

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

No. CV2008-01024

Between

(1) Mellisa Elliot
(2) Michael Elliot

Claimants

And

(1) Ministry of Health
(2) Tobago Regional Health Authority
(3) Attorney General of Trinidad and Tobago

Defendants

Appearances:

Rekha Ramjit for the Claimants
Josefina Baptiste-Mohammed together with
Vinda Maharaj for the 3rd named Defendant

Before The Honourable Mr. Justice Devindra Rampersad

DELIVERED ON: Friday November 13, 2009

JUDGMENT

The history:

1) On 20 March 2008 the Claimant's commenced this action under the Civil Proceedings Rules 1998 ("CPR") against the Ministry of Health, the Tobago Regional Health Authority and the Attorney General of Trinidad and Tobago. The statement of case sets out the 1st named Claimant's claim that she was a patient of the General Hospital, Scarborough in the island of Trinidad [sic] on 27 September 2005 when she was admitted to the Accident and Emergency Department and then transferred to the maternity ward where she was placed on a bed and left unattended. Whilst on the bed and unattended, she gave birth to twins and after some time, medical personnel at the hospital came to her bedside and informed her that the lungs of the babies were not fully developed and that they would die in a few hours. No attempt was made to keep the babies alive. They were abandoned and placed in a tray wrapped in brown paper and

they died some hours later. No effort was made to ensure their survival according to the Claimants. The statement of case did not go on to set out any compliance by the Claimants with the pre-action protocols and there was no evidence of any pre-action letter sent to the Defendants.

2) The claim form with the Claimant's statement a case was served on the 3rd named Defendant on 15 April 2008 and the 3rd named Defendant entered an appearance on 24 April 2008 which was signed by Savi Ramhit as the representative of the Chief State Solicitor, instructing attorney at law for the 3rd Defendant. By application dated 17 December 2008 and filed on 19 December 2008, the Claimants applied for permission to obtain default judgment against the 1st, 2nd and 3rd named Defendants pursuant to the CPR part 12.2 (2)(8). This application was heard by the Honourable Mr. Justice Smith on 23 January 2009. The court notes that on that day one Mr. Christopher Siewchand was granted leave to be heard *amicus*. Mr. Siewchand is an attorney with the State. On 23 January 2009, the Honourable Judge ordered that there be judgment for the Claimants against the 3rd named Defendant in terms of paragraphs (a) and (c) of the claim form and he ordered further that the assessment of damages including the issue of exemplary damages be adjourned to a date to be fixed by notice and the issue of costs were reserved until after the assessment of damages. A request for a date for assessment of damages was filed by the Claimant's attorney at law on 17 July 2009 and a date was given -- the 25th day of September 2009 at 11 am.

The application to set aside and strike out:

3) By notice of application dated 27 July 2009, the 3rd named Defendant, through the Chief State Solicitor as instructing attorney at law for the 3rd named Defendant, applied to set aside the judgment entered in default of defence on 23 January 2009 pursuant to part 13.3 of the CPR or pursuant to the inherent jurisdiction of the court. The application went on to ask for an order that the action be dismissed against the 3rd named Defendant or that all further proceedings in this action be stayed on the ground that it is not and has never been a proper party to these proceedings. The application sought to rely on the affidavit of Kamala Mohammed-Carter deposed to on 27 July 2009 and filed on 28 July 2009.

The affidavit of Kamala Mohammed-Carter:

4) At paragraph 5 of her affidavit, Mrs. Mohammed-Carter deposed that the application for judgment in default of defence was served on the Ministry of Health and was forwarded to the Chief State Solicitor under cover of letter dated 5 January 2009. She went on to say that a notice of the date of hearing was not served on the Chief State Solicitor or the Solicitor General pertinent to the application. Annexed to that paragraph as "K.M.C. 1" were true copies of the letter dated 5 January 2009 and the application. The copy of the application bears testimony to the fact that it did not carry on its face any date of hearing. The letter referred to was in fact a memorandum from the 1st named Defendant's legal advisor to the Chief State Solicitor enclosing the said application for the Chief State Solicitor's urgent attention and also referring to a memorandum dated 23

April 2008 ["the April 2008 memo"] from the 1st named Defendant's legal advisor requesting legal representation for the 1st named Defendant in respect of this matter enclosing copies of the claim form and statement of case and which states at its 2nd paragraph as follows:

"Further, kindly note that the matter at caption falls within the purview of the Tobago Regional Health Authority, which is a body corporate, entitled to be sued in its corporate name by virtue of the Regional Health Authorities Act No. 5 of 1994. Accordingly, the First and Third Defendants may not be proper parties to the matter." [Emphasis mine]

5) At paragraph 6, Mrs. Mohammed-Carter deposed to the fact that on the date of hearing neither advocate attorney nor any of the instructing attorneys appeared since the notice of a date of hearing was not served on the department. She went on, however, to conclude that she was informed by advocate and verily believed that Mr. Christopher Siewchand, attorney at law for the state was present in court in another matter when the application was called and he appeared amicus for the 3rd named Defendant.

6) Mrs. Mohammed-Carter went on to give a history of liasons and communication with the Claimants attorney at law, the 1st named Defendant and the 2nd named Defendant to obtain instructions. Those letters were as follows:

6.1) Letter dated 8 May 2008 addressed to the Claimants attorney at law seeking "further and better particulars" of the Claimants claim to wit the names of the doctors and nurses referred to at paragraph 12 of the statement of case as "medical personnel";

6.2) Memorandum dated 8 May 2008 addressed to the legal adviser of the 1st named Defendant and copied to the 2nd named Defendant requesting the names of doctors who treated the 1st named Claimant along with copies of all medical reports pertaining to the matter.

6.3) Letter dated 10th of June 2008 from the Claimants' attorney at law indicating that the "medical personnel" referred to in paragraph 12 of the statement of case was one "Nurse Mc Pherson" who was on duty that night.

6.4) Memorandum dated 5 August 2008 addressed to the legal adviser of the 1st named Defendant referring to a letter dated 8 July 2008 from the Office of the Secretary of Health and Social Services, Tobago House of Assembly [which was not provided] requesting information in respect of the involvement of a particular doctor in the 1st named Claimant's delivery.

6.5) Memorandum dated 27 January 2009 from the 1st named Defendant's legal advisor to the Chief State Solicitor referring to a memorandum dated 26th of January 2009 which was apparently forwarded to the Chief Secretary, Tobago House of Assembly for his attention. That memorandum confirms that the THA does not fall within or under the Ministry of Health but is a separate entity and that all queries to be addressed by the THA should be sent directly to that entity.

6.6) Letter dated the 5th June 2009 from the chief state solicitor to the legal adviser of the 1st named Defendant requesting certain information in light of instructions received from the Tobago House of Assembly on 9 February 2009

asking for confirmation of which Health Authority the certain persons referred to in the letter of 5 June were attached, including Nurse Mc Pherson.

6.7) Memorandum dated 16 June 2009 from legal adviser to the 1st named Defendant to the Chief State Solicitor acknowledging receipt of the letter dated 5 June 2009 and attaching a copy of a letter dated 12th of June 2009 from the Chief Executive Officer, Tobago Regional Health Authority. The letter dated 12th of June 2009 from the Tobago Regional Health Authority was addressed to the legal adviser of the 1st named Defendant and was stated to be in response to that legal advisers letter dated 9 June 2009 confirming that Nurse Mc Pherson was employed with the Tobago Regional Health Authority.

7) Mrs. Mohammed-Carter deposed that she herself together with advocate attorney visited the office of the Secretary of Health and Social Services, Tobago House of Assembly on 17 February 2009 ["the February 2009 meeting"] and met with several medical officers in order to take instructions. She said that she was unable to ascertain whether these medical officers were employed with the 1st named Defendant or the 2nd named Defendant. Assistance was requested of the chief medical officer and she went on to say that no further assistance was forthcoming from the personnel at the Tobago Health Services. She then went on to say at paragraph 11 that it was only under cover of letter from the 1st named Defendant dated 16th of June 2009 that she got confirmation that the personnel involved were employed with the 2nd named Defendant and that, as a result, 3rd named Defendant was unable to file its Defendants within the prescribed timeline. She then made a rather curious statement. She said that the 3rd named Defendant however, had always had every intention of vigorously defending and/or striking out the 3rd named Defendant as a party to the proceedings.

