoke the principle to enforce the public body to comply with the second point, but it can go wider: for instance, if, taking into account the fact that the principle applies and all other relevant

[41] [2016] UKPC 17

circumstances, a public body could, or a fortiori should, reasonably decide not to comply with the statement." (Emphasis Added)

110. The authority of the person who can make the representation was addressed **in De Smith's Judicial Review**[42] which stated :

> "The representation must be made by a person with actual or ostensible authority to make the representation. The authority will not be bound if the promisee knew, or ought to have known, that the person making the representation had no power to bind the authority".

111. Michael Fordham in his **Judicial Review Handbook**[43] describes the nature of the authority of a person to make the promise as:

> "Whether actual or ostensible authority. South Bucks District Council v Flanagan [2002] EWCA Civ 690 [2002] 1 WLR 2601 at 18 ("Legitimate expectation involves notions of fairness and unless the person making the representation has actual or ostensible authority to speak on behalf of the public body, there is no reason why the recipient of the representation should be allowed to hold the public body to the terms of the representation. He might subjectively have acquired the expectation, but it would not be a legitimate one, that is to say it would not be one to which he was entitled"); Rowland v Environment Agency [2002] EWHC 2785 (Ch) [2003] Ch 581 at 68 ("The public body can only be bound by acts and statements of its employees and agents if and to the extent that they had actual or ostensible authority to bind the public body by their acts and statements"), endorsed by CA [2003] EWCA Civ 1885 [2005] Ch. 1 at 67."

112. There was dispute of fact on this alleged conversation between Mr Philip and PC Griffith. Mr Philip stated that he assumed that the Claimant could have continued to keep the sound levels in excess of the permitted Noise Variation, since he was told by

[42] (7th ed) at 12-035
[43] (7th ed) at 41.2.15

PC Griffith that he could opt to pay a fine instead and breach the sound levels. PC Griffith denied that he ever told Mr Philip this. Indeed, PC Griffith's evidence was that Mr Philip asked him what the fine would be for the breach and he explained to Mr Philip that the fine could vary and be up to $10,000.00. However, that would be dependent on the findings of the Legal Department of the First Defendant and members of the EPU had nothing to do with that as their duty was to ensure that the Claimant complied with the Noise Variation. PC Griffith's evidence was corroborated by PC Hume who deposed that he was present when Mr Philip asked PC Griffith about the fines that the First Defendant imposed for loud music and PC Griffith responded that it varied from approximately $10,000.00, but that it was for the Legal Department of the First Defendant to determine. In my opinion, PC Griffith's version is more probable as it was corroborated by PC Hume and both PC Griffith and PC Hume's evidence was that they did not have the power to impose a fine for the breach of the noise level.

113. Having made these findings, there is no basis for the Claimant maintaining a claim based on any alleged breach of its legitimate expectation as no promise was made by PC Griffith, and in any event he was not vested with such authority. PC Griffith had indicated to Mr Philip that it was the Legal Department of the First Defendant which was responsible for determining and imposing fines for breach of the Noise Variation.

114. In any event, a legitimate expectation cannot be based on an illegality. Michael Fordham in his **Judicial Review Handbook** described this principle at paragraph 41.2.16 as:

> "But the question for the court is whether those statements give rise to a legitimate expectation, in the sense of an expectation which will be protected by law" R v South Somerset District Council, ex p DJB (Group) Ltd (1989) 1 Admin LR 11, 18E (cannot have been legitimate to expect, as a result of council's policy, that would be able to break the law without being prosecuted); R v Gaming Board of Great Britain, ex p Kingsley [1996] COD 241 (doctrine of legitimate expectation based on considerations of fairness, even

where benefit claimed not procedural, and should not be invoked to confer an unmerited or improper benefit); R v Westminster City Council ex p Dinev 24 October 2000 unreported (expectation lacking legitimacy where claimant has been trading unlawfully)."

115. In **R v Westminster City Council ex p Dinev**[44] the Court considered the issue of whether a legitimate expectation can be grounded in an illegality. In that case, the applicants sought leave to apply for judicial review of the decision to introduce a temporary licensing scheme for portrait artists in Leicester Square. The applicants argued that the scheme was introduced without consultation and was contrary to their legitimate expectation that they would be consulted. The Court in dismissing the applicants' appeal agreed with the reasoning of the lower Court that an expectation may properly be held not to be legitimate where it arises out of an unlawful activity, even though there is a practice of non-enforcement. Nonetheless, it stated that during the course of the proceedings the applicants had been given every opportunity to make whatever representations they wished to make and there was "no reason to doubt that the respondents had been ready, and will continue to be ready to consider them".[45]

116. Mr Philip's evidence in cross-examination was that he thought that PC Griffith was the person who had the authority to indicate what the fine would be. However, Mr Phiilip also admitted in cross-examination that previous to the event, he was involved in other events where he had paid fines to the First Defendant after receiving the report after those events. In my opinion, Mr Philip knew that PC Griffith did not have the power or authority to indicate to him that he could keep the sound level at 85 decibels and agree to pay a fine, based on his previous knowledge of the manner and time when fines were imposed by the First Defendant.

