**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**CV2014-00815**

**Between**

**LALCHAN GUNNESS**

**Claimant**

**And**

**THE PUBLIC TRANSPORT SERVICE CORPORATION**

**Defendant**

**Before the Honourable Mr. Justice Robin N. Mohammed**

**Appearances:**

Mr. Lloyd Elcock for the Claimant

Mr. Kiel Taklalsingh instructed by Mr. Vivek Lakhan-Joseph for the Defendant

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**JUDGMENT IN RESPECT OF APPLICATIONS MADE FOR SUMMARY JUDGMENT AND STRIKING OUT**

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## A. Introduction

[1] In the instant matter the Claimant has claimed against the Defendant for:

(a) Severance pay in the sum of **eighty-five thousand six hundred and six dollars and forty-one cents ($85, 606.41)** consequent upon his retrenchment by the Defendant in respect of his employment with the Defendant from 2

July 1964 to 27 December 1989, said sum which he claims is owing to him pursuant to a judgment of the Industrial Court dated 29 April 1998;

(b) A declaration that the Claimant is entitled to a retirement pension pursuant to the **Pensions Extension Act Chapter 23:53** in respect of his employment with the Defendant as a Station Inspector for the periods 1 March 1979 to 23 December 1989 and 17 September 1998 to 2 June 2001;

(c) An order that the Defendant forthwith take all necessary steps to initiate and pursue to completion the processes necessary for the grant of the said retirement pension to the Claimant;

(d) Costs;

(e) Interests; and

(f) Such further or other relief as the Court may deem just.

[2] On 10 March 2014 the Claimant initiated the instant claim by filing his Claim Form and Statement of Case. An amended Claim Form and Amended Statement of Case were filed on 14 May 2014.

[3] On 29 May 2014, the Defendant entered an appearance, therein disclosing its intention to defend the entirety of the claim. Accordingly, on 18 August 2014 the Defendant filed its Defence.

[4] The matter came up for hearing on 4 November 2014, at which hearing, all Court directions were put on hold pending the outcome of settlement talks between the parties.

[5] On 8 January 2015, the Claimant filed a Re-amended Claim Form and Re-amended Statement of Case.

[6] Settlement talks between the parties continued. However, by 6 July 2015, it would appear that settlement talks were unsuccessful in resolving the claim.

[7] On 6 July 2015, the Claimant filed a Notice of Application for summary judgment. On 15 July 2015 the Defendant filed a Notice of Application to strike out the Claimant's Re-amended Statement of Case and for summary judgment.

[8] A case management conference was subsequently held on 16 July 2015 at which the Court gave directions in respect of the Claimant's and Defendant's respective applications.

[9] On 30 July 2015 the Claimant filed a Response to the Defendant's Application to strike out the Claimant's Claim and summary judgment. On the 31 July 2015 the Defendant filed its response to the Claimant's Application for summary judgment.

[10] Written Submissions in support of the respective applications were thereafter filed by the Defendant and Claimant on 6 and 19 October 2015, respectively.

[11] Having read the respective applications of the Claimant and the Defendant and the submissions in support of same, and having considered the evidence before the Court, this Court is of the view that the Claimant's application for summary judgment must succeed and judgment be given in favour of the Claimant.

[12] This Court has accepted the Claimant's submission that the two issues arising for determination in the instant claim are:

(a) first, whether the claimant is still entitled to the sum of **eighty-five thousand six hundred and six dollars and forty-one cents ($85,606.41)** which the Industrial Court ordered against the Defendant by that Court's decision dated 29 April 1998 (*hereinafter referred to as the **"1998 judgment sum"**)*; and

(b) secondly, whether the Claimant is entitled to a pension for the position of Station Inspector for the period extending from 1 March 1979 to 23 December 1989 and 17 September 1998 to 2 June 2001.

[13] This Court agrees that the two aforementioned issues to be determined in the Claimant's instant claim are two newly arising issues which were not determined by the

Court in any of the Claimant's previous claims namely **HCA No. 1133 of 2002**, **TD 325 of 2004**, **CA 8 of 2007** and **CV2011-04155.** Further the Court is satisfied that the Claimant has supported his claim by virtue of the documents exhibited as **"GUN1"**, **"GUN2"**, **"GUN3"**, **"GUN4"** and **"GUN5"**.

[14] Additionally, this Court finds that the Defendant's acknowledgment of the 1998 judgment sum is evident in the correspondence from the Defendant dated 16 February 2005 and 3 July 2013. The Defendant's acknowledgement, consistent with **section 12** of the **Limitation of Certain Actions Act Chap. 7:09,** had the effect of reviving the Claimant's cause of action for an additional twelve years from the date of acknowledgement thus protecting the Claimant's claim for the 1998 judgment sum from becoming statute-barred at the time of initiation of the instant claim.

