THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No.: CV2020-03075

IN THE MATTER OF THE JUDICIAL REVIEW ACT, No 50 of 2000

AND

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

BETWEEN

VISHNUDATH KEMCHAND

OMAWATEE KEMCHAND

Claimants

AND

CONSERVATOR OF FORESTS

Defendant

Before the Honourable Madame Justice Margaret Y Mohammed

Date of Delivery 21 July 2021

Appearances

Mr Jagdeo Singh, Mr Kiel Taklalsingh, Mr Stefan Ramkissoon instructed by Ms Karina Singh Attorneys-at-law for the Claimants.

Ms Monica Smith instructed by Ms Sara Muslim Attorneys at-law for the Defendant.

JUDGMENT

INTRODUCTION

1. The Claimants have been involved in the sawmill industry for over 15 years and they have a license ("the Licence") to operate the First Class Sawmill and Lumber Yard Limited situate at #575 Tabaquite Road San Pedro, Rio Claro ("the Sawmill") pursuant to section 4 of the Sawmills Act[1] ("the Sawmills Act"). On 23 June 2020 to 15 July 2020 the Licence was orally suspended. The Defendants' servants and/or agents seized several logs and all of the records of the Sawmill, namely books containing the relevant permits and records of various log cuttings and timber from the premises of the Sawmill ("the Sawmill's Compound") during the period 25 June 2020 to 6 July 2020. In this action Claimants have challenged the legality of the suspension of the Licence. They have also challenged the failure and or refusal of the Defendant to report the seized items to a Magistrate, in accordance with Section 13 of the Forests Act[2] ("the Forests Act"). The have sought the following orders from the Court:

    (i) A declaration that the continuing failure and/or refusal of the Defendant to report its seizure of various logs, from the Claimants, on 25 June 2020 and 6 July 2020 to a Magistrate in accordance with Section 13 of the Forests Act is unlawful.

    (ii) A declaration that the Defendant's decision to suspend the Claimants' licence to operate a sawmill between the period 23 June 2020 to 15 July 2020 is unlawful, null and void and of no effect.

    (iii) An order of certiorari to bring into the High Court of Justice and quash the said decisions of the Defendant with respect to the seizure and continued detention of the said logs.

    (iv) An order of certiorari to bring into the High Court of Justice and quash the said decision of the Defendant to find the Claimants guilty and/or in breach

[1] Chapter 66:02
[2] Chapter 66:01

of the Sawmills Act when it orally informed the Claimants of the suspension of the Licence to operate a sawmill.

2. They have also sought the following substantive orders, namely:

   (a) An order of mandamus compelling the Defendant to release and return to the Claimants the items/logs purportedly seized pursuant to the cartage receipt dated 25 June 2020 and 6 July 2020 issued to the Claimants.
   (b) Damages inclusive of aggravated and/or exemplary damages.
   (c) General damages resulting from the unlawful seizure of the Claimants' property.
   (d) Legal costs.
   (e) Interest.
   (f) Any other order which the Honourable Court may deem fit in the circumstances.

BACKGROUND FACTS

3. The Claimants position was set out in the affidavit of the First Claimant filed on 15 October 2020 ("the Claimants' Affidavit") and 18 March 2021 ("the Claimants' Affidavit in Reply").

4. According to the First Claimant, on Monday 22 June 2020, at around 9:30 am he received a phone call from Mr Ashton Dabee ("Mr Dabee"), the Forest Ranger requesting that the Sawmill be opened for the purpose of executing an inspection. At that time the First Claimant had prior commitments to attend to, so he advised Mr Dabee that he was unable to facilitate his request and he inquired whether the next day (Tuesday, 23 June 2020) would be convenient for him to conduct the inspection. Mr Dabee agreed to return the next day and left the Sawmill's Compound. On the said day, approximately one hour after leaving, Mr Dabee returned with two police officers attached to the Rio Claro Police station causing the Claimants to open the gates of the Sawmill's Compound to allow them to enter.

5. On entry, Mr Dabee said to the Claimants "I hear allyuh have teak logs on this compound without a permit. We going to search here and see." He then conducted a thorough search of the Sawmill's Compound and concluded that no teak logs were present. He however found apamate, cedar and mahogany logs. Upon finding these logs, Mr Dabee asked the First Claimant "where these logs came from?", who responded by saying "We have 22 acres of land here, it all came from my land." Mr Dabee then telephoned a superior officer while in the Claimants' presence and later informed them that he had received instructions to seize all of the records of the Sawmill ("the Sawmill's Logbooks"). The Claimants requested a receipt for the said seizure of the Sawmill's Logbooks; however, Mr Dabee refused to do so.

6. The next day, on Tuesday 23 June 2020, at around 9:30 am a vehicle with Forest Rangers arrived at the Sawmill. One of the Forest Rangers, Mr Gulab requested that the Claimants show him the location that the logs and timber had been removed from. The First Claimant took him to the location and identified the relevant area. The Claimants then explained to the officers that after the logs and timber were removed, they prepared the land for planting cassava. After examining the area, Mr Gulab stated "These logs didn't come from here. I need to make a phone call."

7. Mr Gulab subsequently, informed the Claimants that he had received strict instructions from his superior, Mr SunPaul Laloo ("Mr Laloo"), to shut down the Sawmill pursuant to Section 4 of the Sawmills Act. The Claimants did not understand why the Sawmill was being shutdown. They requested from Mr Gulab the reasons for the shutdown and he failed to respond or provide any reasons or details for the decision to shutdown the Sawmill. The Claimants were also not advised of any charge or investigation being commenced against them or that the Sawmill's operations were in breach of any law. However, Mr Gulab later informed the Claimants that he had received a directive from the head office to seize all unmarked logs on the Sawmill's Compound.

8. According to the First Claimant, during the course of that week, from Wednesday 24 June 2020 to Friday 3 July 2020, the Forest Rangers/Officers led by Mr Vin Ramnarine ("Mr Ramnarine") removed the logs and timber from the Sawmill's Compound. Mr Ramnarine indicated to the Claimants that the said logs were being seized pursuant to breaches of the Forests Act, but they were not told the nature of the breaches or the relevant sections of the Forests Act.

9. The Defendant's position was set out in six affidavits. They were sworn to by Sunpaul Laloo ("the Laloo Affidavit"), Ashton Dabee ("the Dabee Affidavit"), Goolab Ramroop ("the Ramroop Affidavit"), Kailash Sookdeo ("the Sookdeo Affidavit"), Rajendra Basdeo ("the Basdeo Affidavit") and Vin Ramnarine ("the Ramnarine Affidavit").

10. The Laloo Affidavit was a combination of facts and contentions. I will only set out the factual matters in the Laloo Affidavit. Mr Laloo stated that he is a Forester III and he has been a Forester for approximately 38 years. According to Mr Laloo, he received information from the Assistant Conservator of Forests, Rishi Singh on Monday 22 June 2020 about illicit activities pertaining to the cutting of illegal teak logs at the Sawmill without written permission in the form of a removal permit. He immediately contacted Mr Goolab Ramroop ("Mr Ramroop") and Mr Dabee and instructed them to investigate the matter.

