

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Claim No: CV2020-00950**

**IN THE MATTER OF THE CONSTITUTION OF TRINIDAD AND TOBAGO AND  
IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 14(1) OF THE  
CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO ALLEGING  
THAT THE PROVISIONS OF SECTION 4 THEREOF HAVE BEEN ABROGATED  
ABRIDGED OR INFRINGED**

**Between**

**NIGEL THOMAS  
SUZANNE SINGH also called SUZANNE THOMAS**

**Claimants**

**And**

**THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**

**Defendant**

**Before the Honourable Mr. Justice Robin N. Mohammed**

**Date of Delivery: Friday 7 October 2022**

**Appearances:**

Anthony Manwah for the Claimants

André Cole and Sanjiv Sookoo instructed by Svetlana Dass and Adana Hosang for the  
Defendant

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**JUDGMENT**

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## INTRODUCTION

1. By Fixed Date Claim Form filed on the 10<sup>th</sup> March 2020, the Claimants brought constitutional proceedings against the Defendant relative to the issuance and execution of a *Writ of Fieri Facias*. The Claimants contend that the Registrar and Marshal and the Marshal's Assistant of the Supreme Court of Judicature, being servants and/or agents of the State, wrongfully issued and executed the *Writ of Fieri Facias*. The Claimants further contend that because the Writ was wrongly issued, the execution of the Writ resulted in breaches of their constitutional rights, namely: their rights to the enjoyment of property, protection of the law and respect for private and family life, as guaranteed under **section 4(a), 4(b) and 4(c) of the Constitution of Trinidad and Tobago** (hereinafter "**the Constitution**"). Accordingly, pursuant to **section 14 of the Constitution**, the Claimants sought redress for infringement of their constitutional rights.
2. The evidence on behalf of the Claimants comprises an affidavit filed on 10<sup>th</sup> March 2020 in support of their claim. The Defendant filed two affidavits in response, which were filed on 19<sup>th</sup> October 2020.
3. Specifically, the Claimants sought the following reliefs:
  - a. A declaration that the action of the Defendant, its servants and/or agents in issuing a *Writ of Fieri Facias* against the Claimants in CV2008-00635 on or about 14<sup>th</sup> January 2019, when there was no Court Order authorising same, is in breach of the rights guaranteed to the Claimants under **section 4(a) and (b) of the Constitution**.
  - b. A declaration that the action of the Defendant, its servants and/or agents in executing the said *Writ of Fieri Facias* at the home of the Claimants on the 24<sup>th</sup> January 2019 when there was no Court order authorising same is in breach of the rights guaranteed to the Claimants under **section 4(a), (b) and (c) of the Constitution**.
  - c. An order that the Defendant do pay to the Claimants the sums of **\$242,002.31** and **\$15,000.00** or such other amount as the Court shall think fit as

compensatory damages for the said breaches of the Claimants' said fundamental rights.

- d. Vindictory and other damages for the said breaches of the Claimants' fundamental rights.
- e. Costs.
- f. Such further or other reliefs as the Court may deem fit.

## **FACTUAL BACKGROUND**

### *Claimants' Case – Affidavit of Nigel Thomas*

- 4. By his affidavit deposed on the 10<sup>th</sup> March 2020, Nigel Thomas, the first-named Claimant, said he is an Architect. Suzanne Singh also called Suzanne Thomas, the second-named Claimant, is a Manager and his wife; they share a daughter who was seven years old, and they all reside at Townhouse No.1001, Goodwood Heights Townhouses Phase II, Morne Coco Road, Diego Martin. He stated that the affidavit was made on behalf of himself and the second Claimant.
- 5. He stated that before the 24<sup>th</sup> January 2019, they had a good relationship with their neighbours.
- 6. On the 27<sup>th</sup> September 2012, the Honourable Madame Justice Rajnauth-Lee (as she then was) delivered a ruling in **CV2008-00635 Nigel Thomas Architecture Limited v Primis Corporation** wherein the claim was dismissed and sent to a Master of the Court to assess costs. The said costs were assessed and accordingly, on the 17<sup>th</sup> June 2015, Master Sobion-Awai ordered that the sum of **\$188,324.50** be paid by Nigel Thomas Architecture Limited [hereinafter referred to as “**NTAL**”] to Primis Corporation Limited [hereinafter referred to as “**PCL**”].
- 7. On the 18<sup>th</sup> January 2019, they received by mail a Court Order of the Honourable Mr. Justice Frank Seepersad<sup>1</sup>. That Order was dated 8<sup>th</sup> January 2019 and was made pursuant to an ex-parte application by PCL, which was filed on the 29<sup>th</sup> August 2018.

