**THE REPUBLIC OF TRINIDAD AND TOBAGO**

IN THE HIGH COURT OF JUSTICE

**Claim No: CV 2014-04624**

IN THE MATTER OF THE CONSTITUTION OF TRINIDAD AND TOBAGO

AND

**IN THE MATTER OF AN APPLICATION FOR REDRESS IN ACCORDANCE WITH SECTION 14(1) OF THE CONSTITUTION BY THE APPLICANT/CLAIMANT HEREUNDER ALLEGING THAT HIS RIGHTS AS GUARANTEED TO HIM BY SECTION 4(A) AND (D) OF THE CONSTITUTION HAS BEEN AND IS BEING CONTRAVENED IN RELATION TO HIM**

**BETWEEN**

**DEV ANAND SEEPERSAD**

CLAIMANT

**AND**

**THE DIRECTOR OF FORESTRY**

**THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**

DEFENDANTS

**Before the Honourable Mr. Justice R. Rahim**

Appearances:

Mr. K. Harrikissoon instructed by Ms. G. Gunness for the Claimant

Mr. R. Hector and Ms. N. Granville instructed by Mr. B. Basdeo for the Defendants

## Decision on Application

1. By Notice of Application filed on 6th March, 2015 the Defendants applied to the Court for an order that the Claimant's Claim filed on the 8th December, 2014 be struck out as being an abuse of process pursuant to Rule 26.2 (1)(b) of the Civil Proceedings Rules 1998 ("the CPR"), that those portions of the Claimant's claim that allege that the Claimant's rights pursuant to Section 4(a) of the Constitution of Trinidad and Tobago Chap 1:01 ("the Constitution") be struck out pursuant to Rule 26.2(1)(c) of the CPR as disclosing no grounds for bringing a claim, that the Claimant's claim commenced against the Defendant be struck out pursuant to Rule 26.1(1)(k) of the CPR, that the Defendant be struck out as a party to these proceedings and that the Claimant pay the costs of this application.

## Background

2. By Fixed Date Claim Form filed on 8th December, 2014 the Claimant claimed inter alia:
    i. a declaration that the failure and/or refusal of the First Defendant to allocate the Claimant a teak field for the years 2011 and 2012 is in contravention of his right to equality of treatment as guaranteed under Section 4(d) of the Constitution;
    ii. a declaration that the action and/or conduct of the First Defendant in refusing to award the Claimant a teak field for the years 2011 and 2012 contravened his right to life as guaranteed under Section4(a) of the Constitution.

3. The Claimant claimed that he possessed valid sawmilling licenses which entitled him to tender for the purchase of teak and pine units.

4. The Claimant claimed that by virtue of letters dated 29th March, 2010, 6th January, 2011 and 6th February, 2012 he was invited to tender for teak and pine units for each respective year. The letter dated 6th February, 2012 contained three appendices namely, Instructions to Applicants, Descriptions of Units for sales in 2012 and Letter of Interest. The Instructions to Applicants stated that the criteria for evaluation of the letters of interest will be based on the applicant's selection and priority, proximity of the field to the sawmill, employment, ability to harvest, sawmilling capacity, history of previous allocations and other related criteria. Also included in these Instructions to Applicants was an invitation to prospective Sawmillers to a public opening of the Letters of Interest on 27th February, 2012.

5. The Claimant alleges that at the time of the public opening Mr. Seepersad Ramnarine was the then holder of the office of the First Defendant and that Mr. Ramnarine at the public meeting gave an undertaking that Sawmillers who were awarded fields in the previous year would not be awarded fields the following year because the number of Sawmillers outnumbered the number of fields.

6. Therefore it is the case of the Claimant that he had a legitimate expectation that he would be awarded a teak field. However he was not allocated a Unit in 2012 despite not having received an allocation in the previous year. The Claimant alleges that contrary to the First Defendant's undertaking, in breach of his right to equality of treatment from a public authority guaranteed under the Constitution and in breach of his right to life, liberty, security of the person and enjoyment of property and the right not to be deprived thereof except by due process of law as guaranteed by the Constitution, the First Defendant allocated teak units to Sawmillers who had received units for consecutive years immediately prior to the 2012 allocation.

