REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. **CV2013-05227**

BETWEEN

(1) ULRIC 'BUGGY' HAYNES COACHING SCHOOL
(2) DINSLEY CRICKET CLUB
Acting through its Vice President Biswadeo Dalchan
(3) VERNON DE LEON
(4) OLIVER ELCOCK
(5) RALPH HAYNES
(6) CAROL JAMES
(7) PETER BURKE
(8) ANDERSON MAXWELL
(9) WALTER BAYNE ALEXIS
(10) ROGER BANFIELD
(11) ZOILA BHARATH
(12) BARBARA JEM BAYNE
(13) AVA BURGIN
(14) MERLE CARRINGTON
(15) GWENDOLYN FLORENCE NELSON
(16) DARRIO PRAN
(17) BERNARD BAILEY
(18) JENNIFER ANN ALKINS
(19) EGAN BAZZEY

Claimants

AND

THE MINISTER OF PLANNING AND SUSTAINABLE DEVELOPMENT

Defendant

Before the Honourable Mr. Justice R. Rahim

Appearances:

Mr. F. Hosein S.C. and Mr. R. Dass instructed by Marina Narinesingh for the Claimants

Mr. R. Martineau S.C. and Mr. G. Ramdeen instructed by Kendra Mark for the Defendant

JUDGMENT

1. The Claimants all seek judicial review of a decision made by the Defendant on the 27th September 2013 in relation to the development of land situated at the corner of Orange Grove Road and the Priority Bus Route (PBR), Tacarigua comprising some 10.83 Hectares.

BACKGROUND

Historical

2. The Orange Grove Savannah (the savannah) is well known as a public open space located at Orange Grove Tacarigua which has been utilized daily by a wide cross section of the public for several decades. The savannah comprises some 19.9234 hectares and has been divided by way of usage over the years with a variety of sporting and other activities being conducted in each area. The PBR borders the savannah on the North and the Orange Grove Road borders the savannah on the West. There are now three main grounds located within the confines of the savannah. They are the Eddie Hart, Dinsley Cricket and Buggy Haynes Grounds. Originally owned by Trinidad Sugar Estates Limited, Orange Grove Savannah was leased to the Second Claimant, the Dinsley Cricket Club in 1932. The Second Claimant has used a small wooden shed as a clubhouse on the grounds since that time until the upgrade of the facilities many years ago. The Club is responsible for the granting of permission and the scheduling of events on the Dinsley Cricket Grounds. As far as cricket is concerned the grounds are used for competitions sanctioned by the East Zonal Council of the Trinidad and Tobago Cricket Board, the Trincity League and the Spartan Under -17 Cricket Tournament. Inter-village wind ball cricket is also played. The Club also runs a coaching school on the grounds. Further, several cricket clubs and teams use the Dinsley Cricket Grounds as their home grounds in competitive tournaments and for training. They include

the Garden Village United, Slim's Coaching Clinic and the Trinidad and Tobago Women Cricket Association.

3. The freehold in the savannah was transferred to the state, namely The Republic of Trinidad and Tobago in 1987 by way of Deed of Gift from Home Construction Limited who had subsequently acquired title from Trinidad Sugar Estates Limited. As the years went by, the lands around the savannah have been so developed that they now include large housing communities and businesses.

4. Ulric Buggy Haynes is a sportsman of national repute having played football for Trinidad and Tobago as team captain and senior club cricket for the Malvern Sports Club. The First Claimant is named after Mr. Haynes and was established in 1988. It conducts training in football, cricket and athletics for young persons at the Orange Grove Savannah and was one of the first coaching schools to have been established in the east of Trinidad. Cricket training is conducted during the period January to June (the dry season) and football between July and December annually. Competitive games are played on weekends. During its tenure it has provided fifty scholarships to children of the nearby St. Mary's Children's Home. The Children's Home also uses the grounds and the children participate in sport programmes at the coaching school free of charge. The coaching school now occupies the space that was formally occupied by the Moosai Cricket Club within the savannah.

5. The other Claimants claim to be users of the savannah who will be adversely affected by the decision of the Defendant. According to the Claimants, among these is 'The Evergreens', an active group of Tacarigua senior citizens who exercise during the week at the Orange Grove Savannah. Their use is emblematic of the community nature of the Orange Grove Savannah. This group of retirees, including Dr. Carol James, walks on mornings and congregates under the trees for morning discussions.

6. The history of this public space is well known and is not in substantial dispute in these proceedings. The savannah has played an integral role in the life of the village of Tacarigua from the days of slavery, through the periods of indentureship, British Colonial rule and the advent of national independence right up to the present. In that regard the Claimants have relied on the writings of well known and respected academic and historian Professor Selwyn Cudjoe in his book entitled **"A Village in Trinidad"** (1995) and his paper entitled **"Preserving the Tacarigua Savannah"**. These well researched works paint a picture of inter-dependence between the community of Tacarigua and the savannah, the savannah being at the forefront of community life.

7. Following the abolition of slavery in 1834, former slaves remained on the lands of the Burnley Estate and established free communities. At that time the Orange Grove Savannah was owned by one of the wealthiest slave owners on the island of Trinidad, William Hardin Burnley. Around the same time, the St. Mary's Anglican Church was constructed a mere stone's throw away from the savannah and so was the Children's Home. The home remained one of the only orphan homes available to children of African slaves and East Indian indentured labourers for many years until the arrival in 1869 of the Canadian missionaries who set about building churches, schools and orphan homes within rural communities. It is therefore reasonable to conclude that the savannah would have, in those days, been integral to all aspects of community existence. It would have been the ideal open space to hold meetings and host sporting events. It would have been used for evening recreation, Easter kite flying and numerous other community activities of like kind resulting in a symbiotic relationship between the community and its savannah.

Recent events

8. On the 8th July 2013 the Claimants became aware of plans by the Government to establish a sporting development on the savannah. A meeting was held with representatives of the Sport Company of Trinidad and Tobago (SPORTT), a

limited liability company set up in the year 2004, and which acts as the key implementation agency for the Ministry of Sport and its varied and comprehensive policies for the promotion, sustainable growth and development of sport in Trinidad and Tobago. The Claimants and other members of the Tacarigua Community were informed at that meeting that the Cabinet of the Government of the Republic of Trinidad and Tobago had approved the sum of seventy five million dollars ($75M) for the construction of three sporting facilities throughout Trinidad with one to be developed at the savannah because of its size. The development was to be a multipurpose sporting complex to be named the Eddie Hart Regional Sporting Complex (the complex) and would take two years to build on a phased basis. It would include a twenty-five metre pool, a cricket ground football field, pavilion and four hundred metre running track. According to the Claimants, the SPORTT informed the meeting that the purpose of the complex would be to promote sport tourism which would facilitate the use of the complex by athletes and other sportsmen for training during the moths of winter in other countries.

9. As a consequence of being informed by the SPORTT of the development planned for the savannah, there were several subsequent meetings with various public officials including the then Minister of Sports, representatives of SPORTT and the Member of Parliament for the St. Augustine. The Claimants allege that no full disclosure as to the scope of the project was received at these meeting nor were they consulted in substance because it was clear that the decision to develop the savannah was already made.

10. Their objections to the planned development were made known by the Claimants and the matter became one within the public domain. Thereafter many public statements were made.

11. The Claimants allege that because of the highly publicised objections and statements made, the Defendant must have known that the Claimants were objecting to the development and equally must have known that the

development would have a substantial impact on what is an historical green space but that they nonetheless expedited the process of obtaining permission to develop the land. In this regard an application was made by the Synthesis Group, the agent of SPORTT to the Town and Country Planning Division of the Ministry of Planning and Sustainable Development (TCPD) on the 26th August 2013. The application sought permission for the building of two pavilions and one indoor facility for recreational purposes. The issue of the expedited application has been disputed by the Defendant through it's witness Earl Jardine, Development Control Specialist of the Town and Country Planning Division of the Ministry of Planning and Sustainable Development who has provided evidence as to the process employed in relation to the said application.

12. The Claimants allege that without notice to the public the application was granted on the 27th September 2013, however they only discovered this fact on the 25th November 2013 upon conducting a search of the public register of the Environmental Management Authority. The Defendant admits that permission was granted on the said date.

13. It is not disputed that the SPORTT commenced preliminary works on the savannah thereafter and that two stop orders were subsequently issued by the Tunapuna Regional Corporation. To date work has not resumed on the site, the SPORTT having given an undertaking to the court to cease all works pending the determination of this claim.

14. The Claimants therefore allege that such a fundamental change to the savannah would have necessitated that the views of the community be obtained in the widest possible manner so as to afford a real opportunity for consultation prior to the taking of the decision to develop. They also submit that no such development was published in a National Development Plan pursuant to the **Town and Country Planning Act** Chap 35:01 (TCPA) thereby affording to them the opportunity to object.

15. Many groups associated with the use of the savannah subsequently voiced their objections to the lack of consultation in writing and outlined the prejudice that they would suffer if the proposed development was to continue without their input. Several of these groups comprise members who train with Buggy Haynes Coaching School and Dinsley Cricket Club. These groups include;

    a. Trinity College East
    b. Trinidad and Tobago Women's Cricket Team;
    c. Triumph Sports Club; Faith Assembly Church;
    d. Tacarigua Recruits Cricket Club;
    e. El Dorado Superstars Cricket Club;
    f. Trincity Cricket League;
    g. Genesis Athletic Sports Club;
    h. Paradise Youth Organisation;
    i. Burnley Athletic Club;
    j. Tacarigua Village/Community Council;
    k. Vernlyn Anthony Ross Sports Academy;
    l. Golden Youth Sports Club;
    m. St. Mary's Children Home; and
    n. Dinsley Evangelical Bible Church

<u>The grounds of the claim</u>

16. The Claimants' mount several challenges. Firstly they allege that any development proposed in respect of the savannah and/or any changes to the green space of that savannah are required to form part of a draft development plan under the TCPA and that the Defendant has breached his duty under sections 6 and 7of the said Act to take steps to amend the development plan at all and/or specifically in relation to the savannah. They therefore seek declarations accordingly and an order of mandamus to compel the Defendant to comply with the said provisions.

17. Secondly, that in the exercise of his discretion whether to grant planning permission the Defendant had a duty to act in accordance with section 20 of the **Judicial Review Act** (JRA) in that he was bound to exercise his functions in accordance with the principles of natural justice or in a fair manner. This statutory duty was augmented by a common law duty to exercise such functions in accordance with the principles of natural justice. That the Claimants as users and persons adversely affected by the decision of the Defendant were entitled to be notified in sufficient detail of any and all matters which were relevant to or received by the Defendant relevant to the decision; were entitled to be afforded sufficient time to consider and prepare any response to those matters and were entitled to be afforded the opportunity to submit the responses to the Defendant and to have same duly considered prior to a final determination of the application.

18. The Claimants also submit that the need for consultation was more acute in this case because of the Defendant's failure to update the development plan for the last thirty years. It is their case that the Defendant acted;

    a. Unfairly by depriving persons of the entitlement to object and call for an Inquiry in accordance with section 7 (3) of the TCPA.

    b. Acted contrary to the public policy of the TCPA which requires the solicitation of wider public and parliamentary input through the development plan as a means of informing all grants of permission.

19. Additionally, the Claimants argue that it is clear that the Claimants were entitled to expect consultation as the Ministry and the TPCD had expressly stated that this was to be their policy. They also therefore rely on the doctrine of legitimate expectation.

20. According to the Claimants, the impact upon the parties could not be more stark. The Buggy Grounds and Dinsley Cricket Grounds will be lost. All the

charitable works undertaken by the Coaching School from time to time will be halted. The Dinsley Cricket Club, a fixture in the life of Tacarigua since the 1930s will end and village cricket will be a thing of the past. They say that the fact of a single international standard cricket and soccer field as proposed in the plan for the complex is in no way an answer to these concerns. The building of an international standard facility is part of a move to produce elite athletes but his does not assist in small informal games, or lower level competitive sport of regional or national character. This means that immediately the ordinary users will be excluded. Further, that having regard to the nature of the home and away system of games, it means that with a single ground, it would be impossible for more than one team to operate, even if they could in fact obtain permission to use the new international standard cricket ground. They submit that the impact would be the end of the era of club cricket at the savannah. They alledge that the other users will be adversely affected in individualised manner by the removal of the public green space.