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<sup>1</sup> Annexed as NT2

Accordingly, the Honourable Mr. Justice Seepersad ordered that Nigel Thomas, also known as Nigel Richard Thomas and Suzanne Singh, also known as Suzanne Thomas [the Claimants] of Apartment 1001, Goodwood Heights Place II Lamp Post 15 Morne Coco Road, Diego Martin, be added as parties to the proceedings.

8. On the 24<sup>th</sup> January 2019, at about 6:00 am at the Claimants' address, there was a loud banging on the front door, blowing of car horns and persons shouting the Claimants' names. He said that he looked outside the window and saw two police cars and several police officers with guns, a blue truck and about 8 to 10 men in front of their house. He said one or two of the men demanded to be let in, and they were shouting and behaving in a boisterous and aggressive manner. He noted that Leisa Kisto, an Attorney-at-Law for PCL, was present. He said that his wife became frightened and distraught, and his daughter, who was six years old at the time, began to cry and shake. He said he was alarmed and confused about what was going on and felt very concerned and apprehensive about his family's safety.
9. He said that he let the people in, and one of the men identified himself as Mr Pompey, a Marshal of the High Court, and the other as Amrit Ajodha, a licenced bailiff. He said that either Pompey or Ajodha told him that they have a court order to take things to satisfy a **Judgment Debt of \$242,000.00** owed to PCL. He said he was unaware that they owed PCL, and he asked to see the documentation. The Marshal produced a document which showed NTAL as the 1<sup>st</sup> Claimant/Judgment Debtor, himself as 2<sup>nd</sup> Claimant/Judgment Debtor and his wife as the 3<sup>rd</sup> Claimant/Judgment Debtor. However, he said the Marshal refused to give him a copy of any documents.
10. The Marshal told him that if he did not want goods to be taken, they could pay up the sum owed and the bailiff's fee. He said that to avoid embarrassment, he wrote two cheques: one cheque for **\$242,002.31** payable to Leisa Kisto and the second cheque for **\$15,000.00** payable to Amrit Ajodha. He said the cheques were derived from the account of NTA Designs Limited.
11. After handing over the cheques, the people left his premises. By that time, their neighbours were outside and making enquiries. He said they felt humiliated,

embarrassed, and traumatised. He said that since the 24<sup>th</sup> January, 2019 their neighbours have been distant and cold towards them, and the situation caused them embarrassment.

12. Later on the 24<sup>th</sup> January 2019, he caused their attorney-at-law to file an application to set aside the Order dated 8<sup>th</sup> January 2019.
13. On 4<sup>th</sup> February 2019, he received by mail an Order of the Honourable Mr. Justice Seepersad dated 8<sup>th</sup> January 2019.
14. On the 29<sup>th</sup> April 2019, the Honourable Mr. Justice Seepersad set aside the Order dated 8<sup>th</sup> January 2019. PCL appealed the decision, and the appeal was dismissed on the 30<sup>th</sup> September 2019. On the 13<sup>th</sup> December 2019, a pre-action protocol letter was sent to the Defendant and copied to the Registrar of the Supreme Court of Trinidad and Tobago.

### ***Defendant's Case***

#### ***Affidavit of Rishma Ramrattan***

15. Rishma Ramrattan, by an affidavit deposed on the 19<sup>th</sup> October 2020, said that she is an Assistant Registrar and that she was authorised to make the affidavit on behalf of the Registrar and Marshal of the Supreme Court of Judicature. Her duties and responsibilities include, but are not limited to, management of the court office, acting as keeper of the records, reviewing and granting over-the-counter applications in civil proceedings, and reviewing and perfecting court orders. Also, the nature of such a role is administrative rather than judicial, and the general approach is to ensure compliance with the applicable procedure and rules rather than reviewing the application on a merit basis, as this is more suited to a High Court Judge in situations such as a Notice of Application and affidavits.
16. According to the court records, on 14<sup>th</sup> January 2019, PCL/Judgment Creditor filed a request for a Writ of Execution for Seizure and Sale of Goods (Writ of *Fieri Facias* or *Writ of Fi Fa*) as an over-the-counter application. Orders dated 17<sup>th</sup> June 2015 and 8<sup>th</sup> January 2019 were enclosed as the subject of the said enforcement proceedings. Additionally, the Judgment Creditor filed a Notice of Authorisation, Notice of Indemnity, Notice to Locate Goods and Notice of Agents to Point Out.