7. A previous action was filed by the Claimant, ***Dev Anand Seepersad v The Director of Forestry, Ministry of Housing and the Environment CV 2012-04324***. This action was a mixed claim in the form of judicial review and a constitutional motion in which the Claimant sought to review the decision of the Defendant, to fail and/or

refuse to allocate the Claimant, a licensed Sawmiller, a teak unit for the year 2012 in breach of a legitimate expectation, fairness and in breach of his right to equality of treatment from a public authority in the exercise of a function or guaranteed by Section 4(d) of the Constitution. An interlocutory application to strike out the Fixed Date Claim form was made by the Defendant and the Honourable Mr. Justice Harris granted this application on the basis that the claim disclosed no grounds for bringing a claim.

**Submissions**

The Defendants' Submissions

Abuse of Process

8. In submissions, the Defendant outlined the present case, including the former proceedings before the Honourable Mr. Justice Harris.

9. It was argued on behalf of the Defendants that the Claimant is seeking to re-litigate issues that were determined in the previous action of CV 2012-04324 and that the present case is an abuse of process. In support of this abuse of process submission, Counsel for the Defendant relied upon the well known authorities of ***Henderson v Henderson*** [1843-60] All ER 378 and ***David Walcott v Scotia Bank Trinidad and Tobago Limited*** Claim No. CV 2012-04235. It was contended that the Claimant failed to bring his whole case forward in the original action and is now seeking to supplement the failed action that was brought in 2012. It was further contended that the Court identified a number of inadequacies in the original 2012 claim and the Claimant is seeking to rectify the many criticisms of his case made in the decision of the Court and by seeking to supplement his previous action in this manner, the Claimant has used the process of the Court in a manner it was not intended to be used.

10. In the case of ***David Walcott*** supra, the Defendant sought to strike out a claim on the ground that it was an abuse of process in that the claim was identical to a claim previously dismissed for itself being an abuse of process and which claim raised issues which could have been articulated in an earlier action. Kokaram J stated at paragraph 3 of the judgment:

*"Although there has been no prior determination of the merits on those issues, that is not determinative of the question whether the successive action is an abuse of process. There are many circumstances in which a successive action which articulates the same issues as an earlier action is an abuse of process where there has not been a determination on the merits in the earlier action. This case is but one example. Here the Claimant has made a conscious choice not to appeal the earlier decision dismissing his claim as an abuse of process, when it was open to him to do so, but rather to litigate the identical matter afresh. This is to encourage the circumvention of an appellate process which in itself enshrines and protects the litigant's right to access to justice. It makes a mockery of the appellate process if litigants when faced with an unfavourable decision on a procedural issue or which results in its dismissal to simply re-file the claim. It brings the administration of justice into disrepute. Compounding matters, in the usual course of filing these proceedings the Claimant is obliged to indicate that the new claim is related to an earlier proceeding to allow for the Court Office to appropriately list the new claim in the docket of the judge who is dealing with the related matter. Ordinarily therefore this new matter should have been heard before the Judge who in fact had dismissed his prior action as an abuse of process. In those circumstances, the fact that this same question is being adjudicated by another judge of concurrent jurisdiction in itself highlights the nature of the Claimant's abuse and an unpardonable manipulation of the Court's process. Such litigation must be smothered in its infancy, as to permit such re-litigation is wholly inconsistent with the overriding objective of dealing with cases justly having regard to the principles of equality, proportionality and economy. It is no excuse that the subject matter of this claim has not been adjudicated upon previously. The fact is the Claimant had ample*

*opportunity to pursue his claims in previous proceedings and it is vexatious and an abuse for him to do so now in these fresh proceedings."*

11. At Paragraph 17 of Kokaram's J judgment in ***David Walcott*** supra, my brother further stated:

*"The **Henderson v Henderson** abuse of process is recognized as a wider form of res judicata and equally applies to claims that have not been litigated on the merits previously and following the change in culture in the court's approach to case management, it is no longer acceptable to seek to litigate, in subsequent proceedings, issues already raised but not adjudicated upon in earlier proceedings which had themselves been struck out on grounds of delay or abuse of process. In deciding whether to permit the second action to proceed, the court will bear in mind the overriding objective and will consider whether the claimant's wish to 'have a second bite at the cherry' outweighed the need to allot the court's limited resources to other cases."*

12. The Defendants submitted that even though the facts of ***David Walcott*** differ from the facts of the present case, the principles enunciated in ***David Walcott*** can be applied in the present case. Counsel for the Defendants contended that the Claimant did not seek to appeal the decision of the Harris J but rather re-filed this claim in an attempt to improve his pleadings as well as make additional claims which were never made in CV 2012-04324 although they were available to be so made at the time of filing.