[15] Therefore, the Court finds no merit in the Defendant's contention that the Claimant has contravened the provisions of **Part 8.6(1) and (2) of the Civil Proceedings Rules 1998,** by failing to include in the Statement of Case the facts and/or documents on which he is relying. Further the Defendant's defences namely, (i) that the Claimant's claim is frivolous, vexatious and an abuse of process; (ii) the Defendant's defence of *res judicata*; and (iii) the Defendant's defence regarding the expiration of the limitation period, all fail. Additionally, insofar as the defence of laches was raised by the Defendant, I agree with the Claimant that the Defendant has not pleaded any facts in respect of alleged delays of the Claimant or any prejudice accruing to the Defendant that could support the equitable defence of laches nor would such defence be appropriate in the instant case where the relief sought is not equitable in nature and therefore that defence too must fail.

[16] In these premises, the Court is of the view that the Defendant has no realistic prospect of succeeding in this claim in respect of the first issue raised in the Claimant's Claim. Thus, the Claimant remains entitled to the 1998 judgment sum of **eighty-five thousand six hundred and six dollars and forty-one cents ($85,606.41)** and this Court further awards the Claimant interest on the 1998 judgment sum at a rate of 5% from the

date of this Court's order until the date of payment of the sum in accordance with **section 25A(1) of the Supreme Court of Judicature Act Chap. 4:01.**

[17] Regarding the second issue raised by the Claimant in respect of his entitlement to pension for the position of Station Inspector**,** this Court is also of the view that the documentary evidence has already established that the Claimant was employed as a Station Inspector for the exact period claimed. Certainly, the fact that the Claimant was employed as a Station Inspector is clearly established in-

(a) the Defendant's internal memoranda dated 13 March 1979 and 27 October 1989 from the Defendant's Acting Traffic Supervisor and Area Manager, respectively;
(b) the letter dated 27 August 1998 addressed to the Claimant from the Defendant's Manager of Human Resources, Vincent G. Lynch, which appointed the Claimant as an Inspector pursuant to the Court Order in TD Nos.23/24 of 1990, which said order expressly provided that the Claimant was, subject to age and medical fitness, to be given first priority for employment as a Station Inspector at the Defendant's workplace; and
(c) The letter dated 1 December 2008 from the Defendant's Human Resource Manager, Luces Mark to the Board of Inland Revenue which certifies that the Claimant was employed with the Defendant as a Station Inspector, for the exact periods claimed.

[18] The authenticity of each of those documents has not been denied by the Defendant. While the Defendant exhibited the Claimant's sick leave forms submitted in 2000 and 2001 on which the Claimant stated his job title to be "Inspector". "Inspector (Ch)" or "Chief Inspector", certainly this Court has difficulty accepting that sick leave forms are capable of establishing or confirming one's position particularly in light of more than one correspondence coming from the Defendant's supervisory and human resource personnel which firmly established and confirmed the Claimant's position as a Station Inspector.

[19] Most certainly, this Court is of the view that any doubts as to the Claimant's position would have been clarified by the official letter from the Defendant's Human Resource Manager, Luces Mark, to the Board of Inland Revenue which certified that the Claimant was employed as a Station Inspector for the Defendant, for the exact period which the Claimant claims. Thus, there is strong evidence against the Defendant and this Court is of the opinion that the defence proffered by the Defendant which is premised upon the sick leave forms, does not have a realistic prospect of succeeding against the Claimant's claim. Accordingly, this Court is of the view that the Claimant is also entitled to summary judgment on the second issue in this claim regarding his entitlement to pension for the position of Station Inspector, and similarly entitled to an order that his pension be processed by the Defendant forthwith.

[20] The Defendant's cross-application to strike out the Claimant's Claim and for summary judgment is hereby dismissed. However, the Claimant's Application for Summary Judgment hereby succeeds and is granted. The Defendant shall pay the Claimant's legal costs of the two applications and the Claim.

[21] I have hereinafter detailed the reasons for the Court's decision.

## B. Factual Background

[22] The facts of relevance to this matter are set out in the Claimant's Re-amended Statement of Case and the Defendant's Defence.

[23] The Claimant was employed by the Defendant from 2 July 1964 to 27 December 1989. In 1989 he was retrenched by the Defendant pursuant to the provisions of the **Retrenchment and Severance Benefits Act Chap. 88:13 (RSBA)**.

