

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

CvA. NO. 55 of 2004

**IN THE MATTER OF AN APPLICATION BY MR. SEEBALACK
SINGH OF NO. 258 ST. JULIEN VILLAGE, PRINCES TOWN FOR
LEAVE TO APPLY FOR JUDICIAL REVIEW**

AND

**IN THE MATTER OF THE ILLEGAL ULTRA VIRES AND
UNLAWFUL TERMINATION OF THE APPLICANT'S CONTRACT
OF EMPLOYMENT WITH THE AGRICULTURAL DEVELOPMENT
BANK OF TRINIDAD AND TOBAGO BY LETTER DATED 23RD
DAY OF JANUARY 2003, ON THE BASIS THAT HE
NEGLECTED HIS DUTIES AS THE BANK'S CHIEF EXECUTIVE
OFFICER**

BETWEEN

**HUBERT ALLEYNE, KEITH PAUL, JACQUELINE
RAWLINS AND SATI JAGMOHAN**

APPELLANTS/APPLICANTS

SEEBALACK SINGH

RESPONDENT

AND

**THE AGRICULTURAL DEVELOPMENT BANK
RESPONDENT**

PANEL:

***M. Warner, Justice of Appeal
W. Kangaloo, Justice of Appeal
I. Archie, Justice of Appeal***

APPEARANCES:

***Dr. Denbow S.C. for the Appellants with him Mr. K.
Ramkissoon***

Mr. A. Ramlogan for the Respondent

***The Agricultural Development Bank not appearing and
being unrepresented***

DATE OF DELIVERY:

12th December 2005

***I have read in draft the Judgment of Warner J.A., I agree with it
and do not wish to add anything.***

***W. Kangaloo,
Justice of Appeal***

***I. Archie,
Justice of Appeal***

Delivered by Warner J.A.

JUDGMENT

1. This is an appeal from the decision of Tewari-Reddy J. in which she declined to permit the appellants leave to be heard in opposition to an application for judicial review filed by Mr. Seebalack Singh, the former Chief Executive Officer of the Agricultural Development Bank (the Bank) in which he challenged the decision of the Bank to dismiss him for alleged misconduct. On the 19th March 2003, Myers J. granted Mr. Singh leave to apply for judicial review.

2. The appellants at all material times held the following positions in the Bank:

Mr. Alleyne, was the Chairman of the Board of Directors of the Bank. Mr. Paul was, and still is a member of the Board. Ms. Rawlins was the Finance Manager and Ms. Jagmohan the Corporate Secretary.

3. **Background**

In order to place the appeal in its proper context, I ought to state that the appellants did not take steps to obtain a stay of the substantive proceeding, with the result that the hearing has been completed, albeit that a judgment has not yet been delivered. Notably, the Bank had also raised a preliminary objection to the grant of leave and sought to set aside the order, without success. Following that, an application by the Bank to stay the substantive proceedings pending appeal was not granted. The Bank did not take any part in this appeal before this court. It appears that it does not intend to pursue its appeal against the refusal of the court to rule in its favour on the preliminary objection, because it has not filed a record of appeal. The Bank had contended that Mr. Singh's remedy did not lie in public law.

4. The application for leave to be heard in opposition was supported by the affidavit of Sati Jagmohan. In her affidavit, this deponent extracted parts of Mr. Singh's affidavit in support of the

substantive application, which she contended made serious allegations impugning the conduct of the appellants. She further deposed that if the allegations were left unanswered, it might be concluded that the appellants had not acted in good faith and as a result their reputation and character would be damaged.

The essence of Mr. Singh's complaint in the substantive application was that his dismissal was the Bank's response to his (Singh's) expressed concerns about a board decision to invest the sum of \$4.5 million dollars with an Insurance Company with which Mr. Paul was employed. I do not think that a detailed exposition of the facts is necessary.

5. The trial judge in her reasons pointed out that throughout the hearing, Mr. Ramkisson, who appeared for the appellants sought leave for them to intervene as parties to the suit (Order 53 Rule 4 (2)) and had not argued that they be heard in opposition to the motion (Order 53 Rule 5 (7)).