17. The Request for Writ of Execution was reviewed to ensure compliance with **Part 47 of the Civil Proceedings Rules 1998**, as amended [hereinafter referred to as the CPR].
18. On 14<sup>th</sup> January 2019, she issued a Query to the attorney for the Judgment Creditor. The Query was issued to clarify the authority on which the Claimants were added as Judgment Debtors since the Order of Master Sobion-Awai dated 17<sup>th</sup> June 2015 did not name the Claimants as Judgment Debtors. Furthermore, the Order of the Honourable Mr Justice Seepersad dated 8<sup>th</sup> January 2019 did not specify in what capacity the Claimants were added as parties to the enforcement proceedings.
19. On 15<sup>th</sup> January 2019, attorney for the Judgment Creditor responded to the Query and enclosed a corrected order dated 8th January 2019 from the Honourable Mr Justice Seepersad, which indicated that the persons named were added as 'Claimants' to the proceedings. She stated that on receipt of the Query and the Honourable Judge's Order which was already perfected by the Honourable Judge, she, as Registrar, was bound by the Judge's decision to add the persons as Claimants to the proceedings. She further stated that it is not within the Registrar's remit nor function to question the Honourable Judge's Order.
20. She further deposed that the Request for the Writ of Execution was reviewed per **Part 47 of the CPR** in light of the two Orders of the Court and it was found that the Request satisfied the rules for the *Writ of Fi Fa* to be issued. Accordingly, the Writ of Execution was issued on the 17<sup>th</sup> January 2019.
21. She said that when the Writ of Execution was issued on the 17<sup>th</sup> January 2019 and executed on the 24<sup>th</sup> January 2019, there was no order by the Court to stay any execution of the Judgment against the Claimants in the proceedings. Further, there was no challenge to the joinder proceedings at the material time, nor were there proceedings before the Court of Appeal.
22. Given the above facts, she deposed that the Order granting costs in favour of PSL/Judgment Creditor, the Judgment Creditor's request to enforce the said Order and the Honourable Judge's Order that added two persons as parties to the proceedings,

there was an appropriate, lawful and justified basis and authority for her to issue the *Writ of Fi Fa* against the Claimants.

***Affidavit of Dennis Pompey***

23. By an affidavit deposed on the 19<sup>th</sup> October 2020, Dennis Pompey stated that he had been a Bailiff I/Marshal's Assistant attached to the Judiciary for ten years. His duties include executing writs of possession, writs of execution, serving juror summonses and arresting ships via Court Order.
24. Around January 2019, he was contacted by the Marshal's Head of Section and the *Writ of Fi Fa* was assigned to him. After that, the Writ was signed, stamped and dated. The Writ reflected the requisite interest to be paid at the execution date. He returned to the Marshal's Head of Section with the Writ, and once it was committed to him, he was given a document to take to the Police Station for police assistance in the execution of the Writ. He indicated that procedure mandates that all execution of Writs be done in the presence of police officers, and that the police officers are required to be present. At the same time, the workers provide the necessary manpower to carry items that have been levied upon to satisfy the debt.
25. On Thursday 24<sup>th</sup> January 2019, in the company of Mr Ajodha, who was an agent for the Judgment Creditor, Ms Leisa Kisto, attorney-at-Law for the Judgment Creditor, and workmen, he attended the Four Roads Police Station. After that, at or around 6 am, they proceeded to the Claimants' address to execute the *Writ of Fi Fa*. He said the officers were armed because officers must be armed at executions of writs. He was unable to say the number of police vehicles. There were eight to ten workmen.
26. He said that there was no blowing of car horns upon their arrival. He and Mr Ajodha proceeded to the main entrance of Apartment 1001, where they rang the bell and knocked on the door. He said there was no banging on the door or any aggressive, boisterous behaviour or shouting.
27. He said he had no control over the workmen since the Agent hired them, but the workmen were quiet.

