

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No- CV2020-02047

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW
PURSUANT TO PART 56.3 OF THE CIVIL PROCEEDINGS RULES 1998 AS AMENDED AND
PURSUANT TO SECTION 6(1) OF
THE JUDICIAL REVIEW ACT, CHAPTER 7:08**

AND

**IN THE MATTER OF AN APPLICATION BY RAEHANA LORICK PANTIN AND OTHERS FOR
ADMINISTRATIVE ORDERS PURSUANT TO CPR PART 56.7 AND UNDER SECTION 14(1) OF
THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO FOR CONTRAVENTION
OF THEIR RIGHTS**

BETWEEN

RAEHANA	LORICK	First Claimant
JOANNE	PANTIN	Second Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO Defendant

BEFORE THE HONOURABLE MADAM JUSTICE B.A. LAMBERT PETERSON

Appearances:

Mr. Anand Ramlogan S.C. leading Ms. Renuka Rambhajan and Mr. Ganesh Saroop instructed by Mr. Jared Jagroo and Mr. Che Dindial Attorneys-at-Law for the Claimants

Mr. Reginald Armour S.C. leading Ms. Vanessa Gopaul and Mr. Raphael Adjohia instructed by Mrs. Kendra Mark-Gordon and Ms. Ryanka Ragbir Attorneys-at-Law for the Defendant.

REASONS

Introduction

1. On 18 February 2022, the Court gave its decision on determination of
 - i. the Fixed Date Claim filed on 30 October 2020 seeking constitutional relief; and
 - ii. the issue of costs with respect to the application, filed on 21 July 2020, for leave to file an application for judicial relief.

I indicated that I would provide written reasons. The Court's reasons are now set out below.

Issues

2. The issues for determination were
 - a. whether the Claimants' constitutional rights guaranteed by sections 4 (a) and/or 4 (b) and/or 4 (g) of the Constitution of Trinidad and Tobago were breached by the Minister of National Security's failure to disclose or his late disclosure of the criteria and the factors which informed the management and regulation of the process by which persons were allowed phased entry into Trinidad and Tobago between the 22nd March 2020 and the 24th July 2020; and
 - b. whether any order for costs should be made as a consequence of the Claimants' application for leave to file a claim for judicial review of the Minister of National Security's failure to disclose or his late disclosure of the criteria and the factors which informed the management and regulation of the process by which persons were allowed phased entry into Trinidad and Tobago between the 22 March 2020 and the 24 July 2020.
3. The application for leave to file a claim for judicial review and the constitutional claim, were filed in the same proceedings. The issue of costs related to the Claimants' application for leave to file for judicial review was, by Order dated 15 October 2020, reserved until determination of the proceedings.

Order

4. The Court made the following orders:

IT IS HEREBY ORDERED:

On the Constitutional Claim

- i. There was no breach of the Claimants' constitutional rights with respect to freedom of movement and the right to liberty and enjoyment of property and the right not to be deprived thereof
- ii. The Claimants' constitutional rights under section 4(a), 4(b) and 4(g) of the Constitution were not breached.
- iii. The Claimants do bear the Defendant's costs fit for Senior Counsel, Two (2) Junior Counsel and One (1) Instructing Attorney-at-Law, to be assessed by the Registrar of the Supreme Court in default of agreement.

On the Application for Leave to file a claim for Judicial Review

- iv. The Claimants do bear one half of the Minister of National Security's costs (the Minister of National Security having been removed as a party to these proceedings pursuant to Order made on 3 December 2020) fit for Senior Counsel, One (1) Junior Counsel and One (1) Instructing Attorney-at-Law, to be assessed by the Registrar of the Supreme Court in default of agreement.

Background

5. On the 21 July 2020, the Claimants filed an application for leave to file a claim for judicial review as against the Minister of National Security ("the Minister"). The application also sought immediate interim relief directing the Minister of National Security within 24 hours to disclose the policy and/or criteria being used by him to assess and determine applications for permission/exemption under the Public Health [2019 Novel coronavirus (2019-nCoV)] Regulations of 2020. Further, the Claimants sought constitutional relief against the Attorney General of Trinidad and Tobago. They claimed that their rights under sections 4 (a), 4 (b), 4 (d), 4 (g), 5 (2) (a) and 5 (2) (h)

were being infringed by the failure and/or refusal to disclose the criteria by which applications for permission to return were assessed and determined. In addition, a Certificate of Urgency and a Notice of Application to Deem Urgent were filed on 21 July 2020. I fixed the applications for hearing on 22 July 2020.

