THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No CV2017-01122

BETWEEN

ANGEL LAWRENCE

RESHMA MEETOO

ELIZABETH GUNNESSLAL

(And all sixteen (16) other employees of the

Government Human Resource Services Company Limited)

Applicants/Claimants

AND

GOVERNMENT HUMAN RESOURCE SERVICES COMPANY LIMITED

Respondent/Defendant

Before the Honourable Mr. Justice Robin N. Mohammed

Appearances:

Mr. Lennox Marcelle instructed by Ms. Anuradha Sitala Dean for the Applicants

Mr. Michael A. A. Quamina instructed by Ms. Leah Abdulah for the Respondent

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Decision on Application Whether to Continue or Discharge *Ex parte* Interim Injunction

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I. Background

[1] These proceedings have arisen after an announcement, made on the social media platform known as "Twitter", was brought to the attention of the Applicants on the 16th March 2017. The announcement, later confirmed by the Honourable Prime Minister, stated that the Respondent, the Government Human Resource Services Company Limited ("GHRS"), would be entering into dissolution.

[2] The said Respondent, a State-owned enterprise and employer of some 32 employees, was established by a Cabinet Note in 2006 to facilitate the 'enhancement of the human resource capacity in the public service'. However, due to several factors, most notably, the abject decline in the world economy in 2010 and 2016 coupled with the continuous annual losses reported by the Company, it was determined that the Respondent Company could no longer be continued by the government of the day.

[3] The manner in which the unfortunate news was brought to the attention of the employees was less than desirable as reflected by the apology of the Minister of Public Administration and Communications, Mr Maxie Cuffie, when he attended the Respondent's premises on the day after the twitter announcement. Further to Minister Cuffie's attendance, the Ministry of Public Administration and Communications dispatched a press release setting out the reasons for the intended dissolution. Of note, was the promise that the Government will "honour employees' contracts" and the assurance that the government was committed to "communicating any new developments to the employees". Further, employees were specifically promised that they would be paid their gratuity considering that the separation was instigated by the Respondent.

[4] Since the announcement, the Respondent Company has continued its operations and employees are thereby required to continue to perform their obligations under their respective employment contracts. However, notwithstanding that the dissolution process has been engaged, no date has yet been set for the official closing of the company.

[5] Needless to say, these events have caused significant emotional distress for the employees, who at all times maintain that they were shocked by the news and that they

were neither consulted on the decision taken to dissolve the Company nor with respect to their separation packages. It is their complaint and worry that the uncertainty attendant on the decision to dissolve the Company, more particularly where no date for dissolution has been announced, renders their future existence in chaotic limbo. On the one hand, attempting to secure alternative employment whilst the Company is, on the face of it, still functional, is likely to disentitle them to their termination benefits under their contracts. On the other hand, awaiting the dreaded official dissolution without consultation on: (i) the date for dissolution; and (ii) whether their contract terms in relation to their termination benefits would be honoured by the Company, only adds to their mental anguish in contemplation of their likely premature financial hardship. Accordingly, they regard the process to be unfair, unilateral and arbitrary.

[6] Without Union membership, the employees viewed that their only recourse was to seek relief through the High Court and by Court Order from the Honourable Mr. Justice Rahim on the 24th March, 2017 the Applicants were permitted to act on behalf of the 19 employees mentioned in the Order, in their attempts at seeking protection from the High Court. Such protection was sought by way of an application made on the 3rd April, 2017 seeking an interim injunction to restrain the Respondents from, inter alia, continuing with the dissolution process and/or terminating their employee contracts.

[7] The application was made *ex parte* and this Court granted the injunction by Order dated the 3rd April, 2017. However, at the following hearing of the 27th April, 2017, counsel for the Respondent, Mr Quamina, applied to have the injunction discharged and proceeded to make oral submissions in support. Mr Marcelle, counsel for the Applicants, proffered his submissions in reply and at the conclusion, the Court ruled that the status quo be preserved and that a written decision would be forthcoming.