117. Even if I accepted Mr Philip's version of the promise which he alleged PC Griffith made, it is still not a basis to ground a claim in legitimate expectation as PC Griffith would

[44] [2001] EWCA Civ 80
[45] Paragraph 8

have been agreeing to knowingly not comply with the law as it relates to the EM Act, the NPCR and his duties under the Police Service Act and such illegal actions cannot ground a claim for legitimate expectation.

Did the Second Defendant have any role in making the decision to shut down the event/ turn off the music and if so did he have any lawful basis to do so?

118. It was submitted on behalf of the Second Defendant that the decision to shut down the event was taken by PC Griffith, a servant and or agent of the First Defendant; the Second Defendant's action were not indicative of making the decision to shut down the event; and that the only decision which was made by the Second Defendant was to ensure that the crowd was dispersed and peace was maintained after the decision was made by PC Griffith.

119. Counsel for the Claimant argued that both on the pleaded case and the evidence, the Claimant's position is that the Second Defendant issued an instruction/ directive or took action in the exercise of his police power which caused the event to be shut down and that his actions or instructions were ultra vires, unlawful, in excess of his jurisdiction and breached the constitutional rights of the Claimant.

120. In my opinion, the Second Defendant's position is flawed both on the evidence and in law.

121. There was a dispute in the evidence on who took the decision to shut down the event. Mr Philip deposed that at approximately 12:50am the Second Defendant instructed that the music be turned off.[46] However, this evidence was contradicted by the evidence of the Second Defendant who expressly denied ever giving such a response.

122. The Second Defendant stated at paragraphs 13 and 16 of his affidavit that:

[46] Paragraph 48 of affidavit of Mr Phillip filed on the 27 May 2019 and exhibited as 'B' in the Fixed Date Claim filed 10 June 2019.

> [13] I accepted what PC Griffith stated based on my own interactions with him and Mr. Philip throughout the night as well as references to the noise level readings, that were referred to me by PC Griffith which I also accepted as true and accurate as PC Griffith was part of the EPU and I was not trained relative to the Noise Level Meters. No instruction was issued by myself to turn off the music, but I understood that it was going to be done. After speaking to me, at around 12.50am on the 27th February, 2019 the music was turned off…
>
> [16] The Claimant itself has been unable to say with any particularity what if any decision I made that actually aggrieved it. Having issued no instruction and received no training from the EPU, I had no part to play in making the decision to turn the music off, my duties at the event in question are that I was part of the strength of police officers present and I was only able to assist in that regard.

123. PC Griffith[47] in response to Mr Philip's evidence[48] specifically stated:

> "[65] As to paragraph 48 of the KTP Affidavit it is correct that the music was turned off at around 12:50am on the 27th day of February 2019. This was after my team and I spoke to Ag Senior Superintendent Nelson and we agreed that since there was continuous non-observance of the permitted levels under the Noise Variation and no meaningful attempt to abide by it, that the sound should be turned off. I instructed PC Hume to inform Mr. Philip and the DJ to turn off the music for continuous non-conformance with the Noise Variation." (Emphasis added).

124. PC Griffith under cross-examination confirmed that he instructed PC Hume to inform the DJ and Mr Philip to turn off the music and explain to them that it was because of their failure to comply with the noise level.

[47] At paragraph 65 of the Affidavit of PC Griffith filed on the 19 September 2019
[48] At paragraph 48 of the Affidavit of Phillip filed on the 27 May 2019 and exhibited as 'B' in the Fixed Date Claim filed 10 June 2019.

125. PC Hume[49] deposed that:

> [41] At around 12:50pm, PC Griffith advised me to tell Mr Philip and the DJ to take off the music as they had continued to disregard the permitted sound levels in the Noise Variation. I did so. Following this, Ag. Senior Superintendent Nelson repeated this instruction to other personnel at the event. I then heard the Ag. Senior Superintendent call the Inter-Agency Task Force for backup.

126. In my opinion, based on the evidence of PC Griffith and PC Hume, the Second Defendant was actively involved in making the decision together with PC Griffith to shut down the event. Further, it is also more probable that as the most senior officer of the TTPS at the event, any decision to shut down the event could not have been taken only by PC Griffith and that the Second Defendant was also actively involved in ensuring that steps were taken to give effect to the decision.