[24] By virtue of a judgment of the Industrial Court dated 29 April 1998 in **TD Nos. 23/24 of 1990**, the Industrial Court assessed the quantum of severance pay due and payable to the Claimant under the RSBA in the sum of **eighty-five thousand six**

**hundred and six dollars and forty-one cents ($85,606.41)** ***("the 1998 judgment sum")***. The Industrial Court ordered the Defendant to pay to the Claimant the 1998 judgment sum. In that same order, the Industrial Court also ordered that the Defendant to give the Claimant first priority in order of seniority to be employed as a Station Inspector subject to his age and medical fitness.

[25] Following the Industrial Court's decision, the 1998 judgment sum was not paid by the Defendant to the Claimant. However, by letter reference **HRM 98/351** dated 27 August 1998, the Defendant, in part compliance with the Order of the Industrial Court, offered the Claimant an appointment as an Inspector. Thereafter, by letter of reference **HRM 00/309** dated 14 June 2000, the Claimant was informed that he would from then be in the position of Chief Inspector. According to the Defendant, from in or around 1980, to the time of his pre-retirement leave in November 2001, the Claimant held the positions of either Inspector or Chief Inspector and not that of Station Inspector. The Defendant states that during the Claimant's separate tenures with it, the positions of Inspector and Chief Inspector both fell under the Defendant's weekly paid bargaining unit.

[26] Further the Defendant maintained that at the material times, the Claimant was expressly informed by it and had always understood that he was not a Station Inspector. In support thereof the Defendant attached sick leave forms submitted by the Claimant, in the year 2000 or 2001 on which the Claimant noted his job title as either "Inspector", "Inspector (Ch)" or "Chief Inspector".

[27] Yet, despite the Defendant's contention, the Claimant exhibited internal memoranda and official correspondence from the Defendant to Board of Inland Revenue which certified the Claimant's position as a Station Inspector for the exact period claimed. Exhibited were the Defendant's internal memoranda dated 13 March 1979 and 27 October 1989 from the Defendant's Acting Traffic Supervisor and Area Manager, respectively, which both stated the Claimant's position to be a Station Inspector and a letter dated 1 December 2008 from the Defendant's Human Resource Manager, Luces Mark, to the Board of Inland Revenue which certified that the Claimant was employed with the Defendant as a Station Inspector, for the exact periods claimed.

[28] That notwithstanding, by letter of reference **HRM 01/436** dated 22 November 2001, the Defendant informed the Claimant that he must proceed on compulsory retirement leave on attainment of the age of sixty (60) years, his date of birth being 26 July 1941. Some dispute arose as to the actual birth date of the Claimant, as the Claimant had at the time contended that his birth date was 6 August 1948 and not the 26 July 1941.

[29] The Claimant then initiated **HCA 1133 of 2002, Lalchan Gunness v The Public Transport Service Corporation**. Neither the Claimant nor the defendant specified the exact issue which arose in that claim. However, it was accepted by both parties that that matter was docketed before the Honourable Madame Justice Pemberton and was subsequently dismissed on 21 April 2009 as a result of the non-appearance of both the Claimant and his attorney-at-law.

[30] Thereafter, the Claimant sought redress in 2004 by virtue of Industrial Court proceedings **TD 325 of 2004**, wherein the Claimant claimed that his compulsory retirement at that time was wrong, harsh and oppressive as his birth date was 6 August 1948 and not the 26 July 1941 as recorded by the Defendant. The Industrial Court by written judgment dated 6 December 2006, made judicial findings in the Defendant's favour and pronounced that the Defendant's decision to compulsorily retire the Claimant was not wrong, harsh or oppressive as the Claimant's birth date was in fact 26 July 1941 and therefore the Claimant had in fact attained the age of 60 years, the compulsory retirement age. The Claimant appealed that decision by virtue of **Civil Appeal 8 of 2007**. However, that Claimant's Notice of Appeal was subsequently withdrawn.

[31] The Claimant then brought another set of Court proceedings **CV2011-04155 between Lalchan Gunness v The Public Transport Service Corporation**. That said matter was docketed before the Honourable Mr. Justice Peter Rajkumar. By virtue of those court proceedings, the Claimant claimed inter alia:

(a) Severance pay from the period of his employment beginning 2 July 1964 to his retirement dated 23 November 2001;

(b) Pension benefits for the period following his date of retirement dated 23 November 2001 to the present date; and

(c) National Insurance benefits for the period November 2001 to August 2008.

[32] The Honourable Mr. Justice Rajkumar, by order dated 28 March 2012, ordered that the Claimant's Claim Form and Statement of Case filed in **CV2011-04155** against the Defendant be struck out.