28. After fifteen minutes at the front door, Nigel Thomas answered the door. He then identified himself as a Marshal's Assistant of the High Court and showed him his precept. He then explained to Nigel Thomas the purpose of their visit and read the Order in the Writ of Execution. After a brief conversation, Nigel Thomas invited Mr Ajodha, two police officers and himself into the apartment. He then allowed Nigel Thomas to read the Writ and its accompanying documents. He explained that the Writ was not given to Nigel Thomas because it is not the practice to provide copies of any documents to the Judgment Debtor. Instead, the usual practice is for interested persons to apply to the High Court for a copy.
29. He said that Nigel Thomas read the Order, and after that, Nigel Thomas and the Agent had a conversation. Nigel Thomas indicated that he did not owe PCL. Then he informed Nigel Thomas that failing to adhere to the Court's Order would result in the removal of his possessions. Thereafter, Mr Ajodha, Ms Kisto and Nigel Thomas were engaged in conversations. He was not involved in those conversations.
30. He said in his presence, Nigel Thomas wrote a cheque to Ms Leisa Kisto satisfying the Court Order and another cheque to Mr Ajodha. After that, all persons involved in the exercise vacated the Claimants' premises. He said that he did not inform the Claimants to make out the cheques, nor did he negotiate or approve payments or settle agreements.
31. He said he observed one gentleman observing the process and did not see other neighbours outside their homes.
32. He returned to his office, endorsed the back of the Writ of Execution and submitted the Writ to the Head of his Section.

## **SUBMISSIONS**

### ***Claimants***

33. Counsel for the Claimants submitted that the fundamental issue is whether the Registrar was correct in issuing the *Writ of Fieri Facias* on the 17<sup>th</sup> January 2019. It was further submitted that if the Registrar was correct, the subsequent execution of the Writ would have been properly executed, and the Claimants "would have no leg to stand on."

34. Mr. Manwah submitted that the issuance of the Writ of Fieri Facias was wrongly issued. He contended that the Registrar was wrong for the following reasons:

- a. PCL had the right to enforce the Judgment against NTAL per **Part 44 to 53 of the CPR**. Accordingly, the liability to satisfy the Judgment was on NTAL. The Order of the Honourable Mr Justice Seepersad of the 8<sup>th</sup> January 2019 joined the Claimants in the matter. The joinder took effect on the 8<sup>th</sup> January 2019, and at that time, the Claimants were not parties, and the Judgment Debtor remained NTAL.
- b. The Claimants were not substituted for NTAL but were added as parties. If they were substituted, they would have stood in the shoes of NTAL, and such execution would have been lawful.
- c. **Rule 47.2 (a) of CPR** was not complied with since six years had elapsed since the Judgment was entered and permission was required.

35. It is further submitted that because the issuance of the *Writ of Fieri Facias* was wrong, the execution resulted in breaches of the Claimants' fundamental rights guaranteed by the Constitution.

36. Because of **Section 4 (6) of the State Liability and Proceedings Act**, it was submitted that there is no alternative remedy. Therefore, the only remedy available to the Claimants was a Constitutional Motion per **section 14 (1) of the Constitution**.<sup>2</sup>

#### **Breach of the Constitution**

- a. Enjoyment of Property – **section 4(a) of the Constitution**<sup>3</sup>  
Counsel submitted that there was no due process of law having the Writ being wrongly issued and executed. The Claimants were deprived of the enjoyment of their property when they paid upon the execution of the Writ.
- b. Protection of Law – **section 4(b) of the Constitution**<sup>4</sup>

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<sup>2</sup> Sam Maharaj v Prime Minister of Trinidad and Tobago PC No.0056 of 2015 (para 45)

<sup>3</sup> Thakur Persad Jaroo v The Attorney General of Trinidad and Tobago PC No.54 of 2000 (paras 16-24)

<sup>4</sup> Sam Maharaj v Prime Minister of Trinidad and Tobago (supra) (para 26)

Counsel submitted that the issuing and execution of the Writ were contrary to the Rule of Law and thereby deprived the Claimants of the protection of the law.

- c. The Right to Respect for Private and Family Life – **section 4(c) of the Constitution**

The manner of the execution, that is, loud banging on the door, blowing of car horns, shouting, armed police officers, and boisterous and aggressive behaviour by one or two men, resulting in trauma for the family.