[8] Accordingly, having heard both parties' oral submissions and upon considering the authorities relied upon, this Court must now rule on whether to continue or discharge the interim *ex parte* injunctions granted on the 3rd April, 2017.

II. Submissions & Law:

[9] This Court, upon considering the Applicants' application and its attendant affidavits, granted the injunction based on the reasons as set out therein and summarised as follows:

a. That there is no adequate alternative remedy available to the Applicants other than the protection sought from the High Court because: (i) The Applicants are not members of a Union and therefore, cannot avail themselves of the protection afforded to workers embodied in the Industrial Relations Act[1]; (ii) one cannot simply join a Union 'off the street' and then avail himself of its benefits as it takes about eight (8) weeks to come into good standing; and (iii) the Retrenchment and Severance Benefits Act[2] provides protection for trade disputes arising from redundancy and retrenchment and does not provide protection for all workers in respect of all liquidations. Further, there is no provision in this Act requiring the Company to consult with the Applicants.

b. That since the announcement of dissolution, there has been no communication of any intended decision in respect of termination of the employees and their contracts and therefore, the Respondent has acted unilaterally and unreasonably.

c. That public policy in this country promotes: (i) good faith and fair dealings with employees; (ii) the consultation with employees in matters concerning their terms and conditions at work; and (iii) adherence to acceptable labour standards as enacted by the International Labour Organization ("ILO"). Further, the Government has signalled its intention to abide by the responsibilities cast on it by its membership in the ILO and its acceptance of a leadership role in the ILO.

d. That although some of these ILO conventions have not been ratified or enacted into local law and consequently, are not enforceable, the High Court may take judicial notice that they have been enforced at the Industrial Court of Trinidad and

[1] Chapter 88:01
[2] Chapter 88:13

Tobago. Further, as the Respondent is a State enterprise, it should abide by public policy.

e. That Parliament, by Act No. 7 of 2012, repealed the Masters and Servants Ordinance Chapter 22 No. 5, thus signalling an intention to promote principles of fairness and good faith conduct in the employment relationship.

f. That there is an implied duty to treat employees with respect and trust and to not conduct business in a manner that would destroy the trust and confidence between the Respondent and its employees.

g. That without the Court's protection, the Respondent may unilaterally terminate contracts of employment without regard to the employees' rights, which would cause irreparable harm. Alternatively, no irreparable harm would occur to the Respondent if the injunction is granted.

[10] These grounds for the injunction can be summarised under three heads: **(i) the public policy argument**, which concerns the issues of the implied terms of fairness and trust and the duty to consult the Applicants; **(ii) the alternative remedy argument**, which suggests that the injunction should be continued as there is no alternative remedy available to the Applicants; and **(iii) the balance of justice argument**, which asks whether the greater harm would lie in continuing or discharging the injunction.

[11] The grounds set out above at (b), (c), (d), (e) and (f) all deal with the public policy argument and are central to this Claim. Accordingly, they will be dealt with first.

The Public Policy Argument

[12] The essential issue here is whether the alleged lack of consultation concerning the dissolution and the employee's separation terms breaches the public policy requirements of fairness and reasonableness and is thereby indicative of unilateral and arbitrary action on the part of the Respondent.

[13] In rebuttal, Mr Quamina brought the Court's attention to the **Media Release of the 17th March, 2017**, attached to the Applicants' affidavit of Ms Michelle Mulcare, which stated *inter alia*:

a. **That the Minister conceded that he should have communicated with staff before the announcement and apologised for same;**

b. **That the government could not justify keeping the GHRS in light of the first quarter report from the Central Bank, which pointed to further declines in the economy and that the country no longer needed the services offered by the GHRS;**

c. **That, despite the announcement, the government promises to honour employee contracts and its obligations;**

d. **That a system will be put in place to help employees through this difficult period;**

e. **That he, the Line Minister, would commit to communicating new developments to the employees in a timely and respectful manner and remains open to listening and answering other questions;**

f. **That Ms Avalaughn Huggins, Chairman of the GHRS Board, told employees that they will be paid their gratuity because the separation was initiated by the employer.**

[14] This Media Release occurred the day after the Twitter announcement and the same day that Minister Cuffie attended the Respondent's premises to meet with the employees. It clearly evidences openness to communication, a willingness to provide assistance to employees while honouring their employee contracts, an explanation for the Respondent's decision to liquidate and most importantly, an apology for not informing the employees at an earlier stage.

