**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE COURT OF APPEAL**

**CV2005-00353**

**CA P-148 OF 2014**

**BETWEEN**

**TRINIDAD AGRO SUPPLIES SERVICES LIMITED**

**APPELLANT**

**AND**

**CARONI (1975) LIMITED**

**FIRST RESPONDENT**

**THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**

**SECOND RESPONDENT**

**WAYNE INNISS**

**THIRD RESPONDENT**

**PANEL:** **Bereaux, J.A.**
**Moosai, J.A.**
**Jones, J. A.**

**APPEARANCES:** **Mrs. L. Maharaj SC and Ms. O. Clarke holding for Mr. P. Deonarine for the Appellant**
**Mr. R Martineau SC and Ms. A Rahaman instructed by Ms. J Troja for the First Respondent**

**DATE OF DELIVERY: 9th September, 2020**

**I have read the judgment of Jones J.A. and I agree.**

**Bereaux, J.A.**
**Justice of Appeal**

**I too agree.**

**Moosai, J.A**
**Justice of Appeal**

**JUDGMENT**

**Delivered by Jones J.A.**

1. The Appellant, Trinidad Agro Supplies Services Limited, appeals the decision of the Trial Judge dismissing its claim for damages for trespass and breach of contract and other consequential relief against the Respondents, Caroni (1975) Ltd (Caroni); the Attorney –General (the AG) and Wayne Innis (Innis) (collectively referred to as the Respondents). Initially the claim was also brought against William Washington (Washington) but was discontinued against him. Washington is now deceased. Only Caroni has defended the appeal.

2. As pleaded the claim against the AG is brought pursuant to the **State Liabilities and Proceedings Act Chap 8:02** with respect to the actions of Innis on behalf of the Ministry of Agriculture Land and Marine Resources (the Ministry), as the servants and/or agents of Caroni. As against the AG and Innis the Appellant also seeks damages for breach of warranty of authority.

3. By way of background Caroni is a limited liability company wholly owned by the Government of Trinidad and Tobago. In or around 2003,

in an attempt to restructure the sugar industry, the Government of Trinidad and Tobago established the Sugar Manufacturing Company Ltd. (SMCL), a wholly owned State enterprise, for the purpose of undertaking the sugar processing and refining business previously conducted by Caroni. Initially a transition team was established by the Government to ensure continued production of sugar cane to SMCL. Thereafter, in 2004, the transition team was replaced by the Sugar Industry Team (SIT) established by the Ministry to ensure the supply of sugar cane to SMCL.

4. In August 2003, with the exception of a small management structure, Caroni ceased operation. Despite this there remained acres of lands owned by Caroni that were still cultivated in sugar cane. In order to ensure that the annual production target was met the Government agreed that 12,000 acres of Caroni lands would be made available to private contractors for the harvesting of the sugar cane on the lands. In or around September 2003 the Appellant entered into a contract with SMCL and was allowed to occupy land owned by Caroni (the land) for the purpose of maintaining and harvesting sugar cane for the 2004 and 2005 sugar crop. It is not in dispute that the crop period extends until June of the relevant year.

5. On June 1, 2006 by virtue of the Caroni (1975) and Orange Grove National Company Ltd (Divestment) Act No. 25 of 2005 all lands held by Caroni were divested to the Government of Trinidad and Tobago.

6. Given the manner in which this appeal was presented. in order to understand the submissions and put the judge's findings into context, it is important to identify the cases presented by the various parties on their statements of case as further background.

7. The Appellant alleges that in entering the contract with it SMCL was acting as the agent of Caroni. It also alleges that the Ministry, through Innis, also acted as agent for Caroni. It claims that as a result of

representations made by Innis the contract was extended at least to the end of the 2006 crop, that is, June 2006. The Appellant contends that in August 2005, after the 2005 crop had been harvested and the lands cultivated in preparation for the 2006 crop, Caroni entered the land and in September 2005 bulldozed the land destroying the crops thereon.

8. Caroni, on the other hand, denies any participation in the contractual arrangements between SMCL and the Appellant or that it entered the land in August or September 2005. It denies that SMCL, Innis or the Ministry acted on its behalf. According to Caroni as a result of instructions given to it by the Ministry it allowed the Appellant the use of the land. Its case is that the Appellant's sole entitlement in relation to the land was for the purpose of harvesting the sugar cane on the said lands for the years 2004 and 2005 only. Accordingly by letter dated 21st October 2005 it sought possession of the lands from the Appellants. The Judge found that Caroni entered the land in August and September 2005. Caroni has not appealed this finding.

9. The AG denies that the Ministry was ever the servant or agent of Caroni or that it entered into any contract with the Appellant. It further denies that Innis was employed by it or that the members of SIT acted as the servants or agents of the Ministry. According to the Ministry SIT was a purely advisory and facilitative team of persons familiar with the working of the sugar industry.

10. Innis denies that, in his personal capacity or otherwise, he contracted with the Appellant to carry out the harvesting of sugar cane on the land. He also denies being or holding himself out to be an agent of Caroni at any time after December 2003. He says that insofar as he dealt with the Appellant in relation to the land it was in his capacity as a member of the Transitional Team between August 2003 and December 31 2003 and in his capacity as a member of SIT with the full authority of SIT and the Ministry from January 1 2004. He admits preparing a recommendation

for sugar cane production for the years 2005 and 2006 and avers that on the basis of the Chairman of SIT's advice to him that his recommendation had been accepted, in his capacity as CEO of SIT, he advised the Appellant to commence preparation for the 2006 crop.

11. Evidence on behalf of the Appellant was given by its principals, Praimnath Sawh, Ralph Sawh, and, an employee, Ranjit Boodoosingh. Evidence for Caroni was given by Deosaran Jagroo, its Chief Executive Officer, and Clarence Rambharat, who was, in 2003 and for part of 2004, Caroni's Corporate Secretary and Corporate Secretary of SMCL. The AG led no evidence in support of its case and Innis gave evidence on his own behalf. At the time of the trial Innis was no longer represented by Attorneys at law.

12. At the hearing of the appeal the Appellant framed the dispute between the parties as being whether the Appellant had been authorized to continue to occupy the lands after the end of the 2005 crop ,which ended in June 2005, for the purpose of cultivating, maintaining and harvesting the cane crop from January to June 2006. And, if it had been so authorized, from whom had the Appellant obtained possession.

13. They submit that if the Appellant was authorized by any or all of the Respondents then the acts of Caroni from August 2005 in destroying the Appellant's sugar cane would amount to a trespass and a breach of the Appellant's rights entitling the Appellant to claim damages from all or some of the Respondents. If, on the other hand, the Appellant was not authorised to be on the land after June 2005 then, as a trespasser, the Appellant would only be able to recover damages for any loss it suffered by reason of Caroni requiring it to demit occupation without giving them reasonable notice or time to remove their belongings.

14. While I agree with the Appellant that the essence of the dispute concerns the existence of an agreement made with it for the cultivation of the land

beyond the 2005 crop the dispute is slightly wider than as identified by the Appellant. Also in dispute is whether, at all material times, SMCL, Innis and the Ministry were acting as the agents, or held themselves out to be the agents, of Caroni. The case of the Appellant, founded in trespass and breach of contract, is predicated on a determination that SMCL, Innis and the Ministry were acting on behalf of Caroni or alternatively that Innis and the AG are liable to it in damages for breach of warranty of authority as a result of Innis and the Ministry holding themselves out as having such authority.

15. Ultimately the crux of the case is whether Caroni, as the owner of the land, had permitted the Appellant to remain on the land past the 2005 crop. The Judge identified some 9 issues for his determination. These issues can be more succinctly identified as follows:

    (i) with respect to the Appellant's contractual arrangements for the maintenance and harvesting of the sugar cane on the land were SMCL, Innis and the Ministry or any of them acting on behalf of Caroni;

    (ii) did Innis and/or the Ministry advise the Appellant that it would be permitted to maintain and harvest the sugar cane on the land for the 2006 crop and, if so, did they have the authority to permit the Appellant to occupy the land for the 2006 crop;

    (iii) if they did not have such authority did they, or either of them, hold themselves out as having such authority;

    (iv) in the circumstances to what relief, if any, is the Appellant entitled.

16. At the trial the Appellant relied heavily on (a) a representation made by Innis at a meeting held in September 2003 to the effect that arrangements would be put in place for a long term contract for a period of four to five years; (b) the grant of facilities to it by Caroni in addition to the use of the land; (c) a statement in a letter dated November 29, 2004 from SIT advising that the contract would be extended for three

years and (d) advice given to the Appellant's principal, Praimnath Sawh (Sawh), by Innis to the effect that the Chairman of SIT had given permission for cane production for the 2005 and 2006 crop and that he should go ahead and prepare the crop.