11. According to Mr Laloo, he was informed by Mr Dabee that the Sawmill was in operation, but the gate was locked and that the First Claimant had told him to return the following day. He then instructed Mr Dabee to visit the Police Station in Rio Claro and have the police officers there accompany him to the Sawmill on the same day. Mr Laloo stated that Mr Dabee informed him that when he returned to the Sawmill's Compound with the police officers, he was given access to the Sawmill and while there he observed that there were logs which were not recorded in the Sawmill's Logbooks. Mr Dabee also indicated to him

that he was of the view that an offence contrary to section 8(1) of the Sawmills Act had been committed.

12. Mr Laloo stated that on 23 June 2020, a party of Foresters visited the Sawmill and proceeded to seize all the logs and timber that were not entered into the Sawmill's Logbooks pursuant to section 7 (1) of the Sawmills Act. The seizure and transporting of the logs and timber took place between Wednesday 24 June 2020 and Friday 3 July 2020, when they were taken to the Brickfield Forest Compound ("Brickfield"). According to Mr Laloo, the measurements of the logs were recorded and a Report ("the Seizure Report") was compiled and submitted to the Magistrate on Monday 8 July 2020. Mr Laloo deposed that on Wednesday 15 July 2020 he received a document from the Assistant Conservator of Forests dated 7 July 2020 ("the July 2020 Letter") for delivery to the Claimants. The July 2020 Letter served to notify the Claimants of the lifting of the suspension of the Licence.

13. According to Mr Laloo, he delivered the July 2020 letter to the Claimants and instructed them of their entitlement to apply to the Magistrate's Court for the return of the seized logs and timber within 14 days. He stated that in or around July 2020, he was informed by Mr Ramnarine that on 13 July 2020 the Claimants applied to the Court for the return of the said logs and timber.

14. The Dabee Affidavit was also a combination of facts and opinion. The material facts were that Mr Dabee is a Forester I and he has been a Forester for approximately 17 years. According to Mr Dabee, he received a report on Monday 22 June 2020 from Mr Laloo regarding the presence of teak logs at the Sawmill's Compound. He went to the Sawmill's Compound and observed that its gate was closed but the Sawmill was in operation. He called out to the First Claimant but the latter refused to open the gate for him and the other officers to enter. He then informed Mr Laloo who instructed him to visit the Rio Claro Police and obtain the assistance of the police officers there to enter the Sawmill's Compound. Mr Dabee did as he was instructed and upon his return, he and the police

officers present gained access to the Sawmill's Compound. He informed the Claimants of the information he had, the report that he was investigating and requested to check the material and the Sawmill's Logbook.

15. According to Mr Dabee, he conducted an inspection of the Sawmill's Compound and found cedar, mahogany and apamate logs and other species of logs of various dimensions. Mr Dabee asked the First Claimant where he had gotten the logs and he told him that they came from a piece of land at the back of the Sawmill's Compound. He then accompanied the First Claimant to the said area and based on his observations, he was not satisfied that the logs had come from that area as there were no tree stumps, branches or crown of trees.

16. Mr Dabee informed Mr Laloo of his observations. Mr Laloo instructed Mr Dabee to inspect the Sawmill's Logbooks to see if it contained any entries for the logs and timber that he had found. Upon an inspection of the Sawmill's Logbooks, Mr Dabee did not observe any such entries for the said logs and timber. He informed Mr Laloo of his observations and that the Claimants did not have any removal permits for same. Mr Dabee also stated that he observed that there were no serial numbers, property markings or forestry dye markings on these logs. Mr Laloo then instructed him to seize the Sawmill's Logbooks, which he did by making a written entry in the Sawmill's Logbooks A, B and C that was acknowledged and signed by the First Claimant. The Sawmill's Logbooks were then taken to the Rio Claro Forestry Office for safe keeping. On the following day he met with Mr Ramnarine and while telling him of his observation, handed over the Sawmill's Logbooks.

17. According to Mr Dabee, he accompanied Mr Ramnarine to the Sawmill's Compound on 23 June 2020 and while there, he observed a conversation between Mr Ramnarine and the Claimants. In the said conversation, Mr Ramnarine informed the Claimants that he was investigating a report that the Sawmill did not have any removal permits, records of logs, forestry dye markings or serial numbers and initials on the logs found on the Sawmill's

Compound. He also observed Mr Ramnarine showing the Claimants the Sawmill's Logbooks which had been seized and pointing out certain matters to them. The Claimants provided responses and then he assisted Mr Ramnarine with the measuring, recording and seizing of the logs and timber on the Sawmill's Compound.

18. Mr Ramroop stated that he is a Forester II and he has been a Forester for approximately 38 years. He stated that on 22 June 2020 he received a telephone call from Mr Laloo concerning an alleged Forest Offence at the Sawmill and he was instructed to assist Mr Dabee in the investigation. On 23 June 2020 he and other Foresters proceeded to the Sawmill which was open and operating.

19. According to Mr Ramroop, he requested that the First Claimant show him the area where the logs had been removed. He did not see the Second Claimant at this point in time as the First Claimant was there alone. Upon reaching the area which was adjoining the Sawmill's Compound, he did not see any evidence that trees were cut from this area because there were no stumps, branches, crown or any parts of trees visible that would have indicated that trees had been cut. He indicated to the First Claimant that based on his observation the logs did not come from this area and that he needed to make a phone call to his supervisor to inform him of his observations.

20. Mr Ramroop informed Mr Laloo of his observations and received strict instructions from him to ensure that the Sawmill was not operating because the Sawmill's Logbooks had been seized on Monday 22 June 2020. He then informed the Claimants that the Sawmill was being shut down because its logs and timber were under investigation. Shortly thereafter, he heard Mr Ramnarine, caution the Claimants about the said logs and timber.

21. According to Mr Ramroop, on 23 June 2020 Mr Dabee pointed out a quantity of logs stacked on the Sawmill Log Depot without marking dye, serial numbers and initials. He also met with the First Claimant who was cautioned by Mr Ramnarine. He stated that he

heard Mr Ramnarine inform the Claimants of the offence of failing to keep Sawmill records in accordance with the Sawmills Act. The First Claimant took the Foresters who were present to a piece of graded land at the back of the Sawmill and indicated that all the logs and timber came from there. Upon inspection they did not observe any tree stumps or tree crowns to substantiate the First Claimant's assertion. He informed the First Claimant of his findings and section 20 of the Forests Act. The First Claimant then said that the logs came from private lands located "down the road." Mr Ramroop asked the First Claimant to accompany the Foresters to the private lands. However, the First Claimant indicated that they should return at 1:00pm to meet the owner of the private lands. The First Claimant also requested to compound or settle the matter, but he was informed that there was a Ministerial Directive that all matters had to proceed to Court.

