REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civ. App. No. P050 of 2018
Claim No. CV 2017-03452

IN THE MATTER OF THE JUDICIAL REVIEW ACT CHAP 7:08

AND

IN THE MATTER OF AN APPLICATION BY FISHERMEN AND FRIENDS OF THE SEA, AN INCORPORATED BODY UNDER THE COMPANIES ACT, IN A REPRESENTATIVE CAPACITY PURSUANT TO SECTION 5(2)(b) OF THE JUDICIAL REVIEW ACT, NO. 60 OF 2000 FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

AND

IN THE MATTER OF THE DECISION OF THE ENVIRONMENTAL MANAGEMENT AUTHORITY DATED ON OR ABOUT THE 22ND DAY OF JUNE, 2017 TO ISSUE A CERTIFICATE OF ENVIRONMENTAL CLEARANCE TO THE MINISTRY OF WORKS AND TRANSPORT FOR THE SPECIFIC PURPOSE OF "THE ESTABLISHMENT OF A 5000 METRE HIGHWAY ALIGNMENT" COMMENCING AT A POINT 300 METRES EAST OF THE CUMUTO MAIN ROAD AND ENDING AT A POINT 600 METRES WEST OF GUAICO TRACE, SANGRE GRANDE

BETWEEN

FISHERMEN AND FRIENDS OF THE SEA
Appellant/Intended Claimant

AND

ENVIRONMENTAL MANAGEMENT AUTHORITY
Respondent/Intended Defendant

AND

THE MINISTRY OF WORKS AND TRANSPORT
First Interested Party

AND

KALL COMPANY LIMITED also called KALLCO

Second Interested Party

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Panel:

R. Narine J.A.

P. Moosai J.A.

C. Pemberton J.A.

Appearances:

Mr. A. Ramlogan SC (abs.), Ms. J. Lutchmedial, Mr. A. Pariagsingh and Mr. G. Saroop instructed by Mr. R. Abdool-Mitchell appeared on behalf of the Appellant

Ms. D. Peake SC, Mr. R. Heffes-Doon, Ms. A. Rahaman, instructed by Ms. J. Partap and Ms. G. Landeau-Birmingham appeared on behalf of the Respondent

Mr. I. Benjamin, Ms. T. Jorsling instructed by Ms. S. Dass appeared on behalf of the First Interested Party

Mr. D. Mendes SC, Mr. D. Maharaj instructed by Ms. K. Bharath appeared on behalf of the Second Interested Party

DATE DELIVERED: 20th April, 2018

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I have read the judgment of Narine J.A. and agree with it.

P. Moosai,
Justice of Appeal.

I too, agree.

C. Pemberton,
Justice of Appeal.

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JUDGMENT

Delivered by R. Narine J.A.

1. By Notice filed on 27th March 2018, the appellant seeks, inter alia, conditional leave to appeal to the Privy Council the decision of this court made on 26th March 2018, and an order restraining the Ministry of Works and Transport (MOWT) and KALLCO from continuing work on a 5,000 metre highway in the Cumuto/Guaico area.

BACKGROUND

2. On 29th September 2017, the appellant made an application to the High Court for leave for judicial review to challenge the grant of a Certificate of Environmental Clearance (CEC) issued by the Environmental Management Authority (EMA) to MOWT in respect of Phase 1 of the proposed highway on 22nd June 2017. Before

the trial judge, the appellant relied on fourteen (14) grounds in their application for leave. On 6th February 2018 the trial judge dismissed the application for leave on the basis that the application was not made promptly, and he found that no good reason had been put forward to extend the time for making the application. However, the trial judge went on to consider the merits of the application, and having done so, concluded that the grounds had no realistic prospect of success. Accordingly, he dismissed the application for leave.