[33] Insofar as the 1998 judgment sum is concerned, to date the Defendant has still not paid same to the Claimant. To this end, the Claimant noted that by letter dated 25 January 2005, the Transport and Industrial Workers' Union, acting as an agent of the Claimant, asked the Defendant for information as to when the 1998 judgment sum would be paid to the Claimant. The Defendant by **response letter dated 16 February 2005** signed by the Defendant's Manager Human Resource acknowledged that the Defendant owed to the Claimant the 1998 judgment sum. Documentation containing a further acknowledgment of 1998 judgment sum was exhibited by the Claimant in the form of a memorandum certified and stamped by the Defendant on **3 July 2013**, said memorandum which was addressed to the Ministry of the People and Social Services acting for and on behalf of the Claimant as his agent at that time.

[34] Against that backdrop, the Claimant complained that the Defendant has neglected and failed to pay him the 1998 judgment sum due to him and further that although he was employed with the Defendant in the monthly paid post of Station Inspector during the periods 1 March 1979 to the 23 December 1989 and 17 September 1998 to 2 June 2001, that following his compulsory retirement he has also been unable to make an effective claim for retirement pension under the Pension Extensions Act in respect of his post of Station Inspector.

[35] On 22 January 2014, the Claimant addressed a pre-action letter to the Defendant, calling upon the Defendant to pay to the Claimant the 1998 judgment sum and to make

arrangements for the Claimant to receive his pension benefits. To date, however, both those matters remain unresolved thus giving rise to the Claimant's substantive claim.

## C. Issues to be Determined by this Court

[36] In light of the Claimant's Application for summary judgment, and the Defendant's Cross-Application to strike out the Claimant's Re-amended Statement of Case or alternatively for Summary Judgment in favour of the Defendant, the issues to be determined at this stage are:

**(i) Whether the Claimant's Statement of Case ought to be struck out pursuant to Part 26.2(1)(b) and/or (c) of the Civil Proceedings Rules 1998 (CPR 1998);**

**(ii) Whether pursuant to Part 15.2(b) of the CPR 1998, the Claimant has no realistic prospect of success on the claim; and**

**(iii) Whether pursuant to Part 15.2(a) of the CPR 1998, the Defendant has no realistic prospect of success on its defence to the claim.**

## D. The Submissions of the Claimant and the Defendant

### (i) The Claimant's Submissions

[37] The Claimant submitted that his claim is limited to two matters, namely: (a) the 1998 judgment sum which the Defendant was ordered to pay to him by the Industrial Court in 1998; and (b) his entitlement to pension based on his years of pensionable service from 1979 to 1989 and from 1998 to 2001.

[38] The Claimant submitted that by its Defence, the Defendant raised five defences to his claim, namely:

(a) That the Claimant's instant claim is **statute-barred** under the provisions of **section 3(1) (a) and 3(2) of the Limitation of Certain Actions Act Chap. 7:09;**

(b) That the Claimant's instant claim is barred by virtue of the **doctrine of laches**;

(c) That the issues raised by the Claimant's claim are ***res judicata***;

(d) That the Claimant's claim is frivolous, vexatious and an **abuse of process**; and

(e) That the Claimant has contravened the provisions of **Part 8.6(1) and 8.6(2) of the CPR 1998** by failing to include in the Statement of Case the facts and/or documents on which he is relying.

[39] It is the Claimant's submission that the documentary evidence now before the Court shows quite clearly that those said five defences raised by the Defendant are without merit and in the premises the Defendant has no reasonable prospects of successfully defending the Claimant's claim.

[40] The Claimant submitted that by annexure **"GUN1"** which is exhibited to the Claimant's Re-amended Statement of Case, the Claimant has put forward written acknowledgments by the Defendant of the 1998 judgment sum that it owes to the Claimant: one acknowledgment is dated **16 February 2005** and another **3 July 2013**. According to the Claimant, these acknowledgments serve to revive the Claimant's cause of action and prevent it from being statute-barred. More particularly, the Claimant submitted that the 1998 judgment sum which would have become statute-barred 12 years after 29 April 1998 was revived and time began to run again from 16 February 2005 by operation of law.

[41] Further the Claimant submitted that insofar as concerns the defence of laches, that the Defendant had not properly pleaded that said defence as it has not specified the alleged delays on the part of the Claimant nor has it pleaded any prejudice allegedly suffered by the Defendant as a result of any alleged delays.

[42] The Claimant further submitted that the defence of res judicata and the defence that the Claimant's claim is frivolous, vexatious and an abuse of process, are on its face completely unmeritorious since the claims and subject-matters of the judgments and

Court decisions which were cited by the Defendant, that is, **HCA 1133 of 2002**, **TD 325 of 2004**, **CV2011-04155** and **TD 23/24 of 1990**, are self-evidently not the same as the instant claim made by the Claimant.