[15] Counsel for the Applicants, Mr Marcelle, did not view these statements within the Release to be satisfactory. In his oral submissions, he argued that 'consultation', as he understood it, is about *"keeping workers properly informed and letting them know they can still accept other jobs"* while still being entitled to their gratuity. He further postulated that the implied duty of trust and confidence has been breached as a result of

the effective "state of limbo" with which the employees find themselves considering that no time frame has yet been given for the dissolution.

[16] To be persuaded by this submission, the Court must first find that there indeed exists a public policy requirement for the Respondent to consult the employees prior to the decision to dissolve the Company as well as to inform the employees immediately of a timeframe for closure.

[17] This submission, however, runs into difficulty as it contradicts the longstanding common law principle of freedom of contract espoused in as early as the 19th century in English cases such as **Printing and Numerical Registering Company v Sampson**[3] where Sir G Jessel M.R stated:

> *"Now, it was said on the part of the Defendant, that such a contract as that which I have mentioned, a contract by which an inventor agrees to sell what he may invent, …* ***is against public policy, and it was said to be against public policy, because it would discourage inventions****; that if a man knows that he cannot obtain any pecuniary benefit from his invention, having already received the price for it, he will not invent, or if he does invent will keep it secret, and will not take out a patent.*
>
> ***It must not be forgotten that you are not to extend arbitrarily those rules which say that a given contract is void as being against public policy,*** *because if there is one thing which more than another public policy requires* ***it is that men of full age and competent understanding shall have the utmost liberty of contracting, and that their contracts when entered into freely and voluntarily shall be held sacred and shall be enforced by Courts of justice****. Therefore, you have this paramount public policy to consider - that you are not lightly to interfere with this freedom of contract.* ***Now, there is no doubt public policy may say that a contract to commit a crime, or a contract to give a reward to another to commit a crime, is necessarily void. The decisions have gone further, and***

[3] (1875) L.R. 19 Eq. 462

contracts to commit an immoral offence, or to give money or reward to another to commit an immoral offence, or to induce another to do something against the general rules of morality, though far more indefinite than the previous class, have always been held to be void. I should be sorry to extend the doctrine much further. I do not say there are no other cases to which it does apply; but I should be sorry to extend it much further."

Therefore, only in the rarest of circumstances will the Courts rule that public policy should render a contract void. In all other circumstances, the parties are free to contract with each other as they deem fit and be bound by those terms.

[18] In the instant case, there exists a signed and validly executed contract of employment between the Respondent and each of the Applicants. Mr Marcelle has failed to convince this Court that there are live issues of public policy which would render this contract of employment void. His references to the ILO and its conventions or to the alleged repeal of the Masters and Servants Ordinance are used to support what he perceived to be this government's newfound approach to employee relations. However, as he rightfully conceded, none of these conventions have been enacted into law by Parliament and are therefore unenforceable.

[19] Rather, the essential question to be asked is whether the employees' contracts can be classified as void on the grounds of public policy because of the involvement of the commission of a legal or immoral offence.

[20] On a reading of the **Conditions of Contract** as annexed to the Applicants' affidavit of Michelle Mulcare, there is simply no requirement for the consultation between the parties if a decision is made to dissolve the Company. Counsel for the Applicants submitted that there is likewise no provision that expressly states what is to occur upon dissolution. However, Mr Quamina pointed the Court to Clause 14(b), which he submitted, speaks to the contrary. Clause 14(b) states as follows:

"The Chief Executive Officer… may terminate the employment of the person engaged at any time after three months…for cause, (other than

breach of agreement and misconduct) including poor performance as reflected in the performance appraisal report or ***in situations where the contractual positions are abolished or are no longer relevant to the Company, by the provision to the person engaged of one month's notice in writing;*** *or by payment of one month's salary in lieu of notice."*

[21] While this provision does not specifically speak to the dissolution of the Company, Mr Quamina argues that the wording is broad enough to capture such a circumstance. The rules of interpretation seem to agree.