17. Ultimately the Judge found against the Appellant on each of the issues. With respect to the contractual arrangements for the maintenance and harvesting of the sugar cane the Judge rejected the Appellant's position that SMCL, Innis or the Ministry were acting as an agent or agents for Caroni. He found that the Appellant was made aware of the Government's plan to restructure the sugar industry and that Caroni had ceased the cultivation and processing of sugar cane on or about July 2003. He found that the Appellant had been informed that there was a shortfall of supply of sugar cane to the Mill and that the Government had taken a decision to make available to harvesting contractors (the contractors) lands of Caroni for cultivating and harvesting of sugar cane to make up the deficit and that SMCL had been incorporated for the purpose of processing and refining sugar cane harvested by sugar cane farmers and contractors.

18. With respect to the representations made by Innis at the meeting of September 2003 the Judge rejected the evidence of Sawh and accepted the evidence of Innis that at the meeting Sawh was told that the Appellant could only be given a year to year contract because of Caroni's obligation to distribute lands to its former workers. With respect to the grant of additional facilities by Caroni the Judge was of the opinion that this was a facet of the implied bare licence granted by Caroni to the Appellant in order to allow it to carry out its contractual responsibilities to SMCL.

19. As to the letter of November 29 the Judge was of the opinion that the letter was not written with the knowledge of Caroni or the Ministry, could not be construed as meaning that SIT granted an extension of the

Appellant's contract for three years from the date of the letter and, in any event, did not grant the Appellant any contractual right to remain in occupation of Caroni's land.

20. With respect to the advice given to Sawh by Innis that approval had been granted by the Chairman of SIT for it to go ahead and prepare the crop for 2006 the Judge found that at that time Innis was no longer an employee or an officer of Caroni and there was no evidence that Caroni agreed with the Appellant to permit it to continue in the occupation of the land beyond the end of the 2005 crop. Further he was of the opinion that the document relied on by the Appellant to establish that such approval had been given to Innis was to be construed to mean that recommendations were being made only to the 2005 crop and not the 2006 crop and accordingly the approval granted by SIT was only with respect to the 2005 crop.

21. The Judge concluded that, in entering into the contract with the Appellant, SMCL was acting in its own right and not as agent for Caroni. He determined that neither the Ministry nor Innis was acting as agent for Caroni. He was of the opinion that the course of dealings between the Appellant and SMCL resulted in an implied extension of the contract between them for the year 2005 only and that, with respect to the 2004 and 2005 crop, Caroni had impliedly permitted the Appellant to enter onto the land. This, the Judge determined, amounted to a bare license and not a contract between the Appellant and Caroni.

22. In addition the Judge found that there was no agreement or permission granted by either SMCL or Caroni for the Appellant to remain in the occupation of the land for the 2006 crop and that accordingly when Caroni entered the land in August 2005 it was not in breach of contract nor did it trespass on the land. He found that neither Caroni, nor anyone acting on its behalf, did any act, gave any assurance or made any

representation that would entitle the Appellant to enforce any estoppel against Caroni.

23. With respect to the allegation of breach of warranty of authority by Innis and the Ministry the Judge found that there was no evidence that either held themself out to be acting on behalf of Caroni. Further the letter of June 3, 2004 outlined the extent of Innis' authority and the Appellant ought to have been aware of such limits. In the circumstances he dismissed the Appellant's case and ordered that they pay the Respondents' costs including the costs of the amended statement of case.

24. The Appellant has appealed both the Judge's dismissal of the case and his order that it pay the costs of the amended statement of case. In its written submissions, in addition to complaints about specific findings of the Judge, the Appellant makes two general complaints about the manner in which the Judge conducted the trial. It alleges that the Judge descended into the litigation arena beyond what was necessary for clarification and that the delay in the delivery of the judgment for three years was inordinately long and as such, it submits, the Judge was unable to appreciate the manner in which the witnesses gave their evidence. The other challenges to the judgment can be placed into two broad categories: that the Judge erred in his findings of fact and that the Judge made errors of law or errors of mixed law and fact.

**Challenges to the conduct of the Judge**

25. With respect to both of these challenges what is being attacked here is not any finding of the Judge that arose as a result of this improper behavior or any bias, actual or presumed, demonstrated by the Judge in the conduct of the case evidenced by this behavior. Rather these are standalone challenges on which the Appellant relies in their own right to entitle it to have the judgment set aside. The common question for us arising from these two challenges is not whether the Judge acted

improperly but whether they can properly, and without more, be challenges to the Judge's determinations in this case.

26. With respect to the complaint that during the course of the hearing the Judge descended into the litigation arena the Appellant alleges that the Judge conducted lengthy and vigorous cross-examination of its main witness Sawh, as well as, Caroni's witness Clarence Rambharat (Rambharat) and Innis. These witnesses were the main protagonists in the dispute and the success or failure of the case presented by each of the parties was dependent on the Judge's assessment of them and their evidence.

27. Factually it is not in dispute the Judge questioned these witnesses at the end of their cross-examination or re-examination. The Appellant does not dispute that the Judge was entitled to do so it merely submits that the Judge's questioning was excessive.

28. In support of its allegation that the action of the Judge was improper the Appellant relies on two cases, **Yuill v Yuill [1945] P 15** and **Lennox v Arbor Memorial Services Inc. [2001] 56 OR No. 4725.** There can be no challenge to the position taken in both of these cases on the question of the inappropriateness of a judge overstepping the limits imposed when questioning a witness. However the position adopted in the cases is distinguishable from that taken by the Appellant in the appeal before us. In neither of these cases was the issue at hand simply the behavior of the judge in descending into the litigation arena. In both cases the statements relied on by the Appellant were made obiter in the course of the court's determination on specific issues on appeal.

29. In **Yuill** the Appellant relies on the following statement made by Lord Greene in delivering the judgment of the court:

> "There is one further consideration which is particularly relevant to the present case. A judge who observes the demeanour of the

witnesses while they are being examined by counsel has from his detached position a much more favourable opportunity of forming a just appreciation than a judge who himself conducts the examination. If he takes the latter course he, so to speak, descends into the arena and is liable to have his vision clouded by the dust of the conflict. Unconsciously he deprives himself of the advantage of calm and dispassionate observation. It is further to be remarked, as everyone who has had experience of these matters knows, that the demeanour of a witness is apt to be very different when he is being questioned by the judge from what it is when he is being questioned by counsel, particularly when the judge's examination is as it was in the present case, prolonged and covers practically the whole of the crucial matters which are in issue."

These were comments made in the course of the court considering whether the judge's dismissal of the evidence of two witnesses based on their demeanour was justified.

30. Similarly in **Lennox**, the specific issue under consideration was whether the judge interfered in the conduct of the trial to such an extent that the image of judicial impartiality was destroyed thereby denying the appellant a fair trial. In **Lennox** the court stated:

"[13] A trial judge is expected and entitled to take reasonable steps to ensure that the issues are clear, that evidence is presented in an organized and efficient manner and that the trial runs smoothly and proceeds in a timely manner. Trial judges are also entitled to intervene in the trial where there is need for clarification. However, there is a point at which judicial "intervention becomes interference and is improper": Majcenic v. Natale (1976), [1968] 1 O.R. 189 at p. 203, 66 D.L.R. (2d) 50 at p.64 (C.A.). Unfortunately, upon a review of the entire transcript, it appears that is what occurred in this case."

31. In **Lennox** the interventions under attack were only directed towards the Appellant. Included in the objectionable behavior was the claim that the judge redirected lines of questioning that the appellant's counsel had sought to pursue as unhelpful and strategically ill-advised; he engaged in extensive cross-examination of the appellant's witnesses and challenged their credibility; and he required the production of a document not part of the pleadings and not part of the case as prepared and conducted by the appellant's attorney.

32. In the appeal before us the Appellant does not allege that the Judge's behavior in conducting intense cross-examination was evidence of a bias directed towards it. Indeed the complaint is that the Judge's "lengthy and vigorous cross-examination" was also directed towards the other parties in the case. As formulated the submissions seem to be focused, not on the misbehavior of the Judge but rather, on the failure of the Judge to rely on evidence elicited by him favourable to Appellant.

33. While a Judge's manner in eliciting further evidence from a witness may, in an appropriate case, be the subject of a successful challenge to his findings it ought to be made in the context of a challenge to a specific finding made by the judge. The Appellant has failed to point to any finding of the Judge rendered untenable by the Judge's questioning of the witness or witnesses. As a standalone challenge therefore this ground is unsupportable and must fail.

34. The position taken by the Appellant on the Judge's delay is similar. The delay between the hearing of the evidence and the delivery of the judgment the delay was approximately two years and six months from the close of submissions. This was an inordinate delay. The relevant question however is whether this was a delay that has the effect of vitiating the Judge's determinations.

35. The Appellant relies on the decision of the Privy Council in the case of **Ramnarine v Ramnarine [2013] UKPC 27.** Here the overall delay, 16 years, was more egregious. This was a case dealing with matrimonial relief where the relevant legislation required a consideration of the parties' current circumstances. Accordingly a delay of four years from the filing of the claim to the date of hearing and a further four years from the conclusion of the hearing to the delivery of the judgment was inimical to such a consideration.