13. It was also submitted by Counsel for the Defendants that even though it may be beyond the Claimant's control, the present matter is not before the Harris J, who dealt with the previous matter and the effect is that a different judge of concurrent jurisdiction has now been put in a position to deal with matters which were already dealt with and decided in CV 2012-04324. Counsel for the Defendants submitted

that it is open to the Court to dismiss this present action despite the fact that CV 2012-04324 was not determined on its merits.

14. Counsel for Defendants argued that the allegation of the Claimant that he had insufficient information available to him to properly advance a case until he was provided with a response to his Freedom of Information request dated 18th August, 2013 was not substantiated since this information was available to the public by virtue of the publication of the gazette and if the Claimant exercised sufficient industry and obtained the Gazettes he would have had the necessary information. Moreover, Counsel for the Defendant argued that in paragraph 30 of the decision in CV 2012-04324, the Court stated with reference to the Freedom of Information request that even if this information was forthcoming, the findings of that case would not have been eroded. Therefore, Counsel for the Defendants submitted that the inclusion of the information in the present claim (details concerning the allocation of teak fields to other Sawmillers) would not have had a different effect from the previous claim CV 2012-04324.

15. Counsel for the Defendant submitted that the Ministry of the Environment and Water Resources responded to the Freedom of Information request of the Claimant by letter dated 22nd October, 2013 whilst this claim was filed by the Claimant on 8th December, 2014. It was contended by the Defendants that the Claimant has not provided any explanation for such delay in filing the case.

*16.* Counsel for the Defendant argued that the Claimant is seeking to include in the present matter claims that he could have reasonably raised in his previous case but failed to bring his whole case forward and is now trying to supplement and bolster it by bringing this claim before the Court. The Defendant relied on paragraph 14 of the decision in ***David Walcott*** to support this contention, which stated, *"A plea of res judicata, therefore, is not confined to the issues which the court is actually being asked to decide, but it covers issues or facts which are so clearly part of the subject matter of*

*the litigation and so clearly could have been raised that it would be an abuse of process of the court to allow a new proceeding to be started in the respect of them."*

17. Counsel for the Defendants submitted that the Court in deciding whether this present claim is an abuse of process needs to consider all the circumstances of the case bearing in mind the overriding objective and the two competing interests in this situation are the Claimant's right to access to justice and the finality of litigation and avoidance of multiplicity of proceedings: ***Johnson v Gore Wood & Co*** [2002] 2 AC 1. Counsel for the Defendants contended that the new claims for redress are so closely related to the claims in CV 2012-04324 that it ought to have been in contemplation of the Claimant at the time of the filing of the previous matter and to have been so included. Further, Counsel for the Defendants contended that bringing the present claim, the Claimant is now seeking to revive the previous action which is a blatant abuse of the process of the Court.

18. Counsel for the Defendants submitted that in considering the overriding objective under Rule 1.1 CPR, the Claimant's present claim is a disproportionate use of the court's resources considering the fact that the matter was already dealt with in CV 2012-04324.

The Statement of Case discloses no grounds for bringing a claim

19. It was argued on behalf of the Defendants that the Claimant's claim discloses no grounds for bringing a claim since the rights that the Claimant asserted were breached do not exist as a matter of law and the actions the Claimant complained of do not amount to breaches of his constitutional rights.

20. Counsel for the Defendant contended that the Claimant failed to establish that pursuant to Section 4(a) of the Constitution, one has a right to livelihood. Counsel for the Defendant further contended that even if that was proven, the Claimant would then be faced with the greater challenge of demonstrating that this purported

right to livelihood applied to the factual matrix of this case, that is, that the State was duty bound by the Constitution to provide him with teak fields in order for him to make his living as a Sawmiller.

21. Counsel for the Defendant submitted that even in the realm of industrial law within the European Union the concept of the right to work is not an enforceable right pursuant to the right to possessions (similar to our right to property): See ***Harvey on Industrial Relations and Employment Law***, paragraphs [2678]-[2685].

