REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civil Appeal No: S110 of 2020
Claim No. CV2017-03170

Between

IN THE MATTER OF AN APPLICATION FOR LEAVE TO MAKE A CLAIM FOR JUDICIAL REVIEW PURSUANT TO PART 56.3 OF THE CIVIL PROCEEDINGS RULES, 1998 AND PURSUANT TO SECTION 6 OF THE JUDICIAL REVIEW ACT

AND

IN THE MATTER OF THE MAKING OF A DECISION BY THE MINISTER OF WORKS TO RE-START WORKS ON THE DEBE TO MON DESIR SEGMNET OF THE POINT FORTIN HIGHWAY EXTENSION WITHOUT CONSULTATION WITH MEMBERS OF THE HIGHWAY REROUTE MOVEMENT

BETWEEN

DR. WAYNE KUBLALSINGH
AND
THE HIGHWAY REROUTE MOVEMENT

APPELLANTS/CLAIMANTS

AND

THE MINISTER OF WORKS AND TRANSPORT

RESPONDENT/DEFENDANT

BEFORE THE HONOURABLE MADAM JUSTICE MARIA WILSON

Appearances:

Dr. Kublalsingh in person

Dr. Kublalsingh as a member of the Highway Reroute Movement

Mr. R Ajodhia instructed by Ms. K Bello and Mrs. K Mark-Gordon on behalf of the Ministry of Works and Transport.

Dated: 18th day of June 2020.

RULING

I. INTRODUCTION

1. Before me is an application of Applicants/Appellants Dr. Wayne Kublalsingh and the Highway Reroute Movement (a public interest group), dated and filed on 4th June 2020 seeking leave of this court to deem this appeal urgent and fit for early hearing pursuant to Rule 64.10 of the Civil Proceedings Rules 1998 as amended.

2. In support of this application is the affidavit of Suresh Chaitoo, a member of the Highway Reroute Movement filed and dated the 4th June 2020. In response to this application is an affidavit of Mr. Dennis Harricharan, the Programme Manager - Engineering and Programme Management of National Infrastructure Development Company Limited (NIDCO), on behalf of the Respondent.

II. SUMMARY OF THE HIGH COURT PROCEEDINGS

3. The Appellants sought judicial review of a decision of the Minister of Works and Transport (MOWT) to continue construction work on the Debe to Mon Desir (DMD) segment of the Southbound Highway without first consulting with the Applicants/Appellants in breach of an undertaking allegedly given by him.

4. Rahim, J ruled on April 24th 2020 *inter alia* that - the Government of Trinidad and Tobago gave an undertaking to the Applicants/Appellants that they would not make a decision on works on the DMD until the Applicants/Appellants were first consulted; the undertaking given to the Applicants/Appellants was clear unambiguous and devoid of relevant qualification; the Applicants/Appellants would have understood the undertaking related to all further works and it was reasonable for the Applicants/Appellants to have this understanding; the undertaking created a legitimate expectation for the Applicants/Appellants and by continuing works on the highway without first consulting the Applicants/Appellants and there was a breach of legitimate expectation.

5. However, Rahim, J considered the reasons the Defendants/Respondent gave to justify their actions and weighed it against the requirements of fairness and concluded that the finding on the issue lay in favour of the Defendants/Respondents. In his balancing exercise,

amongst other things, Rahim, J took into consideration that there was a high public interest component in ensuring that money already expended was not wasted or thrown away by the degradation of existing structures without properly securing them and by completing them. Additionally, the judge took into consideration that the Applicants/Appellants essentially accepted that the completion of the incomplete works at the bridges and interchange were necessary and had withdrawn their objections thereto.

6. Rahim, J concluded that the balance laid in favour of the Defendant/Respondent and he stated that the public interest was an overwhelming concern in this case. To the limited extent that the Defendant/Respondent breached or partially breached the undertaking, the court found that such breach was not an unfair one to the Applicants/Appellants nor was it an abuse in the exercise of his power by the Defendant/Respondent.

III. ISSUE TO BE DETERMINED

7. The central issue for my determination is whether or not the Appellants have satisfied me that this appeal should be deemed urgent and expedited pursuant to Rules 64.10 of the CPR as amended.