6. By their claim, the Claimants sought the following reliefs:

1. *An Order granting leave to apply for judicial review;*
2. *A declaration that the continued failure and/or refusal by the Respondent/Intended Defendant to disclose the policy and/or criteria that is being used to assess and determine applications for permission/exemption by the Respondent/Intended Defendant under the Public Health [2019 Novel Coronavirus (2019-nCoV)] Regulations of 2020 is illegal, irrational, unreasonable, and arbitrary;*
3. *An order of certiorari to remove into this Honourable Court and quash the decision by the Respondent/Intended Defendant not to disclose the policy and/or criteria that is being used to assess and determine applications for permission/exemption by the Respondent/Intended Defendant under the Public Health [2019 Novel Coronavirus (2019-nCoV)] Regulations of 2020;*
4. *An order of mandamus directing and compelling the Respondent/Intended Defendant to disclose the policy and/or criteria that is being used to assess and determine applications for permission/exemption by the Respondent/Intended Defendant under the Public Health [2019 Novel Coronavirus (2019-nCoV)] Regulations of 2020 within twenty-four hours.*
5. *A declaration that the Claimants were treated unfairly contrary to the principles of natural justice pursuant to Section 20 of the Judicial Review Act Chapter 7:08;*

As against the Defendant:

1. *A declaration that the continued failure and/or refusal by the Respondent/Intended Defendant and/or the Government of Trinidad and Tobago to disclose the policy and/or criteria that is being used to*

assess and determine applications for permission/exemption by the Respondent/Intended Defendant under the Public Health [2019 Novel Coronavirus (2019-nCoV)] Regulations of 2020 is in breach of the Claimants' rights under sections 4(a), (b), (d), (g), 5(2)(a) and (h) of the Constitution;

2. *An order that the Claimants are entitled to an award of damages, including vindicatory damages, for the breach of their constitutional rights;*

As against both the Respondent/Intended Defendant and the Defendant:

1. *Costs to be assessed;*
2. *Such further and/or other relief as the Court may in the exercise of its jurisdiction under section 14 of the Constitution consider appropriate for the purposes of enforcing, protecting and securing the enforcement and protection of the Claimants' said rights.*

7. On 22 July 2020, I deemed the applications filed on 21 July 2020 to be urgent, and gave directions for the filing of affidavits and propositions of law. The hearing of the applications for interim relief and for leave to file a claim for judicial review was fixed for 30 July 2020.
8. On 27 July 2020, the Permanent Secretary in the Ministry of National Security, Gary Joseph ("the Permanent Secretary") filed an affidavit on behalf of the Minister of National Security in response to all the affidavits filed on behalf of the Claimants but only addressing the issues arising on the applications for the interim reliefs and leave for judicial review. Exhibit 'G.J.2' to the affidavit was a letter dated 24 July 2020 addressed to Mr. Che N. Dindial, Attorney-at-Law which outlined the factors that the Minister took into account when making his decisions for permission or exemption under the Public Health [2019 Novel coronavirus (2019-nCoV)] Regulations of 2020.
9. As a result of emails received by the Attorneys-at-Law for the Claimants and the Respondents/Intended Defendants on the 28 July 2020 and 29 July 2020 respectively, the Court vacated the hearing scheduled for 30 July 2020. The Claimants withdrew

their Application for Interim Relief seeking that the Minister disclose the policy and/or criteria being used by him to assess and determine applications for exemptions. I made Orders in Chambers on 30 July 2020, and fixed the hearing of the application for leave to file a claim for judicial review for 16 October 2020.

10. The Claimants withdrew their Application seeking leaving to file a claim for Judicial Review. On 15 October 2020, I made orders in chambers to that effect. In addition to vacating the orders made on 30 July 2020, I gave directions for the filing of the claim seeking constitutional reliefs. The Court granted the Claimants leave to use the affidavits filed on their behalf in support of the Application for leave for Judicial Review, in the claim for constitutional relief.