[43] The Claimant also submitted that regarding the defence that the Claimant has contravened the provisions of **Part 8.6(1) and (2) of the CPR 1998** by failing to include in the Statement of Case the facts and/or documents on which he is relying, is also on its face completely unmeritorious and is completely refuted by annexures **"GUN1"** and **"GUN2"** which are exhibited to the Claimant's Statement of Case.

**(ii) The Defendant's Submissions**

[44] The Defendant contended that it is not in dispute that the Claimant in these proceedings seeks against the Defendant relief relative to severance and pension payments purportedly owed to him by the Defendant.

[45] However, the Defendant contended that the facts and issues raised in the Claimant's case have been already judicially determined in **HCA 1133/2002**, **TD 325/2004**, **CA 8 of 2007**, and **CV2011-04155**, all of which were instituted by the Claimant against the Defendant.

[46] For that reason, the Defendant further contends that the Claimant's claim is frivolous, vexatious and an **abuse of process** and that the issues in the claim are ***res judicata***, and thus the Claimant ought to be precluded from re-litigating the issues in the instant claim.

[47] Additionally, the Defendant contended that the matters as pleaded by the Claimant in his claim were and continue to be **statute-barred** by virtue of **section 3(2) of the Limitation of Certain Actions Act** which states that an action shall not be brought upon any judgment after the expiration of twelve years from the final judgment and no arrears of interest in respect of any judgment debt, shall be recovered after the expiry of twelve years from the date of the final judgment.

[48] In those premises the Defendant contends that the Claimant's claim has no reasonable prospect of success, is groundless and ought to be struck out.

## E. The Law in respect of the Issues to be Determined

[49] An application for summary judgment is within the ambit of **Part 15 of the CPR**. **Part 15.2** provides that-

> *"**15.2 The court may give summary judgment on the whole or part of a claim or on a particular issue if it considers that—***
> ***(a) on an application by the claimant, the defendant has no realistic prospect of success on his defence to the claim, part of claim or issue; or***
> ***(b) on an application by the defendant, the claimant has no realistic prospect of success on the claim, part of claim or issue."***

[50] The basic principles of summary judgment were outlined by the Court of Appeal in **Western United Credit Union Co-operative Society Limited v Corrine Ammon Civ. App. No. 103 of 2006** which referred to the decisions of **Toprise Fashions Ltd v Nik Nak Clothing Co Ltd and ors (2009) EWHC 1333 (Comm)** and **Federal Republic of Nigeria v Santolina Investment Corp. (2007) EWHC 437 (CH).** The basic principles are as follows:

> *"(i) the court must consider whether the defendant has a "realistic" as opposed to a "fanciful" prospect of success:* ***Swain v Hillman [2001] 2 All ER 91;***
>
> *(ii) A "realistic" defence is one that carries some degree of conviction. This means a defence that is more than merely arguable****: ED&F Man Liquid Products v Patel [2003] EWCA Civ 472 at [8];***
>
> *(iii) In reaching its conclusion the court must not conduct a "mini-trial":* ***Swain v Hillman****;*
>
> *(iv) This does not mean that the court must take at face value and without analysis everything that a defendant says in his statement before the court. In some cases it may be clear that there is no real*

> *substance in factual assertions made, particularly, if contradicted by contemporaneous documents*: ***ED & F Man Liquid Products v Patel at [10];***
>
> *(v) However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial:* ***Royal Brompton Hospital NHS Trust v Hammon (No.5) [2001] EWCA Civ 550;***
>
> *(vi) Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case:* ***Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd [2007] FSR 63****." [Emphasis added]*

[51] Equally important, in light of the Defendant's instant application to strike out the Claimant's Re-amended Statement of Case, is **Parts 26.2(1)(b) and/or (c) of the CPR 1998**. The relevant part of **Part 26.2** provides that-

> *(1)* ***The court may strike out a statement of case or part of a statement of case if it appears to the court*** *–*
> *(a)….*
> *(b)* ***that the statement of case or the part to be struck out is an abuse of the process of the court;***
> *(c)* ***that the statement of case or the part to be struck out discloses no grounds for bringing or defending a claim****;*
> *(d)* ***that the statement of case or part to be struck out is prolix or does not comply with the requirements of Part 8 or 10.***

[52] In determining what may amount to an abuse of process, the Court may consider whether the issue raised in an instant claim is the same as an issue determined on its merits in a previous claim. The Court may also consider whether a prior Court faced with the identical issue had also previously made a procedural ruling in respect of the identical issue which is before the Court in the instant claim. As explained by Kokaram J in **David Walcott v ScotiaBank Trinidad and Tobago Limited CV2012-04235:**