127. In any event, as a matter of law, a judicial review claim can be mounted against multiple persons. Michael Fordham in his text **Judicial Review Handbook** stated at paragraph 5.3 that:

> "Judicial review claims frequently involve several interrelated potential targets. They may be connected "vertically" (e.g. an enactment and a decision made under it) or horizontally (e.g a decision and its later implementation). They are likely to be sequentially. The claimant's timing dilemma will be whether to challenge the early and risk criticism for prematurity, or later and risk being found to have fatally delayed."

128. In **Mossell (Jamaica) Ltd v Office of Utilities Regulations[50]**, the Office of Utilities Regulation ("OUR") issued a determination notice in breach of a ministerial direction

[49]At paragraph 41 of the Affidavit of PC Hume filed on the 19 September 2019
[50] [2010] UKPC 1

given by the Minister of Industry, Commerce and Technology. The said notice negatively affected the appellant, causing it to commence judicial review proceedings against the OUR and they in turn commenced judicial review proceedings against the Minister's Direction. In the appellant's appeal it sought to challenge the extent of the powers held respectively by the utilities regulator and the Minister. The Court found the Minister's Direction was ultra vires and the OUR was not obliged to comply with it. In dismissing the appeal, the Board of the Privy Council stated at paragraph 37 and 44 that:

> "[37] …The scope of the power conferred by the Minister by section 6 can readily be deduced by the terms of the section itself. The section provides for Directions to be followed by the OUR in the performance of its statutory functions. Functions include duties. Thus a Direction must be one that it is possible for the OUR to follow in carrying out its duties under the Act. A Direction that prohibits the OUR from carrying out those duties cannot lawfully be made by the Minister.
>
> [44] What it all comes to is this. Subordinate legislation, executive orders and the like are presumed to be lawful. If and when, however, they are successfully challenged and found ultra vires, generally speaking it is as if they had never had any legal effect at all: their nullification is ordinarily retrospective rather than merely prospective. There may be occasions when declarations of invalidity are made prospectively only or are made for the benefit of some but not others. Similarly, there may be occasions when executive orders or acts are found to have legal consequences for some at least (sometimes called "third actors") during the period before their invalidity is recognised by the court – see, for example, Percy v Hall [1997] QB 924. All these issues were left open by the House in Boddington. It is, however, no more necessary that they be resolved here than there. It cannot be doubted that the OUR was perfectly entitled to act on the legal advice it received and to disregard the Minister's Direction. This much too is plain from Boddington (see Lord Irvine's speech at pp 157H-

158D) and, indeed, in the context of ministerial "guidance", from Lord Denning's judgment in *Laker Airways*: "[I]f the Secretary of State goes beyond the bounds of 'guidance', he exceeds his powers: and the Authority is under no obligation to obey him." (p 700A)."

129. In the instant case, the evidence was that the Second Defendant was actively involved together with PC Griffith in making the decision to shut down the event and to give effect to it. I have already found that there was no basis in law for PC Griffith to make that decision and by extension there was also no basis for the Second Defendant to make that decision.

Damages

130. It was submitted on behalf of the Claimant that the actions of the First and Second Defendants breached its constitutional rights under: sections 4(a) of the Constitution, namely the right to liberty, right to enjoyment of property and not to be deprived thereof except by due process of law; section 4 (b) of the Constitution namely the right to protection of the law; and section 4 (g) of the Constitution namely the right to freedom of movement. Counsel argued that if it had brought the action by way of a constitutional motion it would have been entitled to damages in accordance with the principles of **Josephine Millette v Sherman Mc Nicholls[51].**

131. Counsel for the First Defendant submitted that no damages arise as the Claimant has failed to demonstrate that it could have succeeded in proving that there was a breach of its constitutional rights.

132. Counsel for the Second Defendant argued that the Claimant has failed to set out a compelling case that demonstrated that it is entitled to damages even if it is successful in having the other issues determined in its favour.

[51] CA 14 of 2000/155 of 1995

133. At paragraphs 5 to 7 in **Neil Bennett v The Defence Council and the Attorney General of Trinidad and Tobago**[52], I set out the law with respect to the granting of damages in judicial review matters which I will repeat here:

> "5. It was common ground that the law with respect to the granting of damages in judicial review proceedings was articulated by de la Bastide CJ in **Josephine Millette v Sherman McNichols**[53] as:
>
> > "Damages are only recoverable in judicial review proceedings if they would have been recoverable in an ordinary action brought either by writ or by some other form of originating process eg. Constitutional motion."[54]
>
> 6. The principles laid down by de las Bastide CJ has been codified in section 8 (4) of the **Judicial Review Act**[55] which provides:
>
> > "(4) On an application for judicial review, the Court may award damages to the applicant if-
> >
> > (a) The applicant has included in the application a claim for damages arising from any matter to which the application relates; and
> >
> > (b) The Court is satisfied that, if the claim has been made in an action begun by the applicant at the time of making the application, the applicant could have been awarded damages.""