11. On the 30th October 2020, the Claimants filed a Fixed Date Claim Form seeking the following reliefs:

1. *“A declaration that the continued failure and/or refusal by the First Defendant and/or the Government of Trinidad and Tobago to disclose the policy and/or criteria that is being used to assess and determine applications for permission/exemption by the First Defendant under the Public Health (2019 Novel Coronavirus (2019-nCov) 1 Regulations of 2020 breached the Claimants’ rights under sections 4 (a) (b), (d), (g) and 5 (2) (a) and (b) of the Constitution.*
2. *An order that the Claimants are entitled to an award of damages including vindictory damages, for the breach of their constitutional rights.*
3. *Costs to be assessed*
4. *Such further and or other relief as the court may exercise of its jurisdiction under section 14 of the constitution consider appropriate for the purposes of enforcing, protecting and securing the enforcement and protection of the Claimants’ said rights.”*

12. By the Court Order made on 3 December 2020, I clarified that notwithstanding that the intitulement on the Fixed Date Claim Form included the Minister of National

Security, the Attorney General of Trinidad and Tobago is the only Defendant. I also gave further directions for filing of affidavits and submissions.

13. On the 8 June 2021, the Claimants filed their closing submissions; wherein they abandoned their claim that their constitutional rights under sections 4 (d) and 5 (2) of the Constitution were infringed.

Discussion

14. The Claimants claim that the following constitutional rights have been infringed against them:

Section 4 of the Constitution of Trinidad and Tobago

“It is hereby recognised and declared that in Trinidad and Tobago there have existed and shall continue to exist, without discrimination by reason of race, origin, colour, religion or sex, the following fundamental human rights and freedoms, namely:

- (a) the right of the individual to life, liberty, security of the person and enjoyment of property and the right not to be deprived thereof except by due process of law;*
- (b) the right of the individual to equality before the law and the protection of the law;...*
- (g) freedom of movement;....”*

15. On the 30 January 2020 the World Health Organisation (“W.H.O.”) declared an outbreak of the 2019 Novel Coronavirus (“Covid-19”) as a Public Health Emergency of International Concern. On 31 January 2020 by Legal Notice 34 of 2020 the President of the Republic of Trinidad and Tobago declared Covid-19 a dangerous and infectious disease.

16. From 4 February 2020, there was a phased closure of Trinidad and Tobago’s borders to persons whose travel originated from designated countries. Persons desiring entry to Trinidad and Tobago were required to quarantine for 14 days at a designated location and provide proof of negative test results for Covid-19.

17. On 19 February 2020, the First Claimant left Trinidad and Tobago to seek medical treatment in Canada. On 11 March 2020, the W.H.O. declared Covid-19 a pandemic. On the 14 March 2020, the Second Claimant left Trinidad and Tobago to assist her daughter in Miami.
18. On the 22 March 2020, the borders of Trinidad and Tobago were closed to all persons unless an exemption was granted by the Minister.
19. On 2 June 2020, the Second Claimant emailed the Ministry of National Security applying for an exemption to the border closure. On 17 June 2020, the First Claimant emailed the Ministry of National Security applying for a similar exemption.
20. On 22 June 2020, the Second Claimant sent another email. On 30 June 2020, 3 July 2020 and 15 July 2020, the First Named Claimant sent other emails to the Ministry of National Security.
21. On the 16 July 2020, a pre-action protocol letter was issued on behalf of both Claimants. On the 17 July 2020, the Minister's representatives acknowledged receipt of the pre-action letter and requested two weeks to furnish a response. The Claimants refused the request, indicating that the timeframe was not commensurate to the urgency of the situation.
22. On the 21 July 2020, the Claimants filed a claim seeking Judicial Review, Constitutional Relief and urgent interim relief.
23. On the 24 July 2020, the Permanent Secretary for the Ministry of National Security wrote to the Claimants' Attorney-at-Law Mr. Che Dindial, in response to a Freedom of Information request on behalf of Mr. Devant Maharaj. The Claimants were provided with, and read, a copy of the Permanent Secretary's letter. It detailed the policy, criteria and factors considered by the Minister in granting an exemption.

