

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Claim No. CV 2020-03720**

**IN THE MATTER OF MOTOR VEHICLE AND ROAD TRAFFIC ACT  
CHAPTER 48:50  
AND  
IN THE MATTER OF AN APPEAL AGAINST THE DECISION OF THE  
LICENSING AUTHORITY OF TRINIDAD AND TOBAGO**

**BETWEEN**

**ZACHARY DE SILVA**

**Appellant**

**AND**

**LICENSING AUTHORITY OF TRINIDAD AND TOBAGO  
AND  
TRANSPORT COMMISSIONER**

**Respondents**

**Before the Honourable Mr Justice Seepersad**

Dated: 9 February, 2021

Appearances:

1. Mr. Christophe Rodriguez, Mr. Devvon Williams instructed by Ms. Kimaada Ottley, Attorneys-at-law for the Appellant.
2. Mr. Ravi Nanga, Ms. Rachel Theophilus and Ms. Savitri Maharaj Attorneys-at-law for the Respondents.

**DECISION:**

1. Before the Court for its determination is the Appellant's Fixed Date Claim Form supported by an Affidavit filed on 6<sup>th</sup> November, 2020 and a Supplemental Affidavit filed on 9<sup>th</sup> November, 2020. The relief sought is as follows:

- a) An order declaring that the decision of the Licensing Authority of Trinidad and Tobago and the Transport Commissioner to disqualify and/or suspend the Appellant from holding or obtaining driving permit number 1089131 for a period of six (6) months in accordance with Section 88M of the Motor Vehicles and Road Traffic Act, Chapter 48:50 is unreasonable, irregular and/or improper exercise of his discretion;
- b) An order declaring that the decision of the Licensing Authority of Trinidad and Tobago and the Transport Commissioner to disqualify and/or suspend the Appellant from holding or obtaining driving permit number 1089131 for a period of six (6) months in accordance with Section 88M of the Motor Vehicles and Road Traffic Act, Chapter 48:50 is disproportionate exercise of his discretion;
- c) A stay of the execution of the decision made by the Licensing Authority of Trinidad and Tobago and the Transport Commissioner to disqualify and/or suspend the Appellant from holding or obtaining driving permit number 1089131 for a period of six (6) months in accordance with Section 88M of the Motor Vehicles and Road Traffic Act, Chapter 48:50 until the appeal is heard and determined;
- d) An order that the Licensing Authority of Trinidad and Tobago and the Transport Commissioner took into account an irrelevant consideration when deciding to disqualify and/or suspend the Appellant from holding or obtaining driving permit number 1089131 for a period of six (6) months in accordance with Section 88M of the Motor Vehicles and Road Traffic Act, Chapter 48:50;
- e) An order that the Licensing Authority of Trinidad and Tobago and the Transport Commissioner failed to take into account relevant considerations when deciding to disqualify and/or suspend the Appellant from holding or obtaining driving permit number 1089131 for a period of six (6) months in accordance with Section 88M of the Motor Vehicles and Road Traffic Act, Chapter 48:50;
- f) Costs; and
- g) Such further other orders, directions or writs as the Court considers just and as the circumstances of this case warrant.

2. By Order dated 19<sup>th</sup> January, 2021 the Court on its own motion ordered the parties to file submissions to address its concern as to whether the High Court was the proper forum before which the relief sought should proceed.
3. The Appellant initiated the instant appeal under Section 88M(9) of the Motor Vehicle and Road Traffic (Amendment) Act 2017 (the 2017 Act) as he was disqualified/suspended from holding or obtaining driving permit number 1089131 for a period of six (6) months under Section 88M of the 2017 Act.
4. The 2017 Act amended the Motor Vehicles and Road Traffic Act, Chap. 48:50 (hereinafter referred to as “the Act”) and introduced a system of traffic violations for certain breaches of the Act. The legislation also provides, *inter alia*, for the implementation of a red-light camera system, a demerit points system and reformed the fixed penalty system. The 2017 Act came into operation on 26<sup>th</sup> May, 2020.
5. Section 88M of the 2017 Act deals with the accumulation of demerit points and disqualification and provides:

*“88M(1) Where a newly licensed driver or the holder of a provisional permit accumulates seven or more demerit points within a period of twelve months from the date of issue of the driving permit or the provisional permit, the Licensing Authority shall disqualify that person from holding or obtaining a driving permit for a period of one year.*

*(2) Where a person who holds a driving permit for more than twelve months, accumulates within a period of three years -*

*(a) ten or more but less than fourteen demerit points, the Licensing Authority shall disqualify that person from holding or obtaining a driving permit for a period of six months;*

*(b) fourteen or more but less than twenty demerit points, the Licensing Authority shall disqualify that person from holding or obtaining a driving permit for a period of one year; or*

*(c) twenty or more demerit points, the Licensing Authority shall disqualify that person from holding or obtaining a driving permit for a period of two years.*

*(3) The Licensing Authority shall, before disqualifying a person under subsection (2), give that person notice in writing of its intention to do so, and shall specify a date not less than fourteen days after the date of the notice, upon which the suspension shall be made and call upon the person to show cause why he should not be disqualified.*

*(4) Where a person fails to show cause under subsection (3) and the Licensing Authority after taking into consideration any facts in mitigation, decides to disqualify that person from holding or obtaining a driving permit, the Authority shall forthwith, in writing, notify that person of the disqualification.*

*(5) A disqualification imposed under this section shall not take effect until the expiration of fourteen days after the Licensing Authority has informed the person of the disqualification.*

*(6) Where a person has been disqualified from holding or obtaining a driving permit under this section, that person shall, within fourteen days of being informed of the disqualification, surrender his driving permit to the Licensing Authority.*

*(7) A person who fails to surrender his driving permit to the Licensing Authority as required under subsection (6), commits an offence and is liable to a fine of five thousand dollars and further disqualification for an additional period of one year.*

*(8) Where the disqualification period under this section expires, all demerit points recorded against the driving permit record of the person shall be expunged.*

*(9) A person who is disqualified from holding or obtaining a driving permit under this section may, within fourteen days of the receipt of the notice under subsection (4), appeal to a Court of competent jurisdiction against that decision and the decision of that Court shall be final. (Emphasis Court's)*

*(10) For the purposes of subsection (1), “newly licensed driver” means a person who is the holder of a driving permit for a period of twelve months or less from the date of issue.”*

6. The legislation refers to “a Court of competent jurisdiction” and there are also references to “court” but in the 2017 Act, the terms “court” or “court of competent jurisdiction” are not decisively defined. At **Part VA – Red Light Camera System and Part VI – Fixed Penalty Enforcement and Administration** of the 2017 Act however, “court” - has the meaning assigned by the Summary Courts Act Chap. 4:20.
7. The Act also makes reference to the terms “court” and “court of competent jurisdiction” but these terms are also not adequately defined in the Interpretation Section or in any other part of the Act. In practice however the offences created under the Act were dealt with, almost exclusively, by the Summary Courts and the Act specified the serious offences which had to be determined on indictment.

### **The Summary Courts:**

8. The jurisdiction of these courts is governed by the Summary Courts Act, Chapter 4:20 and “court” means “any Magistrate or Justice when sitting in open Court to hear and determine any matters within his power and jurisdiction, either under this Act or under any other written law, and such Magistrate or Justice when so sitting as aforesaid shall be deemed to be a “Court” or “Summary Court” or “Court of summary jurisdiction” within the meaning of this Act;”

9. Section 6 of the Summary Courts Act provides,

*6. (1) Every Magistrate and Justice shall have and exercise all such powers, privileges, rights, and jurisdiction as are conferred upon each of them respectively under this Act or **of any other written law**, and also, subject to this Act and any other written law, all such powers, privileges, rights, and jurisdiction as are conferred on Justices of the Peace by Common Law. (Emphasis Court's)*

*(2) Every Magistrate shall have and exercise full power and jurisdiction in respect of all summary offences and all matters relating thereto or in respect of which a Summary Court can make an order in the exercise of its jurisdiction.”*

**The High Court:**

10. In the Supreme Court of Judicature Act, Chapter 4:01 at the Interpretation Section “the High Court” is defined as follows, “the High Court of Justice constituted under this Act and the Constitution.”