22. Mr Ramroop stated that he left the Sawmill and returned at 1:00pm to continue his investigations but the First Claimant indicated that it was not possible to meet the owner of the private lands and he had to return another day. In response, he indicated to the First Claimant that the Sawmill was still in operation and that it should not be operating as the Sawmill's Logbooks were seized.

23. According to Mr Ramroop, he received a directive from the Deputy Conservator of Forest, Ameer Roopnarinesingh ("Mr Roopnarinesingh") on 23 June 2020 to seize all the unmarked logs on the Sawmill's Compound and transport them to Brickfield for safe keeping. The procedure was started on 23 June 2020 and completed on 3 July 2020. The corresponding Seizure Report was prepared on 8 July 2020 and submitted to the Magistrate on 9 July 2020. Mr Ramroop also stated that he and Mr Laloo served the Claimants with the July 2020 Letter.

24. Mr Ramnarine has been a Forester I for the past nine years. He deposed that on the 23 June 2020 he had a conversation with Mr Dabee who handed him the three Sawmill Logbooks. He then accompanied Mr Dabee and other Forest Officers to the Sawmill where

he met the Claimants and while there he showed them the three Sawmill Logbooks. He informed them that he was investigating a report that they had logs on the Sawmill's Compound without the necessary removal permit and there was no record of the logs in the Sawmill Logbooks. He observed that there were different species of logs with no markings. He questioned the First Claimant about the records for those logs. The First Claimant indicated that there were no records as they came from his private land at the back of the Sawmill. Upon inspection of the said land he did not observe any tree stumps or tree remains. The First Claimant then told him that the said logs came from someone's private land. He informed the Claimants of the offence of failing to keep records in accordance with section 8(3) of the Sawmills Act and cautioned them accordingly. With the assistance of other Forest Officers, Mr Ramnarine seized all the log and timbers by recording their dimensions and placing a seizure mark. He then warned the Claimants of the intended prosecution and the First Claimant upon being informed of the breaches begged to compound or settle the matter. The logs were then transported to Brickfield during the period 23 June 2020 to 3 July 2020 and the Claimants were notified that the Licence was suspended until further notice.

25. Mr Ramnarine stated that on 25 June 2020 he handed one Cartage receipt for the seized logs to the First Claimant and on 6 July 2020 he handed another Cartage receipt to the First Claimant for the remaining logs seized. He also informed the First Claimant on 6 July 2020 that he only had 14 days to apply to the Magistrate's Court for the logs after the seizure was reported.

26. According to Mr Ramnarine, the Seizure Report was prepared on 8 July 2020 and the complaint together with the Seizure Report was laid on 9 July 2020 at the Rio Claro Magistrate's Court. The charges which were laid against the Claimants were for failing to keep sawmill records, the summons was issued on 9 July 2020 and served on the Claimants personally by Mr Ramnarine.

27. Kailash Sookdeo has been a Forest Ranger I for approximately four years. He was one of the officers who proceeded to the Sawmill's Compound on 23 June 2020. At the Sawmill's Compound, he acted on the instruction of Mr Ramnarine and assisted with the seizure of the logs. On the same evening, the Assistant Conservator of Forest instructed him and the other Forest officers to continue the seizure and measurement of the logs that bore no markings. This exercise was completed on 3 July 2020 when all the seized logs were transported to Brickfield.

28. Mr Rajendra Basdeo stated that he has been a Forest Ranger I for approximately seven years. His evidence was identical to that of Mr Sookdeo.

29. In the Claimants' Affidavit in Reply he denied that he had indicated to the Forest Officers that the logs came from private land or that the matter should be settled or compounded. He stated that he had explained to Mr Ramnarine, Mr Ramroop and Mr Dabee that the logs were cut between April and May 2020 and he had since uprooted and removed the log remains and graded the area in preparation to plant cassava. The First Claimant also deposed that he was only served with the summons in relation to the complaint which was laid and he was only in receipt of the Seizure Report and other documents during the disclosure process in the Magistrate's Court proceedings, which was after the instant action was initiated.

THE ISSUES

30. The issues which I will consider in this action are:

    (a) Was the Defendant's decision to suspend the Licence to operate the Sawmill between 23 June 2020 to 15 July 2020 unlawful, null and void and of no effect?

    (b) Whether the decision of the Defendant to suspend the Licence was proportionate?

(c) Did the Defendant breach the Claimants' legitimate expectation when it suspended the Licence?

(d) Was the Defendant's decision to seize and detain the logs and timber from 23 June 2020 unlawful, null and void and of no effect?

(e) Did the Defendant follow the procedures prescribed by section 13 of the Forests Act with respect to the reporting of the seizure of the logs?

(f) If the Defendant is in breach, are the Claimants entitled to any damages?

WAS THE DEFENDANT'S DECISION TO SUSPEND THE LICENCE TO OPERATE THE SAWMILL BETWEEN 23 JUNE 2020 TO 15 JULY 2020 UNLAWFUL, NULL AND VOID AND OF NO EFFECT?

31. The Claimant contended that the decision to suspend the Licence was unfair and it was in violation of the principles of natural justice, as such the Defendant's actions were unlawful, illegal and null and void. Counsel submitted that the July 2020 Letter stated that the Defendant made the decision to suspend the Licence. However, the Defendant's failure to put forward any evidence to account for the reasons for his decision and the decision making process was fatal to the Defendant's case. It was also argued on behalf of the Claimants that the Defendant's decision to suspend the Licence was a disproportionate response in the circumstances of the instant case, as the evidence put forward on behalf of the Defendant failed to disclose any rationale or justification for this action.

32. It was submitted on behalf of the Defendant that the decision to suspend the Licence was procedurally fair as the Laloo Affidavit and the Ramroop Affidavit set out the basis for the suspension of the Licence and also showed the factors which were considered by the decision-maker, Mr Roopnarinesingh before he made the decision to suspend the Licence. Counsel also submitted that there was no breach of the principles of natural justice as Mr

Ramnarine had informed the Claimants of the nature of the complaint and gave them the opportunity to make representations explaining their position but they failed to do so.

33. Section 20 of the Judicial Review Act[3] ("the JRA") imposes a duty on a public body, to act fairly and in accordance with the principles of natural justice in the exercise of its function. Section 20 of the JRA states:

> "An inferior Court, tribunal, public body, public authority or a person acting in the exercise of a public duty or function in accordance with any law shall exercise that duty or perform that function in accordance with the principles of natural justice or in a fair manner."

34. The requirements for procedural fairness was summarized by Lord Mustill in **R v Secretary of State for the Home Department, ex p. Doody[4]** where he stated:

> "From them, I derive that (1) where an Act of Parliament confers an administrative power there is a presumption that it will be exercised in a manner which is fair in all the circumstances. (2) The standards of fairness are not immutable. They may change with the passage of time, both in the general and in their application to decisions of a particular type. (3) The principles of fairness are not to be applied by rote identically in every situation. What fairness demands is dependent on the context of the decision, and this is to be taken into account in all its aspects. (4) An essential feature of the context is the statute which creates the discretion, as regards both its language and the shape of the legal and administrative system within which the decision is taken. (5) Fairness will very often require that a person who may be adversely affected by the decision will have an opportunity to make representations on his own behalf either before the decision is taken with a view

[3] Chapter 7:08
[4] [1994] 1 A.C. 531, p. 560.

to producing a favourable result; or after it is taken, with a view to procuring its modification; or both. (6) Since the person affected usually cannot make worthwhile representations without knowing what factors may weigh against his interests fairness will very often require that he is informed of the gist of the case which he has to answer."