134. Procedurally the Claimant must comply with Part 56.7 (3) and (4) (b) (ii) of the Civil Proceedings Rules 1998 as amended ("the CPR") which provides for the Claimant to file an affidavit with the Claim Form and he must state if he is seeking "damages, restitution or recovery of a sum due or alleged to be due setting out the facts on which

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[52] CV 2009-01581
[53] Civ App No 155 of 1995 at page 14
[54] Supra at page 14
[55] Chapter 7:08

such claim is based and where practicable, specifying the amout of any money claimed."

135. The Claimant has met the procedural requirements as it made a claim for damages at paragraph 13 of the reliefs sought in the Fixed Date Claim filed in the instant action.

136. With respect to the breaches of the constitutional rights which the Claimant has alleged, I am not satisfied that it has made out a case that that it could have been awarded damages if it had brought an action in a constitutional motion for all the breaches asserted.

137. In my opinion, the Claimant has not made out a case for the breach of the right to liberty and enjoyment of property and the right not to be deprived thereof except by due process of law under section 4 (a) of the Constitution. There was no evidence in the affidavit of Mr Philip which demonstrated that the Claimant, a corporate entity was deprived of its liberty as a result of the shutting down of the event.

138. With respect to the right to the enjoyment to property and the right not to be deprived thereof except by due process, Mr Philip's evidence on this was set out at paragraph 53 of his affidavit[56] where he stated:

> "[53] As a result of the decision(s) and /or action(s) of the First and Second Respondent to shut down the event and disperse the crowd gathered Wild Goose Ltd has suffered pecuniary losses in the sum of Forty- Four Thousand and Eighty-Two Dollars Trinidad and Tobago Dollars and Nineteen cents ($44,082.19). This figure represents the costs of hosting the event per hour. As a result of the decision to shut down the event at least 1 hour of event time was lost and as such there was wasted expenditure associated with the lost hour."

[56] Filed on the 27 May 2019 and exhibited as 'B' in the Fixed Date Claim filed 10 June 2019

139. The word 'property' in the context of a constitutional right includes and is not limited to real property, a licence[57], choses in action[58], salary and benefits due and owing to an individual[59]. In **Bahadur v The Attorney General of Trinidad and Tobago**[60], the Court of Appeal briefly considered how expansive an interpretation could be applied to this constitutional right and stated that:

> "… property within the meaning of section 4(a) of the constitution includes tangible forms of real and personal property, but also less tangible forms such as social welfare benefits, public services and other things to which people are entitled by law and regulations."[61]

140. In my opinion, the aforesaid evidence of Mr Philip is not sufficient to ground a claim for deprivation of the enjoyment of property without due process. The sum which the Claimant claimed it was deprived of was not money which was seized or taken away from him without due process. It is more in the nature of a pecuniary loss which has to be proved.

141. However, I am of the view that the Claimant has demonstrated that its right to the protection of the law was breached when the Defendants acted without authority and shut down the event. The Board of the Privy Council in the recent case of **Jamaicans for Justice v Police Service Commission and another**[62] more or less adopted and agreed with the expansive and evolving definition of "protection of the law". Lady Hale referring to various leading judgments from the Caribbean Court of Justice stated the following:

> "22. The Caribbean Court of Justice, in Nervais v R [2018] 4 LRC 545, when construing section 11 of the Constitution of Barbados, which also begins with

[57] Paponette v Attorney General of Trinidad and Tobago [2010] UKPC 32; The Minister of Energy and Energy Affairs v Maharaj and another [2020] UKPC 13
[58] Societe United Docks v. Government of Mauritius [1895] WLR 114
[59] Bernadette Hood Ceasar v The AG HCA 3015 of 1987; Chandresh Sharma and others v Attorney General Of Trinidad And Tobago C.A. No 52 of 2005
[60] Civ. App. No. 197 of 1984
[61] Ibid, Paragraph 43.
[62] [2019] UKPC 12,

the word "whereas", held that this did not mean that the section was merely "aspirational [or] a preliminary statement of reasons which make the passage of the Constitution, or sections of it, desirable" (para 25). It was intended to have the force of law. The court went on to say, of the right to the protection of the law, that it "affords every person … adequate safeguards against irrationality, unreasonableness, fundamental unfairness or arbitrary exercise of power" (para 45). This is an echo of the words of the Caribbean Court of Justice in Maya Leaders Alliance v Attorney General of Belize [2015] CCJ 15 (AJ), para 47, in turn citing Attorney General v Joseph and Boyce [2006] CCJ 3 (AJ), (2006) 69 WIR 104, 226, para 20."