11. Section 9(2) of the said Act states:

(2) There shall also be vested in the High Court -

(a) all original jurisdiction which was vested in the former Supreme Court by the Judicature Ordinance and such jurisdiction shall include –

(i) the jurisdiction which was vested in or capable of being exercised by all or any one or more of the Judges of any such former Court sitting in Court or Chambers or elsewhere when acting as Judges or a Judge pursuant to any instrument or written law;

(ii) all the powers given to any such former Court or to any such Judge or Judges by any instrument or written law; and

(iii) all ministerial powers, duties and authorities incidental to any and every part of the jurisdiction so transferred.

12. Section 100(2) of the Constitution of the Republic of Trinidad and Tobago and Section 78 of the Interpretation Act, Chapter 3:01 also reference and define the term “High Court”.

13. There can be no dispute that the Court of Appeal, the High Court and the Summary Courts are all courts of competent jurisdiction.

14. A review of the Act suggests that the intention of Parliament was to primarily vest the jurisdiction to determine traffic related offences to the Summary Courts and though by virtue of the 2017 Act specified offences were removed from remit of these courts, there is contained no language which suggests that the 2017 Act completely removed the jurisdiction of the Summary Courts. The intent of the 2017 Act was to streamline the procedures relating to traffic offences in order to put an end to the automatic creation of a magisterial matter in the event that a ticket was not paid. A concerted decision was effected so as to reduce the number of traffic related offences which formed a significant part of the magisterial workload.

15. Part VA and Part VI of the 2017 Act specifically vested jurisdiction over the enforcement of traffic related offences exclusively in the Summary Courts. However, offences under Section 88G and Section 88H are not to be determined by the Summary Courts and under Section 88G the reference to “court” logically refers to the High Court since the offences under Sections 70 and 71 of the Act mandate trial on indictment.

16. Section 128 of the Summary Courts Act expressly provides that an appeal is to be made to the Court of Appeal and all magisterial convictions for traffic offences under the Act were subject to appeal before the Court of Appeal.
17. **In the discharge of its obligation to determine the appropriate forum under Section 88M(9) of the 2017 Act, the Court noted that a pivotal purpose of the amendment was to remove many traffic matters away from the Magistrates' Court which enjoyed almost exclusive jurisdiction over same. Against such a backdrop, the Court asked itself, "Why would Parliament now place an additional burden on the High Court, while at the same time streamlining the procedure in order to reduce the number of traffic matters going before the Summary Courts?"**
18. The administration of the Act was primarily discharged by the Summary Courts and the High Court or the Court of Appeal exercised jurisdiction only where specific reference was made to a trial "on indictment" or the appellate jurisdiction of the Court of Appeal under the Summary Courts Act was invoked.
19. This Court is therefore resolute in its view that under the 2017 Act, the intention of Parliament was to continue the scenario which operated under the Act prior to the amendment and vest almost exclusive jurisdiction to the Summary Courts for the matters that were not removed under the amendment.
20. The 2017 Act however does not expressly provide for the exercise of an appellate jurisdiction at the Magistrates' Court but there is also nothing in Section 88M(9) which suggests that "court" expressly refers to either the High Court or the Court of Appeal. Therein lies the uncertainty.
21. It is noted that the High Court already exercises an appellate jurisdiction over inferior tribunals and obviously the same is true of the Court of Appeal but the Respondents submitted that Section 88M (9) is simply a part of the 2017 Act over which the Summary Courts should exercise jurisdiction.