The Defence

21. In its written submissions filed on February 25th 2015, the Defendant submits that in so far as sections 6 and 7 of the TCPA are concerned as they relate to the development plan, the provisions are directory only. They amount to target duties or best endeavours duties. Further, that the Defendant was given a discretion as to when he would take steps to propose amendments and he is not required to propose them unless he thinks they are required. Further, that since the enactment of the **Planning and Facilitation of Development Act** 2014, (PFDA) which replaced the TCPA, there is no utility in the judicial review proceedings as they relate to the Claimant's argument on the development plan. In this regard the court notes that the PFDA although passed on the 1st October 2014 is awaiting proclamation and so is not yet operative law. The court agrees with the submission of the Claimants in that regard that at the most it signals the intention of the parliament to repeal and replace the TCPA

but nothing more. See **Craies on Legislation** 10th ed. (2012) Sweet and Maxwell, paragraph 10.1.2.

22. In relation to the issue of planning permission it is the Defendant's case that neither fairness or the rules of natural justice require that in granting permission for development members of a community affected by the permission should be notified or be given an opportunity to be heard in relation to the application for permission; nor do they have a right to consultation. Further, that as the TCPA makes specific provision for consultation in section 7 matters (proposals by the Minister for amendment of the development plan), should the legislature have intended there to be consultation during the process of consideration of applications for planning permission, it would have so expressly provided.

23. In relation to legitimate expectation, the Defendant submits that there was no clear and unambiguous promise that is devoid of qualification. Further, that there is no evidence of a practice of consultation in those circumstances. The Defendant also submits that it would not be good administration for the court to exercise its discretion to grant the remedies sought as they would affect third parties who are not part of the proceedings including the owner of the land. Also, that the evidence suggests that the project is no longer being executed therefore the remedies sought if granted would serve no useful or practical purpose.

24. Finally, the Defendant submits that there has been substantial delay in that the failure complained of in relation to the developmental plan took place many years ago. They also add that it is not clear how the mere granting of planning permission can adversely affect the Claimants.

25. Before proceeding further, the court can summarily treat with some of these matters. Firstly, the owner of the land is the state of Trinidad and Tobago. The state's title to the land is not to be compromised or adversely affected if the

court was to grant the remedies sought. This case touches and concerns issues that surround permission granted by a Division of the Defendant for the intended use of the land by SPORTT, a company established by the owner of the land and whether there was a duty to comply with the TCPA as far as planning is concerned. In the court's view therefore all the relevant parties are before the court having regard to the case which the court has to determine. Further, and in any event, SPORTT has appeared at some of the case management conferences and has announced themselves as an interested party. They have also given an oral undertaking to the court which has been set out above. Finally, it is not reasonable to conclude that the grant of permission to develop stands completely separate and apart from the execution of the project as the former is a pre-requisite of the latter which makes the latter inextricably linked to the former.

The evidence

26. The Claimants have filed and rely on the following:

a. Affidavit of Biswadeo Dalchan in support of application for leave filed on the 23 December 2013

b. Affidavit of Ulric Haynes in support of application for leave filed on the 24 December 2013.

c. Joint Affidavit of Third to Twentieth Defendants in support of application for leave filed on the 24 December 2013.

d. Supplemental Affidavit of Ulric Haynes filed on 20th January 2014.

e. Supplemental Affidavit of Biswadeo Dalchan filed on the 20 January 2014.

f. Affidavit of Carol James filed on the 20 January 2014.

g. Affidavit of Ramnarine Khusial filed on the 20 January 2014.

h. Affidavit of Rudolph Samuel filed on the 20 January 2014.

i. Affidavit of Daniel Hart filed on the 20 January 2014.

j. Joint Affidavit of the Claimants filed on the 20 January 2014.

k. Affidavit in Reply of Ulric Haynes filed on the 30 January 2015.

27. In opposition the Defendant relies upon:

a. Affidavit of Earl Jardine filed on the 2 June 2014.

b. Affidavit of Clyde Watche filed on the 2 June 2014.

c. Affidavit of Nisa Simmons filed on the 18 December 2014.

d. Affidavit of Loris Jones-Romany filed on the 18 December 2014.

e. Affidavit of Dexter Browne filed on the 19 December 2014.

LOCUS

28. Section **5(2) (a)** and **(b)** of the JRA empowers the court to grant relief to a person whose interests are adversely affected by a decision or to a person or group of persons if the court is satisfied that the application is justifiable in the public interest in the circumstances of the case. In this case, the Defendant makes no challenge to the locus of the Claimants. The issue of whether the Claimants have been adversely affected has been raised by the Defendant in the context of the application of the principles of natural justice and fairness in examining the provisions of the TCPA on the issue of consultation with those adversely affected by the decision. This shall be dealt with in the context of consultation later on in this judgment. Suffice it to say, that having regard to the history of the land, in particular the user history set out above, which has not been effectively disputed, the court is of the opinion that the Claimants fall squarely within the category of persons identified in both sections 5(2)(a) and 5(2)(b) of the JRA and therefore all possess the required locus to pursue this claim.

FIRST CHALLENGE-Failure to update the National Plan

The Town and Country Planning Act Chap 35:01

29. The TCPA was enacted in the year 1960. The long title sets out that the Act is an Act to make provision for the orderly and progressive development of land in both urban and rural areas and to preserve and improve the amenities thereof; for the grant of permission to develop land and for other powers of control over the use of land; to confer additional powers in respect of the acquisition and development of land for planning; and for purposes connected with the matters aforesaid. Additionally, the Claimants have highlighted the literature contained in the text **Planning Law**, *Victor Moore and Michael Purdue*, 12th ed. (2012) Oxford University Press at paragraphs 4.01 to 4.06 which gives a succinct note on the historical introduction to development plans in the UK, the jurisdiction after which Trinidad and Tobago first modeled its development legislation. The passage is worth repeating in order to provide a historical backdrop to the scheme of development legislation;

> *4.01 Development Plans pay a vital part in the system for the control of development.* ***They constitute the main backcloth against which applications for planning permission are determined*** *and decisions are made on whether or not to issue an enforcement notice to terminate unauthorized development.* ***The strength of the development plan system is that it ensures that there is both a rational and consistent basis for making those decisions.***

30. The material provisions of the TCPA are sections 5 and 6, which provide as follows;

> *5. (1) As soon as may be practicable after the commencement of this Act, the Minister shall carry out a survey of the whole of Trinidad and Tobago.*

(2) Not later than seven years after the commencement of this Act, or within such extended period as Parliament may by resolution allow, the Minister shall submit for the approval of Parliament a development plan consisting of a report of the survey together with a plan indicating the manner in which he proposes that land in Trinidad and Tobago may be used (whether by the carrying out of development or otherwise) and the stages by which any such development may be carried out.

(3) A development plan shall include such maps and such descriptive matter as may be necessary to illustrate the proposals mentioned above with such degree of particularity as may be appropriate to different parts of Trinidad and Tobago; and a development plan may in particular—

(a) define the sites of proposed roads, public and other buildings and works, airfields, parks, pleasure grounds, nature reserves and other open spaces;

(b) allocate areas of land for use for agricultural, residential, industrial or other purposes of any class specified in the plan;

(c) designate, as land subject to compulsory acquisition by the Minister—

(i) any land allocated by the plan for the purposes of any of his functions or the functions of a local authority or of statutory undertakers;

(ii) any land comprised in an area defined by the plan as an area of comprehensive development [including any land therein that is allocated by the plan for any such purpose as is mentioned in subparagraph (i)], or any land contiguous or adjacent to any such area;

(iii) any other land that, in the opinion of the Minister, ought to be subject to compulsory acquisition for the purpose of securing its use in the manner proposed by the plan.

(4) For the purposes of this section, a development plan may define as an area of comprehensive development any area that in the opinion of the Minister should be developed or redeveloped as a whole, for any one or more of the following purposes, that is to say—

(a) for the purpose of dealing satisfactorily with conditions of bad lay-out or obsolete development;

(b) for the purpose of providing for the relocation of population or industry or the replacement of open space in the course of the development or redevelopment of any other area; or

(c) for any other purpose specified in the plan, and land may be included in any areas so defined, and designated as subject to compulsory purchase in accordance with the provisions of subsection (3), whether or not provision is made by the plan for the development or redevelopment of that particular land.

(8) At any time before a development plan with respect to the whole of Trinidad and Tobago has been submitted to and approved by Parliament under this section, the Minister may prepare and submit to Parliament for approval a development plan relating to any part of Trinidad and Tobago, and the foregoing provisions of this section shall apply in relation to any such plan as they apply in relation to a plan relating to the whole of Trinidad and Tobago.

6. (1) At least once in every five years after the date on which a development plan for any area is approved by Parliament, the Minister shall carry out a fresh survey of that area, and submit to Parliament a report of the survey, together with proposals for any alterations or additions to the plan that appear to him to be required having regard thereto.

(2) Notwithstanding subsection (1), the Minister may at any time submit to Parliament proposals for such alterations or additions to any development plan as appear to him to be expedient.

(3) Where, under section 5(8) a development plan is approved with respect to a part of Trinidad and Tobago, the periods of five years mentioned in subsection (1) of this section shall be construed to run from the date on which development plans in respect of the whole of Trinidad and Tobago have been approved by Parliament subject to subsection (2) of this section.

31. The legislation provides a scheme whereby for purposes of accountability and certainty in nationwide planning the parliament plays a vital role. It requires the Minister to bring to the parliament his government's plan for the development of lands throughout the Republic both in terms of the areas proposed for development, and the stages of such development. In addition, section 5 of the Act also treats with the duty of the Minister to bring to the parliament a report on a nationwide survey of all lands (together called the National Development Plan). The plan is laid in the parliament for parliamentary approval. In this way the legislation ensures parliamentary oversight of proposed development by government thereby ensuring participation in the wider sense by the general citizenry who are the users of the land and also providing for openness and transparency in the process of determining which lands are to be acquired for the purpose of development within a ten-year period.

32. By section 6, at least once in every five years, the Minister is to conduct a fresh survey of an area in respect of which a plan has been approved and submit a report to the parliament together with proposals for alterations or additions that appear to him to be required. Should the Minister desire to have the plan amended as a matter of expediency the section provides for the submission to the parliament notwithstanding the time line set out above.

33. Section 7 of the TCPA treats with the issue of consultation in relation to the development plan or alterations thereto. The section provides as follows:

7. (1) The Minister shall in the course of preparing a development plan relating to any land, or proposals for alterations or additions to any such plan, consult with the council of the local authority in whose district any of the land is situated, and may consult with such other persons or bodies as he thinks fit, and the Minister shall, before submitting any such plan or proposals for approval by Parliament, give to the council of any such local authority and to any such persons or bodies an opportunity to make objections or representations with respect thereto.

(2) Notice shall be published in the Gazette and in at least one daily newspaper that the Minister has prepared in draft any such plan or proposals for the amendment of any such plan, and of the place or places where copies of the plan or proposals may be inspected by the public.

(3) If any objection or representation with respect to any such plan or proposals is made in writing to the Minister within one month of the publication of the notice referred to in subsection (2), the Minister shall appoint a person to hold on his behalf a public inquiry into the objection or representation and the Minister shall, before submitting any such plan or proposals for the approval of Parliament, take into consideration the objection or representation together with the report of the person holding the public inquiry.

(4) If as the result of any objection or representation considered, or public inquiry held, in connection with a development plan or proposals for amendment of such a plan the Minister is of opinion that a local authority or any other authority or person ought to be consulted before he decides to make the plan either with or without modifications, or to amend the plan, as the case may be, the Minister shall consult that authority or person, but he shall not be obliged to consult any other authority or person, or to afford any opportunity for further objections or representations or to cause any further public inquiry to be held.

(5) The approval of a development plan or of proposals for amendment of such a plan by Parliament shall be published in the Gazette and in at least one daily newspaper and copies of any such plan or proposals as approved by Parliament shall be available for inspection by the public.

34. So that section 7 provides for the Minster to consult with whom he thinks fit. It further provides for publication of the plan and a process for objection or representation. Should there be objection the law provides for a public inquiry. The Minister is duty bound to consider the objection or representation and the report emanating out of the inquiry before submitting the plan to parliament. In so doing adequate opportunity for objection or representation by those who are likely to be affected are canvassed prior to the approval of parliament being sought. The Minister may also consider whether he wishes to amend the plan that he originally proposed and published post objection or representation and may therefore seek consultation with a local authority but he is not obligated to consult any other person or authority or to provide further opportunities for objection and representation.

