

TRINIDAD AND TOBAGO

CLASSIFICATION: JUDICIAL REVIEW

**IN THE HIGH COURT OF JUSTICE
SUB REGISTRY, SAN FERNANDO**

H.C.A.NO. S-1098 of 2004

**IN THE MATTER OF AN APPLICATION BY
FEROZA RAMJOHN OF RAMATALLY PARK FYZABAD,
FOREIGN SERVICE EXECUTIVE OFFICER II,
FOR LEAVE TO APPLY FOR JUDICIAL REVIEW
JUDICIAL REVIEW ACT 2002**

AND

**IN THE MATTER OF THE ILLEGAL AND/OR
ULTRA VIRES AND/OR UNLAWFUL REVOCATION
OF THE APPLICANT'S TRANSFER TO THE
HIGH COMMISSION OF TRINIDAD AND TOBAGO
IN LONDON, UNITED KINGDOM**

AND

**IN THE MATTER OF THE ILLEGAL AND/OR
UNFAIR TREATMENT OF THE APPLICANT BY
THE ACTING PERMANENT SECRETARY IN
THE MINISTRY OF FOREIGN AFFAIRS**

BETWEEN

FEROZA RAMJOHN

Applicant

AND

**PERMANENT SECRETARY
MINISTRY OF FOREIGN AFFAIRS**

Respondent

And

**PATRICK MANNING, PRIME MINISTER
OF THE REPUBLIC OF TRINIDAD AND TOBAGO**

Interested Party

BEFORE THE HONOURABLE JUSTICE A. TIWARY –REDDY

SUPPLEMENTAL JUDGMENT

98. On 03.05.07 this Court delivered an oral judgment herein and shortly thereafter provided its written judgment in which the following Orders were made:

“1. This Court declares that:

a) The Applicant has been treated unfairly and contrary to the principles of natural justice; and

b) The decision of the Interested Party, the Honourable Prime Minister contained in his letter of the 4th day of June, 2004 to revoke the Applicant’s transfer to the High Commission for the Republic of Trinidad and Tobago in London, United Kingdom is ultra vires, null and void and of no legal effect.

2. This Court grants an Order of Certiorari to remove into this Honourable Court and quash the said decision of the Interested Party dated the 4th day of June, 2004.

3. The Respondent do pay to the Applicant damages to be assessed subject to the Applicant providing proof that a claim for damages had in fact been made.

4. The injunction granted on 11.06.04 and varied on 25.06.04 is hereby discharged.”

99. On the said date this Court reserved the question of costs and directed all parties to file written submissions within 21 days. The Applicant’s submissions were filed on 14.05.07. To date no submissions were filed by the Respondent or the Interested Party. However on the said 14.05.07 the Interested Party filed a Notice of Appeal against the aforesaid judgment.

100. By letter dated 16.07.07 to the Registrar of the Supreme Court, Mr. Anand Ramlogan, junior Attorney-at-law for the Applicant stated that on 9.07.07 the Court of Appeal with the consent of the parties, had deemed this matter fit for urgent and early hearing and had directed that it be placed on the next available Cause List so that it could be given priority.
101. Since this appeal will not be listed until the issue of costs is determined and in the interim the Applicant is unable to tax her Bill of Costs without an Order to this effect from the trial Judge, this Court will proceed to deal with the issue of costs.

RELIEF

102. In her Statement filed on 07.06.04 the Applicant had sought to question the decision of the Acting Permanent Secretary contained in the letter of 7.06.04 to rescind or revoke the Applicant's transfer to London. In her affidavit filed on 24.06.04 (the Joseph affidavit) Ms. Yvonne Gittens-Joseph, referred to a letter dated 4.06.04 from the Prime Minister to the Permanent Secretary in which the Prime Minister had revoked the Applicant's transfer.
103. The Applicant contended that it was only upon receipt of the Joseph affidavit that she became aware that it was the Prime Minister who had revoked her transfer. Accordingly Mr. Ramlogan immediately sought to amend the Applicant's Statement to challenge the Prime Minister's decision instead of the decision of the Permanent Secretary. On behalf of the Respondent and the Interested Party, Mr. Martineau objected to the application to amend and sought costs of that application. This Court has already explained (paragraph 38) the reasons for its decision to grant the amendment and maintains that the amendment sought was not inconsistent with the case such had been filed or argued. In any event the need for the amendment was occasioned by the conduct of the Respondent.