35. The role of the Court was explained by Lord Reed in the UK Supreme Court decision of **R (Osborn) v Parole Board**[5] at paragraph 65 which stated:

> "The court must determine for itself whether a fair procedure was followed (Gillies v Secretary of State for Work and Pensions [2006] UKHL 2; [2006] 1 All ER 731; [2006] 1 WLR 781, para 6 per Lord Hope of Craighead). Its function is not merely to review the reasonableness of the decision-maker's judgment of what fairness required." (Emphasis added)

36. In **Osborn**, Lord Reed noted at paragraphs 68 to 71 that fairness serves the twin purposes of not only ensuring that decisions are of a better quality, but it promotes the Rule of Law and ensures that persons affected by decisions do not feel a sense of injustice.

37. What fairness requires in a particular case is a question of law on which the court is the final arbiter. The relevant test is whether the procedure complied with the requirements of fairness, as they apply in the particular circumstances of the case. If the procedure did not comply with the requirements of fairness, the decision will not be saved by the fact that the decision-maker may have had rational reasons for adopting the procedure.[6] As the duty to act fairly imposes obligations on decision–makers, when courts consider the requirements of fairness in a particular case they are primarily concerned with the actions or omissions of the decision-maker and they are not usually concerned with the unfairness

[5] [2013] UKSC 61
[6] Paragraph 5.29 Judicial Review Principles and Procedures by Auburn, Moffett and Sharland.

arising out of the actions or omissions of others[7].

38. The general power to grant, suspend and revoke licenses to operate a Sawmill is set out at section 4 (4) of the Sawmills Act which provides:

> "4 (4) On due application made the Conservator may grant a licence subject to such terms and conditions as he may think fit, or he may refuse to grant a licence, if he deems the refusal to be necessary or desirable in the interests of the public and he may suspend for such time as he thinks fit, or revoke, any licence issued by him upon breach by the licensee of any sawmill, or by the manager or person for the time being in charge thereof, of any of the provisions of this Act, of any of the terms and conditions subject to which the licence was granted or for any other reason which in his opinion renders the suspension or revocation necessary or desirable in the interests of the public. Any person aggrieved by the withholding, suspension or revocation of any licence may, not later than one month after the withholding, suspension or revocation, appeal to the Minister whose decision shall be final."

39. Section 2(2) of the Sawmills Act states that any reference to the words "Conservator" or "Conservator of Forests" shall be construed as a reference to the term "Director" or "Director of Forestry". There is no provision which states that the acts of a Forester are deemed to be the acts of the Conservator of Forest once the officer is authorized to so act.

40. There appeared to be some inconsistency in the position adopted on behalf of the Defendant with respect to who made the decision to suspend the Licence. The Laloo Affidavit stated that Mr Laloo suspended the Licence. Notably, none of the deponents stated that Mr Roopnarinesingh, Deputy Conservator of Forest took the decision to

[7] Paragraph 5.31 Judicial Review Principles and Procedures by Auburn, Moffett and Sharland

suspend the Licence. The Ramroop Affidavit stated that Mr Roopnarinesingh took the decision to seize the logs *not* suspend the Licence. The July 2020 Letter clearly stated that the Defendant made the decision. In my opinion, in the absence of any evidence in the Laloo Affidavit that he was authorised to make the decision to suspend the Licence, the only public authority which was empowered to make and took that decision was the Defendant as confirmed in the July 2020 letter.

41. In my opinion, the Defendant failed to act fairly when the oral decision was made to suspend the Licence for the following reasons.

42. Firstly, there was no evidence from the Defendant setting out the matters that he took into consideration before he made the decision to suspend the Licence. The July 2020 Letter clearly stated that the Defendant suspended the Licence pursuant to section 4 of the Sawmills Act. However, the July 2020 Letter was signed by Rishi Singh for the Defendant. According the Laloo Affidavit, at the material time, Rishi Singh was the Assistant Conservator of Forest. He was not occupying the office of the Defendant and in any event, he was not the decision-maker as he signed the July 2020 letter on behalf of the Defendant. Further, none of the deponents of the affidavits filed on behalf of the Defendant stated that they were authorised by the Defendant to make any decision to suspend the Licence, which is consistent with section 2(2) of the Sawmills Act which does not give the Defendant the power to delegate this important decision.

43. In the case of **Lawrence Zogli v Chief Immigration Officer**[8]**,** I had cause to set out the relevant principles of law on the duty of candour of public authorities in judicial review matters and the consequences of failing to do so. It is worthwhile to repeat paragraphs 43 and 44 of the said judgment which stated:

[8] CV 2009-0923

"43….This failure by the Defendant to provide evidence of the decision maker was addressed by the author in the text of **Judicial Remedies in Public Law**[9] where he stated:

> "The courts generally recognize that there is an obligation on a public authority to make candid disclosure to the court of its decision-making process, laying before it the relevant facts and the reasoning for the decision challenged. The Court of Appeal has indicated that judicial review is unlike civil litigation and once permission has been granted the defendant should provide sufficient information to enable the court to determine whether the actions complained of were lawful. Sir John Donaldson M.R expressed the view that the defendant was under "a duty to make full and fair disclosure" once permission was granted. Purchas LJ expressed his view more circumspectly, stating that the defendant "… should set out fully what they did and why so far as is necessary fully and fairly to meet the challenge" made by the claimant." (Emphasis added).

44. The Defendant's duty of candour in judicial review proceedings was set out in great detail by Lord Donaldson MR in **R v Lancashire County Council ex p Huddleston**[10] where he stated:

> "Notwithstanding that the courts have for centuries exercised a limited supervisory jurisdiction by means of the prerogative writs, the wider remedy of judicial review and the evolution of what is, in effect, a specialist administrative or public law court is a post-war development. This development has created a new relationship between the courts and those who derive their authority from the public law, one of partnership based on a common aim, namely the maintenance of the highest standards of

[9] 5th ed, Lewis at paragraph 9-07
[10] [1986] 2 All ER 941 at page 945

> public administration. With very few exceptions, all public authorities conscientiously seek to discharge their duties strictly in accordance with public law and in general they succeed. But it must be recognised that complete success by all authorities at all times is a quite unattainable goal. Errors will occur despite the best of endeavours. The courts, for their part, must and do respect the fact that it is not for them to intervene in the administrative field, unless there is a reason to inquire whether a particular authority has been successful in its endeavours. The courts must and do recognise that, where errors have, or are alleged to have, occurred, it by no means follows that the authority is to be criticised. In proceedings for judicial review, the applicant no doubt has an axe to grind. This should not be true of the authority. The analogy is not exact, but just as the judges of the inferior courts when challenged on the exercise of their jurisdiction traditionally explain fully what they have done and why they have done it, but are not partisan in their own defence, so should be the public authorities. It is not discreditable to get it wrong. What is discreditable is a reluctance to explain fully what has occurred and why." (Emphasis added)"

44. The onus was on the Defendant to place before the Court the matters that he considered before he made the decision to suspend the Licence and his reasons for doing so. In light of the Defendant's failure to put any such evidence before the Court, I am entitled to conclude that he did not consider any matters before he made the decision to suspend the Licence and therefore he had no reasons for making that decision. I therefore am constrained to conclude that the Defendant did not act reasonably when he made the decision to suspend the Licence.