8) At paragraph 12 and 13 of the affidavit, Mrs. Mohammed-Carter confirmed that the 2nd Defendant was a body corporate [as referred to in the April 2008 memo] and deposed that at no time was the 2nd named Defendant under the supervision, direction and control of the 3rd named Defendant. She went on to state her reliance on the provisions of section 2 of the State Liability and Proceedings Act Chap 8:02 and, at paragraph 13 she can, strangely, said that any liability for the alleged actions and/or inactions of the said persons property attaches itself to the 1st Defendant and not to the 2nd Defendant. Therefore, she makes no statement with respect to the 3rd named Defendant whom she is representing. She concludes paragraph 13 by stating that the Claimants would not be prejudiced in pursuing a claim against the 2nd named Defendant as a result of any delay caused by this application.

The 2nd named Claimant's affidavit:

9) In essence, and in summary, the 2nd named Claimant referred to the 3rd named Defendant's request for an extension of time to file the defence which expired on 9 August 2008 and that no defence was filed nor was any application filed to extend the time to file it. He said that he was present in court on 23 January 2009 and that someone appeared on behalf of the 3rd named Defendant and that he was informed by his attorneys at law that there was no application by that person for the matter to be stood down or adjourned. He then refers to the newspaper article dated 23 July 2009 which

highlighted the Claimant's plight and that in the article it was stated that the Claimants were awarded default judgment against the 3rd named Defendant. He expressed a feeling of being treated with scant regard whatsoever and deposed to the fact that there was no communication between his attorney at law and attorney at law for the 3rd named Defendant.

The law:

10) The 3rd named Defendant's application to set aside the judgment is made under part 13.3 of the CPR. Rule 13.3(1) of the CPR provides that the Court may set aside a judgment entered under part 12 if:

10.1) *The Defendant has a realistic prospect of success in the claim; and*

10.2) *The Defendant acted as soon as reasonably practicable when he found out that judgment had been entered against him.*

11) It is clear from the rule that a Defendant must therefore satisfy the Court of two (2) things: (a) that he/she has a realistic prospect of success in the claim; **and** (b) that he/she acted as soon as reasonably practicable when he/she found out that judgment had been entered against him/her.

12) The 3rd named Defendant relied on the following cases in support of the application:

12.1) **Treasure Island v. Audobon Holdings Ltd.** - this was a decision of the court of appeal of the British Virgin Islands delivered on 20 September 2004 in relation to submissions relating to the failure to comply with a case management order in respect of the time-limited for the filing of witness statements and the consequent objection to the courting of witnesses in relation to those late witness statements.

12.2) **Moosai's Hardware Company Limited v. Moosai's Development Company Limited and another** - this was a decision of Mdm. Justice Pemberton in relation to an application under the Rules of the Supreme Court 1975 [RSC] to set aside a judgment taken up in default of appearance.

12.3) **Maloney and another v. Conrad Fraser and others** - this was a decision of Mdm. Justice Pemberton in relation to an application under the Rules of the Supreme Court 1975 [RSC] to set aside a judgment taken up in default of appearance.

12.4) **Thomas James v. Stella Boneo** - this was a decision of Stollmeyer J. delivered on 22 June 2005 in respect of matters falling under the Rules of the Supreme Court 1975 [RSC], and in particular, order 35 rule 2 which deals with applications made to set aside judgment after a trial in the absence of a party.

12.5) **Credit Agricole Indosuez v. Unicof Ltd** - this was a decision of the English Queen's bench division at 1st instance to set aside a judgment entered by the Claimant under part 12 of the English CPR in default of acknowledgment of

service. The application was made under the English CPR part 13.2 and, in the alternative part 13.3.

13) The Claimants relied on the following cases in opposition to the application:

13.1) **Alpine Bulk Transport Company Inc. v. Saudi Eagle Shipping Company Inc.** - this was a decision of the English Court of Appeal in an application to set aside judgment taken up in default under the pre-CPR English rules.

13.2) **General Earthmovers Limited v. Estate Management and Business Development Company** - this was a decision of Mdm. Justice Dean-Armorer delivered on 6 November 2007. In this case, the learned judge considered part 13.3 of the CPR upon an application to set aside a default judgment made just under 2 weeks after the default judgment was entered and relied on the case of **ED and F Man Liquid Products Ltd. v. Patel** [2003] EWCA 472 in interpreting the phrase "*realistic prospect of success*" which has been construed as meaning something more than "arguable".

13.3) **Ramkisoan v. Olds's Discount Ltd.** - this is a decision of the local Court of Appeal delivered on 16 May 1961 to set aside a judgment in default of defense which application was made under order 27 rule 15 the Rules of the Supreme Court existing at that time.