3. The appellant appealed the decision to this court and sought an interim order pending the appeal, restraining the interested parties from continuing work on the highway. On 9th February 2018, Rajkumar JA granted an injunction to the appellant, with certain variations as were contained in an interim order made by the trial judge, but discharged upon the dismissal of the application for leave. In his reasons, Rajumkar JA examined the grounds contained in the application for leave. He opined that some of the grounds were more cogent than others. While he found that some of the grounds were unarguable, he expressed the view that grounds (i) and (xi) appeared to raise arguable issues with a realistic prospect of success. We will return to these issues later in this judgment. Ground (i) concerned the issue of public consultation at the pre Terms of Reference (TOR) stage pursuant to Rule 5 of the **Certificate of Environmental Clearance Rules** (CEC Rules). Ground (xi) targeted defects in the Environmental Impact Assessment (EIA), which were identified to the Management Director before the grant of the CEC by technical staff at the EMA.

4. The appeal was heard as a matter of urgency. On 26th March 2018, this court (Smith JA, Jones JA & des Vignes JA) dismissed the appeal. All three judges expressed the view that the application for leave was not made promptly and the appellant had not provided any good reason for extending the time to bring the application. Further, the grant of leave would substantially prejudice the rights of the third parties, in this case KALLCO, and the government and would be detrimental to good administration. However, while Jones JA and des Vignes JA found that the 14 grounds relied on by the appellant, disclosed no arguable

grounds having a realistic prospect of success, Smith JA appears to have found some merit in two of the grounds. At paragraph 58, he stated that having found that the application for leave was not made promptly, it was strictly unnecessary for him to consider the merits of the challenge to the grant of the CEC:

> *"This is because while two aspects of the challenge might have been arguable with some prospects of success, such prospects of success are not in my view so strong as to outweigh the public policy considerations of promptitude, undue delay, prejudice to third party rights and good administration that are present in this case."*

5. The grounds identified by Smith JA related to public consultation on the draft TOR, and the decision of the EMA to forego a cumulative impact assessment.

6. The application for conditional leave is made pursuant to section 23(2) of the **Judicial Review Act Chapter 7:08** and section 109(1) (f) and section 109(2) (a) of the **Constitution**. The respondent contends that there is no issue raised in this case that involves a question of great general or public importance, as required by section 109(2) (a). Further, the respondent contends that even if the appellant wishes to rely on section 109(1), as granting a right of appeal "as of right", the appellant must persuade this court that there is a genuinely disputable issue that ought to be submitted to the Privy Council.

7. For the appellant, in her oral submissions Ms Lutchmedial contends that there are four such issues to be referred, namely:

   (i) the issue of delay in bringing the application for leave,
   (ii) the issue of the interpretation of Rule 5 of the CEC Rules,
   (iii) the issue of the grant of the CEC in the absence of a cumulative impact assessment, and
   (iv) the rationality issue concerning the grant of the CEC with conditions, over the objections of the technical staff with respect to several deficiencies identified by the technical staff.

THE ISSUE OF DELAY

8. Section 11 of the **Judicial Review Act Chapter 7:08**, provides that an application for judicial review must be made promptly and in any event within three months from the date when the grounds for the application arose unless the court considers that there is good reason to extend the time for bringing the application. In deciding whether to grant or refuse the application, the court must consider:
   (i) if there has been undue delay, whether the grant of relief would cause substantial hardship to or substantially prejudice the rights of any person, or would be detrimental to good administration; and
   (ii) the time when the applicant became aware of the decision, and other relevant matters.

9. The first issue that arises for decision, before the discretion to extend time arises, is whether the application for leave was made promptly and within three months of the decision. The decision to grant the CEC was made on 22nd June 2017. The application for leave was filed on 29th September 2017 that is, seven days after the three month period expired. However, the uncontroverted evidence is that the CEC was placed on the National Register on 3rd July 2017, and came to the attention of the appellant on 6th July 2017.

10. Section 11(3) of the **Judicial Review Act** expressly provides that:

    "(3) In forming an opinion for the purpose of this section, the Court shall have regard to the time when the applicant became aware of the making of the decision, and may have regard to such other matters as it considers relevant."