24. On the 27 July 2020, the Defendant filed an affidavit of the Permanent Secretary in the instant proceedings, in which he also outlined the policy for exemption, and the criteria and factors used.
25. On 5 August 2020, the First Claimant was granted an exemption to border closure and she arrived in Trinidad and Tobago on 8 August 2020. On 12 September 2020, the Second Claimant was granted an exemption, and arrived in Trinidad and Tobago on 20 September 2020.
26. The issue of the availability of relief to the Claimants pursuant to the Freedom of Information Act Chapter 22:02 (hereinafter referred to as the “FOIA”) as an alternative remedy or a parallel remedy was raised by the Defendant’s Attorney-at-Law at the first hearing of the instant proceedings on 22 July 2020. In the absence of exceptional circumstances, constitutional proceedings are not appropriate where there is an alternative parallel remedy.¹ To successfully maintain a claim for constitutional relief where there is a parallel remedy, a Claimant must illustrate that there is some feature of his case that indicates that the remedy, although otherwise available, would not be adequate.² The Claimants in the instant case have not illustrated the inadequacy of the parallel remedy - an application made pursuant to the FOIA.
27. The Claimants submitted that the case was a *bona fide* resort to the Constitution that cannot be repelled on the basis of a FOIA application.³
28. The Claimants submitted that the Defendant’s submission of alternate remedy was made at a late stage in the proceedings and is tantamount to an ambush.⁴ As mentioned at paragraph 26 (above) the Defendant on the first date of hearing raised the issue of the FOIA providing an alternative remedy. The Court rejects the Claimants’ submission that the Defendant’s submission was an ‘ambush’.

¹ Jaroo v The Attorney General of Trinidad and Tobago (2002) UKPC 5

² The Attorney General of Trinidad and Tobago v Ramanoop (2005) UKPC 15.

³ Page 4 of Claimants’ submissions in reply

⁴ Page 3 of Claimants’ submissions in reply

29. The Claimants acknowledge that they had sight of the Ministry of National Security's response to Mr. Devant Maharaj's FOIA application, which outlined the policy, criteria and factors relative to the exemption. In light of the disclosed information, the Claimants subsequently withdrew their claim for Judicial Review.⁵

Section 4 (b) – The right to protection under the law

30. The Court was not satisfied that there was non-disclosure of the policy, criteria and policy. The exemption policy was publicly and widely disseminated at media conferences and reported in electronic media and newspapers. The evidence illustrates that the Claimants applied for an exemption on 30 June 2020, annexing proof of nationality. This is highly suggestive of the Claimants' foreknowledge of the exemption policy and criteria.

31. Any failure by the Defendant to publish its policy and/or criteria cannot be said to have deprived the Claimants of the protection of the law, notwithstanding the breadth and scope of this fundamental right. In arriving at this conclusion, the Court was guided by the dicta in the case of **Commissioner of Prisons and another v Seepersad and another [2021] UKPC 13** particularly paragraphs 62 – 76.

32. The First Claimant's evidence was that she expected to return to Trinidad by the end of April 2020.⁶ The Second Named Claimant's evidence was that she was scheduled to return home on the 11 June 2020. The Minister's statement relative to "All nationals being able to return" was published on the 27 May 2020.⁷ Based on the evidence before the Court, there was a failure to "publish" the policy and/or criteria between the periods of 22 March 2020 when the borders were closed to nationals and 27 May 2020.

33. In early June 2020, the Ministry of National Security designated an email address to facilitate the management of applications.⁸

⁵ Paragraph 4 of Claimants' closing submissions and Paragraph 48 of the Fixed Date Claim Form

⁶ Fixed Date Claim Form, paragraph 8

⁷ Exhibit G.J.3 to 27 July 2020 affidavit of Gary Joseph

⁸ Affidavit of Gary Joseph paragraph 7

34. The Claimants submitted that they were rendered stateless. This submission is without merit. There is no evidence before the Court to support a contention of statelessness.
35. The evidence suggests that the Claimants suffered hardship and privation because of the border closure. Whilst this is of serious concern to the Court, I am satisfied that this does not amount to a failure to afford the Claimants the protection of the law. The Claimants retained Counsel, issued a pre-action protocol letter and instituted proceedings. In addition, the FOIA provided a regime for the Claimants to have obtained the information they sought.
36. I gave consideration to the broad scope of constitutional right enshrined by section 4 (b). On the evidence before the court, that there was no breach of the Claimants' constitutional right to protection of the law.