### ***Defendant***

37. In response the, Defendant submitted:

- a. The Registrar acted pursuant to a valid court order when she issued the *Writ of Fieri Facias*;
- b. The Defendant's servants/agents acted lawfully, and inoffensively in executing the *Writ of Fieri Facias*. In any event, it was submitted that the Marshal had no control over the boisterous and aggressive behaviour of the workmen;
- c. The Defendant neither deprived nor came into possession of the sum of **\$242,002.31** paid out by the Claimants to Primis Corporation as the Claimants paid the said sum out on their own accord; and
- d. Consequently, the Claimants' rights were not breached and therefore are not entitled to the reliefs sought.

38. Concerning the joiner, the Defendant submitted that the Court Order emanated from the Judgment Creditor's application before the Honourable Mr. Justice Seepersad, which sought to address enforcement of monetary award as the Claimants de-registered the company and dissolved its assets. The Court granted the application and issued the Order. Upon receipt of the Request to issue the Writ, the Registrar acted lawfully within the remit of her duties by issuing the Query to clarify by what authority the Claimants were added as Judgment Debtors. After receiving the corrected Order, the Registrar was compelled to follow the binding corrected Order of the Judge. As the Honourable

Judge determined the matter of law substantively, it was not within the Registrar's remit or jurisdiction to question the decision. Therefore, the Registrar complied with **Part 47 of the CPR**.

39. Concerning **Rule 47.2(a) of the CPR**, the Defendant submitted that there was compliance since the cost award per the Order dated 17<sup>th</sup> June 2015 was being sought to be enforced. The time-lapse between the issuance of the Writ and the Order is approximately four years and thus well within the prescribed 6-year time frame.
40. The Defendant submitted that the Defendant's servants and or agents did not deprive the Claimants of their right to enjoy their property or of due process. The Defendant submitted that the transaction between the Judgment Creditor and Judgment Debtor occurred independently of the Writ since the money dispensed by the Claimants was not pursuant to the execution of the Writ. From the facts, Nigel Thomas entered into private discussions with the Judgment Creditor's attorney to the exclusion of the Marshal's Assistant. Also, the money was not paid to the Marshal's Assistant neither were goods taken by the Marshal's Assistant.
41. The Defendant also submitted that the Claimants were not deprived of due process of the law since the Claimant admitted to being served on the 18<sup>th</sup> January 2019 with a Court Order dated 8<sup>th</sup> January 2019. The Claimants did not avail themselves of an application to set aside the Order, nor was there any recourse to the Court of Appeal to overturn the Order.
42. It was further submitted that the Claimants' right to the protection of the law was afforded through the existence of the following circumstances:
  - a. The Claimant was afforded the full range of the protection of the law as the actions of the Defendant were not unfair, arbitrary or unreasonable;
  - b. The Claimant at all times had free access to the Courts to appeal or set aside the Order dated 8<sup>th</sup> January 2019, as was evidenced by the fact that an application was made only after execution;
  - c. The Claimant failed to take advantage of the access to the Court, and the Defendant should not be punished for said inaction;

- d. The Claimant failed to apply for a stay of execution of the previous Orders of the Court; and
  - e. The Defendant's servants and/or agents ensured that procedure was adhered to by requesting the relevant documents and acting in accordance with the Civil Proceedings Rules, 1998, and with the Order of the Honourable Court.
43. Concerning the right to private life, counsel for the Defendant submitted that issuing the Writ pursuant to a valid court order is a sufficient and good reason: [see **R (On the Application of Countryside Alliance) v Attorney General**<sup>5</sup>. Therefore, there was no breach of the Claimants' right to family and private life. Also, the Bailiff's actions followed prescribed, proper procedure based upon a lawfully issued writ. The execution was done following the law and without any intention to embarrass or distress the Claimant. Further, the Court ought not to rely on the Claimant's evidence but rather the Defendant's evidence based on evidential principles of public law.<sup>6</sup>

#### **ISSUES FOR DETERMINATION**

*[1] Was the Registrar correct in issuing the Writ of Fieri Facias on the 17<sup>th</sup> January 2019?*

*[2] If the Registrar was wrong, did the subsequent execution of the Writ breach the Claimants' Constitutional rights guaranteed under section 4 (a), (b), and (c) of the Constitution?*