11. In section 11 of the **Judicial Review Act**, the opinions the court may be required to form are:
    - whether the application is made promptly,
    - whether there has been undue delay in making the application,

- whether by reason of that delay the grant of any relief would cause substantial hardship or prejudice to the rights of any person, or would be detrimental to good administration,
- whether there is good reason to extend the three month period.

12. In forming an opinion as to whether the application for leave was made promptly, and if not, whether there was good reason to extend the time for bringing the application, the following matters may be of some relevance:
    (i) The CEC was issued on 22nd June 2017, and placed on the National Register on 3rd July 2017.
    (ii) On 6th July 2017, the appellant reviewed the documents relevant to the CEC and requested copies.
    (iii) On 2nd August 2017, the appellant made an application under the Freedom of Information Act (FOIA) for the EMA to provide all reports, and review assessments prepared for the EMA by its external experts pertaining to the processing of the CEC application.
    (iv) On 7th August 2017, the appellant wrote to the Minister of Planning, setting out its concerns, and requesting an undertaking that the works be postponed until the potential impacts of same on the Aripo Savannah have been fully investigated without having to apply to the court for judicial review. This letter was copied to the President, Prime Minister, Minister of Works and Transport and Chairman of the EMA.
    (v) On 1st September 2017, the EMA responded to the FOIA request, stating that there were no further reports or reviews prepared by external consultants or experts.
    (vi) On 4th September 2017, the appellant wrote to the EMA seeking clarification of the response. There was no response to this request.
    (vii) On 7th September 2017, the appellant received an internal memorandum prepared by the Review Committee of the EMA dated 22nd June 2017, in which the Committee highlighted outstanding concerns to be addressed before the grant of the CEC.

(viii) On 12th September 2017, the appellant issued a pre-action protocol letter to the EMA.

(ix) On 20th September 2017, the EMA responded to the letter.

(x) On 29th September 2017, the appellant filed the application for judicial review.

13. The chronology of events set out above shows that the appellant was by no means inactive during the time that elapsed after the decision was made and before the application for leave was filed. In relation to the issue of delay the following considerations may also be relevant in forming an opinion under section 11 of the **Judicial Review Act**:

(i) The matter involves serious environmental concerns as the project poses potential risks to an environmentally sensitive area with possible harmful consequences to flora and fauna which are unique to that area.

(ii) The appellant is a non-profit organisation dedicated to the protection of the environment.

(iii) There is a disparity in resources available to the appellant as compared to the EMA and the interested parties.

(iv) The subject matter of the application is complex and technical and required the acquisition and examination of an extremely voluminous body of material.

(v) The public interest in protecting and preserving an environmentally sensitive area.

14. It is well settled that an appellate court will not interfere with the exercise of a discretion by a lower court unless the decision can be shown to be plainly wrong: **Attorney General v. Miguel Regis** Civ. App. No. 79 of 2011. However, a trial judge may be shown to be plainly wrong where for example:

- he fails to consider relevant matters, or
- he considers irrelevant matters, or

- he bases his decision on a misapprehension of the facts and/or the law, or
- he places too little weight on important considerations, or places too much weight on less important matters.

15. In his judgment, the trial judge set out the chronology of events, and adverted to the fact that the matter involved an environmentally sensitive area. However, without any reasoned analysis of the relevant factors, and without any indication of the weight that he attached to any of the factors, he went on to conclude that there was no good reason provided by the appellant so as to trigger his discretion to extend the time for bringing the application for leave.

16. The trial judge does not appear to have attached any weight to the uncontroverted evidence that the decision of the EMA was placed on the National Register only on 3rd July 2017, and came to the attention of the appellant on 6th July 2017. He expressed the view that the appellant was in a position to file the application as early as 12th September 2017, the date on which the pre-action protocol letter was sent.