> *"3. .....it is an abuse of the process for this court to manage and try a claim which is identical to a claim previously dismissed for itself being as an abuse of process and which claim raises issues which could have been articulated in yet an earlier action. Although there has been no prior determination of the merits on those issues, that is not determinative of the question whether the successive action is an abuse of process. There are many circumstances in which a successive action which articulates the same issues as an earlier action is an abuse of process where there has not been a determination on the merits in the earlier action. This case is but one example. Here the Claimant has made a conscious choice not to appeal the earlier decision dismissing his claim as an abuse of process, when it was open to him to do so, but rather to litigate the identical matter afresh. This is to encourage the circumvention of an appellate process which in itself enshrines and protects the litigant's right to access to justice. It makes a mockery of the appellate process if litigants when faced with an unfavourable decision on a procedural issue or which results in its dismissal to simply re-file the claim."[Emphasis added]*

[53] Before delving into the application of the law in respect of the parties' respective applications for summary judgment and striking out, it is useful to also consider the principles pertaining to the limitation period for claims and the doctrine of laches as these two defences were also argued by the Defendant in respect of the Claimant's substantive claim.

[54] To that end**, section 3(2) of the Limitation of Certain Actions Act Chap. 7:09** provides that no action can be brought upon any judgment after the expiry of 12 years:

> *"3. (2)* ***An action shall not be brought upon any judgment after the expiry of twelve years from the final judgment and no arrears of interest in respect of any judgment debt, shall be recovered after the expiry of twelve years from the date of the final judgment."*** *[Emphasis added]*

[55] **Section 12(2) of the Limitation of Certain Actions Act**, however, provides an exception whereby the acknowledgment of a debt by the person liable can revive a right of action from the date of acknowledgment. **Section 13 of the Act** is additionally

important as it describes what shall be considered as an acknowledgment capable of reviving a cause of action. **Section 12(2), (3) and (4)** and **Section 13 of the Act** state that-

> ***"12. (2) Where any right of action has accrued to recover any debt or other liquidated pecuniary claim****, or any claim to the personal estate of a deceased person or to any share or interest therein****, and the person liable or accountable therefor acknowledges the claim*** *or makes any payment in respect thereof,* ***the right shall be deemed to have accrued on and not before the date of the acknowledgment or payment.***
>
> ***(3)*** *Notwithstanding subsection (2), a payment of a part of any interest that is due at any time shall not extend the period for claiming the remainder then due, and any payment of interest shall be treated as a payment in respect of the principal debt.*
>
> ***(4)*** *Subject to subsection (3),* ***a current period of limitation may be repeatedly extended under this section by further acknowledgments or payments, but a right of action, once barred by this Act, shall not be revived by any subsequent acknowledgment or payment****.*
>
> *13. For the purposes of this Act —*
>
> *(a)* ***an acknowledgment shall be in writing and signed by the person making the acknowledgment****; and*
>
> *(b)* ***an acknowledgment or payment shall be evidenced by writing and may be made by the agent of the person by whom it is required to be made and shall be made to the person, or to an agent of the person, whose title or claim is being acknowledged or, as the case may be, in respect of whose debt the payment is being made****." [Emphasis added]*

[56] Finally, regarding the **defence of laches**, this is an equitable defence which usually arises where equitable relief is sought by a Claimant but the Claimant has so delayed in bringing his or her action that the circumstances would equate to a waiver or would so prejudice the position of a Defendant in such a manner that it would be unconscionable for a Court to grant the equitable relief that is being sought. The doctrine

of laches is explained in the locus classicus **Lindsay Petroleum Co. v Hurd (1874) LR 5 PC 221 at 239-240**, as follows:

> *"Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy ."*

[57] Bearing in mind the aforementioned principles of law, I now turn to the application of the law to the instant applications.

## F. The Application of the Law in the Instant Matter

[58] Having considered the law, the evidence and the submission of both parties, I am of the view that the Claimant ought to be granted summary judgment in respect of his entire claim.

[59] From a review of the Claimant's Re-Amended Claim Form and Statement of Case, I agree with the Claimant's submission that his instant claim is limited to two issues, namely:

(a) Whether the claimant is still entitled to the 1998 judgment sum which was made against the Defendant by the Industrial Court; and

(b) Whether the Claimant is entitled to a pension for the position as Station Inspector for the period extending from 1 March 1979 to 23 December 1989 and 17 September 1998 to 2 June 2001.

[60] The Court further accepts that the Claimant has supported his claim by virtue of the documents exhibited particularly as "GUN1", "GUN2", "GUN3", "GUN4 and GUN5". In the Claimant's Re-Amended Statement of Case filed on 8 January 2015 the Claimant gave notice that he would be relying on "GUN1" as attached to his Re-amended Statement of Case as well as relying on "GUN2" to "GUN5" as previously filed with his Statement of Case on 14 March 2014. Therefore, the Court finds no merit in the Defendant's contention that the Claimant has contravened the provisions of **Part 8.6(1) and (2) of the CPR 1998** by failing to include in the Statement of Case the facts and/or documents on which he is relying.