142. At paragraph 24 Lady Hale stated that in relation to the meaning of "protection of the law":

> "24. The Board is also disposed to accept that the right to equality before the law, like the right to the equal protection of the law, affords every person protection against irrationality, unreasonableness, fundamental unfairness or the arbitrary exercise of power. These are, in any event, fundamental common law principles governing the exercise of public functions. As there is nothing in the statutory framework governing the PSC to contradict them, they are applicable in this case irrespective of whether or not they have the status of constitutional right." (Emphasis added)

143. The evidence in this case was that the agents and or servants of the First and Second Defendants had taken coercive action by shutting down the event in circumstances where they had no power to do so. In so doing the actions by the First and Second Defendants were arbitrary and unfair to the Claimant. The action also had the effect of penalising the Claimant in circumstances where the only authority the First Defendant had was to conduct an administrative civil assessment of the violation after the event ended and seek damages under section 66 of the EM Act.

144. In assessing the damages which the Claimant is to be awarded the court is guided by the following learning. In the local judgment of **The Attorney General of Trinidad and**

Tobago v Selwyn Dillon[63] the Court of Appeal cited with approval the following summary from Rampersad J regarding the applicable principles for the assessment of damages for constitutional breaches:

> "[20.] Rampersad J., at paragraph 53 of his judgment, carefully, correctly and comprehensively set out the evolution of the law and principles governing the consideration and assessment of damages for constitutional breaches. There is therefore no need to rehearse this history or the relevant authorities in this judgment. The main points in summary are as follows: (1) the award of damages is discretionary; (2) the nature of any award of damages is always with the intention and purpose of upholding and/or vindicating the constitutional right(s) infringed and in furtherance of effective redress and relief for the breaches; (3) whether an award of damages is to be made depends on the circumstances of the case, including consideration whether a declaration alone is sufficient to vindicate the right(s) infringed and whether the person wronged has suffered damage; (4) in determining the sufficiency of a declaration and/or the need for damages, the effect(s) of the breach on the party seeking relief is a relevant and material consideration; (5) compensation can thus perform two functions - redress for the *in personam* damage suffered and vindication of the constitutional right(s) infringed; (6) compensation *per se* is to be assessed according to the ordinary settled legal principles, taking into account all relevant facts and circumstances, including any aggravating factors; (7) in addition to compensation *per se*, an additional monetary award may also need to be made in order to fully vindicate the infringed right(s) and to grant effective redress and relief; (8) such an additional award is justified based on the fact that what has been infringed is a constitutional right, which adds an extra dimension to the wrong, and the additional award represents what may be needed to reflect the sense of public outrage at the wrongdoing, emphasize the importance of the constitutional right and the gravity of the breach, and/or to deter further similar breaches; (9) the purpose of this additional award remains, as with compensation, the vindication of the right(s)

[63] CA Civ P. 245/2012

infringed and the granting of effective relief and redress as required by section 14 of the Constitution, and not punish the offending party; and (10) care must be taken to avoid double compensation, as compensation *per se* can also take into account similar considerations, including relevant aggravating factors and is also intended to uphold and/or vindicate the right(s) infringed."

145. The Privy Council decision in the landmark case of **The Attorney General of Trinidad and Tobago v Ramanoop**[64] at paragraphs 17-19 explained the difference between compensatory and vindicatory damages under section 14 of the Constitution. The Court stated:

> "17. Their Lordships view the matter as follows. Section 14 recognises and affirms the court's power to award remedies for contravention of chapter I rights and freedoms. This jurisdiction is an integral part of the protection chapter I of the Constitution confers on the citizens of Trinidad and Tobago. It is an essential element in the protection intended to be afforded by the Constitution against misuse of state power. Section 14 presupposes that, by exercise of this jurisdiction, the court will be able to afford the wronged citizen effective relief in respect of the state's violation of a constitutional right. This jurisdiction is separate from and additional to ("without prejudice to") all other remedial jurisdiction of the court.
>
> 18. When exercising this constitutional jurisdiction, the court is concerned to uphold, or vindicate, the constitutional right which has been contravened. A declaration by the court will articulate the fact of the violation, but in most cases more will be required than words. If the person wronged has suffered damage, the court may award him compensation. The comparable common law measure of damages will often be a useful guide in assessing the amount of this compensation. But this measure is no more than a guide because the award of compensation under section 14 is

[64] PC Appeal No 13 of 2004

discretionary and, moreover, the violation of the constitutional right will not always be co-terminous with the cause of action at law.