17. Assuming that the appellant was in a position to file the application by 12th September 2017, the question arises as to whether he acted unreasonably in holding his hands, and issuing the pre-action letter first. In doing so, the appellant was following established protocol guidelines for the conduct of civil litigation. Failure to follow these guidelines has possible consequences for costs at a later stage.

18. On appeal, the court found that the trial judge was not shown to be plainly wrong in the exercise of his discretion. However, they appear to have focused on the prejudice to the rights of third parties, and the detriment to good administration, as the basis for their decision.

19. Having regard to the forgoing matters, I am of the view that the issue as to whether the trial judge was plainly wrong in exercising his discretion to refuse to extend the time for the bringing of the application for leave, is a genuinely disputable issue for the determination of the Privy Council.

THE INTERPRETTION OF RULE 5 OF THE CEC RULES

20. In its application for leave the appellant relied on two grounds that involved an interpretation of Rule 5 of the **CEC Rules**:
    (i) In granting the CEC the EMA acted ultra vires and/or perversely in breach of its duties to consult under Rules 5(2) and 5(3) of the **CEC Rules**, and
    (ii) the EMA acted ultra vires section 16 of the **Environmental Management Act Chapter 35:05** and/or in breach of national policy and/or without accounting for material considerations by failing to supervise the interested party's purported consultation on the draft TOR with the public.

21. Section 16 of the **Environmental Management Act Chapter 35:05** provides:

> *"**16.** (1) The general functions of the Authority are to—*
> *(a) make recommendations for a National Environmental Policy;*
> *(b) develop and implement policies and programmes for the effective management and wise use of the environment, consistent with the objects of this Act;*
> *(c) co-ordinate environmental management functions performed by persons in Trinidad and Tobago;*
> *(d) make recommendations for the rationalisation of all governmental entities performing environmental functions;*
> *(e) promote educational and public awareness programmes on the environment;*
> *(f) develop and establish national environmental standards and criteria;*

(g) monitor compliance with the standards criteria and programmes relating to the environment;

(h) take all appropriate action for the prevention and control of pollution and conservation of the environment;

(i) establish and co-ordinate institutional linkages locally, regionally and internationally;

(j) perform such other functions as are prescribed; and

(k) undertake anything incidental or conducive to the performance of any of the foregoing functions."

22. Rule 5 of the **CEC Rules** provides:

"5. (1) Where the Authority determines that an EIA is required, the Authority shall within twenty-one working days after the date of the notification under rule 4(1)(d)—

(a) consult with the applicant on the preparation of the proposed TOR;

(b) prepare the draft TOR; and

(c) notify the applicant in writing that the draft TOR is ready for collection at the Authority's offices upon payment by the applicant of the prescribed charge.

(2) The applicant shall, where appropriate, conduct consultations with relevant agencies, non-governmental organisations and other members of the public on the draft TOR and may, within twenty-eight days after notification under subrule (1)(c), submit written representations to the Authority requesting that the draft TOR be modified and setting out—

(a) the manner in which he proposes that the TOR should be modified;

(b) a reasoned justification for the proposed modifications; and

(c) a report of the consultations with relevant agencies, nongovernmental organisations and other members of the public on the draft TOR.

(3) The Authority shall consider any written representations and the prescribed information submitted by the applicant pursuant to subrule (2) and shall finalise the TOR as it sees fit, and issue the final TOR to the applicant within ten working days after the expiry of the period specified for the submission of written representations in subrule (2).”

23. The trial judge disposed of ground (i) in a summary manner. He found that there was no obligation on the EMA to conduct any consultations under Rule 5, and concluded that this ground disclosed no realistic prospect of success.

24. On appeal, Jones JA applied a literal construction of the rule, and concluded that:
    (i) It is for the applicant to establish whether or not a consultation was necessary and if it was, with whom it should consult.
    (ii) If an applicant wishes to modify the draft TOR, it must engage in appropriate consultation, and report back to the EMA providing a reasoned justification for the modifications, and a report of the consultations made.
    (iii) The EMA only becomes concerned with consultations made by the applicant if the applicant requests a modification of the draft TOR.
    (iv) Since the consultations are only relevant to the written representations for modifications, the applicant is not required in every case to engage in consultation.
    (v) There is no obligation placed on the EMA by Rule 5 to conduct consultations.