35. The Defendant submits in their written submissions that the Minister is not bound to abide by the requirement to update the national plan because the legislation is merely directory and is not mandatory. The Claimants counter that the submission of the Defendant in that regard is misconceived. That the

issue of mandatory or directory is no longer the modern approach to the construction of a statute and in any event that test only becomes relevant where a party alleges that some act is invalid as a result of non-compliance which is not here the case. It is the submission of the Claimant that the Development Plan is the most important planning tool at the disposal of the Defendant as it permits for the widest stakeholder consultation and for the approval of Parliament. Notwithstanding this express duty the Minister has continually failed since 15 August 1989 (being 5 years after the approval of Parliament on 15 August 1984) to give any notice under section 7 (2) of the preparation of any draft plan nor has any such plan been submitted to Parliament in accordance with section 6 of the Act. The Defendant subsequently conceded that the test is no longer expressed in terms of mandatory and directory provisions but went on to submit that it must nonetheless be considered.

WAS THERE A DUTY ON THE DEFENDANT TO UPDATE THE NATIONAL PLAN

36. An examination of the proper test to be applied is helpful in determining whether the section imposed a duty on the Minster and if so, the ambit of that duty. In ***Dayfoot v Maharaj*** 10 WIR 493, the respondent applied to the La Brea Licensing Committee for a certificate authorising the issue of a new licence under the Liquor Licences Ordinance. On 16 May the committee appointed 22 June 1964, as the date of its June licensing session. This was published in "the Gazette" of 4 June, and the respondent's application was published in "the Gazette" of 18 June. At the hearing the appellant objected to the grant of the licence on the ground that the premises were too close to a school and a place of worship. The licence was granted. The appellant appealed on four grounds. The first was relevant to the present case. It concerned the failure of the licensing committee to comply with the Ordinance in not causing the notice of the appointment of the time and place of the June licensing session to be

published in "the Gazette" 28 days at least before the commencement of the session. It was held that the provisions as to notice by publication were directory only and that failure to comply with the time line set out therein could not found a successful ground of appeal.

37. In dismissing the appeal on this point, His Lordship the Honourable Chief Justice Wooding considered the specific provisions of the legislation and its interpretation but went on to also consider that the effect of the argument of the appellant was that the grant of the licence was illegal having regard to the failure to perform the public duty of publication in the Gazette. His Lordship stated at page 496 letter F to 497 letter H as follows;

> *"Whatever the true interpretation of s 19 of the Ordinance however, the question arises whether the non-insertion in "the Gazette" of notice by any special date of the time and place at which a licensing session is to be held can be said to be an illegality vitiating all that followed thereafter. For present purposes we shall assume that all the prescriptions of the section are governed by the phrase "twenty-eight days at least before each licensing session". What then? It has not been suggested that the licensing committee failed to cause notice of its appointment of a time and place for the holding of its June session to be affixed within the period limited for so doing in some conspicuous place or places, or that its said appointment failed to come to the knowledge of any person who was likely to have been interested therein. The only failure complained of was that it did not cause notice to be inserted in "the Gazette" within a time which was said to be prescribed. It is right therefore that we should recall the advice of the Privy Council in Montreal Street Rail Co v Normandin ([1917] AC 170, 86 LJPC 113, 116 LT 162, 33 TLR 174, PC, 30 Digest (Repl) 246, 15) ([1917] AC 170, at p 175), as follows:*
>
> > *'When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in respect of this duty would work 'serious general inconvenience, or injustice to*

persons who have no control over those entrusted with the duty, and at the same time would not promote the main object of the legislature, it has been the practice to hold such provisions to be directory only, the neglect of them, though punishable, not affecting the validity of acts done''.

We would refer also to the judgment of Lord Penzance in Howard v Bodington ((1877), 2 PD 203, 42 JP 6, 19 Digest 364, 1575) ((1877), 2 PD 203, at p 211), where speaking of the distinction between directory and imperative enactments he said that, after reading the cases, the tendency of his mind

'is to come to the conclusion which was expressed by Lord Campbell in the case of the Liverpool Borough Bank v Turner ((1861), 30 LJCh 379) that;
'No universal rule can be laid down for the construction of statutes, as to whether mandatory enactments shall be considered directory only or obligatory, with an implied nullification for disobedience. It is the duty of courts of justice to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be construed'.

I believe, as far as any rule is concerned, you cannot safely go further than that in each case you must look to the subject-matter; consider the importance of the provision that has been disregarded, and the relation of that provision to the general object intended to be secured by the Act; and upon a review of the case in that aspect decide whether the matter is what is called imperative or only directory."

38. Wooding CJ continued;

"*As we see it, the main object of the legislature in enacting the relevant sections of the Ordinance was to cause it to be generally known when licensing sessions*

would be held and to make such provision as should ensure that all or any persons so minded would be facilitated in making thereat applications for the grant or renewal of licenses or in objecting thereto, as the case may be. To that end the course it followed was to prescribe certain months in each year for holding the ordinary sessions of licensing committees, to leave it to each licensing committee to appoint a convenient day in each such month for its session but with the right to adjourn if necessary, to require notice of such appointment to be given to the public so that anyone wishing to apply for a licence whether by way of grant or renewal should be informed sufficiently early to enable him to make his application in due time, and to provide for the giving of such notice both of the date of the session and of such applications as have been made as would effectively enable anyone wishing to object to appear and raise his objection. Accordingly, it provided for notice of the time and place of each licensing session to be published not only in "the Gazette" but also in some conspicuous place or places in the licensing area or district, and for notice of all applications for the grant of a licence to be published not only in "the Gazette" but also in two newspapers circulating locally. But, as we have said, "the Gazette", though an official publication, is not ordinarily a source of popular information. Nor is any licensing committee invested with the means of enforcing publication in "the Gazette" at or before any particular time of any notice it may wish to have published. Nor does any member of the public, or more especially an applicant for or a would-be objector to the grant or renewal of a licence, have any control over the discharge by a licensing committee of its duty to cause any notice to be published in "the Gazette". Accordingly, we hold the provisions as to notice by publication in "the Gazette" (with which alone we are here concerned) to be directory only."

39. The Claimants submit that the reasoning applied in ***Dayfoot*** was specifically rejected in ***Charles v Judicial and Legal Service Commission & Another*** (2003) 1 LRC 422. In ***Charles,*** the appellant was a Deputy Chief Magistrate of Trinidad and Tobago whose conduct had been complained of. Following the

complaints, the Chief Magistrate reported the matter to the first respondent, the Judicial and Legal Service Commission (the Commission), and a Master of the High Court was appointed as investigating officer. Regulation 90(3) of the Public Service Commission Regulations provided that the investigating officer should, within three days of being appointed, give the appellant written notice specifying the time within which he might, in writing, give an explanation concerning the allegation. However, the investigating officer missed the three-day deadline, serving the written notice after four days. Regulation 90(4) obliged the investigating officer to require persons with direct knowledge of the matters under investigation to make written statements within seven days for the information of the Commission. The statements thus acquired were also not obtained within the time limit. Regulation 90(5) required the investigating officer, not later than 21 days from the date of being appointed, to forward to the Commission, for its information, all original statements and all relevant documents together with the report. The Master did not submit the report within the timeframe and no extension of time was sought. Under regulation 90(6) the Commission was obliged to consider the report of the investigating officer and any explanation given by Charles and then to decide whether that person should be charged. The Commission did this and decided to charge Charles, who responded by seeking judicial review of that decision on the basis that the Commission had no power to take it, primarily because of the lateness of the investigating officer's report. The application was declined by the High Court, which decision was upheld by the Court of Appeal. The appellant brought the matter on further appeal to the Privy Council, raising, inter alia, the question of what effect a breach of the time limits in regulation 90 had on the subsequent proceedings of the Commission.

40. The Privy Council decision was delivered by Tipping J who in dismissing the appeal, at paragraph 9 of the judgment espoused the present law to be as follows:

"The leading authority is the decision of the Privy Council in Wang v Comr of Inland Revenue[1994] 3 LRC 681. Lord Slynn of Hadley, who delivered the judgment of their Lordships, cited from the speech of Lord Hailsham of St Marylebone LC in London & Clydesdale Estates Ltd v Aberdeen District Council [1979] 3 All ER 876 in which his Lordship had discouraged the use in this field of rigid legal classifications like mandatory and directory ([1994] 3 LRC 681 at 691). Lord Slynn then said (at 691–692):

'... their Lordships consider that when a question like the present one arises—an alleged failure to comply with a time provision—it is simpler and better to avoid these two words "mandatory" and "directory" and to ask two questions. The first is whether the legislature intended the person making the determination to comply with the time provision, whether a fixed time or a reasonable time. Secondly, if so, did the legislature intend that a failure to comply with such a time provision would deprive the decision maker of jurisdiction and render any decision which he purported to make null and void?'

Some five years earlier the New Zealand Court of Appeal had taken much the same approach in New Zealand Institute of Agriculture Science Inc v Ellesmere County [1976] 1 NZLR 630. Cooke J (now Lord Cooke of Thorndon) speaking for the court said (at 636):

'Whether non-compliance with a procedural requirement is fatal turns less on attaching a perhaps indefinite label to that requirement than on considering its place in the scheme of the Act or regulations and the degree and seriousness of the non-compliance."

41. It is of note that His Lordship in advocating what the Claimants in this case consider to be the new approach, refers to the very authority of ***Liverpool Borough Bank v Turner***, originally endorsed by Wooding CJ in Dayfoot supra. At paragraph 10 of ***Charles*** Tipping J had this to say;

"The approach evidenced by these cases was a development of earlier authority and was not in itself new. It can be traced back at least as far as the judgment of Lord Campbell, sitting as Lord Chancellor in Liverpool Borough Bank v Turner (1860) 29 LJ (Ch) 827, in which he said, in relation to the issue of implied nullification for disobedience of a statute, that the duty of the courts was 'to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be construed'.

And in the well known case of Howard v Bodington (1877) 2 PD 203 at 210 Lord Penzance observed that he was not sure that the language of mandatory and directory was the most fortunate language that could have been adopted to express the idea that it was intended to convey. He continued:

'Still, whatever the language, the idea is a perfectly distinct one. There may be many provisions in Acts of Parliament which, although they are not strictly obeyed, yet do not appear to the Court to be of that material importance to the subject-matter to which they refer, as that the legislature could have intended that the non-observance of them should be followed by a total failure of the whole proceedings. On the other hand, there are some provisions in respect of which the Court would take an opposite view, and would feel that they are matters which must be strictly obeyed, otherwise the whole proceedings that subsequently follow must come to an end.'

And a little later (at 211), after citing from Liverpool Borough Bank v Turner (1860) 29 LJ (Ch) 827, Lord Penzance said:

'... in each case you must look to the subject-matter; consider the importance of the provision that has been disregarded, and the relation of that provision to the general object intended to be secured by the Act; and

upon a review of the case in that aspect decide whether the matter is what is called imperative or only directory.'

It is quite clear that in context his Lordship was there using the words imperative and directory as shorthand for whether or not non-compliance with a particular provision should lead to a failure of the whole proceedings."

42. This court therefore understands the law to be that which is set out in ***Charles*** but does not agree that the dicta in ***Dayfoot*** has been specifically rejected. The court understands it to be the case that Their Lordships in ***Dayfoot*** may have been following the use of directory and mandatory having given too much weight to the nomenclature used in ***Liverpool Borough Bank.*** However the core principle enunciated in ***Liverpool Borough Bank*** and by extension in ***Dayfoot*** remains the same. This court would therefore be hesitant to find that that ***Dayfoot*** has been overruled.

43. The court also considers the learning set out in ***De Smith, Judicial Review*** 7th ed. para 5-057 as follows;

Breach of procedural or formal rules is likely to be treated as a mere irregularity if the departure from the terms of the Act is of a trivial nature or if no substantial prejudice has been suffered by those for whose benefit the requirements were introduced. But the requirement will be treated as fundamental and of central importance if members of the public might suffer from its breach. Another factor influencing the categorization is whether there may be another opportunity to rectify the situation; of putting right the failure to observe the requirement.