The conventional approach to applications of this nature has always been flexible in that in most instances, parties are joined by consent, with little regard at the point of entry to costs implications or to locus standi in the event of an appeal. This case demonstrates however, that intervention ought not to be permitted as a matter of course. Stricter adherence to the provisions of the

rules is appropriate. It is a prerequisite that an applicant furnish the court with sufficient information in support of his application.

6. **The law**

These are the relevant provisions to be construed.

Order 53 rule (4) 2 provides -

“The notice of motion or summons shall be served on all persons directly affected and where it relates to any proceedings in or before a court and the object of the application is either to compel the court or an officer of the court to do any act in relation to the proceedings or to quash them or any order made therein; the notice or summons shall also be served on the clerk - or other appropriate officer of the court and, where any objection to the conduct of the judge or other person presiding over such court is to be made, on the judge or other person.”

A person directly affected must be served and is automatically a party to the suit.

Order 53 Rule 9(1) (now rule 5 (7)) provides:

“On the hearing of any motion or summons under rule 4, any person who desires to be heard in opposition to the motion or summons and appear to the Court to be a proper person to be heard, shall be heard, notwithstanding that he has not been served with notice of the motion or the summons.”

A person who enters under this rule does not become a party to the suit. The applicant though not directly affected must however meet the requirement of being **“a proper person to be heard.”**

Section 14 of the Judicial Review Act 2000 provides:

“(1) Any person who has an interest in a decision which is the subject of an application for judicial review may apply to the Court to be made a party to the proceedings.

(2) The Court may –

- (a) grant the application either unconditionally or subject to such terms and condition as it thinks just;**
- (b) refuse the application; or**
- (c) refuse the application but allow the person to make written or oral submissions at the hearing.”**

The court has a wide discretion under this section and a range of options lies at its disposal, one of which is that the applicant may be made a party to the suit or may be given the opportunity to make submissions, although the application is refused.

As I have indicated, counsel 's arguments in the court below, were restricted to the first rule mentioned. (Order 53 Rule 4 (2))

7. **Findings of the trial judge**

The trial judge held that there are two categories of persons who may be heard in judicial review proceedings- persons who are directly affected and persons who desire to be heard in opposition.

I hasten to add that, Rule 5 (7) and section 14 must be read together, but I also note that a person may have an interest in a decision but may, or may not, wish to oppose the decision. In England, it is not unusual for public interest bodies to seek to enter a proceeding for judicial review, with the object of supporting the litigation. It is not necessary for me to set out examples of cases which may justify a court in permitting intervention as a party or otherwise. Suffice it to say that there are many such instances and the circumstances in which it is done are myriad and diverse.

8. I think that in order to construe the expression “***directly affected***” it is necessary to begin with first principles. Judicial review concerns the primary method by which courts exercise supervisory jurisdiction over public bodies to ensure that they observe the principles of public law.

A person who is “***directly affected***” becomes a party to the proceedings. He is entitled to adduce evidence, to appear at and make interlocutory applications and to appear at the hearings and make representations. (See **Lewis on Judicial Remedies in Public Law para 9-083**).

In *R v Officer Service ex parte Muldoon [1996] 1 WLR 1103*, a Housing Authority's refusal to pay a benefit was challenged. The Secretary of State had made the relevant Regulations determining eligibility for benefits. If the challenge were successful, the Secretary of State would be affected financially by reason of his obligation to pay sums to the Authority. It was held that he was not '**directly affected.**' He was merely indirectly affected by reason of his collateral obligation to pay a subsidy.

9. In the case of *R v Lord Saville of Newdigate 1999 EWHC Admin 103*, four soldiers who were scheduled to give evidence before a Tribunal, sought Judicial Review of the decision of the Tribunal not to provide them with anonymity. The application had been supported by the Ministry of Defence. The victims' families applied to be joined as a respondent. It was held that although the families had an interest in the proceedings, they were not directly affected by the decision. The application was dismissed, but they were permitted to put in evidence should they wish to do so, since they were interested parties and proper persons to be heard. (See also *Milk Marque Ltd. v Monopolies and Mergers Commission CO/3431/99*).