22. This Court is not inclined to accept this argument.
23. Given that Summary Courts are creatures of statute they are devoid of an inherent jurisdiction. If Parliament intended to increase the jurisdiction of the Summary Courts, such a circumstance should have been clearly articulated and if it was intended that magistrates were to act as a final court of review then the 2017 Act should have specifically said so.
24. Magistrates are constrained to only hear matters relating to infractions in their particular district and the 2017 Act does not specify the district in which an appeal under Section 88M(9) of the 2017 Act should be filed. No process is outlined in the 2017 Act or in the Summary Courts Act as to the procedure which should be followed if appeals of the Transport Commissioner's disqualification decisions are to proceed before the Summary Courts.
25. In contrast Part 64.1(2) of the Civil Proceedings Rules 1998 ("CPR"), as amended clearly outlines the process in relation to appeals before the Court of Appeal with respect to decisions of a Tribunal and before the High Court a similar process is outlined under Part 60 of the CPR.
26. The new demerit point system removes certain matters away from the Magistrates' Court and places them in the hands of the Licensing Authority and/or the Transport Commissioner. Essentially, the decision by the Transport Commissioner to disqualify a driver under Section 88M of the 2017 Act amounts and equates to a decision of a tribunal. The jurisdiction of the Magistrates' Court however continues to exist for those who wish to dispute the award of a fixed penalty ticket and the allocation of demerit points. Such a person can file a Notice to Contest, and that matter will be heard by a Magistrate. In addition indictable traffic offences still exist.

27. The new system has made fundamental changes which can have a significant impact upon the motoring public as infractions under the 2017 Act now carry demerit point consequences. Parliament in its wisdom took a strong position in relation to traffic offences. Such a course is understandable and should be applauded given the carnage which occurs on our nation's roads. A vehicle is a potential weapon and there is need to ensure that persons who drive do so responsibly and in a manner which does not jeopardize the safety of other road users. Under the legislation the payment of a fine is not an absolution and with each infraction the offender's permission to use the nation's roadways is affected as demerit points attach and the accumulation of a specified number within a specified time can lead to the loss or suspension of one's driving permit. This process can serve as a deterrent and should force persons into compliance with the traffic laws. The legislation provides for the appeal of a disqualification order and under Section 88M(9) a position of finality of the decision on appeal is outlined. Given the legislative intent it appears that at an appeal the appellant may have to establish, *inter alia*, that the demerit points were acquired due to extenuating circumstances as opposed to mere assertions of inconvenience associated with the loss of driving privileges.

28. This review power is a significant power to confer upon the Summary Courts and if that was Parliament's intent same needed to be expressly stated. Having noted the fundamental shift and impact of the 2017 Act on the motoring public, there existed a heightened obligation on Parliament to ensure that the amendment achieved and communicated certainty of intent. Laws should be drafted with precision and regrettably the legislation did not properly address the issue as to the appellate forum. A lack of precise language is also apparent as Section 88M(1) and 88M(2) both use the mandatory word "shall" in relation to disqualification after a certain number of demerit points are acquired but thereafter the legislation provides for a process of representation before the Transport Commissioner determines whether to disqualify. Greater care is required in the legislative drafting process.

29. Given the finality of the wording of Section 88M(9) on appeal, this Court is resolute in its view that the appropriate forum for the determination of this manner of appeal is the Court of Appeal and not the High Court. The appellate jurisdiction of the Court of Appeal existed from the inception of the Act and in relation to traffic offences the High Court never exercised an appellate jurisdiction. Its involvement with traffic related matters was always confined to trials of indictable traffic offences.

30. For the reasons outlined this Court declares that appeals under Section 88M(9) of the 2017 Act must be undertaken before the Court of Appeal.

31. Accordingly, the matter before this Court is hereby dismissed and the stay of the order of disqualification is hereby lifted.

32. Parliament has an obligation and responsibility to ensure that legislative provisions are clear, certain and definite. Precision and clarity of language is paramount and as outlined, Sections 88M(1), 88M(2) and 88M(9) are poorly drafted. The evident uncertainty required the Court's interpretation and the Appellant's decision to file the instant matter before this Court cannot be criticised in the circumstances. Accordingly, on the issue of costs, this Court shall depart from the usual order that costs follow the event and hereby orders that each party shall bear their respective legal costs.

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**FRANK SEEPERSAD**

**JUDGE**