19. An award of compensation will go some distance towards vindicating the infringed constitutional right. How far it goes will depend on the circumstances, but in principle it may well not suffice. The fact that the right violated was a constitutional right adds an extra dimension to the wrong. An additional award, not necessarily of substantial size, may be needed to reflect the sense of public outrage, emphasise the importance of the constitutional right and the gravity of the breach, and deter further breaches. All these elements have a place in this additional award. "Redress" in section 14 is apt to encompass such an award if the court considers it is required having regard to all the circumstances. Although such an award, where called for, is likely in most cases to cover much the same ground in financial terms as would an award by way of punishment in the strict sense of retribution, punishment in the latter sense is not its object. Accordingly, the expressions "punitive damages" or "exemplary damages" are better avoided as descriptions of this type of additional award."

146. In **Alphie Subiah v the Attorney General of Trinidad and Tobago**[65] Lord Bingham described the approach the Court should take in making the award of compensatory damages under section 14 of the Constitution at paragraph 11 as:

"11. The Board's decisions in Ramanoop, paras 17-20, and Merson, para 18, leave no room for doubt on a number of points central to the resolution of cases such as the present. The Constitution is of (literally) fundamental importance in states such as Trinidad and Tobago and (in Merson's case), the Bahamas. Those who suffer violations of their constitutional rights may apply to the court for redress, the jurisdiction to grant which is an essential element in the protection intended to be afforded by the Constitution

[65] [2008] UKPC 47

against the misuse of power by the state or its agents. Such redress may, in some cases, be afforded by public judicial recognition of the constitutional right and its violation. But ordinarily, and certainly in cases such as the present (and those of Ramanoop, and Merson, and other cases cited), constitutional redress will include an award of damages to compensate the victim. Such compensation will be assessed on ordinary principles as settled in the local jurisdiction, taking account of all the relevant facts and circumstances of the particular case and the particular victim. Thus the sum assessed as compensation will take account of whatever aggravating features there may be in the case, although it is not necessary and not usually desirable (contrary to the practice commended by the Court of Appeal of England and Wales for directing juries in Thompson v Commissioner of Police of the Metropolis [1998] QB 498, 516 D-E) for the allowance for aggravated damages to be separately identified. Having identified an appropriate sum (if any) to be awarded as compensation, the court must then ask itself whether an award of that sum affords the victim adequate redress or whether an additional award should be made to vindicate the victim's constitutional right. The answer is likely to be influenced by the quantum of the compensatory award, as also by the gravity of the constitutional violation in question to the extent that this is not already reflected in the compensatory award. As emphasised in Merson, however, the purpose of such additional award is not to punish but to vindicate the right of the victim to carry on his or her life free from unjustified executive interference, mistreatment or oppression." (Emphasis added)

147. More recently, Kokaram J (as he then was) in **Oswald Alleyne and 152 Ors v The Attorney General of Trinidad and Tobago**[66] reaffirmed and added to the guidelines on the assessment of damages for breach of constitutional rights at paragraphs 75 and 76 of the judgment. They are as follows:

[66] CV2018-00447

"(1) The award of damages is discretionary;

(2) The nature of any award of damages is always with the intention and purpose of upholding and/or vindicating the constitutional right(s) infringed and in furtherance of effective redress and relief for the breaches;

(3) Whether an award of damages is to be made depends on the circumstances of the case, including consideration whether a declaration alone is sufficient to vindicate the right(s) infringed and whether the person wronged has suffered damage;

(4) In determining the sufficiency of a declaration and/or the need for damages, the effect(s) of the breach on the party seeking relief is a relevant and material consideration;

(5) Compensation can thus perform two functions - redress for the in persona damage suffered and vindication of the constitutional right(s) infringed;

(6) Compensation per se is to be assessed according to the ordinary settled legal principles, taking into account all relevant facts and circumstances, including any aggravating factors;

(7) In addition to compensation per se, an additional monetary award may also need to be made in order to fully vindicate the infringed right(s) and to grant effective redress and relief;

(8) Such an additional award is justified based on the fact that what has been infringed is a constitutional right, which adds an extra dimension to the wrong, and the additional award represents what may be needed to reflect the sense of public outrage at the wrongdoing, emphasise the importance of the constitutional right and the gravity of the breach, and/or to deter further similar breaches;

(9) The purpose of this additional award remains, as with compensation, the vindication of the right(s) infringed and the granting of effective relief and redress as required by section 14 of the Constitution, and not punish the offending party;

(10) Care must be taken to avoid double compensation, as compensation per se can also take into account similar considerations, including relevant aggravating factors and is also intended to uphold and/or vindicate the right(s) infringed.

(11) The award must be no more than necessary to give recognition to the value and importance to the constitutional rights and violation caused by their denial.

(12) The Court will require proof of damages, the burden of which lies on the Claimant. The award of compensation is fact sensitive. The quality of evidence required will depend on the facts and nature of the case.