[22] The starting point in construing a contract is that the words are to be given their natural and ordinary meaning. The natural and ordinary meaning is *"…not necessarily the dictionary meaning of the word, but that in which it is generally understood*[4]*."* This means that:

> *"...**terms are to be understood in their plain, ordinary and popular sense**, unless they have generally in respect to the subject matter, as by the known usage of trade, or the like, acquired a peculiar sense distinct from the popular sense of the same words; or unless the context evidently points out that they must in the particular instance, and in order to effectuate the immediate intention of the parties to that contract, be understood in some other special and peculiar sense."*

[23] The words to be interpreted within Clause 14 (b) are as follows: ***"…in situations where the contractual positions are abolished or are no longer relevant to the Company…"***

It is this Court's opinion that, on any interpretation, the dissolution of a company, in its ordinary and popular sense, necessitates that its employees' positions would be abolished or become no longer relevant. In such a situation, the entirety of the Respondent's obligations to the Applicants is limited to the provision of one month's notice in writing or by payment of one month's salary in lieu of notice.

[24] In his grounds for the application of the injunction, Mr Marcelle contended that GHRS had a duty "*not to conduct its business in such a manner as to destroy the trust and*

[4] Chitty on Contracts, Volume 1 General Principles at para 12-051

confidence between it and its employees"[5]. He pleaded that the dissolution resulted from the pro bono work that the Company engaged in, which placed the employees' contracts and the Company in jeopardy.

[25] Mr. Quamina countered by stating the law with respect to the implication of contractual terms, which says that there are two situations when a term would be implied to a contract: (i) where it is necessary, in the business sense, to give efficacy to the contract; and (ii) if it was so obviously a stipulation in the agreement that the parties must have intended it to form part of the contract.[6] He relied on the case of **McClory and Ors v Post Office**[7] in support of such submission.

[26] In ***McClory***, the claim was brought by three former employees of the defendant for damages in compensation for loss of income due to their suspension. Similar to the instant case, the three employees all had identical forms of contract. However, in ***McClory***, the provisions allowed for suspension with or without full pay in the event of misconduct or alleged misconduct. This suspension clause was eventually triggered when the three plaintiffs got into a fight and were charged and arrested for assault. Consequently, the defendant immediately suspended them with full pay. The plaintiffs brought proceedings challenging the suspensions alleging that they constituted a breach of contract due in large part to how the investigations into their alleged misconduct were carried out by the defendant. To succeed, the plaintiffs based their case on the breach of several implied terms, the most relevant one of which was that *"in exercising any right to suspend, the defendants must pay heed to the rules of natural justice and act fairly in all circumstances".*

[27] This implied term, which Mr Quamina submitted was analogous to one of the terms that Mr Marcelle sought to infer into the contract—that the Respondent must act fairly and reasonably in exercising its decision to dissolve the Company - was dispensed with by the presiding judge, Neuberger J., QC:

[5] Page 8, paragraph 17 of the Notice of Application filed on the 3rd April, 2017
[6] Chitty on Contracts *ibid* at paras 13-006 and 13-008
[7] (1993) 1 All ER

> *"it seems to me that the term…is getting close to alleging that the rules of natural justice should apply between employer and employee to the extent that the employer should not be entitled to make a decision which may substantially affect the employee without first informing the employee that the decision is about to be made.* ***I do not consider it right to import the rules of natural justice, which are connected with judicial decisions and some administrative decisions, into the purely contractual relationship of employer and employee.*** *There is no precedent for it, and indeed the argument that any such rules should be applied appears to me to be inconsistent with the observations in the House of Lords…"*

The House of Lords decision referred to by Neuberger J was the case of **Malloch v Aberdeen Corporation**[8] also relied on by the Respondent.