22. Counsel for the Defendant argued that the facts pleaded by the Claimant in his Fixed Date Claim Form and his Affidavit do not give rise to a viable cause of action against the Defendants for breach of Section 4(a) of the Constitution. It was further argued by Counsel for the Defendants that the Fixed Date Claim Form and the Affidavit of the Claimant are devoid of any factual basis upon which can be proven that an actionable wrong had been committed by or liability can be ascribed to the Defendants' purported servant and/or agents. It was therefore submitted that the portions of the Claimant's claim which allege that the Claimant's right pursuant to Section 4(a) of the Constitution have been breached should be struck out. Counsel for the Defendant relied on the case of ***The Attorney General of Trinidad and Tobago v Universal Projects Ltd.*** CV NO. 104 of 2009 and the ***2013 White Book*** paragraph 3.4.2 for this submission.

The First Defendant be struck out as a party to these proceedings

23. Counsel for the Defendant submitted that the present claim is a constitutional matter brought by way of originating motion and the correct party is the Attorney General of Trinidad and Tobago, and not the Director of Forestry. Counsel for Defendant relied on the case of ***Ramesh Lawrence Maharaj v Attorney General*** (No. 2) (1979) AC 385 and ***Section 19(2) of the State Liability and Proceedings Act, Chap. 8:02*** for this submission.

The Claimant's Submissions

Abuse of Process

24. It is the case of the Claimant that he is seeking to illustrate that the First Defendant has acted in mala fides and intentionally discriminated against him in favour of other Sawmillers and further that the issue of legitimate expectation does not arise in the present case, whereas in CV 2012-04324, his case was an administrative action and as the Court noted that in that claim, the issue of a breach of constitutional rights hinged on the finding on the legitimate expectation issue. Moreover, it was submitted by Counsel for the Claimant that the issue of the alleged breach of the Claimant's constitutional rights was not pronounced upon by the Court in CV 2012-04324 and the present claim goes further and includes the Claimant's right to life which includes his right to earn a livelihood. As such it is the argument of the Claimant that the present case is not an abuse of process.

25. For the above submission Counsel for the Claimant relied upon the case of ***Kishore Ramroop Lokai v Deodath Maharaj, Sanchee Maharaj and Bobby Kissoon*** HCA No. S-177 of 2003, wherein the Plaintiff had claimed against the Third Defendant damages for trespass to demised premises by Petty Civil Court Action No. 29 of 2009 and which was overturned by the Court of Appeal in Petty Civil Appeal No. 3 of 2001. In so doing Counsel for the Claimant set out several paragraphs of Alexander J:

*"Paragraph 14: "The Defendants are in essence relying on the doctrine of res judicata which is the basis for the rule that when a matter has been finally adjudicated by a Court of competent jurisdiction it may not be reopened or challenged by the original parties or their successors in interest."*

*Paragraph 16: Cause of action estoppel and issue estoppel which are considered branches of res judicata are explained by Lord Keith of Kinkel in Arnold and Ors -v- National Westminister Bank PLC [1991] 2 A.C. 93 where at page 104 he elucidates:- "It*

*is appropriate to commence by noticing the distinction between cause of action estoppel and issue estoppel. Cause of action estoppel arises where the cause of action in the later proceedings, is identical to that in the earlier proceedings, the latter having been between the same parties or their privies and having involved the same subject matter. In such a case the bar is absolute in relation to all points decided unless fraud or collusion is alleged, such as to justify setting aside the earlier judgment."*

*Paragraph 17: At page 105 Lord Keith continues: "issue estoppel may arise where a particular issue forming a necessary ingredient in a cause of action has been litigated and decided and in subsequent proceedings between the same parties involving a different cause of action to which the same issue is relevant one of the parties seeks to reopen that issue….. issue estoppel, too, has been extended to cover not only the case where a particular point has been raised and specifically determined in the earlier proceedings, but also that where in the subsequent proceedings it is sought to raise a point which might have been but was not raised in the earlier."*