44. That being the position in law, a court would ordinarily have to ask itself two questions. The first is whether the legislature intended the Minister to comply with the time provision for amending the development plan, whether a fixed

time or a reasonable time. Secondly, if so, did the legislature intend that a failure to comply with such a time provision would deprive the decision maker of jurisdiction and render any decision which he purported to make null and void. The court understands the Claimant's submission to be however that the court does not have to treat with the second question because there was no action taken by the Minister in relation to the national plan and in respect of which the Claimants are seeking relief that such action be declared null and void. However, the Claimants seek a declaration that the Defendant has breached his duty under sections 6 and 7 of the Act to take steps to amend the national plan at all or in relation to the savannah and a declaration that any purported development proposed are required to form part of a development plan under the Act. They then seek a Mandamus compelling the Defendant to perform his legislative duty to amend the national plan.

45. In the courts view, the distinction made by the Claimants in this regard carries much weight. The effect of the grant of a declaration that the Defendant has breached his duty under the Act and a declaration that any purported development proposed in respect of the lands known as the Orange Grove Savannah is required to form part of a draft development plan and a mandamus compelling the Defendant to take steps to amend the national plan, does not equate either directly or indirectly to a submission that any development proposed outside of the ambit of the process prescribed by the act is an unlawful one. The effect in the court's view is that should the court find that there is a duty, the court must then examine whether the duty was breached and if so whether that breach has deprived the Claimants of their entitlement to the application of the principles of natural justice. It follows therefore in the court's view that the approach adopted in ***Charles*** (which followed ***Wang***) must be followed in its entirety in order to determine whether the duty does in fact exist. This is so whether the Claimants are claiming that the actions of the Minister *outside the ambit of the act are unlawful and void or not.* The answer to the second question is only a relevant

consideration for the court's determination of the existence of the duty and nothing more. It is not relevant to the relief to be granted in this case. That being said the answer to the second question may be more readily apparent than that to the first so it shall be answered in brief hereafter.

46. The answer to the second question is clearly that the legislature did not intend that a failure to comply with such a time provision would deprive the decision maker (Minister) of jurisdiction and render any decision which he purported to make (outside the process provided for in the TCPA) null and void. It cannot be a reasonable argument and indeed it has not been argued by the Claimants that the actions of the Defendant in not updating the plan has resulted in his lack of jurisdiction thereby rendering any decision he has made in relation to the planned facility and the permission thereon null and void as a consequence. Should the position have been otherwise, the removal of jurisdiction being fundamental, Parliament in its wisdom would have clearly expressed the consequences of non- compliance within the walls of the TCPA but no such consequences are specified. Neither is it a reasonable and/or practical inference to be drawn from the legislation. So that this is merely one factor that the court will consider in determining whether there existed a duty to comply with the five-year timeline.

Did the legislature intend that the Minister comply with the time provision for amending the development plan

47. The court agrees with the submission of the Claimants that it could only have been the intention of parliament that the Minister comply with the requirements set out in the Act to update the plan at least once every five years. It is a process that ensures that the Parliament is kept abreast of the incremental growth in development of the lands of Trinidad and Tobago. This is an important feature of the legislation as it may be reasonably inferred that timely updates to the National Plan would in the usual course of events assist those who make the laws by way of understanding the developmental growth

of the Nation and that which may be required for future development. The process also at the same time allows for transparency in the planning and development of land but more so it is a process which facilitates objections and representations from the public either through the local authority or otherwise thereby providing national participation in development. The opportunity given to the public by virtue of the legislation may not be the gravamen of sections 6 and 7 of the TCPA but is an important democratic participative tool given to the public. In this way the system provides for the widest form of democratic participation in the national development process. The failure to adhere to the lawfully enacted process will result in the deprivation of the opportunity to object or make representation or call for an inquiry by the public. The failure also circumvents Parliamentary oversight which lies at the core of sections 6 and 7. It must therefore mean that the intention of the legislation was that there be periodic amendments to the national plan in a transparent manner which lends itself to both public and Parliamentary oversight in the interest of participative national development.

48. However, the court is not satisfied that the intention of the legislature was that there be strict adherence to the five-year period set by the TCPA. This is so despite the use of the phrase "at least" appearing at section 6 of the Act. Reasonably, it may well be that there is in the Minister's opinion, no need to seek approval to amend within any given five year period. For example, economic constraints in a given period may mean the Minister or his Government will have to prioritise the allocation of available resources with the result that there are no development plans in respect of lands for that period. Relatively small petro-based economies such as ours are no strangers to such austerity measures. One only has to revisit the economic downturn of the 1980s and the macro-economic measures instituted at the time to understand the dilemma faced and the adverse consequences to the administration's ability to institute or continue programmes of land development. So that it could not have been the intention of Parliament, in the

court's view, that where there is no need to amend the national plan, the Minister is nonetheless duty bound so to do or to even report to the Parliament that there is no need so to do. Matters of development planning of lands appear by their very nature to be dictated by circumstances of economic growth and economic nationwide development amongst others, so that Parliament would not have imposed such a rigid duty on the Minister, the performance of which is dependent on several variable and sometimes volatile factors without permitting some measure of flexibility.

49. However, in the court's view, it is not to say that the legislature intended that there be no compliance at all. It must be that in keeping with the spirit and intent of the TCPA as far as wide public democratic participation and the inevitable growth in development were concerned, that the Minister was required to apply to the Parliament for approval of such amendments pursuant to the TCPA within a reasonable time after the deadline for so doing had expired at the latest. It is matter of practicality and common sense that the Republic of Trinidad and Tobago has witnessed tremendous development of its lands since the passage of the Act in 1960 and particularly so since 1984 (year of compliance with requirement to file a National Plan). So that it could not have been that there was no need to amend the national plan over all these years.

50. The evidence of Mr. Clyde Watche provides tremendous insight as to the approach that has been taken to the amendment to the national plan over the years. The witness Watche is the Acting Assistant Director, Town and Country Planning Division, Ministry of Planning and Sustainable Development, having been in the employ of the Ministry since the 3rd August 2008. He has in the past acted as the Director of Town and Country Planning. In that capacity he was responsible for the administration of the TCPA. His duties included developing and maintaining a system of development control, directing research into physical planning studies, the preparation of development plans

and their subsequent review, advising Local Government Authorities, ministries and other bodies on their plans for development. The witness sets out the procedure in respect of applications to develop lands and then treats with the TCPA from paragraph 13 of his affidavit. He opines that the Act is intended to secure the orderly and progressive development of land both in urban and rural areas and to improve the amenities thereof. This of course is merely one of the stated purposes of the Act as contained in the long title. See paragraph 29 above.

51. In 1978, a national plan was prepared pursuant to section 5(2) of the TCPA and was the subject of inquiry during the period 1980 to 1981. It was updated in 1982 and approved by the Parliament in 1984. It became operative on the 15th August 1984 and is known as the National Physical Development Plan (NPDP). According to Watche, this plan reflected a long term strategy for development of the whole of Trinidad and Tobago, expressed in broad principles. It provided detailed land use planning policy including specific land use zones and allocations across Trinidad and Tobago. In preparing the plan, particular attention was paid to objectives, policies and plans of government departments and agencies responsible for various programmes. The witness states that since 1984, various policies have been embarked upon and implemented to assist in the development plans for the nation. The TCPD has produced many plans to supplement the National Plan. Some of the plans for larger regions state the implications of the national plan with greater detail and more precision while others for the smaller areas were used to guide substantial change. Many of those plans are according to the witness "non-statutory", that is, not approved by the Parliament but approved by the Minister as a policy document. The witness then outlines the intention of the government to move towards a new spatial policy and planning framework, by way of the repeal of the TCPA, the passage of the PFDA and the establishment of a National Planning Authority. The witness also speaks of what he calls a key planning instrument in the form of a Municipal Development Plan which was

developed in 2010 by the Ministry of Local Government through accredited consultants. It is his evidence that all fourteen of the municipalities in Trinidad produced a plan which provided a sustainable regional development framework for the respective regions from 2010 to 2020. The plan is comprised of several plans which seek to guide the spatial distribution of social, economic, cultural, infrastructural and environmental activities of the burgesses and partner agencies within their boundaries. It was formulated during a series of consultations and dialogue with various stakeholders. All fourteen plans have been approved by the cabinet and have been adopted as planning instruments. The court pauses to observe that the TCPA requires Parliamentary approval which is quite different to Cabinet approval.

52. The evidence of this witness demonstrates that since compliance with the Act in the year 1984, there has been no application to the parliament for approval of any amendments to the national plan. This is the clear inference to be drawn for the evidence of the witness who stops short of admitting this in unambiguous language. The witness has provided no explanation for such a state of affairs up to the year 2010, not that an explanation will necessarily assist this court in resolving the issues in this case in any event. The court also understands his evidence to be that from 2010 or thereabouts, it was recognized that a completely new framework for national planning was needed and so steps were taken to draft the appropriate legislation to repeal the TCPA. It can be reasonably inferred from the affidavit of this witness that the intention to pass new legislation, was the reason for the failure to amend the national plan in relation to the proposed sporting complex at the savannah.

53. In the court's view, consistent with its finding above, it would seem that the reason advanced by the witness by way of implication for not applying to the Parliament to have the national plan approved during the period 2010 to the present is a practical one having regard to the intention of the government of the day to change the entire planning framework. Subsequent events shave

shown that that intention of the executive has been adopted by the Parliament and the new Act has been passed and is awaiting proclamation. In those unique circumstances, one cannot and ought not to apply a somewhat dogmatic approach to duties imposed by the legislature by virtue of provisions that admit for some latitude in their performance. That being said however, it is clear to the court that there exists a duty on the part of the Minister to apply to the Parliament for its approval should there be any proposed changes to the national plan. This duty, the court finds, must be performed within a reasonable time if not performed within the five-year period. It equally appears that for reasons unknown to this court, there has been no performance of the obligation imposed by this duty for many years. But this case is not and cannot be about a broad challenge to the failure to update the national plan over many years. It is about the failure to update the national plan in relation to the changes to be made to the Orange Grove Savannah, and the consequence of that omission in relation to the opportunity to object and make representation on behalf of the public. The court would therefore answer the first question posed in the affirmative in that it was the intention of the legislature that the Minister comply with the provisions of section 6(1) of the TCPA at least once per five year period or within a reasonable time thereafter. Reasonable time in this case would depend on several circumstances and factors including *but not limited to* the intention of the legislature to abolish the TCPA and the system therein prescribed altogether and to introduce new legislation which provides a somewhat different framework but which also gives timelines for reviews of the plans by the Minister once very five years.

54. Further, the court does not agree with the submission of the Defendant that the legislation imposes a duty on the Minister to make best endeavours or set targets to have the plan updated at least once every five years. An apparent absolute duty cast by legislation upon a public body may be interpreted as granting a discretion as to the manner and extent of its performance. See **De**

Smith, Judicial Review 7th ed, paragraph 5-016. In this case it cannot be reasonably argued that the Minister is duty bound to update the plan in circumstances where no further development has occurred or even where minimal development has taken place but it is equally not the case that he is vested with a discretion to completely bypass the relevant provisions of the TCPA. It is therefore the finding of the court that in so doing in this case, the Minister has breached his duty as not only has he not complied with the recommended timeline but he has also failed to abide by the provisions contained in the TCPA even after a reasonable period for so doing has elapsed. Further the evidence of the witness Watche indicates no intention whatsoever to comply with the Act.

55. In making its determination the court also considered whether there existed an alternate procedure which could have cured the deprivation of the opportunity for objection and representation which was lost by way of the failure to update the national plan. The evidence in that regard is set out hereafter within the discussion on Natural Justice and Fairness. Suffice it to say that the court has found as set out hereunder that no such alternative opportunity was afforded to the Claimants.

SECOND CHALLENGE- The Grant of Permission- Natural Justice and Fairness

56. Section 11 of the TCPA, prescribes that the Minister is empowered to grant permission to develop land where application is made to him under section 8. Section 8 reads:

> *8. (1) Subject to the provisions of this section and to the following provisions of this Act permission shall be required under this Part for any development of land that is carried out after the commencement of this Act.*

(2) In this Act, except where the context otherwise requires, the expression "development" means the carrying out of building, engineering, mining or other operations in, on, over or under any land, the making of any material change in the use of any buildings or other land, or the subdivision of any land, except that the following operations or uses of land shall not be deemed for the purposes of this Act to involve development of the land, that is to say—

(a) the carrying out of works for the maintenance, improvement or other alteration of any building, if the works affect only the interior of the building or do not materially affect the external appearance of the building;

(b) the carrying out by a highway authority of any works required for the maintenance or improvement of a road if the works are carried out on land within the boundaries of the road; (c) the carrying out by any local authority or statutory undertakers of any works for the purpose of inspecting, repairing or renewing any sewers, mains, pipes, cables or other apparatus, including the breaking open of any street or other land for that purpose;

(d) the use of any buildings or other land within the curtilage of a dwelling house for any purpose incidental to the enjoyment of the dwelling house as such;

(e) the use of any land for the purposes of agriculture or forestry (including afforestation);

(f) in the case of buildings or other land that are used for a purpose of any class specified in an Order made by the Minister under this section, the use thereof for any other purpose of the same class.