[28] While the Court agrees with the law as stated, Mr Marcelle specifically pleaded for the implication of the terms of 'trust and confidence' into the employment contracts. The implication of these particular terms has been considered by the House of Lords in **Malik v Bank of Credit and Commerce International SA (BCCI) (in compulsory liquidation)[9],** the principles of which are quite instructive.

[29] In ***Malik***, supra, the appellants were, similarly, employees and their claim was against the bank, their employer. The bank had collapsed due to the fraudulent activities perpetrated by its board. Upon liquidation, the appellants, who were unaware of the fraud, were nevertheless made redundant and had difficulty in obtaining alternative employment in the banking field because of their association with the bank.

The appellants lodged a claim for 'stigma compensation' arising out of the fact that they had been put at a disadvantage in the employment market. They, too, based their claim on the contention that there was an implied term in their contracts of employment that an employer *"…would not conduct his business in a manner calculated to destroy or seriously damage the relationship of confidence and trust between the employer and employee"*.

[8] (1971) 2 All ER 1278
[9] (1997) 3 All ER

While the trial judge held that the claim of stigma compensation did not disclose a reasonable cause of action because such term could not be implied into a contract of employment, on appeal, it was held that the employees had an arguable case that there had been a breach of the implied mutual obligations of trust and confidence.

The term to be implied was that *"…an employer was under a mutual obligation that he would not, without reasonable and proper cause, conduct his business in a manner likely to destroy or seriously damage the relationship of confidence and trust between employer and employee*." Thus, the Court of Appeal held that if it was reasonably foreseeable that conduct in breach of the trust and confidence term would prejudicially affect employees' future employment prospects, and loss of that type was sustained in consequence of that breach, then damages in respect of the loss would be recoverable.

[30] While such finding poses an attractive argument, the facts of the instant case are not on 'all fours' with ***Malik***.

For one, neither the dissolution nor the termination of contracts has yet occurred. Therefore, there has not yet been any breach of terms, whether implied or expressed, within the contracts of employment.

Secondly, and more importantly, there is neither any evidence before this Court to show that GHRS's impending dissolution was as a result of fraud, or any illegal activity for that matter, on the part of its management, nor is the Court convinced that the Applicants' future employment would be adversely affected due to its association with GHRS.

[31] Mr. Marcelle has provided no evidence to support his pleading that the dissolution resulted from the pro bono work done by the Company. Indeed, his oral submissions were notably silent on the purported breach of the implied terms of trust and confidence and the resulting effect on the Applicants' future employability. One can only assume that upon coming across the speech of Lord Nicholls of Birkenhead in ***Malik***, prudence dictated that he abandon this contention entirely.

[32] Lord Nicholls, in his conclusions in ***Malik***, added some 'cautionary notes'. He was particularly conscious of the potential difficulties which claims of this sort may present

for liquidators as they may open the door to speculative claims, to the detriment of admitted creditors in the dissolution of a business. He stated[10]:

> *"There are many circumstances in which an employee's reputation may suffer from his having been associated with an unsuccessful business, or an unsuccessful department within a business.* ***In the ordinary way this will not found a claim of the nature made in the present case, even if the business or department was run with gross incompetence. A key feature in the present case is the assumed fact that the business was dishonest or corrupt."***

[33] It is therefore clear that the law is not on the side of the Applicants. Until the public policy requirements of fairness and reasonableness are enacted into law, there is nothing to convince this Court to have regard to them. Further, in the absence of any evidence of fraud, dishonesty or corruption on the part of the Company, there is no case to be made for breach of trust and confidence in the employee contracts based on mere incompetence of GHRS, even if the incompetence is gross.

[34] Such a finding is dispositive of this matter and is sufficient to discharge the injunction. Nevertheless, the Court will proceed to address the Applicants' remaining arguments on the issues identified in paragraph 10 hereinabove.

The Alternative Remedies Argument

[35] Mr Marcelle submitted that the Applicants are not unionized and, as a result, cannot seek protection under the **Industrial Relations Act, Chapter 88:01 ("IRA")**. As a result, the only available course of redress is via the High Court.