IV. LAW

8. **Rule 64.10** provides -

> *(1) Any party to an appeal may apply for the appeal to be expedited ;*
> *(2) On hearing the application the court may give such directions as are appropriate and in particular may direct that any part of rule 64.12 or 64.13 are not to apply or substitute different time limits for any time limits provided by the rules.*

9. **Rule 64.10 of the CPR** as amended permits the court to make an order for the hearing of an appeal to be expedited. The appellants would like this court to make such an order and in their Notice of Application relied on **six** grounds to support their request for an expedited

hearing of this appeal. The Respondent argued that there is no basis for this appeal to be expedited.

10. In deciding whether or not to exercise my discretion in this matter I considered that the **overriding objective** of the CPR is to treat cases fairly. Treating cases fairly does not only mean fairness to the parties to this appeal but to other parties awaiting for their appeals to be heard. An application for an expedited hearing of an appeal is essentially a request to the court to give an appeal priority over other appeals already listed for hearing**.**

11. Apart from considering the overriding objective of the CPR, I also considered the principles enunciated in **Trinidad and Tobago Civil Rights Association v Patrick Augustus Manning, Civil Appeal No. 147 of 2004, Unilever PLC vs Chefaro Proprietaries Ltd [1995] 1 All E R 587** and **Robert Gormany and Shaun Sammy vs The Trinidad and Tobago Housing Development Corporation, Civil Appeal No. S375 of 2018**. These cases provided me with useful guidelines for deciding whether or not to exercise my discretion to expedite this appeal.

12. Nelson, JA in **Trinidad and Tobago Civil Rights Association v Patrick Manning**, endorsed the views expressed by Sir Thomas Bingham in **Unilever PLC v Chefaro Proprietaries Limited** on the consequences of expediting an appeal:-

> '*Since most appeals are scheduled to be heard on dates fixed well in advance, and since court sittings are so far as possible planned a long time ahead, the expediting of an appeal other than the shortest is likely to have one or other of two consequences, usually both. One is that a fixture already made for the hearing of another appeal has to be cancelled. The other is that the hearing of another appeal, which may well have been awaiting hearing for about 18 months, has to be deferred.'…'Both these consequences are highly distasteful both to the court and the parties in the displaced appeal or appeals.*

13. Further, Nelson, JA following the principles enunciated in **Unilever,** stated the following in **Trinidad and Tobago Civil Rights Association**:

"... the court is very sparing in its grant of applications for urgent hearing especially in view of the fortunate position in which our Court of Appeal list stands. Secondly, that the court in fixing a date for an early hearing would give weight not so much to the wishes of the parties to that appeal, but to the interest of other parties who would be adversely affected by the cancellation or postponement of their appeals. One has to consider that all persons who filed appeals feel that those appeals ought to be heard urgently. It would therefore require some exceptional case to be made out for an urgent hearing to be granted especially in view of the relatively short time-lag between setting down and hearing of an appeal in this jurisdiction."

14. While the time lag between setting down and hearing of an appeal in this jurisdiction is not the same as it was at the time of the **Trinidad and Tobago Civil Rights Association case,** the position adopted by Nelson, JA **in Trinidad and Tobago Civil Rights Association** and held by Sir Thomas Bingham in **Unilever** are still valid**.**

15. Additionally, Sir Thomas Bingham in **Unilever** stated that a party must cross a **high threshold** before its application for an expedited appeal should be granted.

16. In deciding the approach to such applications, Bingham considered two kinds of cases. **One,** where justice can only be done if the appeal is heard immediately or within days. An example of this is where an accused convicted of murder is seeking a stay of execution to prevent the State from carrying out his execution. (Of course there are other examples less extreme than this one.) **Two**, cases where certain circumstances warrant an expedited hearing. For example where -

    i. A party may lose its livelihood, business or home or suffer irreparable loss or extraordinary hardship;

    ii. The appeal will become futile;

iii. The resolution of numerous cases turning on the outcome of a case under appeal will be unreasonably delayed, or the orderly management of class or multi-party litigation in a lower court will be disrupted;

iv. Widespread divergences of practice are likely to continue, with the prospect of multiple appeals until the correct practice is laid down; and

v. There would be serious detriment to good public administration or to the interest of members of the public not concerned in the instant appeal.