#### **LAW AND ANALYSIS**

*Issue [1]: Was the Registrar correct in issuing the Writ of Fieri Facias on the 17<sup>th</sup> January 2019?*

44. The timeline before the Request for Writ of Execution and Assistant Registrar's involvement was as follows:
- i. NTAL brought an action against PCL, and the claim was dismissed<sup>7</sup>. On 27<sup>th</sup> September 2012, The Honourable Madame Justice Rajnauth-Lee (as she then was), when delivering the decision, said:

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<sup>5</sup> **R (On the Application of Countryside Alliance) v Attorney General [2007] UKHL 52**

<sup>6</sup> **Pearl Lakhansingh v Attorney General of Trinidad and Tobago HCA No. S 827 of 1997**

<sup>7</sup> **CV2008-00635**

*"I am of the view that this is a just case not to give prescribed costs, but I intend to ask a Master of the Court to assess these costs based on the factors in the CPR and the relevant Rule, and that would have been, of course, for work done in the matter.*

*Accordingly, this is my Order: The claimant's amended claim filed on 15<sup>th</sup> December, 2008, is hereby dismissed. The claimant shall pay to the defendant costs assessed pursuant to Part 67.12 of the Civil Proceedings Rules 1998 (as amended). The assessment of costs is transferred to a Master to be heard on a date to be fixed by the court office."*

- ii. On 17<sup>th</sup> June 2015, Master Patricia Sobion-Awai carried out the assessment and quantified PSL's costs in the sum of **\$188,324.50**.
- iii. On 29<sup>th</sup> August 2018, PCL made an ex-parte application, the purpose of which was to *"...add parties to the substantive action, to enable the outstanding costs order to be paid by the Thomas' as opposed to NTAL, presumably because that company is no longer on the Register."*<sup>8</sup>
- iv. On the 8<sup>th</sup> January 2019, the Honourable Mr. Justice Seepersad granted the application and ordered:

*"1. Nigel Thomas also known as Nigel Richard Thomas (hereinafter referred to as "Nigel Thomas") and/or Suzanne Singh also known as Suzanne Thomas (hereinafter referred to as "Suzanne Singh") all of Apartment 1001 Goodwood Heights Place II Lamp Post 15 Morne Coco Road, Diego Martin are hereby added as parties to the proceedings herein;*

*2. The costs of this Application filed herein on 28th August 2018 is to be paid jointly and/or severally by Nigel Thomas and/or Suzanne Singh both of Apartment 1001, Goodwood Heights Place II Lamp Post 15 Morne Coco Road, Diego Martin to the Defendant in the sum of Two Thousand Five Hundred Dollars (\$2,500.00)."*

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<sup>8</sup> Para 6 Judgment of Justice Seepersad Dated April 29, 2019

45. **Rule 44.1 (2) of the CPR** provides that a 'judgment debtor' means the person who is liable to enforcement under the judgment or order. A judgment debtor is required to satisfy any judgment against him, failing which a judgment creditor is entitled to enforce the judgment as of right. **Rule 43.8 of the CPR** provides that a judgment or order takes effect from the day it is given or made unless the court specifies a different date. **Rule 44.2 (1) and (2) of the CPR** provide that the general rule is that once a judgment or order has become enforceable, the court must issue an enforcement order if the judgment creditor files the appropriate request, with the qualification that if the Rules require permission to begin enforcement, the judgment creditor must first obtain that permission.
46. From the facts, on 14<sup>th</sup> January 2019, PCL, the Judgment Creditor, filed a request for a Writ of Execution for Seizure and Sale of Goods to enforce their award of costs. Enclosed in their request/application were the Orders dated 17<sup>th</sup> June 2015 and the 8<sup>th</sup> January 2019. Accompanying the said request were the following documents: (i) Notice of Authorisation; (ii) Notice to Indemnify; (iii) Notice to Locate Goods; and (iv) Notice of Agent to Point Out. The request being an over-the-counter application came to the attention of the Assistant Registrar. The role of the Registrar at that time is administrative, thereby ensuring compliance with **Part 47 of the CPR**.
47. Upon receiving the request, the Assistant Registrar noticed an error in the Order dated 8<sup>th</sup> January 2019. That error was that in paragraph 1, although it stated that Nigel Thomas and Suzanne Singh/Suzanne Thomas were added as parties to the proceedings, it did not specify in what capacity. Consequently, on the 14<sup>th</sup> January 2019, the Assistant Registrar issued a query to clarify the authority on which the Claimants were added as Judgment Debtors.
48. **Rule 43.10 (1) of the CPR** provides that the Court may at any time correct (without an appeal) a clerical mistake in a judgment or order or an error arising in a judgment or order from any accidental slip or omission. Looking at the heading to the request application<sup>9</sup> Nigel Thomas also known as Nigel Richard Thomas, and Suzanne Singh,