[36] **Section 51 of the IRA** states that only the following persons may report a trade dispute to the Minister:

a. The employer;

b. The recognized majority union;

[10] Page 12 at b- d

c. ***Where there is no recognised majority union, any trade union of which the worker or workers who are parties to the dispute are members in good standing***.

[37] By **section 2 of the IRA** a **'Trade Dispute'** is defined as *"any dispute between an employer and workers of that employer or a trade union on behalf of such workers, connected with dismissal, employment, non-employment, suspension from employment, refusal to employ, re-employment or reinstatement of any such workers..."*

To be able to bring this matter before the **Industrial Court**, the Applicants must therefore be considered ***'workers'*** who are members of a union with good standing. For the purposes of this Act a ***'worker'*** includes:

> *"any person who has entered into or works under a contract with an employer to do any skilled, unskilled, manual, technical, clerical or other work for hire or reward, whether the contract is expressed or implied, oral or in writing.... and whether it is a contract of service or apprenticeship or a contract personally to execute any work or labour."*

[38] While the Applicants are indeed workers, they are not 'unionized' and therefore, would not be entitled to access the Industrial Court for protection at this time. The process of becoming unionized, however, is also detailed at **section 34(3) (b),** which requires that the Applicants pay the entrance fee and contributions for a continuous period of 8 weeks immediately before instituting proceedings at the Industrial Court.

[39] Further, considering that **section 51(3) of the IRA** allows the Applicants 6 months from the date of the dissolution to bring their action, the Court views that the Applicants have ample time to become union members of good standing and pursue their claim at the Industrial Court. Mr. Marcelle's submission is therefore not entirely correct.

[40] Additionally, the powers available to the Industrial Court in determining such matters are much wider in scope. Under the **IRA**, the Industrial Court is given broad discretion to take into account *"such facts as it considers relevant and material".*[11] As such, Mr Marcelle's public policy arguments would have had much more weight in that arena.

[11] Section 9 of the IRA

[41] Notwithstanding the above, the Court is well aware of the fact that the impending dissolution can take effect at any time. It would, therefore, not be farfetched for the Respondent Company to decide to commence the dissolution before the Applicants have been able to make themselves statutorily ready to proceed before the Industrial Court. Indeed, by all indications, it is the Respondent's intention not to have the Company operational for much longer as it continues to drain funds. It was with these considerations in mind coupled with the principles of equity inherent in an injunction remedy, that his Court granted the application at the first hearing. However, upon consideration of the Media Release, the principle of freedom of contract and most importantly, the learning in **Malik** *supra*, this Court's jurisdiction has been thereby confined. Moreover, having chosen, in the interests of expediency, to pursue this action before this Court, the Applicants have invariably bound themselves by its rules and limitations, and therefore must take the risks along with the rewards.

[42] Aside from his submissions that the Applicants were not entitled to protection at the Industrial Court, Mr Marcelle submitted that damages would not be an adequate alternative remedy.

Several cases were cited in support, all of which emphasised the point that, where no alternative remedy exists, the Court has the discretion to grant an injunction. It therefore would not be necessary to go through each in full, rather, the Court must focus on the essential question—whether damages would be an adequate remedy for the Applicants should the Company be dissolved and their contracts terminated.

[43] One of the several cases cited by counsel for the Applicants was the Canadian Court of Appeal decision in **Canadian Pacific Limited v Brotherhood of Maintenance of Way Employees Canadian Pacific System Federation**[12].

In this matter, the appellant, Canadian Pacific Limited, changed the work schedule of a number of its employees in a way that resulted in the loss of their Sunday rest days. The Respondent Union filed a grievance and pending the hearing of the said grievance before an arbitrator, the British Columbia Supreme Court granted an interim injunction

[12] (1996) 2 R.C.S

restraining the appellant from implementing the new work schedule until the matter was settled by an arbitrator.

The appellant appealed by challenging the jurisdiction of the Supreme Court to issue an interlocutory injunction. This appeal, however, was dismissed on the ground that the Canadian Labour Code provided no forum for the loss of the Sunday rest days except by interlocutory injunction. In coming to its findings, the panel held that despite the existence of a comprehensive code for settling disputes, *"…where no adequate alternative remedy exists under that code, the courts retain a residual discretionary power to grant an injunction*."