The phrase '**directly affected**' therefore connotes that the third party is directly affected simply by the decision, without the intervention of any intermediate agency.

I shall now examine the substance of each case.

10. **Mr. Alleyne's case**

One of allegations made against this appellant was that he instructed the Corporate Secretary to change the draft minutes of the meeting at which the actual decision was taken to place the investment with the Insurance Company - a single citation will suffice for the purposes of this appeal.

In the substantive matter, Mr. Alleyne filed an affidavit in opposition to the motion. He was cross-examined and submissions were made by counsel for the Bank. He was given the opportunity to put his own case and to contradict any relevant statement prejudicial to his view. When Dr. Denbow was asked by this court to indicate what matters the appellant wished to put forward, Senior Counsel informed the court that he had not yet considered that question. In all the circumstances it can confidently be said that Mr. Alleyne suffered no prejudice, and that there was no other matter he wished to bring to the court's attention.

11. **Ms. Jagmohan's case**

This application can be dealt with readily. While the allegation was that she had been instructed to change the draft minutes, there was no allegation that she did. This therefore leads to the questions –what aspect of her character has been tarnished?

And what does the appellant wish to advance to a tribunal that would assist it in determining the issues?

12. **Ms. Rawlins's case**

This appellant was one of the members of the Investment Committee. Like Ms. Jagmohan, no imputations were made against this appellant's character.

13. **Mr. Paul's case**

This case is somewhat different. Mr. Paul, in addition to his post as a director of the Board, was an employee of the Insurance Company involved. The allegation was that a meeting of the Board held on the 3rd October 2002, Mr. Paul did not declare a conflict of interest; that despite the fact that Mr. Paul knew that the Auditor General had on a previous occasion expressed concerns about the investment, he had carried it to completion, even though a legal opinion had been obtained advising of its illegality. He had also visited the Bank demanding the cheque for \$4.5 million dollars for the investment.

As a Director of the Bank, he would have been involved in any decision to identify persons who would make affidavits in reply to Mr. Singh's, with the object of placing all the relevant information before the court. Having regard to the law's insistence that public bodies assist the court in the determination of public law matters it

would be surprising if any decision was taken by the Bank in defending the matter which would have been inimical to Mr. Paul's interest or indeed, to any of the appellants. What is more, there is nothing in the affidavit of Ms. Jagmohan which suggests, even remotely, that the interests of the Bank and Mr. Paul are in any conflict. The fact that no affidavit had been filed by Mr. Paul in the substantive matter must have been a result of a decision which Mr. Paul took together with the Bank's legal advisers. It is reasonable to draw the inference that there is nothing more that Mr. Paul wished to advance on his own behalf or to challenge as a result of the evidence adduced by Mr. Singh.

14. While I take cognisance of the provisions of Section 99 of the Companies Act 1995 by which directors are duty bound to act honestly and in good faith, the law does provide appropriate remedies in private law if a citizen considers that he has been defamed.

The primary objective of intervention or entry in order to present argument in the substantive application, ought therefore to be for the purpose of assisting the court in determining the issues.

15. **Conclusions**

I therefore conclude as follows:

- (1) the fact that an applicant has close ties or direct involvement with the public authority whose decision is challenged does not automatically bring that person within the purview of Order 53 rule 4(2), rule 5(7) or section 14;
- (2) the appellants Sita Jagmohan and Jacqueline Rawlins have pointed to no facts to support their case that their good character has been impugned;
- (3) the appellant Alleyne was not a person “**directly affected**” within the meaning of the rule. If indeed, he were a person with an “**interest in the decision,**” he was in fact heard. There was compliance with the audi alteram partem rule;
- (4) the appellant Paul chose not to file an affidavit in the substantive proceeding and he has not complained that he has suffered any prejudice;
- (5) none of the appellants has demonstrated that the Bank has adopted a position which is conflict with his or her own.
- (6) the trial judge cannot be faulted when, in the exercise of her discretion, she refused the application.

The appeals are therefore dismissed, with costs to be paid by the appellants to the respondent.

Margot Warner,
Justice of Appeal