4 (a) and (g) – The right to liberty and freedom of movement

37. The evidence before the Court is that:
- a. Exemption applications were made by the Claimants on the 2 June 2020 and 17 June 2020 respectively; prior to the Permanent Secretary's FOIA response to Devant Maharaj on the 24 July 2020 and prior to the Permanent Secretary's affidavit filed on the 27 July 2020; and
 - b. Exemptions were granted to the Claimants on the 5 August 2020 and the 12 September 2020 respectively.
38. There is no evidence before the Court that the Claimants were denied entry to Trinidad and Tobago based on the Defendant's failure to disclose a policy and/or criteria.
39. The Public Health Ordinance ("P.H.O.") and the Regulations made thereunder are the legal underpinnings of the border control and the exemption application policy. The

Claimants asserted that they do not accept the regulations as being valid,⁹ but neither the Regulations nor the P.H.O. were the subject of challenge in these proceedings. I am satisfied of the legality and constitutionality of the Regulations, by virtue of the Court of Appeal's decision in **Dominic Suraj et al v The Attorney General of Trinidad and Tobago Civ App 246/2020** and **Satyanand Maharaj v The Attorney General of Trinidad and Tobago Civ App 248 of 2020**. At the time of my decision, the Court of Appeal had upheld the constitutionality of the Regulations, inclusive of the border control regulations.

40. The decision of the Honourable Madam Justice Donaldson-Honeywell in the case of **Takeisha Clairmont v The Ministry of Health and The Attorney General of Trinidad and Tobago CV 2020-03855** was very useful, particularly at paragraphs 18-21 and 24-27:

18. "... Border closure is a drastic measure that affects the lives of citizens like the Claimant. It serves the public interest in upholding the rule of law that citizens, like the Claimant, exercise vigilance in taking such matters to the Court.

19. The right of a citizen to return home is not only inherent based on nationalistic sentiments of belonging but also protected by the Constitution. Rights, such as freedom of movement and enjoyment of property that the Claimant relies on, are counterpoised against the right to life, which the regulation seeks to address. The framers of the impugned regulation may, in my view, have used wording more demonstrative of the rights of nationals like the Claimant to return home, while at the same time affording protection against the harmful public risks to life and livelihoods that could be caused by immediate, mass entry of nationals.

20. However, although the impugned regulation may be somewhat lacking in expression of sensitivity to the rights of nationals, there is nothing therein that

⁹ Fixed Date Claim Form (Ground 1) page 3

debars nationals for entry. This is not a case where the regulation prescribes for statelessness envisioned in the New Zealand context as wholly inappropriate. Instead, both nationals and non- nationals can and have been permitted entry on a managed basis wherein entry for nationals, including the Claimant, is prioritised.

21. Furthermore, the policy in effect has been proven by uncontradicted evidence of the Chief Medical Officer and the Minister of Health and the Permanent Secretary to the Minister of National Security to be one of phased repatriation of all nationals who apply for permission. The Claimant has not put forward any expert evidence to establish that a phased approach to permitting nationals to enter is unnecessary in order to protect against disease transmission risks which potentially cause death thereby contravening the right to life. Accordingly, whilst the managed process involves a curtailment of prior ease of entry to the borders which has hitherto been bereft of procedural hindrances, there is effectively no breach of the rights of citizens provided for or implemented based on the regulations per se. ...

24. In any event, even if leave had been granted, my finding is that the impugned regulation is intra vires the provisions of the governing legislation put in place since 1940 to guard against the ravaging effects of public health risks caused by infectious disease. That legislation, the PHO serves to protect the public interest in avoiding extensive illness and deaths due to infectious disease.

25. As to the Constitutional aspect of the Claim, Boodoosingh J, as he then was, has eloquently and persuasively reasoned in CV 2020-01370 Suraj et al v The Attorney General of Trinidad and Tobago that the PHO, which is the parent legislation to the impugned regulation, is saved law under the Constitution. Accordingly, once the regulation is intra vires the PHO, it is also saved law, which means that it is not open to Constitutional challenge. I agree. However, as the said decision is subject to a pending Appeal, I make no further comment on that aspect of the case.

26. My finding is that even if the impugned regulation is not saved law, it can be upheld as constitutional. It is well established that the rights under the Constitution, including those enshrined at Chapter 1 Part 1, are not absolute . They carry reciprocal duties and responsibilities and may be subject to such restrictions as may be necessary in a democratic society in the public interests of national security, public safety and to protect the rights of other persons.

27. In the instant circumstances, the issuance of the impugned Regulation constitutes a proportionate interference with the affected constitutional rights in this time of a global pandemic and as such it is not a contravention of the said rights. The Court affords the Executive a measure of deference and exercises judicial restraint in relation to the public policy management of the health risks and resource allocation decisions associated with the COVID-19 pandemic, which is based on expert medical advice.”