104. At the end of the day this Court granted all the relief sought in the Statement and made an Order that damages be assessed on condition that the Applicant establish that a claim for damages had in fact been made.
105. Before the substantive application for Judicial Review had been heard the Applicant filed a summons on 1.04.05 seeking discovery of two reports. Dr. Ramsahoye SC led Mr. Ramlogan in this application which was hotly contested. The Respondent and the Interested Party filed a Notice denying access to the said reports for security reasons. Comprehensive written submissions were filed on both sides together with the numerous authorities which had been cited. Further extensive oral submissions were made on behalf of all the parties.
106. The Prime Minister had stated in his letter of 4.06.04 that he was revoking the Applicant's transfer in light of the contents of one of the two reports being sought. After reviewing the evidence and the submissions, both written and oral, this Court concluded that the reports were relevant and necessary to do justice for the fair disposition of the matter and ordered discovery of the reports with all names, save that of the Applicant, deleted.
107. Mr. Ramlogan contended that the disclosed evidence was critical to the outcome of the case and that the Prime Minister's stated reason for revoking the Applicant's transfer was because of the contents of one of the said reports. Further, the fact that all names save that of the Applicant were deleted from the reports, as part of the Order, was irrelevant. Mr. Martineau for the Respondent and the Interested Party maintained that his clients were not prepared to disclose any of the reports for reasons of national security.

COSTS

108. This action was commenced in 2004 and is governed by the **Rules of the Supreme Court 1975 (RSC)**. Order 62 of RSC deals with inter alia, entitlement to costs. And Rule 3 states:

“When costs to follow the event

3. (1) Subject to the following provisions of this Order, no party shall be entitled to recover any costs of or incidental to any proceedings from any other party to the proceedings except under an order of the Court.

(2) If the Court in the exercise of its discretion sees fit to make any order as to the costs of or incidental to any proceedings, the Court shall, subject to this order, order the costs to follow the event, except when it appears to the Court that in the circumstances of the case some other order should be made as to the whole or any part of the costs...”

109. In **In re Elgindata Ltd. (No. 2) (Elgindata) 1992 WLR 1207 at 1213-1214** the Court of Appeal of England per Lord Justice Nourse outlined the following principles applicable to costs:

“...i) Costs are in the discretion of the Court. ii) They should follow the event, except when it appears to the Court that in the circumstances of the case some other order should be made. iii) The general rule does not cease to apply simply because the successful party raises issues or makes allegations on which he fails, but where that has caused a significant increase in the length or cost of the proceedings he may be deprived of the whole or a part of his costs. iv) Where the successful party raises issues or makes allegations improperly or unreasonably, the Court may not only deprive him of his costs but may order him to pay the whole or a part of the unsuccessful party’s costs. Of these principles, the first, second and

fourth are expressly recognised or provided for by rules 2 (4), 3 (3) and 10 respectively (of Order 62 of the Rules of the Supreme Court). The third depends on well established practice. Moreover, the fourth implies that a successful party who neither improperly nor unreasonably raises issues or makes allegations on which he fails ought not to be ordered to pay any part of the unsuccessful party's costs. It is because of his disregard of that principle that the Judge erred in this case.”

110. In **Elgindata**, the Petitioner had sought an order under the Companies Act on the ground that the affairs of the Company had been conducted in a manner unfair to the interests of the Petitioners as minority shareholders. At first instance the trial Judge found in favour of the Petitioners but made orders for the payment of costs which included orders that the Petitioners pay portions of the costs of the majority shareholders. The Petitioners appealed on the issue of costs. In the end the Court varied the order of the trial Judge and held:

“...the fair and proper order for us to make is to deprive the Petitioners of half of their costs and no more...”