*Paragraph 18: "In the case of the 1st and 2nd Defendants, I hold that this action against them can be properly maintained. The previous Petty Civil Court action was brought by the Plaintiff against the 3rd Defendant solely. The 1st and 2nd Defendants were not parties to that action therefore neither cause of action estoppel nor issue estoppel applies to them. In the circumstances, I overrule the submission that the Plaintiff is stopped from proceeding against them in this action."*

*Paragraph 19: "The 3rd Defendant's position is somewhat different. The Plaintiff clearly, is stopped from proceeding against him for trespass in this action that having been the sole cause of action in the Petty Civil Court which was determined in the Plaintiff's favour by the Court of Appeal."*

26. Counsel for the Claimant, in reliance on the authority of ***Kemrajh Harikissoon v Attorney General of Trinidad and Tobago*** (1979) 31 WIR 348 submitted that the Claimant had two remedies available to him, and he first approached the court by way of administrative action/judicial review, where his claim was struck out. Therefore, Counsel for the Claimant submitted that there was no adjudication on the merits of the equality of treatment issue and in such circumstance based on the Privy Council decision in the case of ***Observer Publications Ltd. V Matthew and others*** (2001) 58 WIR 188 which was reiterated in the case of ***Boxhill et al v Port Authority of Trinidad and Tobago*** TT 2007 HC 267 the present action ought not to be deemed an abuse of the Court's process.

27. Counsel for the Claimant argued that since there is no express limitation period within which to commence constitutional proceedings, the delay as alleged by the Defendants does not amount to an abuse of process: See ***Durity v AG of Trinidad and Tobago*** (2002) 60 WIR 448.

The Statement of Case discloses no grounds for bringing a claim

28. It is the case of the Claimant that having regard to his Fixed Date Claim Form, strong grounds are disclosed for bringing a claim against the Defendant with respect of Section 4(a) of the Constitution.

29. It was argued on behalf of the Claimant that the decision of the First Defendant not to award the Claimant a teak field amounted to an infringement of his right to enjoyment of property as the machinery and equipment he had procured as a licensed Sawmiller cannot be put to use by the Claimant.

30. It was argued in alternative by Counsel for the Claimant that the unlawful acts and/or omissions of the First Defendant in the allocation of the teak fields amounted to an undue restriction on the Claimant's freedom to contract and pursue his

occupation of choice and consequently was a deprivation of his liberty. Counsel for this argument relied upon the case of ***Jaglal v Attorney General*** H.C.S 1276/2000.

The First Defendant be struck out as a party to these proceedings

31. Counsel for the Claimant contended that the First defendant ought not to be struck out since the allegations of bad faith, intentional and purposeful discrimination made against the First Defendant touch and concern his right and/or ownership of property, namely the motor vehicle PCH 2623 and the alleged relationship with another Sawmiller who got facilities in comparison with the Claimant.

**First Issue**

32. Whether the bringing of this action by the Claimant amounts to an abuse of process. In order to determine the issue the court must have regard to the previous action, CV2012-04324.

The Previous Proceedings

33. By action number CV2012-04324, the Claimant brought an action before the Court to judicially review the decision of the First Defendant. In that action the Court made certain findings in its judgement. The Court found as follows:

Paragraph 21: *"The Claimant has not laid the basis for showing that (i) the representation was made by a person with the authority to bind the State, (ii) nor has he done so for where or when exactly or even generally, that alleged representation was made and to whom, with any reasonable particularity that would enable the Defendant to speak to it, (iii) further still, he has not shown, nor does it appear from the 'pleadings' that he intends to show, that if the representation was made, that the representation was not considered in the Conservators deliberation in allocating the Unit. He has not shown or laid the basis for showing the breach or threatened breach of the expectation, as I have understood the representation that gave rise to it. To be*

*clear, I am not satisfied that a legitimate expectation could have been created in the first place, by words allegedly used in the circumstances of this case. Further, I agree with the arguments for counsel for the Defendant that the pleaded case circumscribes the evidence in such a manner that the Claimant will not, without more, be able to lead the evidence in support of the making, and the nature of, the representation."*