(13) Any speculative loss does not automatically deprive the Claimant of his right to compensation so long as the Court can exercise its discretion to make an appropriate award having regard to the nature of the breach and the right that has been violated.

(14) Monetary compensation can be awarded by reference to comparable common law measures of damages as a guide.

(15) Where there is evidence of direct loss that is recoverable as a component of compensation. Another component of compensation is to address non-pecuniary matters such as distress and inconvenience.

(16) Another relevant factor in assessment is the seriousness of the breach. The gravity of the constitutional breach can be a factor which warrants an uplift in the award of compensation. Aggravating factors are also to be taken into account."

148. At paragraph 94 of the judgment in **Oswald Alleyne and 152 Ors**, Kokaram J (as he then was) set out the scope of what compensation entails. He stated as follows:

> "In my view, the notion of compensation encompass two streams of loss: the first, any direct provable loss or pecuniary loss and the second, any other intangible loss such as mental distress, inconvenience or aggravating circumstances which ought to be the subject of compensation. I have loosely referred to this as pecuniary and non-pecuniary loss in this judgment. The second stream is not to be confused with a purely vindicatory award which is an additional award necessary to give effect to vindicate the constitutional right. To that extent the Court must ensure it is necessary to do so and is not subject to an aspect of double counting, if not punishment by making an oppressive and disproportionate award." (Emphasis added).

149. The Claimant's evidence to support its claim for pecuniary loss damages was set out at paragraphs 52 and 53 of the affidavit of Mr Philip filed on 27 May 2019 and exhibited as 'B' in the Fixed Date Claim filed 10 June 2019. At paragraph 52 Mr Philip stated that the Claimant spent a total of TT $352,657.50 to cover the cost for the event. Mr Philip also annexed as KTP 4 a budget breaking down the total expenses for the execution of the event which he had prepared and KTP 5 which were copies of all the receipts and invoices for the expenses incurred to host the entire event.

150. At paragraph 53 Mr Philip stated that:

> "[53] As a result of the decision(s) and /or action(s) of the First and Second Respondent to shut down the event and disperse the crowd gathered Wild Goose Ltd has suffered pecuniary losses in the sum of Forty- Four Thousand and Eighty-Two Dollars Trinidad and Tobago Dollars and Nineteen cents ($44,082.19). This figure represents the costs of hosting the event per hour. As a result of the decision to shut down the event at least 1 hour of event time

was lost and as such there was wasted expenditure associated with the lost hour."

151. In my opinion, the sum claimed as the pecuniary loss is not a speculative sum but a sum which the Claimant ought to be able to prove. In the instant case, the Claimant has failed to prove that it suffered the loss in the sum of TT $42,082.19 for three reasons. First, there was no evidence on how Mr Philip arrived at this sum. Second, there was no documentary evidence which demonstrated that the Claimant actually suffered this loss and thirdly there was no other evidence to corroborate Mr Philip's evidence on the sum he has claimed as the loss of the Claimant.

152. The Claimant's evidence on its non-pecuniary loss was set out at paragraph 54 of the affidavit of Mr Philip where he stated:

> "[54] Further, as a result of the decision and/or action of the First and Second Respondent to shut down the event and disperse the crowd gathered. Wild Goose Ltd has suffered injury to its brand reputation and loss of goodwill at a time when the Tailgate event is poised for growth in the Trinidad and Tobago entertainment industry."

153. I was not persuaded to make any award for the Claimant's non-pecuniary loss as Mr Philip's evidence was speculative and there was no independent evidence to corroborate his assertion.

Vindicatory damages

154. I now turn to the claim for vindicatory damages. Counsel for the Claimant submitted that it is entitled to an award of vindicatory damages in the sum of $100,000.00 to mark the Court's disapproval of the Defendants' conduct and that even after the event was shut down the Claimant was still fined the sum of $10,000.00 which was in effect a double penalty.

155. I have decided to make an award for vindicatory damages to register the Court's strong disapproval of the Defendants' decision to shut down an event in circumstances where there was no expressed or implied authority to do so. In so doing, the Defendants deprived the Claimant of due process of law by the arbitrary actions of its public officials. The Claimant was also further penalised when it was ordered to pay a fine of $10,000.00 for the violation of the Noise Variation.

156. In determining the appropriate sum to award, I took into account that the sum awarded as vindicatory damages in the instant case should be significantly less than that awarded in **Oswald Alleyne and 152 Ors** as there were more serious breaches and a significantly lengthier period of delay in that case than in the instant case.

