

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Port of Spain**

**Claim No. CV2019-02271**

**BETWEEN**

**SATNARAYAN MAHARAJ**

First Claimant

**CENTRAL BROADCASTING SERVICES LIMITED**

Second Claimant

**AND**

**THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**

Defendant

**Before the Honourable Mr. Justice Frank Seepersad**

**Date of Delivery:** January 13, 2020

**Appearances:**

1. Mr. Ramesh Lawrence Maharaj S.C., Mr. Jagdeo Singh, Mr. Kiel Taklalsingh, Mr. Dinesh Rambally, Mr. Stefan Ramkissoon instructed by Ms. Rhea Khan, Attorneys-at-law for the Claimants.
2. Mr. Fyard Hosein S.C., Ms. Vanessa Gopaul, Mrs. Josefina Baptiste-Mohammed instructed by Mr. Vincent Jardine, Attorneys-at-law for the Defendant.

**DECISION ON CLAIMANTS' SUBSTITUTION APPLICATION DATED NOVEMBER 29, 2019**

1. The First Claimant, Mr Satnarayan Maharaj filed a fixed date claim form on the 31<sup>st</sup> May 2019 by virtue of which the following reliefs have been sought:
  - a. A declaration that sections 3, 4 and 13 of the **Sedition Act Ch. 11:04**: (1) contravene the principle of legality and/or legal certainty, in that they are vague, uncertain and therefore illegal, null and void and of no legal effect; and (2) are unconstitutionally vague and offend the rule of law.
  - b. A declaration that sections 3, 4 and 13 of the Sedition Act infringe the following fundamental rights and freedoms guaranteed under the Constitution of the Republic of Trinidad and Tobago ("**the 1976 Constitution**"):
    - i. section 4(a) - the right of the individual to enjoyment of property and the right not to be deprived thereof except by due process of law;
    - ii. section 4(i) - the right of the individual to enjoy freedom of thought and expression;
    - iii. section 4(k) - the right to freedom of the press;
    - iv. section 4(e) - the right to join political parties and express political views;
    - v. section 4(j) - the right of freedom of association and assembly; and
    - vi. section 5(2)(h) - the right not to be deprived of the right to such procedural provisions as are necessary for the purpose

of giving effect and protection of the aforesaid rights and freedoms.

- c. A declaration that in so far as Section 6 of the Constitution (the existing law provision) may operate to save the impugned enactments of law, it would amount to a denial of the protection of law and/or an unlawful ouster of the Court's jurisdiction to determine and preserve the constitutional rights of the Claimants.
- d. A declaration that Section 6 of the Constitution itself is inconsistent with the Claimants' fundamental rights, including access to justice, and is further inconsistent with basic underlying principles of the Constitution and therefore is illegal, null and void and of no effect.
- e. A declaration that sections 3, 4 and 13 of the Sedition Act, either individually or collectively, infringe Section 1 of the Constitution in that they are inconsistent and/or incompatible with the characteristics, features and tenets of a democratic state and therefore void and of no effect pursuant to Section 2 of the Constitution.
- f. An order that the Defendant, his servants and/or agents and/or police officers and all those acting in concert with them or howsoever otherwise be restrained and enjoined pending the final determination of the issues arising in these proceedings and on that determination be permanently restrained and enjoined from exercising any of the powers, rights or duties respecting the enforcement of the Sedition Act against the Claimants insofar as it

purports to confer such rights, powers and duties on the Defendant, his servants and/or agents including police officers.

g. Such other orders, writs and directions as it may consider appropriate for the purpose of enforcing or securing the provisions of this chapter to the protection of which the person is entitled.

h. Costs.

i. Such other and further relief as the Court deems appropriate.

2. Subsequent to the filing of the fixed date claim, the First Claimant departed this life.

3. Before the Court's determination of the substantive claim, the Court, however, had to determine the Claimants' Notice of Application filed on November 29, 2019 by virtue of which an order for Vijay Maharaj to be substituted for and on behalf of the First Claimant was sought.

**Determination of the Substitution Application:**

4. The Defendant filed submissions on December 6, 2019 in response and objected to same.

**Law:**

5. The Court considered Part 19 of the Civil Proceedings Rules (1998 as amended), ("the CPR") and in particular Part 19.2(5) and Part 19.5 as well as Part 21.8 of the CPR.

6. The Court also addressed its mind to Section 27(1) of the **Supreme Court of Judicature Act Ch 4:01**.
  
7. The Court next considered the case of **Kareem v The Attorney General of Trinidad and Tobago Civil Appeal No. 71 of 1987**. In this case, the issue as to the applicant's *locus standi* was raised. In the course of his judgment Davis, J.A. made the following statement: “it would appear to me, therefore, that a personal representative in the circumstances under consideration here may well have the right to proceed under section 14(1) of the Constitution in respect of a violation of his deceased's fundamental rights under section 4(a).”
  
8. In **Fuller v Attorney General (1998) 56 WIR 337** at page 360 Downer JA opined that if a person was intentionally deprived of his life, then the logical entity to prosecute the claim is the estate. At page 405 Harrison JA construed Section 2(1) of the Law Reform (Miscellaneous Provisions) Act which is equivalent to Section 27(1) SCJA. The learned judge found that the wording of the provision is wide enough to embrace facts which give rise to an application for constitutional redress.