45. Secondly, there was no evidence that the Defendant gave the Claimant an opportunity to be heard before the decision was made to suspend the Licence. Paragraph 6.04 of the text

Judicial Review Principles and Procedures by Auburn, Moffett and Sharland described one of the core requirement of fairness as:

> "At the core of the duty to act fairly, and the minimum requirement of fairness, is the need to ensure that a person affected by a decision has an effective opportunity to make representations before it is taken, so that he or she has the chance to influence it. This is sometimes described as the 'right to be heard'. However, fairness does not always require an oral hearing. For that reason the right is more appropriately characterised as a right 'to make representations'."

46. At paragraph 6.67 the learned authors continued:

> "If, however, an individual's representation are duly submitted to the decision-maker, but the decision-maker fails to have regard to them, whether deliberately or through inadvertence, that is almost certain to amount to a breach of the requirements of fairness, and to a breach of the decision-maker's duty to take into account relevant considerations."

47. It was submitted on behalf of the Defendant that the Claimants were given an opportunity to be heard before the decision was taken, as Mr Ramnarine stated that he informed the Claimants about the alleged breaches and offences and he gave them an opportunity to make representations but they failed to do so.

48. Mr Ramnarine's evidence was that he informed the Claimants that he was investigating a report that they had logs on the Sawmill's Compound without the necessary removal permit and there was no record of the logs in the Sawmill's Logbooks. He observed that there were different species of logs with no markings and questioned the First Claimant about the records for those logs. The First Claimant indicated that there were no records as they came from land at the back of the Sawmill. Upon inspection he did not observe any tree stumps or tree remains. The First Claimant then told him that the said logs came

from private lands. He informed the Claimants of the offence of failing to keep Sawmill records in accordance with section 8(3) of the Sawmills Act. He then cautioned the Claimants.

49. According to the Ramnarine Affidavit, the First Claimant was given an opportunity to be heard when he asked him where the logs came from and the First Claimant stated it was from private lands. The First Claimant was also given ample opportunity to contact the individual who owned these private lands, to show where the logs came from but he failed to make adequate arrangements. He also stated that the Claimants were informed of the alleged breaches and they were given the opportunity to make representations but they failed to do so.

50. In my opinion, the exchange between Mr Ramnarine and the First Claimant which the Defendant has relied on to prove that the Claimants were given an opportunity to be heard prior to the suspension of the Licence is not material as Mr Ramnarine was not the decision-maker. In my opinion, there was no evidence that the Defendant called upon the Claimants to make any representations to him prior to the decision to suspend the Licence. Therefore, the Claimants were denied the opportunity to be heard by the Defendant and they were not treated fairly prior to the decision by the Defendant to suspend their licence.

51. Before I leave this issue, Counsel for the Claimants in his submissions argued that the failure by the Defendant to produce the gazetted suspension rendered the purported suspension stillborn. I did not consider this submission as relevant, as it was not an issue which was raised in the Claimants' Affidavit and therefore the Defendant was deprived of the opportunity to respond.

WHETHER THE DECISION OF THE DEFENDANT TO SUSPEND THE LICENCE WAS PROPORTIONATE?

52. In **Sanctuary Workers' Union v Minister of Labour**[11] the Court summarised the principles on proportionality at paragraphs 54 and 55 as:

> "54. Where a decision, effected by a public authority, impacts upon a fundamental right, the decision maker must consider all the relevant criteria and adopt a proportional approach. Before such a decision is made, the decision maker should address the following questions:
>
> 1) Whether the objective of the measure is sufficiently important to justify the limitation of a protected right?
>
> 2) Does the factual matrix present several appropriate or applicable options?
>
> 3) Which option would occasion the least harm, prejudice or detriment, having regard to the ultimate objective of the decision to be made?
>
> 4) Will the contemplated decision impose disproportionate disadvantages upon the individual to whom the intended decision relates?
>
> 55. The decision maker should ultimately adopt a cautious and considered approach and should comprehensively and completely weigh all the relevant factors as well as the possible consequences which the decision may occasion, before the decision is made. The decision must be fair and must relate to a clearly defined objective. The objective should be characterised by a degree of importance which justifies its implementation notwithstanding the impact which will be occasioned to entrenched rights. When the Court is tasked with the mandate to review any

[11] CV2019-01113

decision which materially impacts upon a fundamental right, it should be guided by a merit based approach, as it must be robust in its defense of entrenched rights. Whenever such exceptional circumstances arise, the Court cannot stay within the traditional strictures imposed by the principle of "due deference' and confine itself to considerations of Wednesbury reasonableness."

53. In order to determine if the decision by the Defendant to suspend the Licence was proportionate, I am obliged to consider the matters the Defendant took into account before he made that decision. In the absence any such evidence from the Defendant, I am entitled to conclude that the decision was disproportionate.

DID THE CLAIMANTS HAVE A LEGITIMATE EXPECTATION THAT THE LICENCE WOULD NOT BE SUSPENDED?

54. The Claimants asserted in their fixed date claim that they held a legitimate expectation that the Licence would not be suspended. It was submitted on behalf of the Claimants that when the Defendant granted the Claimants the Licence, it created in them the expectation that they could operate the Sawmill subject to the expressed terms and conditions of the Licence, and the statutory conditions contained in the Sawmills Act and that the Licence would not be suspended except in accordance with the law.

55. Counsel for the Defendant argued that the Claimants' claim with respect to any frustration of their legitimate expectation must fail. They asserted that the Claimants failed to provide any evidence to show how a legitimate expectation to operate a sawmill was created by the words and/or actions of the Defendant, in terms of a promise or representation made to them which was clear, unambiguous and devoid of relevant qualification.

56. Lord Neuberger in the Privy Council decision of **United Policyholders Group v The Attorney General of Trinidad and Tobago**[12] repeated some of the principles of legitimate expectation. He stated at paragraphs 37 and 38:

> "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 [1990] 1 WLR 1545, 1569, cited with approval by Lord Hoffmann in R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs (No 2) [2009] AC 453, 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 statement. This third point can often be elided 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 circumstances, a public body could, or a fortiori should, reasonably decide not to comply with the statement."

[12] [2016] UKPC 17

57. The burden of proving the legitimacy of the expectation initially rests on the Claimant. Once the Claimant has proven the elements, the onus is shifted to the Defendant to justify the frustration of the legitimate expectation.