36. In **Ramnarine** Lord Wilson reading the judgment of the Board stated:

> "**[19]** The Board returns to the startling feature of this appeal, being not only the overall delay of over 16 years in the final determination of these proceedings but also, and in particular, the delay of four years between the conclusion of the hearing before the judge and the oral delivery of his judgment. The decision of the Court of Appeal in Lalla v Lalla, Civil Appeal No 102 of 2003, concerned a challenge to a decision that a will was valid. One of the grounds of appeal was that the judge had delivered judgment 16 months after the conclusion of the hearing. Mendonca JA, in giving a judgment with which Hamel-Smith and Warner JJA agreed, said:
>
> > "73 Without in any way seeking to justify the delay, I may note that the Courts in this jurisdiction are subject to a very heavy workload with too few resources to handle it. In the not too distant past there was an embarrassing delay in the time a matter would take to be tired. While significant inroads have been made in reducing the time to trial, there is still a delay in the system. The result is that 'writing time' for Judges is viewed generally as an unaffordable luxury, and Judges start new matters right after the completion of the hearing of one. The consequence is that in some cases, judgments do take undesirably long periods to be written. There is no denying that this was the case here . . . . . 16 months is excessive."

37. In categorizing the delay in delivery of the judgment as gross the Board was of the opinion that there was no significant consequential error in the reasoning in the judgment. Referring to its earlier decision in the case of **Cobham v Frett [2001] 1 WLR 1775** and the decision in **Lalla,** referred to by him in the above quotation, Lord Wilson stated:

> "In the Cobham case Lord Scott proceeded to state, at p 1783, 1784:
>
> > "In their Lordships' opinion, if excessive delay, and they agree that 12 months would normally justify that description, is to be relied on in attacking a judgment, a fair case must be shown for believing that the judgment contains errors that are probably, or even possibly, attributable to the delay. The appellate court must be satisfied that the judgment is not safe and that to allow it to stand would be unfair to the Complainant."
>
> In the Lalla case Mendonca JA, again at para 73, proceeded to cite Lord Scott's words and, at paras 74 to 79, he explained that, in his view, the delay of 16 months had not led to error and that the appeal should be dismissed.
>
> **[22]** In the present case, gross though was the judge's delay in its delivery, the Board fails to find significant consequential error in the reasoning of his judgment."

38. In the appeal before us, as with its complaint of the Judge's cross-examination of the witnesses, the Appellant fails to identify any specific error made by the Judge as a result of the delay. It simply alleges that "the [Judge] would necessarily have been unable to appreciate the manner in which witnesses' testimonies would have been given and critical instances in cross-examination would no longer be fresh in his mind." In these circumstances while there is merit in the complaint that the delay of two and a half years between the completion of the hearing and the delivery of the judgment was much too long, in the absence of

the delay being linked to specific errors made by the Judge, this too cannot form the basis of a successful challenge to the findings of the Judge.

**Did the Judge err in his findings of fact.**

39. The Appellant contends that the Judge erred (a) in failing to take into consideration the government policy in relation to sugar cane and that Caroni and the AG acted as one to implement this policy; (b) in failing to give proper weight to the evidence of Rambharat; (c) in his treatment of the contemporaneous documents; and (d) in coming to the wrong conclusions with respect to failure of the AG to call witnesses and Innis to produce corroborating evidence.

40. With respect to challenges to a judge's findings of fact it is well known that the powers of review of this Court are limited and are as stated by the Privy Council in the case of **Beacon Insurance Co. Ltd. v Maharaj Bookstore Ltd [2014] UKPC 21**. Broadly speaking the Appellant will have to satisfy us that in arriving at a conclusion of fact the judge was plainly wrong. A judge may be said to be plainly wrong, for example, where there is no evidence to support the finding which the judge made; where the evidence was misunderstood; where the judge failed to analyse the totality of the evidence; or where the finding is one which no reasonable judge would have made.

**Did the judge err in not taking into consideration the evidence on Government policy.**

41. The Appellant makes two submissions in this regard. It submits that (i) the Judge's finding that the AG was not responsible and that the Appellant acted unreasonably in relying on the representation of Innis is contrary to the whole arrangement for the implementation of government policy in relation to sugar cane; and (ii) the Judge failed to

take into consideration that Caroni and the Ministry were implementing government policies and, although separate entities, in doing so were acting as one.

Insofar as the Appellant's written submissions deal with the refusal of the Judge to draw adverse inferences from the failure of the AG to call any witnesses this submission is more properly dealt with later in this judgment when dealing with the Judge's conclusions with respect to the failure of the AG to call witnesses.

42. Insofar as the submission deals with the government policy as identified in the case of **The Trinidad Civil Rights Association v Manning HCA No. 3606 of 2003.** I agree with the submissions of Caroni that the findings of fact made by the judge in that case cannot amount to evidence in the instant case. This was a case of judicial review. The Appellant seeks to rely on statements by the judge that with regard to government policy on sugar, in carrying out the dictates of the Government, Caroni was acting as an agent of the Government. The statements relied on by the Appellant are clearly obiter and, in any event, reliance on them runs contrary to the general policy that decisions in judicial review cannot be relied on to found an estoppel per rem judicatam: **Eco – Power UK Ltd. v Transport for London [2010] EWHC 1683 (Admin) at paragraph 19** and **R v Secretary of State for Environment ex p. Hackney London Borough Council [1984] 1 WLR 592 at 602A-B.**

43. In any event in its oral submissions before us the Appellant submits that it is not relying on the Trinidad Civil Rights Association case for this purpose but simply because the case demonstrates that by the year 2007 lands had not as yet been distributed by Caroni or the Ministry to Caroni's ex-workers. In the circumstances the comments or determinations made by the judge in the Trinidad Civil Rights case are not relevant or applicable.

44. The Appellant further submits that the evidence reveals that the Respondents all had a common awareness that the Government had taken a decision to restructure the sugar industry and were working in tandem as a unit to effect this policy change. It submits that implicit in each of the Respondent's pleading was the tacit awareness of the overall policy decision of the Government and their inter-related roles in helping to achieve it. Further, it submits, upon the cessation of trading operations of Caroni in August 2003 the responsibility for discharging extension and support services to the cane farming sector reverted to the Ministry.

45. Given the case pleaded by the Appellant it is difficult to understand the relevance of these submissions. The case as pleaded by the Appellant was not that the Respondents all acted as agents for the Government in the discharge of Government policy but rather that the SMCL, Innis and the Ministry were all acting as agents for Caroni.

46. It is clear that Caroni, SMCL and the Ministry each had a role to play in effecting the government policy on the sugar industry. In this regard, the evidence is that, the role of Caroni was to permit access to its land for the purpose of the maintenance and harvesting of the sugar cane on its land. The fact that the Appellant accepts that the responsibility for discharging extension and support services devolved onto the Ministry when Caroni stopped trading not only suggests that Caroni had a limited role in this regard but also does not lend support for its position that the Ministry was acting as the agent of Caroni.

47. Similarly it does not follow that the fact that SMCL, Caroni, Innis and the Ministry were aware of the government policy for the restructuring and each had a role to play in it meant that they were acting as one with respect to that policy nor that, as submitted by the Appellant, the knowledge of one was likely to be the knowledge of the other. More to

the point, even if this were so, this does not mean that it is open to conclude from this that Innis and the Ministry were acting as agents of Caroni.

48. As far as government policy was concerned there were two aspects of it relevant to the dispute between the parties: (i) did the government policy mandate SMCL, Innis or the Ministry to act on behalf of Caroni; and (ii) insofar as the policy applied to the contractual arrangements between SMCL and the Appellant did this policy extend to the 2006 sugar crop. There was no evidence led by the Appellant with respect to (i) and with regard to (ii) this was raised and dealt with by the Judge.

49. In the circumstances there is no merit in the contention that the Judge failed to take into consideration the government policy or the role of the Respondents in this regard.

**Did the Judge fail to give proper consideration to the evidence of Rambharat.**

50. The Appellant submits that the Judge failed to consider or analyse the evidence of Rambharat insofar as it corroborated the evidence of the Appellant and/or Innis. The evidence of the Appellant and/or Innis that the Appellant says was corroborated by Rambharat and ignored by the Judge was:

    (i) that Caroni was a party to the contractual arrangement between the Appellants and SMCL;

    (ii) the breach of contract by Caroni and its trespass to the Appellant's crops;

    (iii) the Appellant's contention that in his post at SIT Innis was an agent of the Ministry; and

    (iv) that there was Cabinet approval for the contractors going forward for the 2005-2006 crop;

51. With respect to (i) the Appellant relies on the following evidence of Rambharat as corroborating its evidence that Caroni was a party to the contractual arrangement between them and SMCL:

> "…….. [The Appellant] was permitted to occupy and use exchange pen yard and buildings. Letter was based on discussions between SMCL and Caroni. Mr. Sawh wrote to chairman of SMCL and asked for use of garage facilities. I responded not on behalf of SMCL but on behalf of Caroni. I recognized that [the Appellant] had arrangement with SMCL. Caroni was saying that as part of arrangement. Caroni was saying that as part of arrangement they would be permitted. I was allowing use and occupation of pen yard and building for 2003 and 2004……."