[61] Moreover, this Court agrees that the two aforementioned issues to be determined in the Claimant's instant claim are two newly arising issues which were not raised in any of the Claimant's previous claims namely **HCA1133 of 2002**, **TD 325 of 2004**, **CA 8 of 2007** and **CV2011 of 4155**. In fact in the affidavit of Marissa Ramsoondar filed on 31 July 2015, at paras. 13 to 17, Ms. Ramsoondar (on behalf of the Defendant) established the nature and issues which arose in those matters. Ms. Ramsoondar stated that-

> *"13. These issues are detailed concisely hereunder and have been addressed by me based on records of the Defendant (Court proceeding and otherwise) and/or my professional involvement in same. In particular, the Claimant filed High Court Action* ***HCA 1133 of 2002, Lalchan Gunness v The Public Transport Service Corporation****. This matter was docketed before the Honourable Madam justice Pemberton and was subsequently dismissed on 21st April 2009 for the non-appearance of both the Claimant and his attorney-at-law.*
>
> *14. Further the Claimant took issue with the Defendant's decision that he be compulsorily retired as at November 22nd 2001 as a consequence of the Defendant's records detailing his date of birth as being 26th July 1941 and not in 1948. As such, the claimant sought redress in 2004 by virtue of Industrial Court proceedings*

***TD 325 of 2004***, *wherein the Claimant claimed that his compulsory retirement at that time was wrong, harsh and oppressive. The Honourable Court by written judgment dated 6th December 2006, made judicial findings in the PTSC's favour and pronounced that the Company's decision to compulsorily retire the worker was not wrong, harsh and oppressive and that the Company was therefore justified in determining that the Worker had in fact attained the age of 60 years, the compulsory retirement age.*

*15. The Claimant thereafter appealed the decision of* ***TD325 of 2004*** *by virtue of the proceedings* ***Civil Appeal 8 of 2007*** *with the said Notice of Appeal being subsequently withdrawn.*

*16. The Claimant brought yet another set of Court proceedings,* ***CV2011-04155 between Lalchan Gunness and The Public Transport Service Corporation*** *which was docketed before the Honourable Justice Rajkumar, whereby the Claimant claimed, inter alia:*

*(i) Severance pay from the period of his employment beginning 2nd July 1964 to his retirement dated 23rd November 2001;*
*(ii) Pension benefits for the period following his date of retirement dated 23rd November 2001 to the present date;*
*(iii) National Insurance benefits for the period November 2001 to August 2008.*

*17. On the 28th March 2012, the Honourable Justice Peter Rajkumar ordered that the Claimant's Claim Form and Statement of Case filed in CV2011-04155 against the Defendant be struck out and that the Claimant was to pay the Defendant's costs on the basis prescribed by the Civil Proceedings Rules 1998 (as amended).*

[62] Based on the description of the nature, issues arising in and outcome of each of those previous matters, it does not appear that any of those four aforementioned matters were concerned with whether the Defendant is still entitled to the 1998 judgment sum or whether the Claimant is entitled to a pension for the position of Station Inspector. It would appear that these are two new issues that have not been ventilated previously and for which there is no previous procedural ruling or determination on the merits. Thus, the

Defendant's defence that the Claimant's claim is frivolous, vexatious and an abuse of process as well as the Defendant's defence of *res judicata* must fail.

[63] This Court additionally finds that as a result of the Defendant's written acknowledgment of the 1998 judgment sum in the documents from the Defendant dated 16 February 2005 and 3 July 2013, in accordance with **sections 12 and 13 of the Limitation of Certain Actions Act (supra),** the Claimant's cause of action would have been revived for an additional twelve years from the date of these written acknowledgments thus protecting the Claimant's claim for the 1998 judgment sum from becoming statute-barred. The Claimant's substantive claim was initiated within twelve years of the date of each of the Defendant's acknowledgments on 16 February 2005 and 3 July 2013. The Defendant's defence regarding the expiration of the limitation period must therefore fail.

[64] Further, insofar as the defence of laches has been raised by the Defendant, I agree with the Claimant that the Defendant has not pleaded any facts in respect of the alleged delays of the Claimant or any prejudice accruing to the Defendant that could support a defence of laches. Nor would such defence be appropriate in the instant case where the relief sought is not equitable in nature and thus cannot attract the equitable defence of laches. Consequently, that defence too must fail.

[65] In these premises, the Court is of the view that the Defendant has no realistic prospect of succeeding in this claim in respect of the first issue raised in the Claimant's Claim. Thus, the Claimant remains entitled to the 1998 judgment sum of **eighty-five thousand six hundred and six dollars and forty-one cents ($85,606.41)**.