13.4) **Mykoo v. Water and Sewerage Authority** - this is a decision of the Hon. Mr. Justice MG Daly delivered on 29 October 1980 to set aside a judgment taken up in default of defense.

14) In respect of the authorities supplied, I bear in mind what was said by Brooke LJ in the case of **Akram –v- Adam** [2004] EWCA Civ 1601, [2005] 1 All ER 741 at page 14 paragraph 40 where he says:

*This governing purpose is restated in the overriding objective in CPR 1.1 and runs through the new rules and the case law (particularly the case law in this court) by which the rules and their underlying philosophy have been explained to judges and practitioners. In his judgment in *Hashtroodi v Hancock* [2004] EWCA Civ 652, [2004] 3 All ER 530, [2004] 1 WLR 3206 Dyson LJ contrasted in one particular context the "'intricate and numerous' authorities' under one of the former Rules of the Supreme Court on the one hand and the 'new procedural code' (which should generally be interpreted without reference to earlier case law) on the other (see [10], [12]*

15) It is therefore quite evident that the courts must now use the new framework of the CPR to create new precedent to meet the requirements of the CPR and its aims and objectives and ought not to seek great assistance on procedure under the CPR from the pre-CPR case law as the approaches are fundamentally different. As observed by Soo Hon JA in the court of appeal in **In re Trincan Oil Limited. In re The Companies Act,**

Chap.88:01. Between Trincan Oil Limited v Schnake, Keith. C.A.CIV.179/2008 delivered on the 9th April 2009 at page 13 et al:

*“It has been said that the CPR prescribes certainty and that it fetters the discretion of the Court. In the case of **Ferdinand Frampton and Ors. v Ian Pinnard and Ors Civil Appeal No. 15/2005 (C/A of Dominica)**, another case which concerned an application for an order extending time, to file a notice of appeal, Barrow J.A. made the following observations at **paragraph 15**:*

“There is no longer need to rely on judge-made criteria with the uncertainties that attend varying judicial viewpoints as to what those criteria should be and what emphasis should be given to which of them.

In contrast, certain of the criteria that are set out in Rule 26.8 [equivalent to our Rule 26.7] are made conditions precedent to the grant of relief and the Court is expressly precluded from granting relief of certain of them are not satisfied. Therefore, the discretion to grant relief under the rules is distinctly fettered...”

*The learned Justice of Appeal continued at **paragraph 17**:*

“There are mandatory conditions imposed by this rule. It is stated in sub-rule (1) that the application has to be made promptly and it must be supported by an affidavit...In sub-rule (2) a strict fetter is imposed upon the court's discretion - the court may grant relief only if it is satisfied that the failure to comply was not intentional, that there is a good explanation for the failure and the party in default has generally been compliant.”

*The Court is no longer empowered to use only its discretion to determine whether an application for extension of time should be granted. The considerations set out in the rules must be strictly followed. According to Parker LJ in **Audergon v La Baguette Ltd [2002] EWCA Civ 10** allowing judges to formulate their own considerations would be detrimental to the functioning of the new rules. He explained at **paragraph 107**:*

“Inherent in such an approach, as it seems to me, is the danger that a body of satellite authority may be built up... leading in effect to the rewriting of the relevant rule through the medium of judicial decision. This would seem to me to be just the kind of undesirable consequence which the CPR were designed to avoid”

The Rules therefore restrict the Court's exercise of its discretion; the appellant must satisfy the criteria. In the past the Court exercised what became known as an 'unfettered discretion' the New Rules have taken that away and replaced it specifically with set criteria.”

16) In respect, therefore, of the 3rd named Defendant's appeal to the inherent jurisdiction of the court in the application before me, I have to categorically deny that I have any such inherent jurisdiction. The CPR provides quite clearly the factors and process which must be followed in the consideration of any application before the court under part 13.3 of the CPR. There is therefore no room for uncertainty as the rules quite adequately provides the factors which I must take into account. I find comfort in this approach by following the reasoning of the English Court of Appeal in **Masri v Consolidated Contractors International Co SAL and another** [2008] EWCA Civ 876, [2008] All ER (D) 359 (Jul) where the learned Sir Anthony Clarke MR said at paragraph 63 et al of the Lexis Nexis report:-

“But it does not follow that there is an inherent jurisdiction to permit service on a person out of the jurisdiction in other cases which are actually covered by rules of Court. For the reasons I have given, in my view the present circumstances are covered by the CPR. So in my view there is no room to invoke the inherent jurisdiction of the court as a last resort.”