17. While this list is not exhaustive it was instructive to me in coming to my decision. The common thread that ran through the **Trinidad and Tobago Civil Rights Association (supra), Unilever (supra), Robert Gormany (supra)** and the recent case of **The Attorney General of Trinidad and Tobago vs Ryan Reno Mahabir (supra)** was that appeals should only be expedited where there are exceptional circumstances.

V. GROUNDS RELIED ON BY THE APPELLANT

18. I will now consider each of the grounds upon which the Appellants relied. I will address these grounds bearing in mind what the Appellants sought at the High Court was the judicial review of a decision of the Minister of Works and Transport (MOWT) to continue construction work on the Debe to Mon Desir (DMD) segment of the Southbound Highway without first **consulting** with the Applicants/Appellants, in breach of an undertaking allegedly given by him. What the Appellants ultimately want is to be **consulted** so that the many studies and research which they conducted in relation to the area of DMD and the project generally would considered, before the MOWT pursue more construction work on the DMD segment.

19. In their written submissions the Appellants relied on **six** grounds to support their application for the expedited hearing of this appeal and in their oral submissions identified

three of the circumstances referred to in the **Unilever** case and sought to fit some of their grounds under these three heads as their basis for the expedited hearing of this the appeal.

20. I will first address the six written grounds outlined in their application for an expedited hearing and then the three circumstances they identified from **Unilever**.

WRITTEN GROUNDS RELIED ON BY THE APPELLANT

Ground one

21. In ground one, the Appellants referred to a breach of a condition in the Certificate of Clearance which required compensation to be paid to owners before the commencement of relocation and demolition works and the failure of the judge to address the issue of lapsed notices in accordance under the **Land Acquisition Act Chapter 58:01** (LAA).

22. The breach of condition in the Certificate of Clearance and the failure of the judge to address notices that lapsed under the LAA were not issues in the High Court matter for the judge to consider and therefore are not issues relevant to this appeal. These issues are therefore irrelevant to my consideration of whether or not I should exercise my discretion to expedite this appeal.

Ground two

23. In ground two the Appellants complained that the court ignored evidence of the impact of ongoing work on the community. This too was not an issue that was relevant in the High Court proceedings and therefore not relevant to this appeal. It is therefore irrelevant to the application before this court.

Ground three

24. Ground three addressed the failure of the Judge to fairly consider public interest claims of the Appellants, in weighing the requirements of fairness against the public interest in the matter. This was a complaint about the Judge's findings and in any event not supported by evidence. The only supporting evidence is in the form of an affidavit of Suresh Chaitoo

which does not address a public interest claim. The complaint about the Judge's findings is not relevant to this application. This ground is therefore irrelevant to this application.

Ground four

25. Ground four dealt with the Appellant's assertion that there was still time for the consultations promised to the Appellants and argued that an expedited hearing will facilitate this consultation. I do not agree that expediting the appeal would necessarily lead to consultation. On the other hand there is nothing to prevent this consultation pending the appeal of this matter. This is not a factor which justifies the expediting of this Appeal

Ground five

26. Ground five refers to the merits of the appeal and argues that the Appellants have a fair prospect for success. The merits of the appeal is not a factor that I need to take into consideration in deciding whether to expedite this Appeal.

Ground six

27. Ground six refers to delays in the course of the trial and suggest that delays allowed the Defendant/Respondent in the past to expedite works on the grounds, and further delays will allow such works to continue apace on the ground.

28. The delays in the course of the trial in the past are irrelevant issues for my consideration in this application. In the affidavit of Mr. Harricharan filed on behalf of the respondent, he described the scope of the current works and stated that no new works will commence. There is no evidence that there will be further delays nor is there evidence at this time that there will be future works. Mr. Harricharan stated in his affidavit the scope of the work which was ongoing at the time of the judgement and indicated that the Defendants/ Respondents did not intend to begin new work on the project.

29. The Respondents submitted that none of these grounds provided any support for this application to expedite the hearing of this appeal.

Conclusion on the six written grounds

30. Having examined the six written grounds outlined in the notice of application, I conclude that none of the grounds are relevant to this application before the Court, to expedite the hearing of the Appeal in this matter. The Appellants have therefore not shown that there are exceptional circumstances and have not been able to pass the high threshold that is required for me to deem this appeal urgent.