**Resolution of the Application:**

**Part 19.2(5) of the CPR is not the applicable rule-**

9. The Defendant’s objection to the Claimants' Application was primarily based on a contention that Part 19.2(5) is the applicable provision of the CPR but this Court holds the view that the applicable provisions of the CPR are Part 21.8 and Part 19.5.

10. In the instant application a party to the proceedings died and the application is for a person to be substituted to represent the estate of that party so as to enable the proceedings to be continued.
11. Part 21.9 (3) of the CPR provides that, the general rule, is that if the Court makes an order on an application under this Rule, it shall be that unless the personal representatives or some other person on behalf of the estate applies to be substituted under Rule 19.5 or for directions under Rule 21.8 by a specified date, the claim shall be struck out.

**Defendant's reliance on Dr Myron Wing Sang Chan et al v Noel Garcia and the Attorney General Civil Appeal No. P-342 of 2017-**

12. The Defendant referred to the Court of Appeal decision **Dr Myron Wing Sang Chan et al v Noel Garcia and the Attorney General Civil Appeal No. P-342 of 2017** and relied on this authority to argue that the substitution of Mr. Vijay Maharaj in place of the First Claimant would not assist the Court in resolving the issues in dispute more effectively.
13. The Court formed the view that the Defendant's reliance on Noel Garcia (supra) is misguided. In Noel Garcia (supra) the facts were substantially different from the relevant factual matrix before this Court.
14. At the Court of Appeal, Mendonça JA held that the trial judge ought not to have granted the substitution application as the Court felt that there was nothing to suggest that the presence of the deceased First Claimant's estate was necessary to resolve the issues in dispute in those proceedings.

15. This Court is of the view that the aforesaid decision was peculiarly fact dependent, given that the findings which were challenged by Mr Garcia were those of a commission of enquiry and there was nothing to suggest that the appellants, as the two surviving commissioners, were not capable of providing the requisite degree of assistance as they could have placed before the court all relevant information.
16. In the present application unlike in Noel Garcia (supra), there is no other person capable of carrying on the claim as instituted by the deceased First Claimant.
17. It must be noted that, Mendonça JA at paragraph 37 stated that, “Whether the substitution was required for the just and effective resolution of the matters in dispute before the court should be considered in that context”.
18. The Court also considered the case of **Ronald Harewood v Carlo Mc Honey (The Commissioner of Prisons) CV 2006-00365** wherein Gobin J dismissed the deceased claimant’s application for constitutional redress and did not grant a substitution order to appoint the deceased claimant’s mother to carry on the proceedings.
19. In Harewood (supra) the claimant’s affidavit was fundamentally important to the determination of the relevant facts upon which the resolution of his motion was premised unlike the instant matter which does not involve any factual dispute.
20. Gobin J interpreted Section 27 of the Supreme Court of Judicature Act in its historical context, to mean that the survival of the right of redress did not

exist because the Constitution did not exist at the time of the UK Supreme Court of Judicature Act 1934.

21. This Court has elected to adopt a different interpretation of Section 27 of the Supreme Court of Judicature Act and the Court considered the “speaking nature” of **Section 10(1) of the Interpretation Act Ch. 3:01**.
22. The Court also noted that the Supreme Court of Judicature Act was passed on August 31<sup>st</sup> 1962, the same date on which the 1962 Constitution was enacted. Consequently, the draftsman and the Parliament had before them, the “new” remedy under section 6 (which is now found in Section 14 of the 1976 Constitution) and they must have logically intended that “cause of action” included all causes of action inclusive of the “new” causes of action with respect to the Constitution.
23. The Court also reviewed the case of **Dumas v the Attorney General of Trinidad and Tobago [2017] UKPC 12** and noted that the Judicial Committee of the Privy Council decided, *inter alia*, that the Supreme Court could, in an administrative action where no contravention of personal rights was alleged, grant a declaration in favour of a Claimant, in the public interest.
24. In Dumas (supra), the Court of Appeal (Civil Appeal No. P 218 of 2014) outlined a three step approach to be considered when a determination had to be made by the court as to whether it should entertain public interest litigation which seeks constitutional review. These steps require that the litigation must be:
  1. Bona fide,
  2. Clothed with a real prospect of success, and
  3. Grounded in a legitimate public interest.



25. At paragraph 15 of the Dumas judgment (supra) the Judicial Committee of the Privy Council stated:
- "it is the task of the Judiciary to uphold the supremacy of the Constitution and thereby the rule of law".
26. This Court, guided by Dumas (supra), recognised that in the discharge of its mandate to resolve administrative actions which involve the Constitution, it exercises a generous and wide inherent jurisdiction and it must always uphold the supremacy of the Constitution and vindicate the rights of aggrieved persons.
27. The seriousness of the alleged breaches of the First Claimant's constitutional rights ought not to be devalued by reason of his death. Even in death, the estate of the deceased First Claimant should be entitled to pursue the vindication of the deceased First Claimant's rights and his son and executor, Vijay Maharaj, should be permitted to step into his shoes and act on behalf of his estate.

**Conclusion:**

28. Consequently and for the reasons outlined this Court grants the order for substitution sought in the Notice of Application filed on the 29th November 2019.

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**FRANK SEEPERSAD**  
**JUDGE**