58. In my opinion, the legitimacy of the expectation was created by the Defendant when it issued the Licence. It was the Defendant's clear representation to the Claimants that it would not be suspended once they abided with its terms and conditions, the law in particular, the Sawmills Act and the principles of natural justice. The Claimants were therefore entitled to expect that the Licence would not be suspended unless those principles were followed by the Defendant. However, the Claimants' legitimate expectation was frustrated as the Defendant suspended the Licence without acting in accordance with the law when he failed to given them the opportunity to be heard before the decision was taken. In the instant case, there was no evidence from the Defendant to justify the frustration of the legitimate expectation.

WAS THE DEFENDANT'S DECISION TO SEIZE AND DETAIN THE LOGS AND TIMBER UNLAWFUL, NULL AND VOID AND OF NO EFFECT?

59. One of the orders which the Claimants have sought is to quash the decision of the Defendant with respect to the seizure and continued detention of the logs. The Defendant's power to seize and detain logs was set out in section 13 of the Forests Act which provides:

> "13. (1) When there is reason to believe that a forest offence has been committed in respect of any forest produce, such produce, together with all tools, ropes, chains, boats, crafts, carriages, carts and cattle used in the commission of the offence, may be seized by any Forest Officer, or person authorised by him, or by any rural constable or police officer.
>
> (2) Every person seizing any property under this section shall, as soon as may be, make a report of such seizure to a Magistrate. When the forest produce

with respect to which such offence is believed to have been committed is the property of the State and the offender is unknown, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to his official superior.

(3) All such property shall be forfeited to the State, and shall be taken to be condemned, and may be sold by the Forest Officer of the district in which the seizure took place, unless the person from whom the same had been seized or the owner thereof or some person authorised by him, within fourteen days of such seizure, claims the same, and, within the said term of fourteen days, or such further term as a Magistrate may allow, proves to the satisfaction of such Magistrate that such forest produce was not obtained from State land, or that such person had some sufficient licence or authority in that behalf.

(4) In lieu of the forfeiture of any of the things other than forest produce mentioned in this section, the Magistrate may order the owner thereof to pay such penalty, not exceeding seven hundred and fifty dollars, as the Magistrate thinks fit, and on payment of such penalty such things shall be returned to the owner.

(5) Whoever seizes any forest produce or any property under this section shall place on such forest produce or property, or the receptacle, if any, in which it is contained, a mark indicating that the same has been seized.

(6) Notwithstanding anything contained in this section, a Forest Officer may direct at any time the immediate release of any property seized under this section which is not the property of the State, and the withdrawal of any charge made in respect of such property"

60. Section 2(1) of the Forests Act defines a "forest offence" as any offence punishable under the Forests Act or under any rule thereunder. It also defines "forest produce" as including

"the following when found in or brought from State land: (a) trees and all parts or produce of such trees; (b) plants not being trees, and all parts of produce of such plants". "State land" is defined as including waste or vacant land within Trinidad and Tobago and all lands vested in the State. "Private land" is defined as "land other than State land".

61. Section 7(A) of the Forests Act deals with the removal of timber. It states:

> "7A. (1) No person shall remove any timber from any land by any means whatever, without a Removal Permit granted in accordance with this section.
>
> (2) An application for a permit shall be made by the owner or occupier of such lands.
>
> (3) Where an application is being made to remove timber from private land and the applicant is the owner of such land, he shall make a declaration of ownership in the prescribed form.
>
> (4) An applicant who is not himself the owner, shall make a declaration to the effect that the timber for which the permit is required is bona fide private property which has come from private land, with the consent of the owner of such land.
>
> (5) A person who contravenes subsection (1), commits an offence and is liable on summary conviction to a fine of twenty thousand dollars."

62. Although Counsel for the Claimants referred the Court in his closing submissions to the National Forest Policy, I have not considered it as this was a new matter which was not raised in the Claimants' Affidavit and the Defendant had no opportunity to respond to it.

63. All the deponents of the affidavits filed on behalf of the Defendant are Forest Officers. Section 13(1) empowers any Forest Officer or person authorised by him or any rural

constable or police officer to seize forest produce where there is reason to believe that a forest offence has been committed. In the instant case, the evidence set out in the Dabee Affidavit, the Ramroop Affidavit, and the Ramnarine Affidavit was that they made certain observations and they obtained certain information from the First Claimant on where he obtained the logs. However, none of them stated that they made the decision to seize and detain the logs. Indeed, the evidence from Mr Ramroop was that Mr Roopnarinesingh was the person who made that decision.

64. However, there was no evidence from Mr Roopnarinesingh setting out the matters that he considered and his reasons for making the decision to seize and detain the logs. In the absence of any justification from Mr Roopnarinesingh, the Court is entitled to conclude that there was no reasonable justification by Mr Roopnarinesingh for the decision to seize and detain the said logs.

65. Indeed, my position is fortified as the Claimants were not charged for any offence under section 13 of the Forests Act, but they were charged with an offence under section 8 of the Sawmills Act. The Complaint without Oath and the Report of Seizure Form to the Magistrate were exhibited as "V.R.1" to the Ramnarine Affidvait. The Report of Seizure Form was dated 8 July 2020 and the Complaint without Oath was dated 9 July 2020. Both documents stated that the charges against the Claimants were for the offence of failing to keep Sawmill Records pursuant contrary to section 8(3) of the Sawmills Act.

66. Section 8 of the Sawmills Act states:

> "8. (1) Every licensee shall keep, or cause to be kept, books and records in the English language recording all such particulars as may be necessary to enable him to render any such return or furnish any such information as the Conservator would be entitled to require under this Act.

(2) Such books and records shall be kept in a safe place on the premises on which the sawmill or the holder of a permit for a furniture shop is situated.

(3) Any licensee who fails to comply with the requirements of this section in any respect is guilty of an offence against this Act."

67. A licensee is defined at section 2 of the Sawmills Act as a person who is the holder of a sawmill licence issued under the Sawmills Act.

68. Although the Seizure Report stated that it was submitted in accordance with section 13(1) of the Forests Act, at the end it stated that charges have been preferred against the Claimants under section 8(3) of the Sawmills Act and not section 13 of the Forests Act. Further, the Summons which was issued was for the offence of failing to keep proper Sawmill records and not for committing a forest offence.

DID THE DEFENDANT FOLLOW THE PROCEDURES PRESCRIBED BY SECTION 13 OF THE FORESTS ACT WITH RESPECT TO THE REPORTING OF THE SEIZED LOGS?

69. The decision which the Claimants have sought to impugn with respect to the seizure of the logs, is the Defendant's failure and/or refusal to report the seized items to a Magistrate in accordance with section 13 of the Forests Act which initiates a statutory forfeiture procedure. With respect to this decision, the Claimants have sought a declaration that the failure and/or refusal of the Defendant to report its seizure of various logs from the Claimants to a Magistrate in accordance with section 13 of the Forests Act is unlawful.