52. Contrary to the submission of the Appellant all this evidence does is to confirm that Caroni was aware that the Appellant had an arrangement with SMCL and in that regard it was prepared to permit the Appellant the use of the pen yard and building to facilitate that arrangement. This evidence is consistent with the finding of the Judge that Caroni had granted the Appellant a bare license to enter upon its lands, including the Exchange Pen yard and buildings, to carry out its contractual obligations to SMCL. The evidence of Rambharat relied on by the Appellant does not support its submission.

53. In any event the Appellant gives no evidence of Caroni being a party to the contract. The Appellant asks the Judge to find that Caroni was a party to the contractual arrangements based on an assumption made by Sawh and his brother that at the meeting of September 2003 that Rambharat and Innis were representing Caroni and because Caroni allowed them to enter into the occupation of the land and the exchange pen yard and buildings for the purpose of the contract and sold them fertilizer. These were simply inferences that the judge was being asked to make from the evidence presented.

54. With respect to (ii) the Appellant relies on Rambharat's evidence that the crop cycle ended in June as corroborating the Appellant's evidence of a breach of contract by Caroni and its trespass to the crops in August 2005 thereby destroying them after 75% of the preparatory work had been put in. There was no dispute before the Judge that the crop cycle ended in June. The mere fact that the crop cycle ended in June 2005 however does not corroborate the Appellant's evidence as to Caroni's breach of contract or its trespass in August 2005 or its evidence that 75% of the preparatory work for the 2006 crop had been done.

55. With respect to (iii) the Judge accepted that in 2004/2005 Innis was a member of SIT which, the Judge found, had been established by the Ministry. This accords with all the evidence in the case. What the Judge found however was that in September 2003 Innis was not acting on behalf of the Ministry but rather was a member of the Transition team. This was a finding that the Judge was entitled to make on the evidence before him. This was consistent with the evidence of both Jagroo and Innis. The Judge was entitled to accept this evidence.

56. With respect to (iv) the Appellant relies on the evidence of Rambharat when he states:

> "I have seen documents which support what [I] said. I can't be very specific about it. I have seen Cabinet minutes and correspondence between Ministry and SMCL …. Cabinet minutes had to do with funding of sugar industry through the MOA and there would be correspondence between MOA and SMCL on what support the Ministry would give the sugar industry …."

57. The Appellant submits that this was critical supporting evidence in relation to Innis' contention that there was Cabinet approval for the contractors going forward for the 2005-2006 crop period. The Appellant has misread the evidence. The evidence referred to above was

evidence adduced in cross-examination of Rambharat by the AG. This evidence was in respect of the letter of offer from the Appellant to SMCL and the letter accepting the offer signed by Rambharat on behalf of SMCL in 2004. The subject of the cross-examination was which of the areas identified by the letter was the responsibility of the Ministry. In particular Rambharat was being questioned on the basis for his identifying the areas that he said were the Ministry's responsibility. It is in this regard that this statement was made. The reference to Cabinet minutes here was a general reference and had nothing to do with Cabinet approval for the contractors going forward for the 2005-2006 crop period as submitted by the Appellant.

58. In these circumstances there is also no merit in this submission. The Appellant has failed to establish that the Judge erred in his determination or that he wrongly failed to take Rambharat's evidence into consideration.

**Did the judge err in his treatment of the contemporaneous documents.**

59. The Appellant refers to eight letters that it says was critical to its case. It submits that these documents corroborated the version of events put forward by them and Innis and made Caroni's and the AG's evidence highly improbable. It contends that the Judge failed to give these documents the weight they deserved.

60. The Appellant further submits that the Judge failed to apply the law in relation to these documents. In this regard it refers to the cases of **Ramsaran v Hoodan (unreported) Privy Council App. No 5 of 1997; Attorney General and Another v Kalicklal Bhooplal Samlal 36 W.I R 382; Grace Shipping Inc. and another v CF Sharp & Co (Malaya) PTE Ltd. [1987] LRC (Comm) 550** and **Horace Reid v Charles and Percival Bain PC No. 36 of 1987.** These cases do not deal specifically

with the treatment of contemporaneous documents rather they identify a judge's responsibility in assessing evidence, including contemporaneous documents, as a whole.

61. The Appellant submits that bearing the principles adduced in these cases in mind the Judge failed to utilize the correct approach in assessing the witnesses and balancing his assessment of the witnesses against the backdrop of the contemporary documents. While this may be a correct statement of the law as espoused by the cases referred to by it has no relevance to the Appellant submission on the failure to give proper weight to the contemporaneous documents. The cases therefore are of no assistance here. In any event for the cases to be of any relevance in this appeal the Appellant must point to specific findings by the Judge that it says run afoul of the principles addressed in the cases. It has not done so.

62. Ultimately the interpretation and weight to be placed on these documents were determinations of fact to be made by the Judge. To succeed here the Appellant must show that the Judge was plainly wrong. It is not sufficient therefore for the Appellant to identify a mistake made by the Judge in the evaluation of the evidence the Appellant must also demonstrate that the mistake was sufficiently material to undermine the conclusions made by the Judge.

63. The documents referred to by the Appellant are:
    a. Letter dated November 29, 2004 from S.I.T indicating that the Appellant's contract would extend for the next three years;
    b. Letter dated February 3, 2005 advising contractors not to undertake future crop operations;
    c. The Appellant's letter of February 28, 2005 to Caroni requesting herbicide;

d. A letter dated May 4, 2005 from S.I.T indicating that the Appellant had been allocated lands for cultivation of Crop 2006.

e. A Report titled **Proposed Sugar Cane Production 2005 to 2006** by Innis;

f. Two letters dated April 12, 2005 by which the [Ministry] forwarded two cheques to Innis for onward transmission to SMCL; and

g. A letter dated September 27, 2005 from S.I.T to [Caroni].

The Appellant makes no submission with respect to this latter letter. In these circumstances it is not necessary to deal with that letter any further.

**(a) The letter of November 29, 2004**

64. The Appellant submits that the Judge failed to pay due regard to this letter. It submits that the Judge ought to have paid more regard to the fact that the letter outlined that the contract would extend for the next three years.

65. This was a letter written on SIT's letterhead and signed by Washington as Manager, Sugarcane Supply. It was a letter intended for the Appellant's bankers. It advises that the Appellant had been contracted to cultivate and harvest sugar cane fields on land owned by Caroni for supply to SMCL. It indicates that the contract would extend for the next three years and that any assistance given to the Appellant would be greatly appreciated.

66. By the time of the hearing Washington had died. Innis however gave evidence that the letter was written at the Appellant's request as an accommodation to be used by it solely for the purpose of getting finance from its bank. This evidence was not challenged by the Appellant.

67. The Judge considered the letter. He found that there was no evidence that the letter was written with the knowledge or authorization of Caroni or the Ministry. He stated that he did not construe the letter to mean that SIT had granted the Appellant an extension of the contract for a further three years nor did it grant the Appellant any contractual or equitable right to remain on Caroni's lands. In coming to this conclusion the Judge cannot be said to be plainly wrong these were conclusions that were available to him on Innis' evidence.

**(b) The letter of February 3 2005,**

68. By this letter SIT advised the Appellant not to undertake any future crop operations after the fields had been harvested in the 2005 crop until further advised. The Judge placed great weight on this letter. He found that it contained a clear and unambiguous instruction to the Appellant by SIT.

69. The Appellant does not challenge this finding but simply says that the Judge failed to give any credence to the fact that that letter did not bring the Appellant's license to an end. There is no allegation by any of the Respondents that this letter brought the Appellant's licence to an end. This was not a case of the termination of a license by a notice. Indeed the dispute between the parties was not whether Caroni properly terminated the licence but whether the license extended past June 2005. In these circumstances that fact that the letter did not bring the license to an end was of no relevance to the issues for determination.

**(c) The letter of February 28, 2005**

70. This letter was a request from the Appellant to the Financial Comptroller of Caroni for the purchase of herbicide. The letter stated that the Appellant was contracted by SMCL to cultivate sugar cane on Caroni

lands and that the herbicide was needed to undertake future crop work. Sawh gave evidence that this was an urgent request by the Appellant for herbicides to use on the 2006 crop. The Judge accepted what was stated in the letter but found that the evidence of Sawh that he was making an urgent purchase of herbicide in late February 2005 for use in the 2006 crop was not credible. Further he was not satisfied that by agreeing to sell herbicide to the Appellant in late February Caroni was entering into a contract to permit the Appellant to continue in occupation of its land for crop 2006. Given the fact that the evidence was the 2005 crop did not end until June 2005 this was a finding that the Judge was entitled to make.

**(d) The letter of May 4, 2005**

71. This was a letter written to the Appellant on a SIT letterhead and signed by Washington as Manager, Sugar Cane Supply. The letter refers to the fact that the Appellant had been allocated land at the Waterloo section to maintain in cane cultivation for crop 2006. The letter advised that some work was being done on some of the fields by the Research and Extension Support Services and requested that no operation was to take place on the land before contacting either that organization or the staff of SIT.