Paragraph 22: *"There are clearly several variables or criteria if you will, in the formula for allocating the Units. The variables are not hidden and have been apparent to the Claimant. There is no evidence that the representations that created the 'expectation were made after the communication of the "instructions" to the Sawmillers so as to allow for the suggestion that it is to supersede the said instructions. As I said, at best, the representation is but one of the criteria, albeit possibly a weighty one if one were to accept it was made at all and so made by a person with the appropriate authority. In the circumstances, I cannot see how the earlier representation, if made, could have created the legitimate expectation of a substantive benefit, when at a date later in time, the Conservator made known the criteria for determining the allocation of Units and subsequently made his decision with respect to the allocation of Units, presumably on the basis of the established and known criteria. In any event, on the pleaded case for the Claimant, there is no denial of receipt by him of the "Instructions to Applicants." Whether, the Conservator can act contrary to the "tender" criteria whether or not it was received before or after the representation, is, it appears to me, to be a question of Law. I find that the Conservator in either scenario is duty bound to apply the said criteria, albeit weighting the criteria as he sees fit."*

Paragraph 23: *"Accepting, for the purposes of this conclusion, the allegations of the fact made by the Claimant as true; the Claimant does not seek to challenge the process by which the 'instructions to Applicants' set out. He is not alleging that the criteria there set out were not followed. He is not alleging that the representation that was alleged to have been made by the Director was not considered by the said Director as part of the decision making process. His case taken at its highest is simply an attack on the decision as opposed to the process of arriving at the decision. He is calling on the*

*Director to make his allocation in a manner contrary to the "Instructions to Applicant" and 'criteria' therein, that surely the Director is bound to follow or in any event expected to follow."*

Paragraph 25: *"The Claimant has claimed that the effect of the decision of the Conservator was in breach of his rights to equality of treatment under the Constitution. The case as actually pleaded and supported by affidavit evidence does not articulate this case. I am unable to see this argument. In any event, alternatively, this issue hinges on the finding on the legitimate expectation issue."*

Paragraph 30: *"Suffice it to say, it is improper for the State to withhold any related document/record peculiarly within its control and then call on the citizen to prove the contents of the said documents as part of the citizen's case. As it is, at the time of filing the Claimant's action, the State has not responded to the request under the Freedom of Information Act Chap. 22:02. Had the trial gone on beyond this point, in these circumstances, the Claimant would have a strong case in asking the Court to accept their oral evidence on this narrow point, over that of the Defendant, notwithstanding the absence of the documentary evidence now sought under the Freedom of Information Act. However, even if this information was forthcoming, it would not appear to have eroded the essential findings above."*

**Findings on the issue**

34. ***Part 26 of the CPR*** as amended empowers the Court to strike out, dismiss or stay proceedings which are an abuse of process. To amount to an abuse of process, there must be some prejudice demonstrated. Further, it must be shown that the actions of he who attempts to re-litigate amounts to such an intolerable misuse of the process of the court that it would be unfair to permit the litigant to use the court's process in such a manner to the detriment of the other party or parties. Moreover, it is an abuse of process to raise in subsequent proceedings matters which could and

should have been litigated in earlier proceedings: ***Paragraph 534 of Volume 11 of Halsbury's Laws of England 5th Ed 2009***. It should be noted that the fact that the previous claim was struck out is no bar to an abuse of process finding. The finding in each case turns on its own facts.

35. The court notes that the issues in this matter were not adjudicated upon in the previous matter therefore; no re-litigation of the issues is being attempted by the First Claimant: ***Henderson v. Henderson*** and ***Johnson v Gore*** supra.

36. However, the rule in ***Henderson v Henderson*** supra gives the court a wider jurisdiction. The rule provides that a claimant is barred from litigating a claim that has already been adjudicated upon or that which could and should have been brought before the court in earlier proceedings arising out of the same facts (***Henderson v Henderson***, ***Johnson v Gore***).

37. In ***Johnson v Gore*** supra, their Lordships of the House of Lords found that there was a public interest in the finality of litigation and in a Defendant not being vexed twice in the same matter; but that whether an action was an abuse of process as offending against the public interest should be judged broadly on the merits taking in account all public and private interests involved and all the facts of the case, the crucial question being whether the Plaintiff was, in all circumstances, misusing or abusing the process of the Court.