(vi) Since in this case the MOWT did not seek a modification of the draft TOR, whatever consultations it deemed appropriate or not were irrelevant to the process of finalising the TOR.

25. Interestingly, as Jones JA noted, the draft TOR submitted by the EMA made provision for stakeholder consultations for the purpose of assisting in the identification of environmental issues, the maximisation of benefits and mitigation of impacts while preventing environmentally unacceptable development. The draft TOR further recommended at least two public meetings. It is not in dispute that the applicant (MOWT) was provided with the draft TOR by letter dated 11th November 2016. Just thirteen days later by letter dated 24th November 2016, MOWT advised the EMA that it had submitted the draft TOR to ten government agencies, and had received no response. By letter dated 12th December 2016, the EMA advised MOWT that the TOR was deemed to be final.

26. The ten government departments to which the draft TOR was submitted by MOWT were:
    (i) Town and Country Planning
    (ii) Forestry Division
    (iii) Ministry of Agriculture
    (iv) Drainage Division
    (v) Water Resources Agency
    (vi) Occupational Safety and Health Agency
    (vii) Ministry of Energy
    (viii) Sangre Grande Regional Corporation
    (ix) Office of Disaster Preparedness and Management
    (x) Fire Services Division.

27. Interestingly, the EMA appears to have taken the view that public consultation was mandatory at the pre TOR stage. By letter dated 16th November 2017, the EMA advised the MOWT that Rule 5(2) makes provision for the applicant to conduct

consultations with the public and, in particular, affected communities within the project area, relevant agencies and non-governmental agencies. Jones JA concluded however that the "letter was making incorrect assertions as to the requirements of the rule".

28. Des Vignes JA agreed with Jones JA and adopted her reasons. However, Smith JA found that were it not for his finding on the issue of delay, this ground might have been arguable with some realistic prospect of success. Rajkumar JA, in his ruling on the application for an injunction, expressed the view that this ground appeared to raise arguable issues.

29. In my view it is arguable with realistic prospect of success that Rule 5 admits of a different interpretation to that of Jones JA, in two important aspects.

30. The first part of Rule 2 of the **CEC Rules** provides:

> *"The applicant <u>shall</u>, <u>where appropriate</u>, conduct consultations with relevant agencies, non-governmental organisations and other members of the public on the draft TOR …"* (emphasis added)

Clearly, the language of the rule is mandatory. The applicant "shall" consult. However, the words "where appropriate" appears to confer a discretion on the applicant, as to whether consultation is necessary, and if so, what should be the extent of the consultation, and who are the persons or organisations to be consulted.

31. The second part of the rule continues:

> *"<u>and may</u>, within twenty-eight days after notification under subrule (1)(c), submit written representations to the Authority requesting that the draft TOR be modified …"* (emphasis added)

It seems to me that Jones JA interpreted both parts of the rule, conjunctively. This it seems, led her to the conclusion that the duty to consult only arises where the applicant seeks to modify the draft TOR.

32. The rule may be interpreted disjunctively, that is the duty to consult, where appropriate, arises whether or not the applicant seeks a modification of the draft TOR.

33. Logically, if the interpretation of Jones JA is the correct one, then Rule 5(3) may be interpreted to apply only in cases where the applicant seeks a modification of the draft TOR. However, a disjunctive interpretation of Rule 5(2) would suggest that the applicant would be required to submit a report of any consultations that were carried out (being part of the "prescribed information referred to in Rule 5(3)) before the EMA finalises the TOR. It would seem to accord with common sense that the EMA would require some feedback from the applicant before it finalises the TOR, whether modifications are sought or not. In fact in this case, the applicant did report to the EMA on the consultations it made, although it did not seek any modification.