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<sup>9</sup> exhibited as R.R.1 in the Affidavit of Rishma Ramrattan

also known as Suzanne Thomas, are listed as Claimants/Judgment Debtors. When compared to the Order of the 8<sup>th</sup> January, 2019 although it said they were added as parties, it did not state the capacity in which they were added; therefore, the query, as evidenced by the Query Notice, was the proper course of action bearing in mind **Rule 43.10 (1) of the CPR.**

49. On 15<sup>th</sup> January 2019, in response to the Query Notice, the Judgment Creditor sent the corrected Order. The corrected Order was dated 8<sup>th</sup> January 2019, and paragraph 1 stated that Nigel Thomas, also known as Nigel Richard Thomas and Suzanne Singh, also known as Suzanne Thomas, were added as Claimants. I believe the Assistant Registrar's evidence when it was stated that when she had sight of the corrected Order, it was already perfected by the Honourable Judge.

50. Counsel for the Claimants submitted that the Order dated 8<sup>th</sup> January 2019 was wrong and that the Claimants should not have been added to the proceedings. Accordingly, I have interpreted counsel to be saying that the Order was either defective or a nullity and that the Registrar was wrong to use the Order as one of the bases for issuing the Writ.

51. The Privy Council in **Leymon Strachan v The Gleaner Company Limited and Dudley Stokes**<sup>10</sup> provides instructive guidance on the effect of an order which may be defective or a nullity. *Lord Millett* said:

*"28. An order made by a judge without jurisdiction is obviously vulnerable, but it is not wholly without effect; it must be obeyed unless and until it is set aside and (as will appear) it provides a sufficient basis for the Court of Appeal to set it aside ...*

*30... George Jessel MR said, at p.142: ...I think that an order made by a Court of competent jurisdiction which has authority to decide as to its own competency must be taken to be a decision by the Court that it has jurisdiction to make the Order, and consequently you may appeal from it on the ground that such decision is erroneous.*

*32. From time to time a judge of the Supreme Court will make an error as to the extent of his jurisdiction... But whenever a judge*

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<sup>10</sup> Privy Council Appeal No. 22 of 2004

*makes an order he must be taken implicitly to have decided that he has jurisdiction to make it. If he is wrong, he makes an error whether of law or fact which can be corrected by the Court of Appeal. But he does not exceed his jurisdiction by making the error; **nor does a judge of co-ordinate jurisdiction have power to correct it.***"  
[Emphasis added]

52. Accordingly, the Registrar was bound by the Order of Seepersad J. The fact that the Order was subsequently set aside on the 29<sup>th</sup> April 2019 is immaterial because according to the evidence, at the material time, that is, between the 17<sup>th</sup> January 2019 and 24<sup>th</sup> January 2019, there had been no application to set aside the Order joining the Claimants nor any proceedings before the Court of Appeal. Unless and until the Order is set aside or reversed by the Court of Appeal, the Registrar was bound by the Order dated the 8<sup>th</sup> January 2019. Therefore, I disagree with Counsel for the Claimants. There was an order adding the Claimants as parties to the proceedings. When the Assistant Registrar received the corrected Order she was satisfied that the Claimants fell within the definition of '*judgment debtors*' per **Rule 44.1 (2) of the CPR**.

***Time: Whether the Court's permission was required?***

53. **Rule 46.2 (1) (a) of the CPR** provides that a judgment or order for payment of a specified sum of money other than an order for payment into court may be enforced by a *Writ of fi fa* under Part 47. **Rule 47.2 of the CPR** sets out the specific circumstances in which the Court's permission is required before a writ of execution, defined to include a *Writ of Fieri Facias*, may be issued. One of those circumstances is where six years have elapsed since the Judgment was entered. The policy underlying **Rule 47.2 of the CPR** must be that the judgment creditor must get on with enforcing his Judgment and too much delay would place all parties, including the judgment debtors, in a prejudicial position.