72. The Appellant contends that this letter comprised an acknowledgment that approval had been given for crop 2006. The Judge found that in writing the letter SIT was not acting as agent for Caroni. He was of the opinion that, given the fact that the letter was written before the end of crop 2005, it did not override the clear instructions of the February 3 2005 letter that no further work be undertaken past the 2005 crop nor did it imply that the Appellant had been given approval to be on Caroni's lands beyond June 2005.

73. The Appellant does not here challenge the Judge's finding that SIT was not acting as agent for Caroni rather it submits that the letter was a very clear and unambiguous contemporaneous document which supported the Appellant's case that it had approval to remain on the land for the 2006 crop. In this regard therefore the Appellant simply disagrees with the weight placed on the letter. This was a finding that the Judge was entitled to make based on the existence of two letters written by the same person which on the surface seemed to contradict each other and where the writer was no longer available to give evidence. In these circumstances the Appellant has not demonstrated that in coming to this finding the Judge was plainly wrong.

**(e) The Proposed Sugar Cane production 2005 and 2006 document**

74. This document, prepared by Innis, contained the recommendations that, according to him, had been accepted by the Chairman of SIT. It was this acceptance that he said formed the basis of his telling the Appellant they could prepare the land for the 2006 crop. The Judge considered the contents of the document and concluded that, notwithstanding the title, the recommendations contained in the document dealt with the 2005 crop only. He found that the document should be construed to mean that Innis was making recommendations about the 2005 and not the 2006 crop. The Appellant only submission on this document is that the Judge fell into error when he criticized the document on the basis that Innis had failed to call the Permanent Secretary to corroborate his evidence. This is a submission dealt with later in this judgment when dealing with the Judge's conclusions on the failure of Innis to call evidence.

**(f) The letters dated April 12, 2005**

75. These were letters from the Permanent Secretary of the Ministry to Innis enclosing cheques representing payment by the Ministry to SMCL for the cost of insecticide for use by the contractors. The letters both made

reference to the Ministry's agreement to subsidise the purchase of fertilizer for the sugar cane farmers and contractors in respect of Crop 2005/2006. The Appellant submits that the Judge took no notice of these documents. It submits that the Judge ought to have considered that this was evidence of approval of contractors coming directly from the Ministry for the period 2005/2006 and that it provided implicit approval for the 2006 crop since the letter, written in 2005, made reference to frog hopper control and froghoppers usually impact on crops between July to December.

76. The Judge in fact did consider the letters. He found that these letters provided evidence that Innis was vested with authority to act on behalf of SIT. Insofar as the Appellant submits that the Judge ought to have taken into consideration the fact that froghoppers usually impact on crops between July to December there was no evidence led of this fact.

77. What the Judge failed to consider was that the letters suggested that in April 2005 it was understood by the Ministry that the arrangements for the maintenance and harvesting would continue with respect to the 2005/2006 crop. Given the issues that were for the Judge's determination however this was only relevant to the question of whether the Ministry and or Innis were liable to the Appellant for breach of warranty of authority. Since the Appellant has challenged the Judge's finding that neither the Ministry nor Innis was liable to the Appellant for breach of warranty of authority I will deal with the letters when dealing with that challenge later in this judgment.

78. Save perhaps for this latter point there is also no merit in the Appellant's submissions on this challenge.

**Did the Judge come to the wrong conclusion with respect to the failure of the AG to call witnesses and the failure of Innis to produce corroborating evidence.**

79. Before us the Appellant submits that adverse inferences should have been drawn against the AG as a result of the failure of Trevor Murray (Murray), the Permanent Secretary in the Ministry and the Chairman of SIT at the time, to give evidence. The Appellant submits that Murray could have provided important evidence on whether or not he had approved the Proposed Sugar Cane Production 2005 to 2006 document and whether he had made certain representations to Innis as alleged by him.

80. The law in this regard is clear:

> "(1) In certain circumstances a court may be entitled to draw adverse inferences from the absence or silence of a witness who might be expected to have material evidence to give on an issue in an action.
>
> (2) If a court is willing to draw such inferences that may go to strengthen the evidence adduced on that issue by the other party or to weaken the evidence, if any, adduced by the party who might reasonably have been expected to call the witness.
>
> (3) There must, however, have been some evidence, however weak, adduced by the former on the latter question before the court is entitled to draw the desired inference: in other words, there must be a case to answer on that issue.
>
> (4) If the reason for the witnesses' absence or silence satisfies the court then no such adverse inference may be drawn. If, on the other hand, there is some credible explanation given, even if it is not wholly satisfactory, the potentially detrimental effect of his/her absence or silence may be reduced or nullified." **Per Lord Justice Brooke in Wisniewski v Central Manchester Health Authority** and adopted in this jurisdiction in **Gulf View Medical Centre Ltd and Roopchand v Karen Tesheria Civ. Appeal 087 of 2015.**

81. The question here is not so much whether the Judge ought to have drawn adverse inferences but what were the adverse inferences open to the Judge to draw from this failure. In accordance with **Wisniewski** adverse inferences, in these circumstances, may either go to strengthen the evidence adduced on that issue by the other party or weaken the evidence adduced by the party who ought to have called the witness. The Appellant led no evidence on the point so that the adverse inference was not available to strengthen the Appellant's evidence. The AG led no evidence so the second option also does not arise. This was evidence given by another defendant in the action. The principle of law advanced in **Winiewski** therefore does not apply.

82. The only evidence adduced by the Appellant on the point was what Sawh says he was told by Innis. The evidence of Innis was therefore key in the assessment of this evidence.

83. Innis' evidence in chief was that in 2004 he made certain recommendations in his Proposed Sugar Cane Production 2005 to 2006 document. He says that he was repeatedly informed by Murray that those recommendations had been approved and that the sugar cane lands then under cultivation by the contractors would continue to be cultivated by them. It was on this basis, he says, the Appellant was advised to proceed with its preparation for crops 2005 and 2006.

84. Under cross-examination there was some prevarication by Innis. On one hand he accepted that, although the document purported to refer to both 2005 and 2006, the contents only dealt with production in 2005. On the other hand he says that it was implied that the document also referred to 2006 and that the recommendations were for both 2005 and 2006.

85. The Judge did not totally reject Innis' evidence. He did not reject Innis' evidence that Murray approved the recommendations made in the document. Rather after examining the document the Judge found that

the recommendations made by Innis were only in respect of the 2005 crop.

86. In those circumstances not only does the **Winiewski** principle not apply but given Innis' evidence, the Judge's assessment and his qualified acceptance of that evidence there was no need for the Judge to draw any adverse inferences from the failure of the AG to call witnesses evidence. The Judge as he was entitled to do came to his conclusion on the basis of the documentary evidence presented to him and Innis' evidence.

87. In any event, given the finding of the Judge that neither Innis nor the Ministry was acting on behalf of Caroni, the question of whether Murray gave approval for the Appellant to continue with the 2006 crop was a moot point and again only possibly relevant to the claim for breach of warranty of authority.

88. With regard to the failure of Innis to produce corroborating evidence the Appellant submits that the Judge misapplied the law. It submits that the Judge was wrong in finding that Innis failed to discharge the burden of proof upon him in relation to Cabinet's approval by failing to call Murray or produce any contemporaneous documentary evidence and/or cabinet minute to show such approval. Although couched in terms of an error of law this is a challenge to the Judge's finding of fact.

89. The Appellant has misread the evidence and the Judge's reasoning. The Judge's comment on the failure of Innis to call Murray to give evidence had nothing to do with Cabinet's approval. The question of Cabinet's approval arose on Innis' evidence of statements made by the Acting Prime Minister at a meeting chaired by the Acting Prime Minister held at Whitehall. This was a meeting that had been called, according to Innis, in response to a letter from SIT of September 23, 2005.

90. In assessing Innis' evidence the Judge stated:

> "111. There are several points that should be noted about [Innis'] evidence:
>
> (a) SIT's letter dated [23rd] September 2005 is a request for a deferral. It is consistent with the fact that [Caroni] had made a decision to resume control of its lands in order to begin the distribution to its former workers. Further, there is no evidence that this request was granted by [Caroni];
>
> (b) [Innis'] evidence is inconsistent with his Defence. At paragraph 30 of his Defence, [Innis] alleged that at the meeting held at Whitehall, Senator Lenny Saith informed the persons present at the meeting that "Cabinet had approved the occupation of the said lands by the contractors for a period including 2006 and a decision was taken that, inter alia, the [Appellant] would be permitted to harvest the sugar cane on lands then occupied by it in early 2006 and immediately thereafter would have to vacate the said sugar cane lands to [Caroni]." However, in his witness statement, [Innis] makes no reference to a Cabinet decision but states that at the meeting at Whitehall a decision was taken to permit the contractors, sugar cane farmers and Cane Famers' Associations to harvest their sugar cane in early 2006;
>
> (c) [Innis] failed to produce any documentary evidence, such as minutes of the meeting held at Whitehall or a Cabinet Minute, to prove that there was any such meeting or any such decision;
>
> (d) Even if such a meeting took place and a decision was taken to that effect, there was no evidence that [Caroni] was party to the discussion and the decision. Further, [Innis] was quite clear in his evidence that neither he nor SIT were authorised to act as the servant or agent of [Caroni];

(e) In any event, such a purported decision could not as a matter of law override [Caroni's] legal obligation to distribute the lands in accordance with the terms of an order of the Industrial Court, a court of superior record;

(f) Although [Innis] gave evidence that Mr. Jagroo, the Acting CEO of the First Defendant informed him that the Industrial Court order had been waived, no documentary evidence was produced to prove that there had been any variation, waiver or deferral of the Court's order."