34. Another issue that may require clarification is the interpretation of the first part of Rule 5(2), which provides that the applicant "shall, where appropriate, conduct consultations with relevant agencies, non-governmental organisations and other members of the public". While the duty to consult appears to be mandatory, the applicant is given a discretion to decide the extent and scope of the consultations, and with whom he should consult.

35. The question arises as to what happens, if the applicant chooses not to consult with persons clearly affected by the development, or with organisations that clearly have an interest in the possible consequences of the development, as in this case. Is the EMA powerless in such a case to direct the applicant's attention to persons

or organisations affected, having regard to its statutory duty to regulate development so as to protect the environment and the public from possible harmful consequences?

36. For these reasons, we consider that the issue concerning the proper interpretation of Rule 5 of the CEC needs to be definitively settled by our highest court.

OTHER ISSUES

37. Having found that there are genuinely disputable issues with respect to the judge's ruling on delay, and the interpretation of Rule 5, it is strictly unnecessary for us to consider the further grounds put forward by the appellant. Suffice it to say that we have noted that Smith JA expressed the view that the issue of the grant of the CEC in the absence of a cumulative impact assessment is an arguable ground with a realistic prospect of success. We hold that this, as well is a genuinely disputable issue for the attention of the Privy Council. The issue of the rationality of the decision to grant the CEC with conditions in spite of the objections of the technical staff with respect to several deficiencies outstanding, has generated some controversy between the parties. We do not express a view on this issue, which we expect will be raised on appeal to the Privy Council.

38. Accordingly, we are minded to grant conditional leave to the appellant. The grant of leave, in our view, would be hollow in the absence of an order to preserve the status quo.

39. The respondents have argued strenuously that the injunctive relief should be refused having regard to the delay in bringing an application for injunctive relief, the prejudice to the interested parties if the works are interrupted, and the absence of an undertaking in damages to be provided by the appellant.

40. In considering the issue of delay it is necessary to bear in mind the chronology of events:

- On 22nd June 2017, the appellant wrote to the Minister of Planning, setting out its concerns, and requesting an undertaking that the works be postponed until the potential impacts of the development were fully investigated, so as to avoid an application to the court for judicial review. This letter was copied to the Minister of Works, and the EMA.
- On 1st September 2017 the letter of award was made to KALLCO.
- On 12th September 2017, the appellant issued a pre-action letter to the EMA.
- On 29th September 2017 the appellant filed its application for leave. The application included an interim declaration that the decision of the grant of the CEC was null and void, and that all consequent actions therefore be stayed pending the determination of the application.
- On 8th December 2017, a notice was published to the effect that works would begin on 2nd January 2018.
- The works began on 8th January 2018. On the same day the appellant's attorney-at-law issued a letter to the attorney-at-law acting for MOWT, requesting that no further work should take place until the determination of the application for judicial review.
- By reply dated 9th January 2018 the request was refused by MOWT.
- An application for an injunction was filed on 15th January 2018.

41. It was also argued that the trial judge had set 16th November 2017 as the deadline for any applications to be made. However, at this time there was no indication that the interested parties were about to start works. In fact the contract to KALLCO was only finalised on 20th December 2017.

42. Accordingly, in my view, there was no unreasonable delay in bringing the application for injunctive relief. The timeline also has consequences for the issue of prejudice being suffered by the interested parties. Having regard to the chronology of events, it is clear that MOWT was aware since 7th August 2017, that this matter was quite likely headed for litigation. Yet it proceeded to award the

contract on 1st September 2017. Both interested parties were aware that the application for leave was filed since 29th September 2017, and that this application included relief relating to a stay of all actions pursuant to the decision, yet they proceeded to finalise the contract and begin the works, incurring substantial expenditure as a result.

43. The appellant is a non-profit non-governmental organisation dedicated to the protection of the environment. Understandably, it is not in a position to give an undertaking in damages in a matter that involves hundreds of millions of dollars. However, in this case, to impose such a condition would be in effect, to stifle the application. It is clearly in the public interest that this matter should go forward.