57. The Judicial Review Act Chap 7:08 provides as follows:

20. 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.

58. The rules of natural justice require that the decision maker approaches the decision making process with 'fairness'. What is fair in relation to a particular case may differ. As pointed out by Lord Steyn in ***Lloyd v Mc Mahon*** [1987] AC 625, the rules of natural justice are not engraved on tablets of stone. The duty of fairness ought not to be restricted by artificial barriers or confined by inflexible categories. The duty admits of the following according to the authors of the ***Principles of Judicial Review*** by De Smith, Woolf and Jowell;

i. Whenever a public function is being performed there is an inference in the absence of an express requirement to the contrary, that the function is required to be performed fairly. ***Mahon v New Zealand Ltd*** (1984) A.C. 808.

ii. The inference will be more compelling in the case of any decision which may adversely affect a person's rights or interests or when a person has a legitimate expectation of being fairly treated.

iii. The requirement of a fair hearing will not apply to all situations of perceived or actual detriment. There are clearly some situations where the interest affected will be too insignificant, or too speculative or too remote to qualify for a fair hearing. This will depend on the circumstances.

59. In this case the Claimants submit that the Minister is in fact a public body or authority and was acting in the performance of a public duty or function at the time he granted permission. They submit that the common law as it relates to natural justice compliments the statutory obligation contained in section 20.

Further, that the Minister having breached his duty and having thereby deprived the Claimants of the opportunity for consultation, he commenced the application process from a degraded position not contemplated by the legislature. They submit that in such a circumstance, the obligation to actively consult on such a major project was even greater than it would ordinarily be. According to the Claimants this duty would have been augmented by the fact that public protests were being conducted on the day that the permission was granted and the Minister knew or ought to have known that there was widespread objection to the project. Therefore it is in the face of public protests the Minister granted permission without consultation which was unfair to the Claimants and the public at large.

60. The Defendant submits that neither fairness nor the rules of natural justice require that in granting planning permission for development, members of a community affected by the permission should be notified or be given an opportunity to be heard in relation to the application for permission, nor do they have a right to be consulted by the Defendant.

61. Further, it is submitted by the Defendant that the Act specifically makes provision for consultation in section 7 matters. That if it were that Parliament intended that there should be consultation when applications for planning permission were being considered Parliament would have so provided expressly. The Claimants answer that the fact that Parliament has not required that the Minister hear the Claimants as persons who would be directly and adversely affected is not at all relevant to the issue. They rely on the case of ***Bank Mellat v Her Majesty's Treasury (No. 2)*** [2013] UKSC 39.

62. The ***Bank Mellat*** appeal was about measures taken by H.M. Treasury to restrict access to the United Kingdom's financial markets by a major Iranian commercial bank, Bank Mellat, on the account of its alleged connection with Iran's nuclear weapons and ballistic missile programmes. The proliferation of

nuclear weapons was an international issue of great importance to the security of the United Kingdom and the international community. For a number of years, Iran had a major industrial programme which the United Kingdom, along with the rest of the international community, believed to be directed to the development of the technical capability to produce nuclear weapons and to the improvement of its ballistic missile capabilities. Between 2006 and 2008 the United Nations Security Council adopted a number of resolutions under Article 41 of the United Nations Charter, which dealt with threats to international peace and security. One of these resolutions called upon all states to

> *"exercise vigilance over the activities of financial institutions in their territories with all banks domiciled in Iran, in particular with Bank Melli and Bank Saderat, and their branches and subsidiaries abroad, in order to avoid such activities contributing to the proliferation sensitive nuclear activities, or to the development of nuclear weapon delivery systems."*

63. There were two principal legislative instruments available to the United Kingdom government for the purpose of restricting the operations in the United Kingdom of Iranian financial institutions associated with the country's nuclear and ballistic missiles programmes. The second, made under Section 62 of the Counter-Terrorism Act 2008 empowered the Treasury to make a direction by statutory instrument in situations specified in paragraph 1, involving three categories of "risk" associated with a foreign country outside the European Economic Area. On 9 October 2009 the Treasury made an order, the Financial Restrictions (Iran) Order 2009 SI 2009/2725, which came into force three days later on 12 October. It was made under Schedule 7, paragraph 13 of the Act and required all persons operating in the financial sector not to enter into or to continue to participate in any transaction or business relationship with Bank Mellat or any of its branches or with a shipping line called IRISL. On 20 November 2009, Bank Mellat applied in the High Court under section 63 of the Counter-Terrorism Act 2008 to have the direction set

aside on grounds which fall under two heads. In the courts below, these were called the procedural and the substantive grounds. The procedural ground was that the Treasury failed to give the bank an opportunity to make representations before making the order. The Bank had no express statutory right to such an opportunity, but it contended that such an opportunity was required at common law and by article 6 and article 1, Protocol 1 of the European Convention on Human Rights.

64. In delivering the majority decision of the UK Supreme Court on the procedural ground Lord Sumpton set out the following from paragraph 28 of the judgment and continuing thereafter;

> *"28. I also consider that the Bank is entitled to succeed on the ground that it received no notice of the Treasury's intention to make the direction, and therefore had no opportunity to make representations.*
>
> *29. The duty to give advance notice and an opportunity to be heard to a person against whom a draconian statutory power is to be exercised is one of the oldest principles of what would now be called public law. In Cooper v Board of Works for the Wandsworth District (1863) 14 CB (NS) 180 143 ER 414, the Defendant local authority exercised without warning a statutory power to demolish any building erected without complying with certain preconditions laid down by the Act. "I apprehend", said Willes J at 190, "that a tribunal which is by law invested with power to affect the property of one Her Majesty's subjects is bound to give such subject an opportunity of being heard before it proceeds, and that rule is of universal application an founded upon the plainest principles of justice."*
>
> *30. In R v Secretary of State for the Home Department Ex p Doody [1994] 1 AC 531, 560, Lord Mustill, with the agreement of the rest of the*

*Committee of the House of Lords, summarised the case-law as follows: (omitted. See subsequent quote from **Doody**)*

32. *In my opinion, unless the Act expressly or impliedly excluded any relevant duty of consultation, it is obvious that fairness in this case required that Bank Mellat should have had an opportunity to make representations before the direction was made. In the first place, although in point of form directed to other financial institutions in the United Kingdom, this was in fact a targeted measure directed at two specific companies, Bank Mellat and IRISL. It deprived Bank Mellat of the effective use of the goodwill of their English business and of the free disposal of substantial deposits in London. It had, and was intended to have, a serious effect on their business, which might well be irreversible at any rate for a considerable period of time. Secondly, it came into effect almost immediately. The direction was made on a Friday and came into force at 10.30 a.m. on the following Monday. It had effect for up to 28 days before being approved by Parliament. Third, for the reasons which I have given, there were no practical difficulties in the way of an effective consultation exercise. While the courts will not usually require decision-makers to consult substantial categories of people liable to be affected by a proposed measure, the number of people to be consulted in this case was just one, Bank Mellat, and possibly also IRISL depending on the circumstances of their case. I cannot agree with the view of Maurice Kay LJ that it might have been difficult to deny the same advance consultation to the generality of financial institutions in the United Kingdom, who were required to cease dealings with Bank Mellat.*

35. *The duty of fairness governing the exercise of a statutory power is a limitation on the discretion of the decision-maker which is implied into the statute. But the fact that the statute makes some provision for the*

procedure to be followed before or after the exercise of a statutory power does not of itself impliedly exclude either the duty of fairness in general or the duty of prior consultation in particular, where they would otherwise arise. As Byles J observed in Cooper v Board of Works for the Wandsworth District (1863) 14 CB(NS) 190, 194, "the justice of the common law will supply the omission of the legislature." In Lloyd v McMahon 1987] 1 AC 625, 702-3, Lord Bridge of Harwich regarded it as "well established that when a statute has conferred on any body the power to make decisions affecting individuals, the courts will not only require the procedure prescribed by the statute to be followed, but will readily imply so much and no more to be introduced by way of additional procedural safeguards as will ensure the attainment of fairness."

Like Lord Bingham in R (West) v Parole Board [2005] 1 WLR 350 at para 29, I find it hard to envisage cases in which the maximum expressio unius exclusio alterius could suffice to exclude so basic a right as that of fairness.

36. *It does not of course follow that a duty of prior consultation will arise in every case. The basic principle was stated by Lord Reid forty years ago in Wiseman v Borneman [1971] AC 297, 308, in terms which are consistent with the ordinary rules for the construction of statutes and remain good law:*

"Natural justice requires that the procedure before any tribunal which is acting judicially shall be fair in all the circumstances, and I would be sorry to see this fundamental general principle degenerate into a series of hard-and-fast rules. For a long time the courts have, without objection from Parliament, supplemented procedure laid down in legislation where they have found that to be necessary for this purpose. But before this unusual kind of power is exercised it must be clear that the

statutory procedure is insufficient to achieve justice and that to require additional steps would not frustrate the apparent purpose of the legislation."

Cf. Lord Morris of Borth-y-Gest at 309B-C."

65. Setting aside the effect of the European Convention on Human Rights on the interpretation of English Statutes, ***Mellat*** appears in the court's view to be clearly articulating that the common law principles of natural justice and the right to be heard are rights which limit the statutory discretion of the decision maker. In so saying, ***Mellat*** affirms that in some cases the common law right to a fair hearing ought to be implied in the statute having regard to the draconian measures prescribed in the statute.

66. The facts of ***Mellat*** are on par with the present case save and except for the fact that the consequences of the exercise of the act in Mellat were dire to Bank Mellat and so the exercise of the power in that case was considered draconian. That is not the position in the present case. The effect of the construction of the sporting facilities will of necessity result in perhaps massive inconvenience to the groups who participate in sporting activities on the grounds. It may involve a change in the way they do things and the venue but those are matters which can be remedied. The exercise of the discretion to grant planning permission is however in no way to be considered as the exercise of a draconian power. However the similarity between ***Mellat*** and the present case lies with the fact that the statute in ***Mellat*** contained a clear power to act and the right to be heard was implied in that power because of the circumstances of that case. Similarly, the TCPA gives the Minister the power to grant planning permission, in the same way that the power was given in ***Mellat*** without a statutory right to a hearing. That being said, court is of the opinion that it does not appear that Their Lordships in ***Mellat***, intended that the category of cases to which the common law may be applied be rigidly restricted to those in which the power

could be considered draconian. Certainly that would be to impose an artificial barrier to the application of the common law in other cases in which public interest may require its application. The application of the common law in each case would depend on the facts of that case. But more than this, unlike in ***Mellat***, statute, by section 20 of the JRA imposes a positive duty on the Minister to exercise his power to grant permission consistent with the principles of natural justice in a fair manner even if the court is to not have recourse to the common law.

67. In the present factual scenario, the TCPA provides for a process whereby the Minister, in the process of altering a development plan is bound to consult with the local authority within whose jurisdiction the land is situated. He may also consult with any other persons or bodies he thinks fit. She shall also before submitting the plan, give to the Council or persons or bodies an opportunity to make objections or representations. But the statute does not stop there. It provides for Notice in the Gazette which grants an opportunity for objection and representation in writing upon receipt of which the Minister is hold an inquiry and a report on the inquiry submitted to the Minister. The Minister is then to consider the report along with the objections and representations before submission to the Parliament. Even before submission, the Minister may consult with others if he so desires. So that the statute clearly gives an opportunity to be heard to those who may be affected and to others who wish to be heard. There is however no such procedure provided in the statute in respect of applications for planning permission.

68. For these reasons, this court agrees with the submissions of the Claimants that the fact that the TCPA does not contain a provision for objection or representation in respect of applications for permission to develop lands is of no relevance to the application of the principles of natural justice and fairness.

69. It is to be noted that before a court imposes a duty to consult in respect of planning permission where no such duty is prescribed by statute, it must be clear that the statutory procedure is insufficient to achieve justice and that to require additional steps would not frustrate the apparent purpose of the legislation. In the court's view the present case falls squarely within the ambit of that principle. It is clear that the statutory framework does not provide for objections and representations in respect of applications for planning permission and so is insufficient to achieve justice in this case. It is equally clear that to require additional steps would not frustrate the purpose of the TCPA but will in fact fulfill its purpose, the Claimants having been deprived of the opportunity to object or make representations in respect of an amendment to the National Plan in relation to the proposed savannah development.