91. The Judge therefore concluded that on a review of the evidence presented the Appellant had failed to prove that there was in existence a contract with Caroni or the AG for the maintenance, cultivation and harvesting of the sugar cane on Caroni's lands for crop 2006. The reference by the Judge to the AG is clearly a reference to SIT and the Ministry.

92. The Appellant submits that by unfairly applying a measuring stick of corroboration to Innis's evidence the Judge erred in not giving it the weight it deserved. As the arbiter of fact however it was for the Judge to assess the evidence and put whatever weight he determined on it given his assessment. Although corroboration was not mandatory it was open to the Judge to look for corroborating evidence to determine which one of the versions, if any, given by Innis was correct. Indeed this is the approach recommended in the cases referred to by the Appellant on the correct approach to be taken to an assessment of the evidence by a trial judge.

93. For these reasons the Appellant's challenges to the Judge's findings of fact fail.

**Did the Judge make errors of law or errors of mixed law and fact.**

94. The Appellant submits that the Judge (i) misdirected himself on the law in relation to a bare licence; (ii) failed to analyse and consider the evidence in relation to estoppel and misapplied the law in relation thereto; (iii) misapplied the law in relation to apparent and ostensible authority and/or breach of warranty and (iv) wrongly exercised his discretion by ordering the Appellant to pay the costs of the amended claim.

**Did the Judge misdirect himself on the law in relation to a bare licence.**

95. The Judge determined that the Appellant held a bare licence by which it was permitted by Caroni to enter upon the land to carry out its contractual obligations to SMCL with respect to the 2004 and 2005 crop.

96. The Appellant relies on dicta of Megarry J. in **Hounslow London Borough Council v Twickenham Garden Developments Ltd [1971] 1 Ch. 223** in support of its submission that the arrangement between Caroni and it was a contractual licence. It submits that the fact that (a) none of the Respondents except Caroni denied that there was a contract in existence between it and SMCL and (b) by letter dated October 21,2005 Caroni acknowledged the contractual arrangement between the parties is evidence of this. The dicta of Megarry J. relied on was his statement, found at page 254 of the judgment, that: "A licence to enter land is a contractual licence if it is conferred by a contract; it is immaterial whether the right to enter the land is the primary purpose of the contract or is merely secondary".

97. This submission fails for three reasons. In the first place, Caroni never denied that there was a contract between the Appellant and SMCL it simply pleaded that it was a stranger to the matters pleaded and not a party to the contract. Secondly, if by its submission the Appellant seeks to include Caroni as one of the parties to the contractual arrangement, it

misrepresents the contents of the letter. By Caroni's letter of October 21, 2005, save perhaps with respect to equipment loaned to the Appellant, Caroni does not acknowledge that there was a contractual arrangement between it and the Appellant. The letter, written by the acting Chief Executive Officer of Caroni, simply requests the return of equipment loaned to the Appellant and calls upon the Appellant to desist from obstructing or impeding Caroni or persons on behalf of Caroni from entering onto the land.

98. Insofar as the letter refers to any arrangement it does not suggest any contractual arrangement with Caroni with regard to the occupation of the land. The letter states:

> "As you are aware, pursuant to arrangements made by the [Ministry] with a number of contractors and farmer groups (sugar contractors) including yourself portion of lands in some of Caroni's estates were used by the sugar contractors for the sole purpose of maintaining and reaping sugarcane crops from ratoons previously planted by Caroni for the **years 2004 and 2005** and, Caroni loaned some of its equipment to these sugar contractors (including yourself) to facilitate such maintenance and reaping of sugar cane."

99. Finally the statement of Megarry J. relied on by the Appellant is taken out of context. In **Hounslow** there was a contractual relationship between the parties. The plaintiff and the defendant had entered into two contracts requiring the defendant to do certain construction on land in the control of the plaintiff. The plaintiff attempted to repudiate the contracts and sought possession of the land. The defendant did not accept the repudiation and remained in possession. One of the questions for the judge's determination was whether the plaintiff was entitled to possession of the site from the defendant.

100. It was in this context that the following statement was made by Megarry:

> "(1) A licence to enter land is a contractual licence if it is conferred by a contract; it is immaterial whether the right to enter the land is the primary purpose of the contract or is merely secondary. (2) A contractual licence is not an entity distinct from the contract which brings it into being, but merely one of the provisions of that contract. (3) The willingness of the court to grant equitable remedies in order to enforce or support a contractual licence depends on whether or not the licence is specifically enforceable. (4) But even if a contractual licence is not specifically enforceable, the court will not grant equitable remedies in order to procure or aid a breach of the licence." **at page 254**.

101. The simple point here is that, as found by the Judge, there was no contract between Caroni and the Appellant neither was SMCL acting as agent for Caroni. The obiter dicta of Megarry J. relied on by the Appellant does not apply.

102. Alternatively the Appellant submits that the invitation to carry on until the crop of 2006 evidenced by the letter of May 4, 2005 and the contents of the November 29 2004 letter coupled with the grant of herbicide by Caroni amounted to a licence coupled with an interest. It is difficult to follow the Appellant's train of thought here. Particularly since these were both letters written by Washington purportedly on behalf of SIT. Given the Judge's determination, that neither SIT nor the Ministry was acting on behalf of Caroni and the effect of the letter of February 2005 seeking to purchase herbicide from Caroni, it is difficult to conceive how these letters, or the purchase of herbicide were evidence of an invitation by Caroni to carry on until the 2006 crop.

103. In any event at the end of the day the real issue for the Judge's determination was whether there was permission from Caroni for the Appellant to remain on the land after the 2005 crop. In the light of this issue the nature of the Appellant's licence on the land for the years 2004

and 2005 was not material to the Judge's final determination unless it was determined by him that Caroni had extended its permission for the Appellant to be on the land to the expiration of the 2006 crop.

104. The Appellant further submits that even if the Judge was correct in concluding that what existed between the parties was a bare licence the Appellant was entitled to a reasonable time to vacate the land. Relying on the case of **Winter Garden Theatre (London) Limited v Millennium Productions Limited [1948] A.C.173** the Appellant submits that it ought to have been given a reasonable time to vacate the premises.

105. The position is perhaps best stated by **Lord Macdermott** in **Winter Garden at pages 204-205** as follows:

> "My Lords, the profusion and diversity of licence and the freedom of contract regarding them are such as to discourage any unnecessary formulation of general propositions on the subject. But it is, I think, safe, as well as desirable for the decision of this case, to say that one who remains on the land of another after his licence to use it has terminated will not be considered a trespasser before he has had a reasonable time in which to vacate the premises. That is well settled, though the assessment of what is reasonable may depend on a great variety of factors and cause considerable difficulty in particular instances. This period of grace can, of course, be the subject of agreement, but it exists for gratuitous as well as for contractual licensees and, on that account, must, I think, be generally ascribed to a rule of law rather than to an implied stipulation. For that reason it need not be read into this contract. It has, however, a bearing on the question which I am now discussing. It supervenes after the licence has terminated. Its purpose is to enable the former licensee to adjust himself to the new situation by vacating the premises. Measured reasonably and fairly it will often provide sufficiently for the consequences of the

licensor's change of will. But its object is not to prolong the user sanctioned by the licence merely for the benefit and convenience of the licensee for, ex hypothesis, the licence has ceased; and where, as for example in cases of a specialized user involving obligations to third parties or the public, the circumstances or the contract are such as to show that an immediate cessation of the authorized use or activity was not contemplated or intended, the rule of law to which I have referred may well, and notwithstanding a liberal measurement of its reasonable period, fall short of meeting the just requirements of the position."

106. This was not an issue raised before the Judge but it is one that we are perfectly capable of treating with in accordance with the principles stated in the case of **Diamondtex Style Ltd. v NUGFW CA, 59 of 2008.** On the facts of the appeal before us the purpose of the license was to facilitate the Appellant's contract with SMCL to maintain and harvest the sugar cane on the land. As found by the Judge the licence was for a limited period, that is, initially until the end of the 2004 crop and then extended to the end of 2005 crop. By June 2005 therefore the licence had ended. Further, as found by the Judge, Caroni had an obligation to distribute the lands to its former workers and the Appellant had been advised since February 2005 not to undertake any future crop operations.