70. The Claimants submitted that the jurisdiction to make the report to the Magistrate was not properly invoked unless the seized items fall within the statutory remit of being forest produce, that is the seized logs were taken from State Lands.

71. Counsel for the Defendant submitted that there was no failure and/or refusal by the Defendant to report the seizure of the items to a Magistrate, as the logs were seized between 24 June 2020 and 3 July 2020 and the Seizure Report was submitted to the Magistrate on 9 July 2020 in accordance with section 13 (2) of the Forests Act.

72. The evidence in the Laloo Affidavit, the Ramnarine Affidavit and the Ramroop Affidavit was that the Seizure Report was prepared and submitted to the Magistrate's Court on 9 July 2020 in accordance with section 13 (2) of the Forests Act.

73. Paragraphs 10 and 11 of the Laloo Affidavit stated:

> ***"……***The seizure of the logs and transporting them to Brickfield Forest Compound took place during the period Wednesday 24th June, 2020 to Friday 3rd July, 2020. Seizure of the logs were carried out by Forest Rangers Rajendra Basdeo and Kailash Sookdeo and Forester I Vin Ramnarine.
>
> These measurements of the logs were then typed and a Report was compiled which was reported to the Magistrate on Monday 8th July, 2020. This was done in accordance to Section 13(2) of the Forests Act Chapter 66:01***."***

74. Paragraph 13 of the Ramnarine Affidavit stated:

> "….it is not true that the Claimants have not received any report made to the Magistrate. On the 8th July, 2020 the report was prepared and the complaint was laid on 9th July 2020 at the Rio Claro Magistrates' Court together with report of seizure to the Magistrate. Charges were laid against the Claimants Vishnudath and Omawatee Kemchand for failing to keep sawmill records. Attached to the Complaint without Oath Form was the record of species and measurement of the logs that was seized, Summary of Evidence and Report of Seizure Form to the Magistrate. The summons was issued on 9th July 2020 and served to the Claimants

personally by me the same day. Court copies of Complaint without Oath and Report of Seizure Form to the Magistrate was returned to me on the 09th October, 2020. There is now produced, shown to me hereto annexed marked V.R.1 a true copy of the said documents."

75. Paragraph 17 of the Ramroop Affidavit stated:

> "…The seizure was prepared on the 8th July, 2020 and reported to the Magistrate Court on 9th July, 2020, in accordance to the Forests Act Chapter 66:01, Section 13(2)."

76. The Claimants' Affidavit in Reply did not dispute the fact that the Seizure Report was submitted to the Magistrate on 9 July 2020. Instead it took issue with the fact that the Claimants were only served with the summons in relation to the complaint which was laid and that they only received the Seizure Report and other documents during the Magistrate's Court's proceedings which was subsequent to the initiation of the instant action.

77. The purpose for submitting the Seizure Report to the Magistrate under section 13(2) of the Forests Act is to trigger the process for forfeiture in the Magistrate's Court. It is in these proceedings that the Defendant must prove that the logs and timber were forest produce which were taken from State Lands. During these proceedings the Claimants are given the opportunity to be heard on the seizure, continued detention and the forfeiture of the logs and timber.

78. In my opinion, compliance with section 13(2) of the Forests Act is premised on the conditions in section 13 (1) being met. The Defendant must present evidence to this Court to demonstrate that the Forest Officers who were at the Sawmill's Compound met the conditions set out in section 13(1) namely, that at least one of them had reasonable belief that the Claimants had committed a forest offence. However, there was no evidence that

any of the Forest Officers had a reasonable belief that the Claimants had committed a forest offence as the Claimants were not charged for that offence. As stated previously the Seizure Report and the Complaint without Oath only referred to the Claimants as having committed an offence under section 8(3) of the Sawmills Act. In my opinion, in the absence of the Claimants being charged with any offence under section 13 (1) of the Forests Act, the Seizure Report which was submitted to the Magistrate pursuant to section 13(2) of the Forests Act failed to properly invoke the forfeiture procedure under section 13 of the Forests Act. The net effect was that this failure by the Defendant deprived the Claimants of the opportunity to be heard on the issue of the seizure, detention and forfeiture of the logs which they alleged were from their property.

79. For these reasons, I was not satisfied that the Defendant complied with its statutory duty with respect to the reporting of the seized logs as set out under section 13 of the Forests Act.

IF THE DEFENDANT IS IN BREACH ARE THE CLAIMANTS ENTITLED TO ANY DAMAGES?

80. The Claimants had asserted a claim for compensatory, aggravated and/or exemplary damages in this claim. However, Counsel for the Claimants did not address their claim for damages in their closing submissions.

81. It was submitted on behalf of the Defendant that even if the Court is minded to find in the Claimants' favour, it should not exercise its discretion in awarding damages to the Claimants.

82. At paragraphs 5 to 7 in **Neil Bennett v The Defence Council and the Attorney General of Trinidad and Tobago**[13], I set out the law with respect to the granting of damages in judicial review matters which bear repeating here:

[13] CV 2009-01581

"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**[14] 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."[15]

6. The principles laid down by de las Bastide CJ has been codified in section 8 (4) of the **Judicial Review Act**[16] 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."

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

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[14] Civ App No 155 of 1995 at page 14
[15] Supra at page 14
[16] Chapter 7:08

83. The Claimants have complied with Part 56.7 (3) and (4)(b)(ii) CPR as they had made a claim for both compensatory and aggravated damages in their Fixed Date Claim. In my opinion, the basis for any award for damages to the Claimants is limited to compensatory and aggravated and/or exemplary damages in a claim for breach of their constitutional right to protection of the law and not for an ordinary claim.

84. In the local judgment of **The Attorney General of Trinidad and Tobago v Selwyn Dillon**[17], 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

[17] CA Civ P. 245/2012

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) 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."

85. Kokaram J (as he then was) in **Oswald Alleyne and 152 Ors v The Attorney General of Trinidad and Tobago**[18] reaffirmed and added to the guidelines on the assessment of damages for breach of constitutional rights at paragraphs 75 and 76 of the judgment. These guidelines are as follows:

"(1) The award of damages is discretionary;

[18] CV2018-00447

(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."

86. 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 said 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).

87. The Claimants' evidence in respect of their pecuniary loss was set out at paragraphs 24 to 30 of the Claimants' Affidavit. They stated that the Defendant unlawfully suspended the Licence and seized approximately 300 logs of various species[19] which measured 3,358.44 cubic feet and was valued at $724,200.00 excluding Value Added Tax ("VAT"). According to the Claimants, as a result of the seizure of the logs and the closure of the Sawmill they lost substantial sums of money due to their failure to satisfy various purchase orders, namely three orders[20] received from: Loutan Lumber Yard dated 6 August 2020 requesting several quantities of Mahogany, Apamate and Cedar Lumber which was valued at $285,000.00 excluding VAT; Unique Woodworking Limited dated 14 August 2020 requesting several quantities of Thick Mahogany and Cedar Lumbar which was valued at $104,850.00 including VAT; and Maraj Woodworking Est & Co Ltd dated 20 August 2020 requesting several quantities of Mahogany, Apamate and Cedar Lumber which was valued at $389,250.00 including VAT.