70. His Lordship Mendonca JA put the matter succinctly in Civil Appeal 71 of 2007, ***Permanent Secretary, Ministry of Foreign Affairs; Patrick Manning Prime Minister of the Republic of Trinidad and Tobago v Feroza Ramjohn***, at paragraph 46:

"The Court may read into a statute the necessary procedural safeguards to ensure the attainment of justice. This is so even if the act sets out a procedure to be followed. In that case the Court will require that procedure to be followed and will import additional safeguards if necessary in the interest of justice. In Lloyd v Mc Mahon [1987] 1ALL ER 1118, 1161 Lord Bridge of Harwich said:

> *"…it is well established that when a statute has conferred on anybody the power to make decisions affecting individuals, the Court will not only require the procedure prescribed by the statute to be followed, but will readily import so much and no more to be introduced by way of additional procedural safeguards as will ensure the attainment of justice."*

71. At paragraph 47, his Lordship quoted with approval the dicta of Mason J in ***Kioa v West*** (the facts of which it is unnecessary to set out for the present purpose) as follows:

"*The critical question in most cases is not whether the principles of natural justice apply. It is; what does the duty to act fairly require in the circumstances of the particular case? It will be convenient to consider at the outset whether the statute replaces the duty when the statute contains a specific provision to that effect, for then it will be pointless to enquire what the duty requires in the circumstances of the case, unless there are circumstances not contemplated by the statutory provision that may give rise to a legitimate expectation. However, in general, it will be a matter of determining what the duty to act fairly requires in the way of procedural fairness in the circumstances of the case. A resolution of that question calls for an examination of the statutory provision and the interests which I have already mentioned."*

72. That being said, the court notes that the Defendant has accepted in oral submissions that the common law natural justice rights generally augment the statutory duty set out in section 20 of the JRA. He however argues that the Claimants are not affected persons within the ambit of Lord Mustill's definition in the case of ***Reg. v. Secretary of State for the Home Department, Ex parte Doody*** (1994) 1 AC 531.

73. At this juncture it is necessary for the court to remind itself of the words of Lord Mustill. In ***Doody***, the respondents to the appeal, S. Doody, J.D.Pierson, E.W. Smart and K. Pegg were each convicted of murder and sentenced to life imprisonment on various occasions between 1985 and 1987. The penal elements of these life sentences fixed by Secretary of State were respectively 15 years; not more than 20 years; 12 years; and 11 years. So much each prisoner knew, but what the prisoners did not know was why the particular term was selected. The application before the court was therefore an attempt to find out according to Lord Mustill: partly from an obvious human desire to be told the reason for a decision so gravely affecting his future, and partly because he hoped that once the information was obtained he may have been

able to point out errors of fact or reasoning and thereby persuade the Secretary of State to change his mind, or if he failed to challenge the decision in the courts. Since the Secretary of State declined to furnish the information, the respondents brought applications for judicial review. At page 14 Lord Mustill had this to say;

> *"What does fairness require in the present case? My Lords, I think it unnecessary to refer by name or to quote from, any of the often-cited authorities in which the courts have explained what is essentially an intuitive judgment. They are far too well known. 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 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.*

74. This court does not agree with the submission of the Defendant that the Claimants are not persons affected by the grant of permission by the Minister.

The principle underlying the facts of ***Doody***, although related to the imposition of sentences on the Respondents as those being directly affected are no different in the court's view to those underlying the facts of the present case. The effect of the grant of planning permission is to authorize the SPORTT to proceed to enter the lands used by the Claimants and the public at large, retake possession of same, debar them from its use during construction and ultimately debar them from making use of the majority of the savannah in the manner in which it has been so used for many years. The fact that the plan appears to provide a cricket ground on an adjacent space and a football ground elsewhere provides no basis for saying that the Claimants will not be affected. If anything, these Claimants are the ones to be most affected by the construction more than perhaps any other as they have had continuous and undisturbed use of the grounds over many years.

75. Before concluding this issue, it is necessary to treat with several authorities relied on by the Defendant. The Defendant has relied on the dicta of Dyson L.J in ***R (on the application of London Borough of Hillington and others v Lord Chancellor*** (2008) EWHC 2683 (Admin) para [48] to demonstrate that it is not the law that public authorities must necessarily consult those who are liable to be disadvantaged by a proposed decision before they can make a decision. The relevant dicta reads as follows:

"The Lord Chancellor has decided to withdraw the subsidy in respect of court fees. For present purposes, I shall assume that the withdrawal of subsidy was a policy decision which he was entitled to make in the public interest. He did not promise that he would consult any particular person or group of persons before making the decision. Nor has he adopted an established practice of consulting on which the Claimants can rely. In my view, therefore, the withdrawal of subsidy falls within the paradigm category of decisions on national policy issues in respect of which a public authority is entitled to decide whether and, if so, whom to consult. In support of their case, the Claimants cannot point to any conduct on

the part of Central Government apart from the failure to consult itself. But that is not enough. They need to make good a case of unfairness amounting to an abuse of power. In my judgment, they come nowhere near doing this. Their principal point is that the withdrawal of the subsidy deprived them of a benefit. Even if that were right, it would not be enough. Decisions made by public authorities in the exercise of their discretion will often yield benefit to some and loss to others. It is not the law that authorities must necessarily consult those who are liable to be disadvantaged by a proposed decision before they can make the decision (underline mine)*. Government and administration would be impossible if that were the case. But in any event for the reasons that I have given at 40 above, I do not accept that in substance local authorities were deprived of a benefit by the withdrawal of the subsidy in respect of court fees in public law family cases."*

76. The Claimants reply that this case having involved the promulgation of legislation in respect of which a fees order was made and laid before parliament, is authority for there being no common law duty of consultation in respect of the promulgation of delegated legislation but it is not authority for the applicability of natural justice rights in respect of persons affected by a single executive determination by a public body. The court agrees with this submission and would add that this court has also to consider the clear duty imposed by section 20 of the JRA. This case also does not involve rulemaking which is in large measure the category of case in ***R (on the application of London Borough of Hillington and others v Lord Chancellor***. The court also agrees with the Claimants that the present case involves adjudication in relation to a specific parcel of land and is not about policy. Additionally, the distinction here is that in this case, the opportunity to be heard is set out in the provisions as they relate to the amendment to the national Plan. At that juncture, the policy decisions in relation to planning are subject to parliamentary oversight and national scrutiny but the Defendant has breached his statutory duty in that regard thereby depriving the Claimants of the opportunity to be heard. So that in the particular facts of this case, the breach

of the duty to update the national plan is directly relevant to the application of the principles of natural justice in the planning permission process conducted by the Minister.

77. The Defendant also relied on the authority of ***R (on the application of Association of Personal Injury Lawyers and another) v Secretary of State for Justice*** [2013] EWHC 1358 (Admin) [22][33][43][64]. The court is of the view that that case is of no assistance to this court in the particular circumstances of the present case. That case turned on a challenge to delegated legislation and it was conceded by the claimants that there was no duty to consult. The facts of the present case are quite different. Similarly the court agrees with the submission of the Claimants that the authority of ***The Trinidad and Tobago Automotive Dealers Association v The Minister of Trade Industry and Investment*** CV 2014-01301 paragraph 13, provides no real assistance to this court on the issue to be determined. Short of a finding that there was no duty to consult there was no discussion in that case on the existence or not of the duty. Further, the case concerned a challenge to a policy decision to be adopted by the Ministry of Trade. Clearly in such circumstance there is no duty to consult.

78. There is one other case upon which the Defendant relies, namely ***R v Devon County Council ex p Baker; R v Durham County Council, ex parte Curtis and another*** 1995 1 AER at pg 85 c-d. In two separate appeals the questions arose whether a local authority was under a duty to consult the residents of a home for old people which the authority proposed to close and whether the availability of the alternative remedy of an application to the Secretary of State under s 7D[a] of the Local Authorities Social Services Act 1970 prevented the court from granting judicial review. Section 7D, so far as material provides: '(1) If the Secretary of State is satisfied that any local authority have failed, without reasonable excuse, to comply with any of their duties which are social

services functions … he may make an order declaring that authority to be in default with respect to the duty in question …'

79. In the first case, in August 1988 the local authority raised at a meeting with residents of a residential home for the elderly which was under the authority's management the possibility that the home would be closed. In September 1990 the authority's director of social services visited another home to discuss the planned closure of residential homes in the area. By that time the local authority was well aware that the residents of the two targeted homes were strongly opposed to their closure. On 8 January and 12 June 1991 action groups formed with the purpose of keeping the homes open received letters from the local authority giving assurances that full consultation would take place, by which the authority meant consultation on relocation of affected residents. On 5 September the local authority sent a letter to the residents at the two homes stating that recommendations for closure would be made at the next meeting of the social services committee on 19 September and that meetings would be held at the two homes on 9 and 24 September respectively to discuss the implications of the planned closures. On 24 October the authority made the final decision to go ahead with the proposed closures.

80. In the second case, the local authority prepared a draft community care plan under s 46(1) of the National Health Service and Community Care Act 1990, which was published in November 1991. The plan was in general terms and made no reference to the closure of individual residential homes. The statutory consultations under s 46(2) duly took place and from those and from a number of public meetings which had been held to discuss the draft plan, the local authority was clearly aware that there would be strong opposition to the closure of residential homes in the area. On 10 January the director of social services sent letters to each residential home targeted for closure, explaining the planned closure and informing the residents that they would be closely involved in planning the consequential relocation. At its meeting on 15

January, the social services committee rejected a motion for further consultations with the staff and residents of the homes and approved the proposed closures. In each case, two permanent residents facing relocation as a result of the closures of their homes applied for judicial review of the local authority's decision on the ground that before resolving to close a residential home the local authority owed a duty to consult the permanent residents on the issue of closure. The local authorities contended, inter alia, that the court ought not to grant relief by way of judicial review because of the alternative available remedy of an application to the Secretary of State under s 7D of the Local Authorities Social Services Act 1970, which enabled the Secretary of State to declare a local authority which failed to comply with any duty comprising a 'social services function' to be in default of that duty and to give directions to ensure that the duty was complied with. The judge dismissed the applications. The residents appealed to the Court of Appeal.

81. It was accepted by the councils that they owed the residents a duty to act fairly in making the decision to close a home, and it was submitted for the applicants that the duty to consult was an aspect of the duty to act fairly. In the Durham case the court found that there was no representation to the residents that they would be consulted (they were notified of the closure 5 days prior) neither was there any such practice. However the court found that it was simply unfair not to hear the residents prior to the closure of that specific home. In this court's view, this case demonstrates the importance of fairness to those who are to be directly affected by a specific decision and does not assist the Defendant. In the Devon case, there was in fact a promise of consultation and the court found that there was an opportunity given to the residents to be heard and that their concerns were in fact so heard so that equally, this case does not assist the Defendant.

82. Having therefore found that the statute does not provide adequately for a procedure to object and make representations and that there was a duty to act

fairly on the part of the Minister the court should therefore enquire as to the ambit of that duty in this case in these particular circumstances, and whether on the evidence that duty was in fact fulfilled. The court wishes in so doing to be pellucid in stating that **the finding of the court is not that there exists a general duty to consult when the Minister is considering whether to grant permission to develop land** but that in this case, in these circumstances, having regard to all the factors identified, including but not limited to the fact that it appears on the evidence that the Ministry was aware of the public objections and the fact that the Claimants were deprived of the opportunity granted to them by statute in relation to objections and representations permitted when updating the national plan and the extent of the effect that the sporting complex would have on the daily activities of these Claimants, there was a duty on the Minister to act fairly when considering the application for planning permission. In so saying it is the finding of the court that that duty encompassed the grant of an opportunity to the Claimants to engage in genuine consultation on at least on one occasion. It was not the duty of the Minister to consult with each and every user of the savannah but merely to provide a general opportunity to those users who wishes to avail themselves of that opportunity.

Consultation

83. Consultation is not only about objection but is also about representations which may consist of questions, suggestions and proposals all with a view to assisting in arriving at the best possible plan which would benefit the various interests in the community and at the same time give effect to the government's intention. It is about a participative balanced approach.