41. It is settled law that rights such as the right to liberty and freedom of movement are not absolute. They are subject to limitations, particularly where other rights are affected and/or where there are conflicting public interest considerations. Such curtailment of rights was evident in the ‘lockdowns’ experienced in Trinidad and Tobago, and by the phased border closure. I was mindful of the evidence Dr. Roshan Parasram, the Chief Medical Officer and the designated quarantine authority under the Quarantine Act Chap 20:05.

42. Dr. Parasram’s evidence was very clear and measured. He outlined that he had been advising the Ministry of Health in terms of its response to the Covid-19 from a public health perspective. In doing so, he had to keep abreast of all the data and guidelines published by W.H.O. He made mention of the fact that the primary role of the W.H.O. was to direct and coordinate international health building in the United Nations, and that Trinidad and Tobago is a member state.

43. The Court also considered the evidence of Mr. Gary Joseph, the Permanent Secretary at the Ministry of National Security. The newspaper article exhibited as “G.J.4” dated 27 May 2020 is entitled “*Nationals will be allowed home once they meet all*

requirements.” Both Claimants applied for exemptions in June 2020. As stated in paragraph 30 (above) it is evident that the Claimants possessed foreknowledge of the exemption policy and criteria at the time of their application.

44. There was no prescribed policy of statelessness. Nor was it a case where the late disclosure of the policy and/or criteria used to assess exemption, rendered the Claimants stateless and breached their constitutional rights to liberty and freedom of movement. The Court is satisfied that neither the late disclosure of the policy/criteria or the exemption policy itself amounted to the stripping away of the Claimants’ citizenship as submitted by the Claimants.

45. Based on the uncontroverted evidence of the Chief Medical Officer and the Permanent Secretary to the Minister of National Security, the policy was one of phased repatriation of all nationals who apply for exemption. The phased return of nationals via the exemption process required that the applicant be a national or permanent resident of Trinidad and Tobago. This information was in the public domain, albeit not posted on the Ministry’s website between 22 March 2020 and 24 July 2020. The Court was also satisfied on the evidence before it, that the Claimants’ rights under section 4 (a) right to life and liberty and 4 (g) right to freedom of movement were not breached.

Conclusion

46. There is no dispute on the facts. The Claimants have failed to demonstrate exceptional circumstances and inadequacy of the parallel statutory remedy available to them under the FOIA. The true nature of the Claimants’ claim does not involve contravention of constitutional rights. A FOIA request in this context would have been the very means by which the Claimants could have secured the information being sought. The case of **Primnath Geelal and another v The Attorney General of Trinidad and Tobago S-274 of 2017** was relied on by the Claimants as authority that the Claimants did not know the criteria used by the Minister to assess exemption to the border closure and therefore they did not have adequate information to make an effective application. The **Geelal** case, which dealt with the issue of challenging an *ex parte* detention made pursuant to the Proceeds of Crime Act can be readily

distinguished from the instant case which deals with an evolving situation due to an unpredictable, global pandemic.

47. From the evidence of the Permanent Secretary, the factors, which the Minister took into consideration when granting exemptions, were subject to change. That flexibility was due to the Minister's dependence on advice received from public health experts. The advice of the public health experts was responsive to the evolving nature of the characteristics of Covid-19 virus, its spread and the research findings concerning the global pandemic. The affidavit of the Permanent Secretary sworn to on 2 February 2021 provided useful insights into the minefield of balancing competing interests during a time of uncertainty, brought about by a global pandemic.

48. The Permanent Secretary detailed that a large number of exemption applications were received on a daily basis. Between 18 March 2020 and 25 July 2020 approximately 5,715 applications, either to enter or to leave Trinidad and Tobago, were received. That exemptions were not granted to the Claimants immediately on their application does not equate with an infringement of their respective constitutional rights.

Costs:

49. The Claimants and the Minister of National Security both sought an order for costs with respect to the Application for Leave to file for Judicial Review. The Claimants' Attorney-at-Law submitted that the Minister of National Security should bear the Claimants' costs up to the time of the withdrawal of the claim for judicial review. Senior Counsel submitted that the Claimants were justified in moving the court, by their application for leave because the Minister of National Security had not provided the information sought in the pre-action letter. The Attorney-at-Law for the Ministry of National Security submitted that the Claimants' proposed judicial review was the subject matter of a pending Freedom of Information request by another client of the Claimants' Attorneys-at-Law.