31. The Court will now address three (3) of circumstances referred to in the **Unilever** case, upon which the Appellants relied in their oral submissions to support their application before this Court.

VI. ORAL GROUNDS UPON WHICH THE APPELLANT RELIED

Ground One - Members of the Highway Reroute group may lose its livelihood, business or home or suffer irreparable loss or extraordinary hardship

32. The Appellants referred to breaches of provisions under the **Environmental Management Act Chapter 35:05** and of the **LLA** which he said resulted in trespass to certain lands, flooding, no compensation or no full compensation to owners in the areas earmarked for this project.

33. The Appellants attempted to provide the Court with oral evidence on these issues during his submission but did not have affidavits from the persons to whom he referred, in support. The only affidavit he had in support of this application was from Mr. Suresh Chaitoo and Mr. Chaitoo did not speak about flooding in his affidavit. In any event such facts were not relevant to the issues before Rahim, J and therefore were not considered by him in coming to his decision in this matter. They are therefore irrelevant to the appeal in this matter and also this application before me.

34. It is noteworthy that despite the alleged hardship, which the First Appellant claim the Second Appellants suffered there was no application for any interlocutory relief like an injunction or an interim relief.

Ground Two - The appeal will be deemed futile

35. The Appellants argued that there was a breach of the undertaking to consult with the Appellants before continuing the work on the DMD project, that is, to consider certain environmental research that was done, and he argued that this breach led to flooding in certain areas. They appellants submitted that the whole course of action would be rendered futile if not expedited because the Minister would be **free to go ahead and do any work on the segments** without the benefit of the certain studies that were prepared.

36. There was no evidence of flooding before me. Dr. Kublalsingh attempted to give evidence of this during his oral submissions without providing any evidence to the court. I did not permit him to do so.

37. The Appellants have not provided any evidence to support this submission and instead speculated about what they felt the Minister would do or might do. In the evidence of Mr. Dennis Harricharan he described the ongoing works and indicated that these works were ongoing at the time of the High Court Judgement in this matter. Mr. Harricharan also confirmed that no new work had been undertaken on the DMD segment of the SHHEPF Project between 24th April 2020 – the date of the delivery of the High Court judgment - and the 9th June 2020 when Mr. Harricharan signed the affidavit. The Judge determined that the ongoing works, which were limited to the structural integrity of the uncompleted Mon Desir interchange only, were in the public's interest.

38. The Court notes that despite the fear that it would become futile if the work on the DMD project continues, there was no application by the Appellants for any interim relief or otherwise to justify the urgency to address any irreparable harm.

Ground Three - There would be a serious detriment to good public administration or to the interest of members of the public not concerned in the instant appeal.

39. Mr. Kublalsingh in his oral submission indicated that failure to expedite the appeal would be detrimental to good public administration because the works that would be allowed to

continue, would be in breach of the Environmental Management Act and cause continuous flooding in the area and damage to individual property and forestry.

40. Again, there was no evidence of flooding in the affidavit of Suresh Chaitoo so there is no evidence of this before the court.

41. Further, I should point out that the breach of EMA or the LLA by the MOWT was not part of the claim before Rahim, J and therefore does not feature in this appeal. The appeal is grounded on the fact that MOWT made an undertaking, operated contrary to that undertaking and the MOWT's decision was said to be a breach of the Applicants'/ Appellants' legitimate expectation. However such breach was deemed justifiable by Rahim, J in the interest of the public.

42. The Appellants have not provided any evidence to support this submission and instead speculated about what they felt the Minister would do or might do. In the evidence of Mr. Dennis Harricharan he described the ongoing works and indicated that these works were ongoing at the time of the High Court Judgement in this matter. Mr. Harricharan also confirmed that no new work had been undertaken on the DMD segment of the SHHEPF Project between 24th April 2020 – the date of the delivery of the High Court judgment - and the 9th June 2020 when Mr. Harricharan signed the affidavit.

VII. CONCLUSION

43. In conclusion, the Appellants have not satisfied me on a balance of probability that this appeal involves exceptional circumstances that should lead me to exercise my discretion to deem this appeal urgent pursuant to Rule 64.10 of the CPR as amended.

44. In the circumstances, I will dismiss this application and order that the Appellants pay the cost of this application to be certified by a registrar.

Maria T. M. Wilson
Justice of Appeal