84. In the ***The Trinidad and Tobago Automotive Dealers Association*** case supra, Seepersad J set out in succinct form at pages 7and 8, the attributes of proper consultation with interested parties. This court agrees that the authorities set

out therein and the dicta quoted reflect the true position in law and is of the view that they bear repeating in the circumstances of this case:

"17. The Learned Judge also cited with approval at paragraph 70, the dicta of Lord Woolf M.R. in R -v- North and East Devon Health Authority ex parte Coughlan [2001] 1 QB 213, where Lord Woolf opined as follows: "... whether or not consultation of interested parties and the public is a legal requirement if it is embarked upon it must be carried out properly. To be proper, consultation must be undertaken at a time when proposals are still at a formative stage; it must include sufficient reasons for particular proposals to allow those consulted to give intelligent consideration and an intelligent response; adequate time must be given for this purpose; and the product of consultation must be conscientiously taken into account when the ultimate decision is taken." (emphasis added)

18. A similar position was advanced in R -v- Secretary of State for Trade and Industry ex parte UNISON [1996] ICR 1003, 1015 F [referred to at p. 586, para 60.6.10 of the Judicial Review Handbook 5th edition] where it was held that:- "...fair consultation involves giving the body consulted a fair and proper opportunity to understand fully the matters about which it is being consulted and to express its views on those subjects, with the consultor thereafter considering these views properly and genuinely"

19. The approach in Eon Hewitt supra was adopted by Rajkumar J in Irwin Hercules & Ors –v- Tobago House of Assembly (CV 2013-01738). Rajkumar J in discussing the law on consultation in administrative law cited with approval at paragraph 66 of his judgment the dicta of Webster J in R v Secretary of State for Social Services, ex parte Association of Metropolitan Authorities [1986] 1 All ER 164 where the Court said:

> *"There is no general principle to be extracted from the case law as to what kind or amount of consultation is required before delegated legislation, of which consultation is a precondition, can validly be made. But in any context the essence of consultation is the communication of a genuine invitation to give advice and a genuine consideration of that advice. In my view it must go without saying that to achieve consultation sufficient information must be supplied by the consulting to the consulted party to enable it to tender helpful advice. Sufficient time must be given by the consulting to the consulted party to enable it to do that, and sufficient time must be available for such advice to be considered by the consulting party. Sufficient, in that context, does not mean ample, but at least enough to enable the relevant purpose to be fulfilled. By helpful advice, in this context, I mean sufficiently informed and considered information or advice about aspects of the form or substance of the proposals, or their implications for the consulted party, being aspects material to the implementation of the proposal as to which the Secretary of State might not be fully informed or advised and as to which the party consulted might have relevant information or advice to offer."*

85. This court will therefore have to determine whether there was in fact consultation with the Claimants which is a matter of evidence.

Was there consultation

86. The President of the Dinsley Cricket club Biswadeo Dalchan testified at paragraph 25 of his affidavit of the 23rd December 2013 that he was informed by the Local Government Councillor for Dinsley of a meeting which had been scheduled with the SPORTT to be held at the savannah the following day, that is on the 1st July 2013. The witness along with seven other members of the club

attended the said meeting at which Mr. Dexter Browne, project manager for SPORTT along with others including a representative of the Tunapuna Piarco Regional Corporation (under whose local authority jurisdiction the savannah falls) and a representative of the Trincity league. He testified that there were others present but he could not recall their identities. Mr. Browne informed the attendees of the proposal of SPORTT for the development of the savannah to be called the Eddie Hart Regional Sporting Complex. He produced a design and site layout for the complex and he explained the details. It was obvious to the witness that both the Dinsley Cricket Ground and the Buggy Haynes Cricket grounds were not demarcated on the plan. The witness enquired about their absence but neither Mr. Browne or anyone else was able to identify these two grounds. The witness drew the inference that the plans entailed the removal of those grounds and was of the opinion that the SPORTT was failing to respond meaning fully to his questions and those of his membership. He was then informed by Mr. Browne that he and other members of the panel had heard the concerns and would return the following week. The meeting was then ended and another meeting scheduled for Monday the 8th July at 9:00 am. On that day SPORTT once again met with the members of the Dinsley Cricket Club at the Pavilion. In addition to Mr. Browne there were others present including Mr. Eddie Hart, Mr. Bernard Bailey and Mr. Buggy Haynes, who arrived late. Modifications to the design and site layout of the Sporting Complex were presented. According to this witness, the only change to that plan was that what was previously proposed as the football field was changed to a cricket pitch. The size and location remained the same. The witness questioned the size and was told that this could not be changed. Upon enquiry the witness and those present were told that they could take their concerns to the then Minister of Sport Mr. Anil Roberts.

87. On the 9th July 2013, on their own initiative, the witness together with other members of his club visited the office of their Member of Parliament (MP), the representative for St. Augustine Mr. Prakash Ramadhar and informed him of

all that had occurred in relation to the savannah including the proposed displacement of their grounds. The MP then committed to meeting with the club and representatives of SPORTT to discuss their concerns. This he did on the 16th July 2013 in the presence of Local Government Councillor Ria Boodhoo and other representatives of SPORTT including Mr. Browne. SPORTT spoke of the project and its benefit to the community. The witness and others expressed their concerns about the facility and the lack of consultation with those to be directly affected. In the presence of the witness the MP was informed by SPORTT that the only person with whom there had been consultation was Mr. Eddie Hart and that the stakeholders had not been consulted. The MP enquired about whether the design site layout could be redone and Mr. Bridgemohan of SPORTT indicated that considerable sums had already been spent on the design. Bridgemohan also indicated to the MP that he had not visited the savannah before that day and that the surveying firm had in fact visited. The MP, at the close of the meeting instructed the representatives of SPORTT to accompany the Club to the savannah to see how the club could be accommodated. This visit was conducted later that said day by Mr. Browne and Councillor Boodhoo. After making the rounds of the savannah, Mr. Browne informed the witness that a cricket field would be put in for the club and that the witness Dalchan would be contacted in two weeks. Nothing was heard from SPORTT thereafter and the stakeholders (Claimants began to meet to chart the way forward). By this time Dr. Carol James and others had established the Save our Green Space Committee. Dalchan joined the committee was elected Vice President and was appointed to represent the committee at meetings on the issue.

88. Dalchan along with nine other members of the committee attended a meeting at the head office of SPORTT on the 19th September 2013. Nine representatives of SPORTT were in attendance at which SPORTT gave a presentation of the proposed sporting facility. The facility appeared to be the same as that which had been presented before save and except that it appeared that the cricket

ground had reverted to a football ground. This was the last meeting with SPORTT. The area proposed for the sporting complex was then fenced by SPORTT and the Claimants were thereby debarred from use. Sometime after the 25th November 2013, by which time Dalchan had instructed an attorney, through the efforts of that attorney, it was discovered that planning permission had been given by the Minister on the 27th September 2013. As stated earlier, stop notices were subsequently issued in respect of the project and SPORTT has given an undertaking before this court not to continue work while this claim is pending. It is to be noted that SPORTT has played no part in this claim thereafter.

89. The evidence of Mr. Buggy Haynes supports that of Dalchan in material particular. It is the evidence of Mr. Haynes that he heard of the meeting of the 8th July 2013 from a resident Mr. Bailey on the very day of the meeting. He together with Mr. Bazey of the Coaching school attended the meeting together. At that meeting they were informed of the planned sporting complex by SPORTT and a design was shown to them by Mr. Browne. According to Mr. Haynes, members of the Dinsley Cricket Club raised several concerns. The witness enquired of Mr. Browne as to where the coaching school would be relocated should the complex be built and he responded that things would be worked out so that everyone would get to play cricket. The witness attempted to explain the concept of competitive cricket and the need for multiple grounds. The witness' evidence is that being dis-satisfied with the answers given at the meeting, he telephoned the Minister of Sport and raised his concerns with him. In response he was assured by the Minister that he should not worry and that the Buggy Haynes cricket ground would be relocated as there is land all over the country. The court pauses to note that there has been no evidence presented by the Defendant to dispute or negate this evidence. Equally, this evidence makes it clear in the court's view that a determination had been made by that stage that the Buggy Haynes Cricket grounds were to be removed and would not be accommodated as part of the project.

90. The witness and Dr. James took it upon themselves to canvass the views of the users of the savannah and in so doing came to the conclusion that most of the users were unaware of the plans of SPORTT to construct a sporting complex. This would have been prior to the erection of the fence. A petition was circulated and eventually hand delivered to the Minister of Sport, the MP for St. Augustine and SPORTT by Mr. Egan Bazey on the 12th July 2013. A copy of the petition has been exhibited as UBH to the Buggy Haynes affidavit of the 24th December 2013 and appeals for the reconfiguration of the placement of the structures to be built on the savannah. It sets out in general form the concerns of some of the stakeholders and seeks a meeting with them on the site to walk the area so that the concerns and proposals may be properly articulated. The petition bears some one hundred and eighty nine (189) signatures. Thereafter, several meeting were held with interested parties and the issue gradually gained national media attention. On the 13th September 2013, Mr. Haynes visited the MP for St. Augustine together with Dr. James and Mr. Bazey. The MP informed them that he was aware of the issues, that they had his personal support for the maintenance of the green space and the stoppage of the project to facilitate proper consultation but that he was not the Minister responsible for the project so that it did not fall under his purview. According to Mr. Haynes, the MP then went on to say that he was desirous of having a meeting with all the relevant stakeholders.

91. Later that day the same individuals met with the Minster of Sport to hear their concerns. The Minister informed them that contractors had already been hired and that the sporting complex would proceed as tax payers money had already been spent. The court once again pauses to observe that no evidence has been presented which refutes these allegations and the court therefore accepts them as fact. The Minister further indicated that SPORTT had undertaken consultation during the previous eight months and that there were notices to

that effect on the radio, newspapers and those placed in mailboxes. However, the Defendant has provided no evidence of this.

92. By letter of the 11th September 2013, SPORTT wrote to Dr. Carol James on behalf of the save the Green Committee as follows:

> *Dear Dr. James,*
>
> *Attached please find a brief outline of the major features and considerations for the captioned facility for your review.*
>
> *To date we have met with several stakeholder groups from the community however we have not yet had the opportunity to display the plans for the upgrade of (sic) this group with your community group. As such we would like to invite you to attend a presentation of the facility to be scheduled at our Head Office at a mutually convenient time following your review of the attached summary and we will attempt to respond to any queries arising subsequently.*

93. Dr. James after meeting with the Committee on the 11th September, (having invited SPORTT to attend that meeting and they having not attended), on the 13th September 2013, invited SPORTT to meet with a delegation of ten members of the community on Monday the 16th September at 10:30 a.m. or Tuesday the 17th. However on the 19th September 2013, a meeting did occur with SPORTT at its head office. The meeting was attended by members of the Committee who after a presentation by SPORTT requested further information. No such information appeared to have been provided. Several community meetings were held thereafter and the SPORT issued a press release on its intention to construct the complex on the 7th October 2013. The following day they moved in with tractors and took possession of the grounds.

94. Thereafter several organisations and institutions wrote to SPORTT requesting that the project be halted and that SPORTT engage in meaningful consultation

with the stakeholders. These organisations include but are not limited to Trinity College East, East Zonal Council of the Trinidad and Tobago Crocket Board, Trinidad and Tobago Women Cricket Team, The Tacarigua Village Council, and the St. Mary's Children Home. In total some seventeen letters are exhibited to the affidavit of Mr. Haynes in this regard.

95. The Defendant has filed and relied on an affidavit of Dexter Browne. The evidence by way of affidavit of Dexter Browne leaves much to be desired in the court's view. This witness, who one would surmise would be uniquely placed to refute the allegations made by the Claimants he being present at almost all of the meetings, says nothing whatsoever to refute those allegations. Neither does he provide an explanation in his view as to what transpired on those occasions at the minimum. His evidence simply relates to the fact that there has been no approval from the Tunapuna/Piarco Regional Corporation or clearance from the Environmental Management Authority. He states that he became aware of the petition when he received a phone call from Mr. Haynes. But this evidence is outright unbelievable. It could not be that he was unaware of the myriad of issues being raised by all stakeholders prior to the appearance of the petition, as he was present at almost all of the prior meetings. The court therefore interprets his failure to deny the matters set out by the Claimants as an acceptance of their testimony and shall say no more about this witness. Further, the affidavit of Clyde Watche does not assist on this issue.