111. The decision in **Elgindata** was considered in **Privy Council Appeal No. 86 of 2002 Peter Seepersad v Theophilus Persad and Capital Insurance Limited (Peter Seepersad)** in which when the Privy Council endorsed the aforesaid principles. In particular Lord Carswell stated at paragraph 24:

“ ... The award of costs in Trinidad and Tobago is in the discretion of the Court, as is usual in most common law of jurisdictions. The general rule which should be observed unless there is sufficient reason to the contrary is that costs will follow the event. Where the party who has been successful overall has failed on one or more issues, particularly where consideration of those issues has occupied a material amount of hearing time or otherwise led to the incurring of significant expense, the court may

in its discretion order a reduction in the award of costs to him, either by a separate assessment of costs attributable to that issue or as is now preferred, making a percentage reduction in the award of costs: see, eg. **In re Elgindata (No 2) 1992 1WLR 1207**. The Court of Appeal's Order was predicated upon the proposition that the assessment of damages for pain and suffering and loss of amenity was a separate issue from the assessment of the other heads of damage. This was an incorrect assumption. An issue for these purposes must be something so distinct and separate in itself that the decision of it constitutes an "event"..."

112. Mr. Ramlogan has submitted that the Applicant was advised and represented by Dr. Ramsahoye SC and himself in this matter. Further although Dr. Ramsahoye SC did not appear throughout the trial, his advice and presence were justifiable and necessary. In any event Dr. Ramsahoye's absence for part of the trial should not adversely affect the award of costs which should be assessed by reference to its novelty, complexity, public importance as well as its importance to the Applicant's career.
113. In **HCA 305 of 2004 – Devant Maharaj vs The Statutory Authorities Service Commission** application was made to reduce the successful Applicant's costs on the ground that the Court had rejected the submissions on irrationality of the impugned decisions. The Court identified the relevant test being whether the issue of irrationality was "so distinct and separate in itself" that the decision on this issue constituted an event.
114. This Court considers that there were two "events" in this case, namely the application for discovery of the reports and the application for judicial review of the decision to revoke the Applicant's transfer to London. The Applicant succeeded in both "events" and this Court sees no good reason to depart from the general principle that costs follow the event.

115. In **Peter Seepersad** (above) reference was made to the need to consider all the relevant circumstances in awarding costs and pointed to some of the factors to be considered by a judge, namely, the complexity of the matter and the difficulty or novelty of the questions of law involved as well as the skill, specialised knowledge and responsibility required of and time and labour expended by counsel.
116. The application for discovery was critical to be final outcome of the case. This application was vigorously resisted by the Respondent and the Interested Party on the ground of national security. Comprehensive written submissions were filed and numerous authorities were cited. Further, extensive oral submissions were made. This Court considers that the issue of national security was an area of law which required a considerable amount of research.
117. Mr. Ramlogan maintained that the Applicant was represented by Dr. Ramsahoye SC and himself in this matter. Further although Senior Counsel was absent for part of the trial this should not adversely affect the order for costs as the Court must have regard to the matters set out in paragraph 115 above.
118. This case was complex and involved several issues of public importance namely balancing national security concerns against observing the rules of natural justice, the exercise of the Prime Minister's constitutional power to veto the appointment of a foreign service officer to a foreign mission and alleged discrimination on the ground of race. This case was also of great importance to the Applicant as the decision to revoke her transfer denied her increased benefits and allowances as she approached retirement from the public service.

119. Having considered all the relevant circumstances as well as the factors set out in paragraph 115 above, I make the following Orders:

- a) That the Respondent and The Interested Party do pay to the Applicant costs fit for one Senior and one Junior Attorney at law in respect of the application for discovery.
- b) That the Respondent and the Interested Party do pay to the Applicant costs fit for two counsel in respect of the application for judicial review.

120. This Court declines to make any order for costs in respect of the application for the amendment.

Dated this 8th day of February, 2008.

Amrika Tiwary-Reddy

Judge