17) At the end of the day, I am guided in my approach by the decision of our local appeal court in the case of **Nizamodeen Shah v Lennox Barrow** CA No. 209 of 2008 delivered on the 24th November 2008 by Mendonca JA on an application to set aside judgment taken up in default of defence. In that matter before the Court of Appeal, the appeal turned on the question of the delay in the making of the application to set aside the judgment. In that matter, the request for judgment in default of defence was made on 15 November 2007. On 1 April 2008, an application was made to set aside the default judgment under part 13.3 of the CPR. In that case, the application was made at least 2 months after the date when the appellant found out that judgment was taken up against him. The learned Justice of Appeal noted that the obligation is on the applicant to put some material before the court on which the court can come to the conclusion that he has acted as soon as reasonably practicable. He went on to note that our rule 13.3 is different from the English rule which provides that its primary considerations in setting aside a default judgment are that there is a real prospect of successfully defending the claim or that there is some other reason why the judgment should be set aside or the Defendant allowed to defend the claim. This gives the court, to my mind a broader discretion than is available on the local CPR. In **Nizamodeen Shah v Lennox Barrow**, the fact that the appellant neglected to offer any explanation for the delay was found to be fatal.

Analysis of the evidence and the application and conclusion:

Did the 3rd named Defendant “act as soon as reasonably practicable when he found out that judgment had been entered against him” ?

18) I have no evidence before me from the 3rd named Defendant of exactly when it was found out that judgment had been entered against the 3rd named Defendant. I say this bearing in mind that the duty is on the applicant to make full and frank disclosure. In

Zouzou v Family Welfare Association [2004] EWHC 557 (Ch) per PUMFREY J at page 8 line 29 paragraph 26:

Where a Claimant is seeking to set aside a judgment obtained by the Defendant, in my view the court is entitled to require a full and frank explanation for the reasons for non-attendance. There are many circumstances which arise at the interlocutory stages of an action, where a default is attributable to matters which lie mainly or wholly in the knowledge of the party in default. Where the court is confronted with such circumstances, it seems to me as a matter of common justice that the court must be satisfied so that the other party can be satisfied, that the judgment which has been regularly obtained, should be set aside upon cogent grounds.

I wish to respectfully apply that approach to matters such as the one at bar.

19) In any event, when I look at the evidence proffered by the 3rd named Defendant in this matter, I do not feel confident in accepting that the 3rd named Defendant “acted as soon as reasonably practicable when he found out that judgment had been entered against him”. I say this because of, and bearing in mind, the following:

19.1) The April 2008 memo from the 1st named Defendant's legal advisor to the Chief State Solicitor stated quite clearly that the 1st and 3rd named Defendants may not be proper parties to the matter so that the Chief State Solicitor's office would have had notice since then – i.e. April 2008 - that they needed to consider an application to strike out the 3rd named Defendant as a party in this matter. That application ought to have been actively prepared and pursued at the earliest possible moment. This was not done.

19.2) After the initial grant of the extension for the filing and service of the defense by a the Claimant's attorney at law, the 3rd named Defendant took no procedural steps whatsoever to preserve the 3rd named Defendant's position by filing an application to extend time for the filing and service of the defence - even in the circumstance referred to in the affidavit that further investigations were being conducted and further instructions were being sought.

19.3) By letter dated the 10th June 2008, the Chief State Solicitor was informed that the “medical personnel” attending to the 1st named Claimant was one Nurse Mc Pherson but took no steps to ascertain who Nurse Mc Pherson was employed by until 5th June 2009 – almost one year later.