107. This therefore was not a situation as envisaged by Lord Uthwatt in the Winter Garden case, relied on be the Appellant, when he referred to the general proposition that 'he who sows should reap'. That statement was made in the context of a licence determinable by notice. In those circumstances it would be reasonable, as stated by Lord Uthwatt, for the length of the notice to be determinable "by the commitments of the licensees as they stood under the contract at the date of the notice". This was not the position here. In the instant case the Judge found that the licence was for a limited period. It was to end in June 2005. Further, as

found by the Judge, the Appellant knew long before the expiration of the licence that the land was required for another purpose.

108. The Judge found that Caroni entered onto the lands in August and September 2005 in order to prepare the lands for distribution in accordance with its commitments. The evidence of the Appellant was that it was early August. The question here therefore is whether the period from the end of June 2005 to early August, a little over 31 days was sufficient time for the Appellant as the former licensee "to adjust to the new situation by vacating the premises".

109. Given that the purpose of the Appellant's licence was for the maintenance and harvesting of the sugar cane for the 2004 and 2005 crop that should have been sufficient time for the Appellant to quit the land. The 2005 crop would already have been harvested and it would just have been for the Appellant to remove whatever equipment used to maintain and harvest the sugar cane and quit the Exchange Pen yard and buildings used for this purpose.

110. In the circumstances there is no merit in the Appellant's submissions that the Judge misdirected himself on the law in relation to a bare licence or that the Appellant was not given a reasonable time to vacate the land.

**Did the Judge fail to analyse and/or consider the evidence in relation to estoppel and/or misapply the relevant law.**

111. The Appellant submits that the evidence in this case gives rise to the application of the doctrine of promissory estoppel. In this regard it relies on the case of **Thorner v Majors and others (2009) UKHL 18** which identifies the three elements required to be established by a party to found a case of promissory estoppel: (a) a representation made or assurance given to that party; (b) reliance by that party on the

representation or assurance; and (c) some detriment incurred by the party as a consequence of that reliance.

112. In its re-amended statement of case the Appellant seeks the following equitable relief in terms of declarations sought:

> "(3) Further and/or alternatively a declaration that the [Appellant] has an interest coupled with an equity in the lands comprising 1985.6 acres as follows;
>
> a) 917 acres at "Exchange section"
> b) 517.7 acres at "Waterloo section"
> c) 354.1 acres at "Montserrat section"
> d) 100.4 acres at "Esperanza section"
> e) 96.4 acres at "Reform section"
>
> Each of which are coloured orange and pink and shown on the five plans marked "C" in the Re-amended Statement of Case.
>
> (4) Further and/or alternatively a declaration that [Caroni] is estopped from requiring the [Appellant] to deliver up possession of the said lands and/or from returning equipment in terms of a notice of termination dated the 21st October 2005 from [Caroni] or at all.
>
> (5) Further and/or alternatively a declaration that the [Appellant] is entitled in equity to cultivate and harvest the said lands with equipment supplied by [Caroni] for a period of three (3) years from the 29th November 2004.
>
> (6) Further and/or alternatively a declaration that the conduct of [Caroni] by its servants and/or agents in issuing a termination notice demanding the return of equipment within fourteen (14) days was unconscionable and/or inequitable and/or unjust."

113. There is no specific plea in the statement of case seeking to establish a promissory or any other type of estoppel. While this would not prevent a judge from finding that an estoppel arises in an appropriate case this is not an appropriate case. Further it explains the manner in which the Judge dealt with the equitable relief sought.

114. The Judge dealt with this relief sought by the Appellant under two heads:

    (i) Did [Caroni] grant to [the Appellant] a licence coupled with an interest by reason whereof [Caroni] was estopped from requiring the [Appellant] to deliver up possession of the land it occupied and to return the equipment which it had made available to the [Appellant] for harvesting canes in the 2004 and 2005 crop years; and

    (ii) Was the [Appellant] entitled in equity to cultivate and harvest the land it occupies with equipment supplied by [Caroni] for a period of three years from November 29, 2004.

    This reflected the manner in which the case had been argued by the Appellant before the Judge.

115. With regard to (i) the Judge found that the Appellant had not satisfied him that by reason of any acts or assurances or representations of Caroni, either directly or through the acts of any servant or agent, it acted to its detriment thereby entitling it to enforce an estoppel against Caroni. He further found that when by letter dated October 21, 2005 Caroni requested the return of its equipment and to vacate its land it was entitled to do so since at that date the Appellant was a trespasser on its land.

116. With regard to (ii) the Judge was not satisfied that the letter of November 29 granted the Appellant an equitable right to remain in the occupation of the land. He was of the opinion that from the inception the

Appellant was aware that it was a short-term arrangement which would be reviewed on a year to year basis and that the Appellant knew that the reason why it could not be granted a long term contract was because Caroni was under a legal obligation to distribute its lands to its former workers. He was of the view that when Sawh requested the letter for the Appellant's bankers he must have known that it could not amount to an extension of its contract with SMCL or a grant of permission to remain in the occupation of the land.

117. Further the Judge stated that the Appellant did not lead any evidence that Caroni was consulted before the letter was written or it was even aware of the Appellant's request for such a letter or its terms. The Judge therefore concluded that it would not be fair, just or equitable to find that based on the letter the Appellant was entitled to continue to cultivate and harvest Caroni's land and with its equipment for a period of three years from November 29,2004.

118. The Appellant submits that the evidence in relation to representations made by to it by agents and/or servants of Caroni and the AG stand unchallenged. In this regard the Appellant is not correct. While the Judge seems to have accepted that Innis had advised the Appellant to go ahead and cultivate the 2006 crop he found that there was no evidence that SMCL, SIT, the Ministry or Innis were acting as agents for Caroni. Neither was there any evidence that Innis was at that time employed by Caroni. In the circumstances any representations made by Innis or SIT to the Appellant could not amount to a promissory estoppel enforceable against Caroni so as to entitle the Appellant to any equitable relief against it. In the absence of any evidence of a representation or assurance made by Caroni or on its behalf therefore the claim in promissory estoppel against Caroni does not get to first base and fails.

**Did the Judge misapply the law in relation to apparent and ostensible authority and/or breach of warranty of authority.**

119. This is the crux of the Appellant's case. To succeed it will have to show that the Judge was wrong in his conclusions that (i) the Appellant failed to establish that the Ministry, through SIT, and Innis were vested with the authority, real or apparent, to act for Caroni; and alternatively (ii) Innis and the Ministry were not liable for breach of warranty of authority.

120. With respect to (i) the Judge found that while there was evidence that Innis was vested with authority to act on behalf of SIT what had to be decided was whether either the Ministry or Innis was vested with real or apparent authority by Caroni with respect to the representations made to the Appellant to proceed with the preparations for the 2006 crop.

121. He was of the opinion that the Appellant had not established that either Innis or the Ministry was vested with actual authority to give approval to the Appellant on behalf of Caroni. He was of the view that, based on his conclusion of the effect of the recommendations contained in Innis' Proposed Sugar Cane Production 2005 to 2006, approval had only been obtained from Murray for the 2005 crop. Further Innis had adduced no evidence that he was duly authorized by the meeting at Whitehall to give permission to the Appellant to remain on the land and in possession of the equipment. In any event Innis had made it clear in his witness statement that neither he nor the Ministry were acting for or on behalf of Caroni at any time.

122. Further, with respect to apparent authority, the Judge was of the view that the Appellant was fully aware from the correspondence sent to it by SIT in June that it was required to make formal arrangements with Caroni with respect to its temporary occupation of the land for harvesting operations and had also received the SIT letter of February 3, 2005 advising it to refrain from future crop operations after the harvesting of crop 2005. He therefore concluded that Innis was not

vested by Caroni with apparent authority by Caroni to permit the Appellant to remain in the occupation of the land and allow the Appellant to retain possession of it.

123. With respect to (ii) the Judge concluded that neither Innis nor the AG was liable to the Appellant for breach of warranty of authority. In coming to this conclusion the Judge referred to the law on warranty of authority and determined that applying the law to the facts the first issue was whether the Ministry and /or Innis by words or conduct represented that either had actual authority to act on behalf of Caroni with regard to the grant of permission to remain in the occupation of the land beyond the end of crop 2005.

124. He was of the opinion that the evidence of Sawh did not reveal any words or conduct on the part of Innis whereby he represented that he had any authority to act on behalf of Caroni. He was of the view that when Sawh held meetings with Innis after the receipt of the February 3rd letter he did so on the basis that Innis was the Chief Operations Officer of SIT and when Innis gave Sawh the go-ahead to continue preparations for crop 2006 he was purporting to act on behalf of SIT and not Caroni. Further he was of the opinion that in the light of the SIT letter of June 3rd Sawh ought to have appreciated the limits of Innis's authority and taken steps to secure a formal agreement with Caroni. The Judge was entitled to come to these conclusions based on the evidence before him.