50. When the application for leave came up for hearing before me on 22 July 2020, Senior Counsel on behalf of the Claimants indicated that the FOIA application involving Mr. Devant Maharaj was not a related matter. Senior Counsel informed the Court that Mr. Maharaj is a public-spirited activist. He, indicated, on being informed that other persons (directly impacted and personally aggrieved by virtue of being citizens stranded overseas) had filed proceedings, that he no longer wished to proceed with proceedings CV2020-01970. This was confirmed in an affidavit of Mr. Devant Maharaj sworn to in these proceedings on 22 July 2020 whereby he stated at paragraph 8 that he gave instructions that a Fixed Date Claim not be filed because “persons who are personally aggrieved have since instituted legal proceedings....”
51. I am satisfied that when that the Claimants filed their application for leave for Judicial Review the criteria used by the Minister of National Security in assessing exemption applications had not been provided to the Claimants or to Mr. Devant Maharaj.
52. Notwithstanding this, I consider the Claimants’ to have filed their application for leave prematurely.
53. A pre-action protocol letter dated 16 July 2020 was sent on behalf of the Claimants to the Permanent Secretary, Ministry of National Security and to the Solicitor General. The Claimants required a response by 4:00 p.m. Sunday 19 July 2020 on the basis that the information was required as a matter of urgency. The Defendants’ Attorneys-at-Law received a response on Friday 17 July 2020 requesting two weeks to retain counsel and respond. The Claimant’s Attorneys-at-Law refused the request for an extension. On Monday 20 July 2020 via letter, the Solicitor General repeated her request for a 14-day extension. On Tuesday 21 July 2020 the applications for leave to file judicial review, application for interim relief and application that the matters be deemed urgent, were filed. On Friday 24 July 2020 the information sought by the Claimants in the instant matter were provided to the Attorneys-at-Law for Devant Maharaj in proceeding CV2020-01970. The same Attorneys-at-Law represented Mr. Devant Maharaj and the Claimants. This was well within the period of extension of 14 days from 16 July 2020 sought by the Solicitor General.

54. The request of 14 days did not appear to me to be unreasonable. The costs incurred to the Claimants in filing proceedings and the Ministry of National Security in retaining Counsel with respect to a grant of leave to file for judicial review was rendered unnecessary.
55. In exercising my discretion, I considered the factors outlined in Part 67 of the Civil Proceedings Rules 1998 as amended. I considered that given the litigation conduct of the Claimants' it is reasonable that they bear one half of the Ministry of National Security's costs certified fit for Senior Counsel, one Junior Counsel and one Instructing Attorney, to be assessed by the Registrar in default of agreement.
56. As it relates to the constitutional claim, the Claimants' Attorneys-at-Law submitted that had the Minister published the criteria and factors utilised by him, the need for this claim would have been obviated. The Defendant's Attorney-at-Law submitted that the Claimants' should bear the Defendant's costs because the Claimants maintained their claim when it should have been apparent that there was really no opportunity for constitutional relief.
57. The criteria and factors to be considered by the Minister were not neatly packaged and published on a website. This did not amount to a breach of the constitutional rights of the Claimants. The criteria were made available to all via media conferences and the subsequent news reporting of those conferences. The media conferences were broadcast prior to the issuing of the pre-action letter on 16 July 2020 and the filing of applications on 21 July 2020 on behalf of the Claimants.
58. The Claimants' litigation conduct was characterised by a constant whittling down of the constitutional reliefs sought by them against the Defendant. On the specific facts of the instant case, it was apparent that the matter was likely to be determined in the manner in which it was in fact determined.
59. Notwithstanding the suggested orders of the respective Attorneys-at-Law, the discretion with respect to the granting of costs remains that of the Court. In addition to considering Parts 66 and 67 of the Civil Proceedings Rules 1998 (as amended) I was

mindful that the Attorneys-at-Law for the Defendants had to respond to the voluminous though well-researched submissions on behalf of the Claimants. The Defendant's pithy and clear response would have required considerable skill. The justice of the case merited that the Claimants bear the Defendant's costs certified fit for Senior Counsel, two Junior Counsel, and one Instructing Attorney, to be assessed by Registrar in default of agreement.

Dated this 16th day of September 2022

Betsy Ann Lambert Peterson

Judge