44. We have been referred by Mr. Mendes to the decision of the Privy Council in **Belieze Alliance of Conservation Non-Governmental Organisations (BACONGO) v. Department of the Environment & Anor.** [2004] 1 LRC 630. In this case, the Board was confronted by a situation where the grant of an injunction to halt a major project would cause significant financial loss to the respondent, and the applicant was not in a position to give an undertaking in damages. The Board considered that in such a case it had to form some view of the strength or weakness of the appellant's case. Having done so, the Board concluded that the applicant did not appear to have a strong case. It also held the view that on the evidence before it the risk of injustice favoured the respondent. Accordingly, the Board refused to grant the injunction.

45. While we are guided by the statement of principle as set out above in the **BACONGO** case, it must be borne in mind that each case will ultimately depend on its peculiar facts. We note that in the **BACONGO** case the project seems to have been somewhat more advanced than in the case at hand. The court cannot embark at this stage on a trial of this matter based on voluminous affidavit evidence. However, on a preliminary assessment of the evidence in this matter we are of the view that the appellant has raised arguable issues that are of

sufficient strength so as to justify the grant of injunctive relief pending a final determination.

46. Applying the principles laid down in **American Cyanamid Company v. Ethicon Limited** [1975] 1 All ER 504, we are satisfied that there is a serious issue to be tried in this case and that damages will not be an adequate remedy for the appellant if the injunctive relief is refused. The balance of justice clearly favours the appellant in this case. The risk of financial loss to the interested parties if the injunction is granted, is outweighed by the risk of damage to the environment that may be irreparable and impossible to quantify in terms of damages, if the injunction is refused.

47. Accordingly, we are minded to grant an injunction in terms of the draft order annexed to the motion. However, in view of the importance of this matter to all the parties concerned, we wish to ensure that this matter is dealt with expeditiously so as to minimise prejudice to the parties affected by the order.

DISPOSITION:

48. This motion is therefore deemed fit for urgent and expedited hearing. Conditional leave is hereby granted to the appellant to appeal to the Judicial Committee of the Privy Council against the judgment of the Court of Appeal delivered on the 26th March 2018 subject to the following conditions:

    (a) That the appellant do within seven (7) days from the date hereof enter into good and sufficient security in the sum of five hundred pounds to the satisfaction of the Registrar of this Court for the due prosecution of the appeal;

    (b) That the appellant within seven (7) days from the date hereof take out all appointments for settling the record to enable the Registrar to certify that the record has been settled and that the provisions of this order on the part of the appellant have been complied with and

that the record, which the appellant propose will be printed in Trinidad and Tobago, shall be transmitted by the Registrar of the Supreme Court to the Registrar of the Privy Council within twenty-one (21) days from the date of such certificate;

(c) That the appellant be at liberty to apply at any time within one hundred and twenty (120) days from the date hereof for final leave to appeal on production of a certificate under the hand of the Registrar of due compliance on their part with the conditions of this order.

The application for final leave is fixed for the 30th of April 2018 at 9:00 am. The MOWT through its head, the Minister of Works and Transport and/or the Permanent Secretary in the MOWT whether by itself, the Second Interested Party Kall Company Limited or any other contractor or through their servants and/or agents and/or employees is restrained from taking any further steps to continue the works on a 5000 meter highway alignment commencing at a point 300 meters East of the Cumuto Main Road and ending at a point 600 meters West of Guico Trace Sangre Grande ("the project") which began on or about 8th January, 2018 pursuant to the Certificate of Environmental Clearance dated 22nd June 2017 (CEC 4952/2016) until the hearing and determination of the appeal by the Judicial Committee of the Privy Council or until further order.

It is ordered that the costs of this application be costs in the appeal.

Dated the 20th day of April, 2018.

R. Narine
Justice of Appeal.