96. Earle Jardine (witness for the Defendant), however is the Development Control Specialist of the T&CPD, Ministry of Planning and Sustainable Development. In his affidavit he sets out in generic form the procedure for treating with State applications. On his evidence, the process is as follows. The application is submitted to the Regional Office and collected by him personally or forwarded to him via an internal mail system. Site visits are then made to the proposed development and thereafter the application is assessed based on land use policy and site development standards. Once the proposal conforms to policy

and site development standards a favourable recommendation is made. The application is then forwarded to the Office of the Director of TCPD who makes a decision on the application. The process usually takes two months except when a request is made for more time so that the applicant can provide more information. State applications are usually expedited "due to the importance of these decisions on the wider community".

97. It is of note that the witness Jardine does not testify that decisions are taken in keeping with the national plan approved by the parliament but in conformity with policies for development. The court can only surmise that the witness is referring to ad hoc policies which are not approved by the parliament and which because of their transient nature, are susceptible to change at the behest of any government at anytime without parliamentary oversight. He states that the National Development Plan is such a broad based plan that it is unwise to use it as the sole decision making tool for development control planning decisions. Of course it was never suggested by the Claimants in this case that the national plan be so used.

98. In relation to the specific application for permission in this case, it is Jardine's evidence that the application made by the Synthesis Group on behalf of the Ministry of Sport on the 26th August 2013 was received by him on the 29th August 2013. He then checked the proposal against the policy and checked the site development standards for example, parking, building height, building coverage, floor area ratio and setbacks as they relate to the site. He made a visit to the site to ascertain that the site was vacant and that work had not commenced. He observed that the location was an open space for recreational use. He further testifies that in assessing planning applications, consultations with members of the public are not normally undertaken. However, consultations are frequently held with the **Applicants** before determining the application. In this regard he held discussions with the Synthesis Group and permission was subsequently granted. It is therefore abundantly clear on the

evidence of this witness that there was no consultation with the Claimants by the TCPD or the Ministry of Planning. It can be gleaned from his evidence that this application was treated in the same generic manner that other applications were treated without regard to existing hue and cry for consultation which had found its way into the public domain and the fact that no amendment had been made to the national plan.

99. That being the evidence, it is manifestly clear that there was no consultation with those to be affected. The essence of consultation is the communication of a genuine invitation to give advice and a genuine consideration of that advice. This in the court's view must start with the giving of adequate notice of the intention to consult and the date and time of the consultation. That notice must be given in a form which provides for the widest reception by those who may be potentially affected, whether by way of advertisement in the newspaper and flyers distributed to residents. The form and manner of distribution of the notice is only relevant in so far as it treats with the requirement to reach out to as many of those persons to be affected in an effort to secure sufficient participation in the process. This in the court's view is the first step in engaging in a genuine consultative process. There is no evidence before this court from the Defendant as to the steps taken to entreat the community in a genuine process of consultation in that regard. To the contrary the evidence shows a reactionary approach to the concerns of the stakeholders on the part of the Defendant in a piecemeal manner which itself does not in substance reflect genuine consultation.

100. Secondly, to achieve consultation sufficient information must be supplied by the consulting to the consulted party to enable it to tender helpful advice. Sufficient time must be given by the consulting to the consulted party to enable it to do that, and sufficient time must be available for such advice to be considered by the consulting party. The contents of the letter of the 11th September 2013, supra, adequately demonstrate the malaise in approach

taken towards consultation. The said letter simply offers to provide information on the project and an opportunity to ask questions and to be provided with responses. This in no way fulfills the essence of genuine consultation. Consultation is not about providing information and answering questions. It is about hearing the views of those to be affected and actively considering their views. If at the end of the day, the views of those to be affected have made no difference to the decision maker then it does not lie within the mouth of the affected persons to complain that they were not consulted so long as their views were properly considered.

101. In the court's view, there is no evidence before it of efforts being made to entreat sufficiently with the affected persons, to supply them with sufficient information with which to make intelligent proposals; to give adequate time for this purpose. There is equally no satisfactory evidence that the product of consultation was conscientiously taken into account when the ultimate decision to approve the planning development was made. The Claimants in this case have had to discover matters relating to the project largely through their own tireless efforts. They have literally pleaded with the Minister of Sport and the SPORTT for genuine consultation on several occasions. They have also had to resort to the national media in their efforts to be heard. But alas their pleas have all fallen on deaf ears. There appears to have been no genuine effort on the part of the Minister of Planning to listen to the people affected and to take their numerous concerns on board prior to making his decision. The approach to these Claimants by the Defendant is perhaps starkly reflected in the evidence of Mr. Haynes who stated that the Minister of Sport informed him in no uncertain terms when approached that the Sporting Complex "can't be stopped, it wouldn't be stopped and is going full steam ahead". *(See paragraph 57 of the affidavit of Buggy Haynes of the 24th December 2013)*. This statement while not attributable to the Minister of Planning appears to be generally indicative, in the court's view, of the approach taken to the construction of the sporting complex without sufficient regard for the right

of those who make the community their home and whose lives revolve around the savannah to be heard.

LEGITIMATE EXPECTATION

102. Justice J. Charles in the case of ***Buddie Gordon Miller & Ors v The Minister of the Environment and Water Resources & Ors*** CV2013-04146 set out the definition of legitimate expectation at page 14, paragraphs 23 and 24 as an expectation which, although not amounting to an enforceable right, is founded on a reasonable assumption which is capable of being protected in public law. It enables a citizen to challenge a decision which deprives him of an expectation founded on a reasonable basis that his claim would be dealt with in a particular way. The terms of the representation by the decision maker (whether express or implied from past practices) must entitle the party to whom it is addressed to expect, legitimately one of two things, namely; i) that a hearing or other appropriate procedures will be afforded before the decision is made or ii) that a benefit of a substantive nature will be granted or, if the person is already in receipt of the benefit, that it will be continued and not be substantially varied. See also the dicta of Their Lordships of the Court of Appeal in the case of the ***AG of Trinidad and Tobago v The United Policy Holders Group*** Civ Appeal 82 of 2013 wherein the court adopted the dicta of Lord Bingham LJ that in order for a promise to form the basis of a successful claim of legitimate expectation the promise had to be clear unambiguous and devoid of relevant qualification.

103. Suffice it to say that in this case, in the absence of a clear promise from the Ministry or Minister that there was to be consultation the court finds that there was no reasonable basis for an expectation to be created that the Claimants would be consulted in relation to the specific application for planning permission. The Claimants submit that the policy of the Ministry

dated June 2012 entitled "Environmental, Economic and Social Well Being for today and tomorrow" gave rise to the clear expectation that the Claimants would be consulted in matters of this nature. The court does not agree with this submission. The publication of a policy in the court's view is the expression of an intention at any given time. The policy may be changed as and when the administrator desires that policy be changed to meet its new intention. The court does not agree therefore that such a policy augments an entitlement to a fair procedure in this case and it is clear that it does not and cannot create a right on its own. Even more so in this case, the policy appears to be of general significance and import and ought not to be interpreted as being referable to any one specific act on the part of the Ministry or the Government on a specific application. The policy appears to represent a statement of intent to adopt a more inclusive, consultative and participative approach in general nationwide development.

104. The court therefore finds that there was no clear unambiguous promise to consult the Claimants in respect of the grant of planning permission. The claim in respect of legitimate expectation must therefore fail.

105. The Defendant has submitted that the evidence demonstrates that the project is no longer being executed and therefore the remedies sought are useless and serve no practical purpose. In the court's view the evidence before the court does not demonstrate that the project has been permanently halted or is not being pursued. There are stop orders in place but this in no way equates with that which the Defendant commends to this court. The inference is that so long as there is compliance in relation to the matters in respect of which the stop orders were granted, they may be lifted and the project continued.

106. The Defendant also relies on the case of ***Balram Singh v PSC*** PC Appeal 95 of 2012 in submitting that any relief granted will serve no useful purpose. In ***Balram Singh*** Lord Carnwath stated at paragraph 16:

"*The Board cannot leave the case without expressing concern at the time and expense which must have been incurred, both by the appellant and the respondent Commission (not to speak of court resources), in pursuing this appeal to this level. Even if it had been successful it would have achieved no substantive benefit other than possibly a declaration as to the legality of decisions made almost a decade ago. However it is not the practice of the Board to grant declarations of law in the abstract or for no practical purpose. There is no information as to the motives of the appellant in continuing to pursue the proceedings after December 2007 when he achieved what was presumably his primary aim. It is said on his behalf that there is a public interest in ensuring the lawful administration of the Regulations. In general of course that is so. But there is no evidence that this aspect of the Regulations has given rise to more general problems, nor of support for the appellant from any union or other representative body. In such circumstances it should not be assumed that even a successful appellant will be entitled to a bare declaration unless it can be shown to have some practical purpose for him or others, nor that he will necessarily be entitled to an order for costs."*

107. In the present case, the events occurred in 2013 unlike the passage of over a decade in the ***Balram Singh*** case. Further, it cannot be said that the declarations to be granted will be abstract and of no practical purpose. The relief sought by the Claimants include an order compelling the Minister to re-consider the application for planning permission in a procedurally fair manner. Additionally, as relate to the declarations in respect of the failure to update the National Plan there is substantial public interest in ensuring that administrators comply with statutory duties. Further, the failure to update the National Plan having deprived the Claimants specifically and the wider public generally of the opportunity to object or make representation to proposed new development, that failure became a factor which the court considered in coming to the determination that the Defendant and one of the factors which the court considered gave rise to a duty on the part of the Minister to treat

fairly with the Claimants prior to the grant of permission. The court will therefore make the orders sought save and except for the orders of *Mandamas* in relation to the updating of the National Plan and a *Declaration* that any development at the Orange Grove savannah is required to form part of the national plan. This is so for two reasons. Firstly whether the government of the day through its Minister chooses to update the National Plan or not is a matter solely for that government and a court ought not to trespass upon the powers of the Executive. Secondly it is clear at this stage as the evidence demonstrates that Parliament in its wisdom has passed new legislation which changes the framework of planning development and which has eliminated the requirement of parliamentary approval for national plan updates, although the legislation awaits proclamation.

108. In relation to the issue of delay which was raised, albeit in passing manner, by the Defendant, the court notes that planning permission was granted on the 27th September 2013 but was only discovered by the Claimants on or around the 25th November 2013. The application for leave in these proceedings was made on the 24th December 2013. There has therefore been no delay.

GREEN SPACES

109. Before closing, the court pauses to comment obiter that the phrase "green space" has been used by the Claimants throughout this claim. The Defendant's witnesses have said that there is no official designation of green spaces, but for planning purpose there exist recreational areas. This is a fact. Whether one uses the former or latter nomenclature makes no substantial difference to this case in the court's view. Developed nations appear however to have gone the way of eco friendly references in an acknowledgement that the phrase green space does not only define a place for human recreation but also goes beyond to acknowledge the reservation or conservation of a community's rural natural or historic character and the conservation of land for recreational, ecological, environmental or aesthetic interests. The phrase is of much wider import in

that it expresses the symbiotic relationship between a community and its green spaces. The phrase carries with it subtle overtones of the ethos of the once rural communities which exist far and wide within Trinidad and Tobago. The court wishes therefore to respectfully suggest, that as we continue to develop as a nation in the twenty first century, the time may have arrived when those who govern may wish not only to ensure that sufficient recreational areas are provided, but also to consider that the green spaces in our twin island state deserve some measure of protection.

110. In relation to costs, the Claimants having been in large measure successful on the claim, costs shall follow the event and the usual order for costs in administrative claims shall be made.

111. The order of the court shall be as follows;

a. It is declared that the Defendant has breached his duty under sections 6 and 7 of the Town and Country Planning Act Chap 35:01 to take steps to amend the development plan in respect of the lands known as the Orange Grove Savannah.

b. The decision of the Defendant dated the 27th September 2013 to grant permission for the carrying out of development of land in Application No. T2F:1090/2013 made under the Town and Country Planning Act Chap 35:01 ("the decision") was made in breach of the principles of natural justice and is null void and of no effect.

c. An order of Certiorari is granted to remove into this Honourable Court and quash the decision.

d. An order of Mandamas is granted as follows; The Defendant is to reconsider Application No. T2F:1090/2013 in a procedurally fair manner and specifically after genuine consultation with the Claimants and other affected members of the public.

e. The Defendant is to pay to the Claimants the costs of the claim to be assessed by a Registrar in default of agreement.

Dated the 16th day of June 2015

Ricky Rahim

Judge