[66] Regarding the second issue raised by the Claimant in respect of pension for the position of Station Inspector**,** this Court is also of the view that the documentary evidence has already established that the Claimant was employed as a Station Inspector for the exact period claimed. Certainly, the fact that the Claimant was employed as a Station Inspector is clearly established in:

(a) the Defendant's internal memoranda dated 13 March 1979 and 27 October 1989 from the Defendant's Acting Traffic Supervisor and Area Manager, respectively;
(b) the letter dated 27 August 1998 addressed to the Claimant from the Defendant's Manager of Human Resources, Vincent G. Lynch, which appointed the Claimant as an Inspector pursuant to the Court Order in **TD Nos.23/24 of 1990**, which said order expressly provided that the Claimant was subject to age and medical fitness to be given first priority for employment as a Station Inspector at the Defendant's workplace; and
(c) The letter dated 1 December 2008 from the Defendant's Human Resource Manager, Luces Mark to the Board of Inland Revenue which certifies that the Claimant was employed with the Defendant as a Station Inspector, for the exact periods claimed.

[67] The authenticity of each of those documents has not been denied by the Defendant. Rather, the Defendant in support of its defence exhibited copies of sick leave forms which were submitted by the Claimant in 2000 and 2001 on which the Claimant stated his job title as "Inspector", "Inspector Ch" or "Chief Inspector". Certainly this Court has difficulty accepting that sick leave forms are capable of establishing or confirming one's position particularly in light of several correspondences coming from the Defendant's supervisory and human resource personnel which firmly established and confirmed the Claimant's position as a Station Inspector.

[68] Most certainly, any doubts as to the Claimant's position which would have been caused by the sick leave forms would have been clarified by the official letter from the Defendant's Human Resource Manager, Luces Mark, to the Board of Inland Revenue which certified that the Claimant was employed as a Station Inspector for the Defendant, for the exact period which the Claimant claims in his substantive claim. Thus, there is strong evidence against the Defendant (coming from the Defendant's own agents), and this Court finds that, mindful of the basic principles of summary judgment as previously mentioned, the defence proferred by the Defendant in respect of this second issue, also

does not have a realistic prospect of succeeding. Thus, this Court is of the view that the Claimant ought to be granted summary judgment in respect of the entirety of his claim.

## G. Disposition

[69] Accordingly, in light of the above analyses and findings, the order of the Court is as follows:

**ORDER:**

1. **A declaration that the Claimant is still entitled to the 1998 judgment sum ordered by the Industrial Court on the 29 April 1998 totaling eighty-five thousand six hundred and six dollars and forty-one cents ($85,606.41) as against the Defendant.**

2. **The Defendant shall pay to the Claimant the 1998 judgment sum.**

3. **The Defendant shall pay interest on the 1998 judgment sum at the statutory rate of 5% from the date of this order until the date of payment of the 1998 judgment sum.**

4. **A declaration that the Claimant is entitled to a retirement pension, in accordance with the Pensions Extension Act Chapter 23:53, in respect of his employment with the Defendant as a Station Inspector for the periods 1 March 1979 to 23 December 1989 and 17 September 1998 to 2 June 2001.**

5. **The Defendant shall forthwith take all appropriate steps to initiate and pursue to completion the processes necessary for the grant of the said retirement pension to the Claimant.**

6. **The Defendant shall pay to the Claimant his legal costs in this matter in the following respects:**

**(i)** **costs in relation to the Claimant's Notice of Application filed on the 6 July 2015 as well as the Defendant's Notice of Application filed on the 15 July 2015 to be assessed in accordance with CPR 1998 Part 67.11, in default of agreement; and**

**(ii)** **costs in relation to the Claim having been determined at a stage after the defence and up to and including the case management conference to be quantified on the prescribed scale in accordance with CPR 1998 Part 67.5(3) and (4)(b)(ii) and Appendices B and C.**

**(iii)** **in pursuance of (ii) above, costs are to be calculated at 55% of the full prescribed costs in accordance with Appendix B of the Prescribed Scale. The full prescribed costs in accordance with Appendix B is quantified in the sum of $21,121.28. Therefore, 55% of the full prescribed costs is quantified in the sum of $11,616.70.**

**(iv)** **In relation to (i) above, in the event that there is no agreement on costs by the 31 July 2017, then the Claimant to file and serve a Statement of Costs for assessment to which the Defendant to file and serve Objections, if necessary, within 21 days thereafter.**

**7. There shall be a stay of execution of this order for 30 days.**

**Dated this 14th day of June, 2017**

**Robin N. Mohammed**
**Judge**