19.4) By letter dated 5th of January 2009, which was addressed to the chief solicitor for the Chief State Solicitor's **urgent attention**, the Chief State Solicitor was given notice of the application for judgment in default of defence together with a copy of the application along with a copy of the April 2008 memo which once again would have brought the issue of the 3rd named Defendant being an improper party to these proceedings to the Chief State Solicitor's attention and to the forefront of the minds of the instructing attorneys in those chambers. Even if no date was referred to in the application - and, having perused the courts file it seems to me that the application was defective in form and, in any event did not carry a date - it was incumbent upon the Chief State Solicitor's team of attorneys

to have placed this matter on the “front burner” with red flags bearing in mind what was set out in the April 2008 memo. Inquiries could have been made of the court or even of attorney at law for the Claimants - whether by telephone call, traditional correspondence, e mail or direct contact through instructing attorney. This was not done. Whereas the court appreciates the work load of the Chief State Solicitor's office, in a case such as this where an application has been made to the court to enter judgment in default of defence and it is brought to the attention of the Chief State Solicitor, there seems to be no excuse for not having dealt with it as a matter of urgency and with the requisite seriousness that such an application required.

19.5) On 23 January 2009, a state attorney – Mr. Christopher Sieuchand - who this court knows has appeared on several matters involving the state in the capacity as advocate attorney, appeared amicus and was present when the order was made granting permission to enter judgment. Mr. Sieuchand never deposed to an affidavit in this matter so I am unaware of what he perceived his role in the matter to have been. Mrs. Mohammed-Carter deposed at paragraph 6 of her affidavit that she “... *was informed by advocate and verily believed that Mr. Christopher Sieuchand, attorney at law for the state was present in court ...*” Surely, that cannot be a sufficient explanation of what happened on the day in question. Why did instruct in attorney not speak directly to Mr. Sieuchand or, for that matter, give details as to when she was so informed by advocate? Suffice it to say that, in the absence of any information or evidence from him, I can only assume that he would have related the outcome of the hearing to the relevant persons attending to this matter within a short time of the hearing.

19.6) No step was taken procedurally until 27 July 2009 - almost 6 months after the judgment was taken up. No explanation was given as to why the application to set aside the judgment was not made more promptly. Even if confirmation of the employment of Nurse Mc Pherson did not come until June 2009, the 3rd named Defendant had sufficient information available to have made an application more promptly than almost 6 months after. It seems that the judgment on 23 January 2009 is what galvanized the 3rd named Defendant's attorneys into action. Prior to that date, there were only 2 memoranda sent out by the 3rd named Defendant's attorneys to parties other than the Claimant with no responses offered into evidence. After the judgment, there was a physical and personal visit to the General Hospital in Scarborough by instructing and advocate attorney for the 3rd named Defendant to gather information and to speak to the parties involved at the hospital (no reason is given as to why this visit did not take place during 2008 if it was that information was not forthcoming). A series of correspondence and telephone calls only then ensued and it seems that it was only then that the 3rd named Defendant's attorneys showed the sort of activity and investigation necessary to substantiate the statement that the 3rd named Defendant had always had every intention of vigorously defending and/or striking out the 3rd named Defendant as a party to the proceedings.

- 19.7) No communication was had with the Claimant's attorney at law at all over the course of the proceedings save for the initial request for further and better particulars in May 2008.
- 20) As a result, I hold that the 3rd named Defendant did not act as soon as reasonably practicable when it was found out that judgment had been entered against the 3rd named Defendant.

The real prospect of success:

21) I have no doubt that there is merit in the 3rd named Defendant's application in terms of the merit of the defence that the 2nd named Defendant was really the party who is culpable in this matter. The 3rd named Defendant's submissions in respect of the Regional Health Authorities Act and the State Liability and Proceedings Act seem to me to be quite definitive in respect of this issue. Further, I do not believe that, on the statement of case, the Claimants have shown that there was any servant/master relationship between the 2nd and 3rd named Defendant's or that the 2nd named Defendant was the servant and/or agent of the 3rd named Defendant or that the 2nd named Defendant was under the control and supervision of the 3rd named Defendant.

22) However, unlike in the English provision, our part 13.3 requires the 2 factors mentioned above to work in tandem. Without them **both** being present the application cannot succeed. As I have mentioned above, my discretion is fettered. As a result, even though I am of the view that there is a real prospect of success on the proposed defence, the other factor is not present.

The Order:

- 23) It is therefore ordered that:
- (i) The 3rd named Defendant's application filed on 28th July, 2009 is dismissed.
 - (ii) Claimant to file and serve statement of costs by **4th December, 2009**.
 - (iii) Matter adjourned to **7th January, 2010** at 9.15 a.m. in Court Room P.O.S. 20 to deal with the assessment of the Claimant's costs to be paid by the 3rd named Defendant.

Devindra Rampersad
Judge (Ag.)