38. This court is also guided by the approach advocated by his Lordship in at paragraph 15 of ***David Walcott*** supra:

    Indeed in a commendable attempt to simplify the application of the doctrine of res judicata or "**Henderson v Henderson** abuse of process" May LJ in **Manson v Vooght** [1999] BPIR 376 explained: *"In my view, the use in this context of the phrase 'res judicata' is perhaps unhelpful, and this not only because it is Latin. We are not concerned with cases where a court has decided the matter; but rather cases where*

*the court has not decided the matter, but where in a (usually late) succeeding action someone wants to bring a claim which should have been brought, if at all, in earlier concluded proceedings. If in all the circumstances the bringing of the claim in the succeeding action is an abuse, the court will strike it out unless there are special circumstances. To find that there are special circumstances may, for practical purposes, be the same thing as deciding that there is no abuse, as Sir Thomas Bingham MR came close to holding on the facts in Barrow v Bankside Agency Ltd [1996] 1 WLR 257. The bringing of a claim which could have been brought in earlier proceedings may not be an abuse. It may in particular cases be sensible to advance cases separately. It depends on all the circumstances of each case. Once the court's consideration is directed clearly towards the question of abuse, it will be seen that the passage from Sir James Wigram VC's judgment in Henderson v Henderson 3 Hare 100 is a full modern statement of the law so long as it is not picked over semantically as if it were a tax statute."*

39. In conducting the balancing exercise of the competing public and private interests, the court is of the view that the Claimant is attempting to get "a second bite of the cherry." Upon perusing the Fixed Date Claim Form in the first claim along with the Fixed Date Claim Form of the present case, it is clear that both claims are based on the same facts. The differences between the two forms lie with the addition of the claim for the year 2011 and with the insertion of the breach of Section 4(a). The claim in respect of 2011 could have been brought in the 2012 claim.

40. Further, the constitutional aspect of the claim was in fact raised in the previous claim but the decision of my brother Harris J demonstrates quite clearly that the Claimant failed to lead the necessary evidence by way of affidavit in support of such a claim. As a consequence, it appears to this court that the Claimant is now attempting to plug that which was leaking at the time the first claim was litigated. It cannot be that the Claimant, having brought a Judicial Review application in which he raised specific constitutional breaches which have been adjudicated upon ought

to be allowed to re-institute a claim for constitutional redress alone based on the same facts. It is no answer to say that the claim is now being brought on the specific ground of mala fides when in fact the facts are largely the same in respect of both claims.

41. Additionally , the effect of the provision of further information under the FOI Act was considered by Harris J who opined that the information would not have in his view, affected the outcome of that first claim. To the extent therefore that the Claimant hinges the present claim on new information provided therein, that argument is a non-starter.

42. In that respect, the court also agrees with the submissions of the Defendant that the allegation of the Claimant that he had insufficient information available to him to properly advance a case until he was provided with a response to his Freedom of Information request dated 18th August, 2013 was not substantiated since this information was available to the public by virtue of the publication of the gazette and if the Claimant exercised sufficient industry and obtained the Gazettes he would have had the necessary information and therefore could have raised the issue in the first claim.

43. The public interest demands that the litigant be given ample opportunity to have constitutional matters litigated particularly where they involve the deprivation of fundamental rights and freedom. Private interests demand that persons who tender for sawmill allocations be given frank and full disclose and be treated fairly in the award of fields.

44. But these interests do not stand alone when considering whether there exists an abuse of the process. The court must also consider the overriding objective. This claim has been through the court's process and has consumed judicial time resulting in a written decision by His Lordship Harris. This court must ensure that a case is

not afforded more time and resources than that which it justly deserves. The court must also ensure that so far as is possible, the parties are placed on even footing. The court must therefore be vigilant in protecting it's process from abuse. Having weighed all these considerations, the Court is satisfied on a balance of probabilities that the Claimant is attempting to misuse the process of the court by the institution of this new claim to gain an unfair advantage against the Defendant. To that extent, if so permitted the effect would be that the parties will not be placed on equal footing and the Defendants will be made to once again defend the very claim that it has defended on a previous occasion. This in the court's view amounts to real prejudice to be suffered by the Defendants.

45. For these reasons, the Court shall strike out the claim as being an abuse of the process of the court and order the Claimant to pay to the Defendants costs of the application to be assessed by the Court. Having regard to the court's decision, it is unnecessary for this court to treat with the other aspects of the claim raised in submissions.

Dated the 6th November 2015

Ricky Rahim
Judge