157. In **Oswald Alleyne and 152 Ors** Kokaram J (as he then was) awarded $300,000.00 as vindicatory damages to mark the seriousness of the breach. The Court held that the State's treatment of the Claimants was characterised by an attitude that was indifferent and contemptuous as it took over 14 years to enact the regulations. The Court found that: since 2000 the MPOs were making representations to the State to have regulations enacted; the High Court matter was filed in 2004 after absolutely no interest of the State was shown in treating their concerns; the Claimants made numerous representations and complaints to the State for redress and since 2002 it had promised to conduct a job evaluation for MPOs but failed to do so while conducting evaluations for other civil servants; the evidence of the State was that the Police Service Commission did not have personnel available to work out the MPOs terms and conditions of employment; Cabinet agreed that certain allowances be increased and MPOs were paid varying rates of arrears or meal and housing allowances between 2003-2011; the State could not satisfactorily explain why the Claimants were left in regulatory purgatory for all these years; up until the Privy Council appeal the State did not enact the regulations; eleven days after the Privy Council hearing, the State enacted the Municipal Police Service Regulations; the Privy Council did not consider that by the State enacting the said regulations, that the Claimants were not entitled to vindicatory damages or an additional award; and no

explanation was given by the state for failing to adopt a short term option as a temporary measure.

158. In **Glen Fitzroy Alvarez Fuentes and anor v Minister of National Security**[67] I awarded the sum of $20,000.00 as vindicatory damages in circumstances where there was a delay by the Defendant of 14 months, blatantly failing to comply with an order of the Court.

159. In **Alyssa Morgan v The AG of Trinidad and Tobago**[68] the Claimant was awarded the sum of $10,000.00 as vindicatory damages, in circumstances where she was detained and later imprisoned by police officers for several hours on a warrant for defaulting in paying the outstanding sum of $100.00 on a $1000.00 traffic ticket that she had received four (4) years prior. However, the outstanding sum had been paid several years' prior, a few days past the due date and after the warrant had been issued for her arrest.

160. In **Terry Andrews v The AG of Trinidad and Tobago**[69] the applicant was awarded the sum of $15,000.00 as vindicatory damages, in circumstances where he was unlawfully detained and imprisoned by police officers for several hours, for breach of a maintenance order in respect of his minor child. The applicant had in fact not been in breach of the order and the warrant had been issued in error.

161. In the circumstances of this case, I am of the opinion that a fair award for vindicatory damages is between the range of $10,000.00 to $30,000.00. I have decided to award the sum of $30,000.00 which is the higher end of the range to register my strong disapproval against the public bodies for taking decisions without any basis in law. I have also taken into account that it was one singular action of the First and Second Defendants and not several actions over a prolonged period of time.

[67] CV 2019-00858
[68] CV 2018-00562
[69] CV 2017-03165

ORDER

162. It is declared that that the decision and/or action by the First and Second Defendants to shut down and/or stop and/or terminate the Tailgate Carnival event on 27 February, 2019 before the scheduled end time of 2am was illegal, unlawful, ultra vires, unauthorized and contrary to law.

163. It is declared that the decision and/or action by the First and Second Defendants to shut down and/or stop and/or terminate the Tailgate Carnival event on 27 February,2019 before the scheduled end time of 2am was in excess of jurisdiction.

164. It is declared that the First and Second Defendants failed to satisfy or observe the conditions or procedure required by law in particular the Environment Management Act and/or Police Service Act prior to exercising their power or authority to shut down and/or stop and/or terminate the Tailgate Carnival event on 27 February,2019 before the scheduled end time of 2am.

165. It is declared that the decision and/or action by the First and/or Second Defendants to shut down and/or stop and/or terminate the Tailgate Carnival event on 27 February,2019 before the scheduled end time of 2am breached the principles of natural justice and due process.

166. It is declared that the decision and/or action by the First and Second Defendants to shut down and/or stop and/or terminate the Tailgate Carnival event on 27 February,2019 before the scheduled end time of 2am was an unreasonable and/or irregular and/or an improper exercise of discretion.

167. It is declared that the decision and/or action by the First and Second Defendants to shut down and/or stop and/or terminate the Tailgate Carnival event on 27 February,2019 before the scheduled end time of 2am was an abuse of power.

168. It is declared that the decision and/or action by the First and/or Second Defendant to shut down and/or stop and/or terminate the Tailgate Carnival event on 27

February,2019 before the scheduled end time of 2am conflicted with the Environmental Management Act and the Noise Pollution Control Rules, 2001.

169. It is declared that the decision and/or action by the First and/or Second Defendant to shut down and/or stop and/or terminate the Tailgate Carnival event on 27 February,2019 before the scheduled end time of 2am was made without any evidence on which a finding of fact could reasonably be based.

170. The First and Second Defendants to pay the Claimant the sum of $30,000.00 as vindicatory damages.

171. The First and Second Defendants to pay the Claimant's costs of the action to be assessed by a Registrar in default of agreement.

/s/Margaret Y Mohammed

Judge