125. The difficulty faced by the Appellant is that there is no factual basis for its submissions. With regard to SIT both Sawh and Jagroo give evidence that SIT was established to ensure a supply of sugar cane to SMCL. Understandably Innis as a member of SIT was in a better position to give a little more detail in his evidence. According to Innis SIT was established in 2004 under the auspices of and answerable to the Minister responsible for the Ministry. Its responsibility was to evaluate

the competence and capability of the Contractors, Sugar Cane Farmers and Cane Farmers' organisations for the harvesting of sugar cane for supply to SMCL and to advise these organisations and SMCL in respect of contractual arrangements. According to him SIT was not authorized to enter into any contract for the supply of sugarcane or occupation of land. He further says that neither SIT nor he were servants or agents of Caroni. This evidence was never challenged by the Appellant.

126. Neither is there any evidence that SMCL acted on behalf of the Ministry or Caroni or indeed that there was a tripartite agreement. It is difficult to ascertain who the Appellant suggests were the three parties who arrived at this tripartite agreement. On the Appellant's evidence four parties were involved, the Appellant, SMCL, SIT representing the Ministry and Caroni. Further the evidence was that SMCL was established for the purpose of undertaking the sugar processing and refining business previously conducted by Caroni. Its role was therefore not to act on behalf of but to replace Caroni.

127. In these circumstances the case of **Montreal,** relied on by the Appellant, does not assist. This was a case based on specific facts. The issue in that case was whether the respondent company was in occupation of the premises so as to be taxable at the material time. A determination of this issue depended on whether the respondent company was acting as a manager or agent for the government or whether it was acting on its own behalf. The court was required to decide this question based on the terms of two contracts both relating to the arrangement between the government and the respondent company.

128. In the course of coming to its conclusion Lord Wright, delivering the judgment of the court, opined that, in determining this question rather than the test of control used in the earlier cases, in some instances a fourfold test of control, ownership of tools, chance of profit and risk of loss would be more appropriate.

129. In the case under appeal before us no such evidence had been placed before the Judge by the Appellant or at all. Indeed it was not the case of the Appellant that using these indices SMCL, SIT, Innis or SIT should be considered to be the agent of Caroni. Neither was it the Appellant's position that using these indices Caroni and these other bodies were to be considered agents of the Government. The case of Montreal has no relevance to this appeal.

130. The Appellant further submits that despite the evidence of Rambharat it was clear that he was at the September meeting, not in any private capacity, but as the agent of the Ministry through SMCL or an agent of Caroni or both. With due respect to the Appellant this seems to be a red herring. First of all Rambharat's evidence was never that he was there in a private capacity but rather that, despite being the Corporate Secretary of Caroni at the time, he was representing SMCL. More to the point while it is open to the Appellant on the evidence to submit that at that initial meeting Rambharat was representing both Caroni and SMCL, the offer made by it to maintain the land for the purpose of the harvesting of the 2004 crop was made to and accepted by Rambharat on behalf of SMCL.

131. Given the unchallenged evidence that SMCL was a separate body established by the Government to take over Caroni's role in the sugar processing and refining business it is difficult to find any support for the Appellant's submission that with respect to its contractual arrangements with the Appellant SMCL was acting as an agent for Caroni. In any event the real issue for the Judge's determination was not whether at the September meeting Rambharat represented Caroni, SMCL or the Ministry but rather whether permission had subsequently been given by Caroni for the Appellant to remain on the land for the 2006 crop.

132. The Appellant further submits that the Judge fell into error when, after finding that Innis was vested with authority to act on behalf of SIT, he veered off course by opining that what was for decision was whether either the Ministry or Innis was vested with real or apparent authority by Caroni for the representations made to the Appellant to proceed with the preparations of crop 2006. The Appellant submits that this is contrary to the position stated in Halsbury's that:

> "Where the act complained of is not expressly authorized by the principal, the principal is, while the agent is acting within the scope of his implied authority or within the scope of his apparent or ostensible authority, jointly and severally responsible with the agent, however improper or imperfect the manner in which the authority is carried out. It is immaterial that actual malice is an essential ingredient of the wrongful act, that the wrongful act is also a crime, or that the act in question has been expressly prohibited by the principal: Halsbury's Laws of England, 5th ED, 2008 Vol 1 Agency paragraph 151."

133. The difficulty with this submission is that for the statement in Halsbury's to have any application to this case the Appellant first must establish that the relationship of principal and agent existed between Caroni and Innis and/or the Ministry. The Appellant's case is predicated on there being an agency relationship between Innis and /or the Ministry and Caroni or that Innis and /or the Ministry held themselves out as being the agent for Caroni and having the authority on Caroni's behalf to permit the Appellant to occupy the land for the purpose of the 2006 crop. There was no evidence of such a relationship nor was there evidence that either Innis of the Ministry held themselves out as being authorised by Caroni to grant permission for the 2006 crop. In the absence of any such evidence the case presented by the Appellant fails.

134. In any event the Judge found that, by virtue of the letter of June 3, 2004, the Appellant had been advised by SIT that it was required to approach

Caroni to enter into a formal agreement with respect to its temporary occupation of the land. He concluded that in those circumstances Sawh ought to have appreciated the limits of Innis's and SIT's authority.

135. In coming to this conclusion the Judge took the relevant law as stated in Bowstead into consideration. According to Bowstead:

> "Every person who purports to act as an agent is deemed by his conduct to represent that he is in fact duly authorized so to act, except where the purported agent expressly disclaims authority or where the nature and extent of his authority, or the material facts from which its nature and extent may be inferred, are known to the other contracting party: **Bowstead & Reynolds on Agency, Nineteenth Edition, Article 107**.

136. Given this position the fact that the letters of April 12, 2005 suggested that the arrangements for the maintenance and harvesting would continue with respect to the 2005/2006 crop does not assist the Appellant. The position is the same with respect to any approval given by Murray or Innis for the Appellant to continue with the 2006 crop. By the time this was communicated to the Appellant it had already been made aware of the need to get separate permission from Caroni. In these circumstances it cannot be said that the Judge misapplied the law in relation to apparent and ostensible authority and /or breach of warranty of authority.

**Did the Judge wrongly exercise his discretion in ordering the Appellant to pay the costs of the amended claim.**

137. In dealing with the question of costs the Judge ordered that the Appellant pay the Respondents' costs of the action together with Caroni's costs of the injunction (including the costs of the application to continue the injunction) and the costs of and occasioned by the

amendments to the Statement of Case to be assessed in default of agreement.

138. The Judge gave no reasons for his order but it would seem that he was of the view that having dismissed the Appellant's claim costs should follow the event. This is in accordance with the general rule that the court must order the unsuccessful party to pay the costs of the successful party: **Rule 66.6(1)**. The Appellant challenges the Judge's order that it pay the costs occasioned by the amendments to the Statement of Case. The Appellant submits that such an order is an improper exercise of the Judge's discretion bearing in mind that the amendments were made in a timely fashion without any undue delay or prejudice to the Respondents.

139. The fact that the amendment may have been done in accordance with the rules has no relevance to the issue of the incidence of costs. The effect of such an order made by a judge takes into account the fact that as a result of amendments to the Statement of Case defendants may have incurred costs in contesting the application, if there was a contest, or in making consequential amendments to their statements of case

140. According to the submission of the Appellant the amendments were made before the first Case Management Conference. In accordance with the rules there would have been no need to make an application to the court. Costs therefore would only have been incurred by a Respondent if it was required to make consequential amendments to its statement of case. In the circumstances of this case, since the amendments joined the other Respondents, the only Respondent who needed to amend its statement of case was Caroni. Accordingly, even though the amendment might have been timely, Caroni incurred an expense as a result of it. The Appellant has not advanced any valid reason why Caroni ought not to be compensated for this expense.

141. In conclusion therefore the Appellant has not demonstrated that the Judge erred when he determined that (a) with respect to the Appellant's contractual arrangements for the maintenance and harvesting of sugar cane on the land neither SMCL, Innis and the Ministry nor any of them acted on behalf of Caroni; (b) neither Innis or the Ministry had the authority to permit the Appellant to occupy the land for the 2006 crop and (c) Innis or the Ministry did not hold themselves out as having such authority. Nor did the Judge wrongly exercise his discretion as to costs. In the circumstances of this case the Judge was not wrong when he concluded that the Appellant was not entitled to any of the relief sought.

142. Accordingly there is no merit in any of the challenges made by the Appellant to the Judge's determinations. The appeal therefore is dismissed and the decision of the Judge affirmed. With regard to costs the order for costs made by the Judge stands. As the Appellant has not succeeded in its appeal we see no reason to depart from the general rule that costs follow the event. Only Caroni has defended the appeal. The Appellant will therefore pay Caroni the costs of the appeal. The costs in the High Court are to be assessed by the Registrar and the costs of the Appeal shall be two thirds of the costs of the action assessed to be due to Caroni excluding the costs of the injunction and the costs of and occasioned by the amendment to the statement of case.

**Judith Jones**
**Justice of Appeal**