88. The Laloo Affidavit deposed that the suspension of the Licence was lifted on 15 July 2020 and as such the Claimants had ample time to fulfil the three orders that they had received in August 2020 which amounted to $724,000.00. Mr Laloo also deposed that Mahogany, Apamate and Cedar logs had been seized from the Sawmill and based on their

[19] Details of Logs Seized: 27 logs of Mahogany; 143 logs of Apamate; 107 logs of Cedar; 4 logs of Hogplum, 6 logs of Poidoux; 2 logs of Juniper; 1 log of Immortelle;1 log of Milkwood; and 7 logs of Bois D'orme.
[20] Exhibit V.K. 6

measurements, the said logs would yield approximately 24,000 sq. ft. of lumber, which when valued at $13.00 per sq. ft. amounted to $312,000.00.

89. In the Claimants' Affidavit in Reply they responded that prior to 15 July 2020, the Defendant's suspension of the License inhibited the normal operations of the Sawmill. They maintained that they were unable to fulfil their clients' purchase orders and explained that in order to fulfil the said orders they needed to have a sufficient quantity of logs and upon confirming the availability of the logs specified, operate the Sawmill to process the logs into its final form in order to meet the customer's request. The processing of the logs required sufficient manpower/labour and was a time-consuming process that required adequate time to prepare. They stated further that the log measurements performed by the Defendant were not an accurate reflection of the true value of the logs on the open market, as each log is different in dimension and is measured based on its length and width.

90. From the evidence, it was not in dispute that a certain quantity of logs owned by the Claimants were seized and taken to Brickfield. The parties disputed the quantity and value of the logs which were seized and whether this adversely impacted the Claimants' ability to fulfil the three purchase orders that they had received in August 2020 from clients. There was no cross- examination of the First Claimant and Mr Laloo on this aspect of their evidence.

91. From the Claimants' evidence there are two aspects of loss that they have asserted, namely loss arising from the suspension of the Licence and loss arising from the seizure of the logs.

92. The Claimants' evidence that they were not able to satisfy the aforementioned three purchase orders as a result of the suspension of the Licence was disputed by the Laloo Affidavit. In my opinion, by the time the Claimants received these purchase orders in

August 2020, the Licence was no longer suspended as the suspension had been lifted on 15 July 2020. Therefore, the Claimants were entitled to continue operating the Sawmill after that date and to meet the aforesaid purchase orders.

93. I now turn to the seizure of the logs. The Claimants' evidence is that they were not able to satisfy the aforesaid purchase orders solely due to the seizure of the logs by the Defendant which circulated throughout the lumber community. In my opinion, this aspect of the Claimants' evidence is weak and not sufficient to persuade me that this was the reason they were unable to satisfy the said purchase orders. The Claimants did not place any evidence before the Court of any efforts they made to source logs to meet the purchase orders. They also failed to produce any evidence from persons in the lumber community to corroborate their evidence.

94. The Claimants also stated that the aforementioned purchase orders which totalled $724,200.00 excluding VAT, illustrated the loss of revenue which they incurred as a result of their inability to supply subsequent orders. Although this evidence was unchallenged, in my opinion it was weak as they~~,~~ Claimants failed to put before the Court any proper accounting information for any period before the seizure, which would have set out the profit and loss of the Sawmill and demonstrated any alleged loss of business or revenue after the seizure.

95. Further, in considering the issue of the Claimants' alleged loss due to the seizure of the logs, I have also taken into account that one of the declarations which the Claimants have sought and which I am granting is for the Defendant to return the logs and timber which were seized.

96. With respect to non-pecuniary loss, the Claimants stated that the Defendant caused them to suffer damage to their otherwise good reputation, as its actions were widely publicized in the local media and raised controversy in the Sawmill and Lumber industry over the

legitimacy and integrity of the Claimants' business. This evidence was not challenged but I have attached little weight to the Claimants' evidence on their alleged non-pecuniary loss as their evidence was self-serving. Further, the Claimants did not produce any evidence from other persons who were either their customers or business associates to corroborate their claim of loss of reputation in the industry.

97. Although the Claimants made a claim for exemplary damages, Counsel for the Claimant did not address this claim in the written submissions. Exemplary damages may be awarded in a circumstance where there is outrageous conduct disclosing malice, fraud, insolence and cruelty. In **Rookes v Barnard**,[21] Lord Devlin stated that exemplary damages are different from ordinary damages and will usually be applied:

(i) where there is oppressive, arbitrary or unconstitutional conduct by servants of government;

(ii) where the defendant's conduct had been calculated to make a profit; and

(iii) where it was statutorily authorised.

98. The function of exemplary damages is not to compensate, but to punish and deter, and such an award can appropriately be given where there is oppressive, arbitrary or unconstitutional action by servants of the government. Lord Carswell in the Privy Council case of **Takitota v The Attorney General of Bahamas**[22] stated that, "[T]he awards of exemplary damages are a common law head of damages, the object of which is to punish the defendant for outrageous behaviour and deter him and others from repeating it ...".

99. In computing the award for exemplary damages, there are several criteria which the court should take into account. Lord Devlin in **Rookes v Barnard** set it out as follows:

[21] [1964] AC 1129
[22] P.C.A No. 71 of 2007

a. A plaintiff cannot recover exemplary damages unless he is the victim of the punishable behaviour;

b. An award of exemplary damages should be moderate; and

c. Awards of exemplary damages should be considered in light of the means of the parties.

100. In addition to the three criteria set out by Lord Devlin, the learned authors of **McGregor on Damages**[23] set out an additional criteria to include:

a. The conduct of the parties;

b. The relevance of the amount awarded as compensation;

c. The relevance of any criminal penalty;

d. The position with joint wrongdoers; and

e. The position with multiple claimants.

101. I have decided against making any award for exemplary damages, as there were no facts which were particularised by the Claimant which could form a basis to make such an award. Further, I was not convinced from the evidence that the actions of the Forest Officers were oppressive or calculated by them to make a profit.

ORDER

102. It is declared that the Defendant's decision to suspend the Licence to operate a sawmill between the period 23 June 2020 to 15 July 2020 is unlawful, null and void and of no effect.

103. It is declared that the failure and/or refusal of the Defendant to report its seizure of various logs, from the Claimants, on 25 June 2020 and 6 July 2020 to a Magistrate in accordance with Section 13 of the Forests Act is unlawful.

[23] 19th Edition at paragraphs 13-033 to 13-044

104. The Defendant's decisions to seize and detain the said logs are quashed.

105. The Defendant is to release and return to the Claimants, the logs / items seized pursuant to the cartage receipt dated 25 June 2020 and 6 July 2020 within 21 days of this order.

106. No award is made for damages.

107. The Defendant to pay the Claimants' costs to be assessed by a Registrar in default of agreement.

/s/Margaret Y Mohammed

Judge