The Court of Appeal felt that the Code provided no means to secure the postponement of implementation of the new work schedule for the interim period pending the decision from the arbitrator.

[44] This authority does not, in this Court's view, assist the Applicants' case for the simple fact that there is no "code" relative to this matter that states that an injunction would be the only or even the most appropriate way of protecting the employees should the dissolution occur.

[45] Rather, the facts and principles gleaned from the House of Lords in ***Malik***, are most analogous and instructive on this issue and state as follows: "when the terms of trust and confidence that are to be implied into a contract of employment are breached, **the appellants would be entitled to damages** if they could prove that they were handicapped in the labour market in consequence of the bank's corruption".[13]

[46] Had this Court found that the implied terms of trust and confidence had been breached, (which it has not) by the GHRS in its dissolution procedure, pursuant to ***Malik***, damages would have been an adequate remedy and not an injunction.

The Balance of Justice Argument

[47] Mr Marcelle submitted that there would be irreparable harm to the Applicants should the injunction be discharged and accordingly, the balance of justice lies in favour of the

[13] **Malik**, supra, at page 2

continuation of the injunction. He relied on the words of Hoffman J to argue that the refusal of this injunction would enable the Respondent to achieve a commercial objective by its ***"calculative disregard of a principle of civil society— that men perform their covenants made"***, which in this case, is the Respondent's covenant to employ the workers for a 3-year period on contract.

[48] While the Court does take heed of the Applicants' distress and their concerns about the termination of their contracts, their ability to secure future employment and the financial hardship that may follow, such eventualities were already agreed to the day that they signed their contract and agreed to be bound by its terms.

[49] Alternatively, as submitted by Mr Quamina, the Court must consider the harm to the Respondent should the injunction be continued thereby halting the dissolution process. As deposed in the affidavit evidence of Vanessa Garcia, the Respondent Company has suffered significant losses from the years 2007 to 2010, a trend which has continued from 2014 to 2016. In these latter years, annual losses amounted to roughly $7 million, $8 million and $7.5 million respectively. This evidence has not been refuted by the Applicants.

[50] Being a State-owned enterprise, these losses are borne by the government through various subventions and therefore, the Respondent, in effect, has become a drain on the country's economy. The effect of this becomes even more alarming considering the declining state of the world economy and the precipitous decline in oil prices within the last 2 years. Continuing the injunction and thereby postponing the dissolution would, in no doubt, result in less funds being available to settle the Company's debts and by extension, its debts to the Applicants under their respective contracts (that is, their termination benefits).

[51] It is therefore the Court's view that continuing the injunction will do more harm to both the Respondent and the Applicants. As such, it becomes clear to the Court that the balance of justice rests in discharging the injunction.

III. Disposition:

[52] Having heard the submissions of both parties and considered the authorities in support, this Court finds that the injunctions granted on the 3rd April, 2017 ought to be discharged.

[53] Accordingly, the order of the Court is as follows:

ORDER:

1. **The injunctions granted on the 3rd April, 2017 against the Respondent as represented in clauses 1, 2, 3 and 4 of the order made on the said 3rd April, 2017 be and are hereby discharged.**
2. **The Applicants' Application filed on the 3rd April, 2017 be and is hereby dismissed.**
3. **Counsel for both parties shall address the Court on the question of costs of and incidental to the said Application.**

Dated this 16th day of May, 2017

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Robin N Mohammed
Judge

Post Script: After delivery of the decision, the following directions were agreed on the issue of costs:

1) **The Defendant's attorney to file and serve submissions on the question of the entitlement, and if necessary, the quantification of costs in relation to the injunctive proceedings on or before the 25th May, 2017.**
2) **Response submissions to be filed and served by the Claimants' attorney on or before the 2nd June, 2017.**
3) **Thereafter, the Court shall give its decision on the issue of costs without a hearing.**

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Robin N Mohammed
Judge