54. Further, **Rule 66.5 (a) of the CPR** provides that a party to proceedings may not recover the costs of those proceedings from any other party or person except by an order of the court. It is noted that **Rule 2.3 of the CPR** says that in these Rules, "order" includes a "judgment".

55. From the evidence, PCL were defendants in a claim brought by NTAL. The claim was dismissed, and PCL was awarded costs to be assessed. The first prerequisite when requesting an enforcement writ is that there be subsisting a judgment enforceable by the Judgment Creditor against the Judgment Debtor. Concerning PCL/Judgment Creditor, **Rule 66.5 of the CPR** is important in the context of enforcement. PCL/Judgment Creditor could only have recovered such costs of those proceedings from 17<sup>th</sup> June 2015, the date on which an order was made quantifying the costs.
56. Therefore, I find that given the facts of this case considered in the context of enforceability, time, as contemplated by **Rule 47.2 of the CPR**, began to run from the date of the Order of Master Patricia Sobion-Awai on 17<sup>th</sup> June 2015.
57. Consequently, I find that the Registrar at the material time acted according to a valid order which added the Claimants as judgment debtors and that permission was not required. Therefore, the issuance of the Writ was valid.
58. Having determined that the issuance of the Writ by the Assistant Registrar was proper, it follows that **Issue [2]** as to whether the Claimants' constitutional rights would have been infringed is therefore rendered nugatory. This follows from the submission of counsel for the Claimants that if the Registrar was correct, then subsequent execution of the Writ would have been proper, and the Claimants "would have no leg to stand on."
59. Nonetheless, the Court found it prudent to consider whether the execution of the Writ breached the Claimants' constitutional rights having regard to some of the facts presented in the affidavit evidence of both sides.
60. The Claimants' evidence concerning the execution of the Writ is stated above in paragraphs 8-11. Essentially, it is the Claimants' evidence that on the 24<sup>th</sup> January 2019, at or around 6:00 am, there was banging on the front door, blowing of car horns and people shouting their names outside the house. Outside their house were two police cars, a blue truck, several police officers with guns and 8-10 civilian men. There was shouting by one of two men to be let in, and the Claimant complied. As a result, Mr Pompey, a Marshal of the High Court and Amrit Ajodha, a licenced bailiff, were let in.

61. Either Mr Pompey or Ajodha told the 1<sup>st</sup> Claimant that they had a court order to take things to satisfy a Judgment Debt owed to PCL. He said the Marshal produced a document showing NTAL as the 1<sup>st</sup> Claimant/Judgment Debtor, himself as the 2<sup>nd</sup> Claimant/Judgment Debtor and his wife as the 3<sup>rd</sup> Claimant/Judgment Debtor. However, he said the Marshal refused to give him a copy of any documents. He said the Marshal told him they could pay the full debt amount and the bailiff fee if he didn't want any of his goods taken. Also, he said the Marshal told him on whose behalf to write the cheques. Consequently, he wrote a cheque to the Judgment Creditor's agent and a second to the bailiff. After handing over the cheques, the persons left the premises.
62. The Defendant's evidence concerning the execution of the Writ is stated above in paragraphs 23-32. Mr Pompey confirmed the presence of Ms Leisa Kisto, Mr Ajodha, the existence of policemen and 8-10 workers. However, he denied that there was blowing of car horns, banging on the Claimants' doors or any aggressive, boisterous behaviour or shouting. He said he had no control over the workers since they were hired by the agent. However, he said the workers were quiet.
63. Mr Pompey and Mr Ajodha proceeded to the front door where they rang the doorbell and knocked on the door. After 15 minutes, Nigel Thomas answered the door. Mr Pompey identified himself and explained the purpose of their visit. They were let into the apartment whereupon Mr Pompey allowed the 1<sup>st</sup> Claimant to read the writ. Mr Pompey said Nigel Thomas read over the writ, and after that, Mr Nigel Thomas, Mr Ajodha and Ms Kisto had a conversation. He deposed that he was not privy to that conversation. Mr Pompey confirmed that the Claimant wrote the cheques. Thereafter, all persons vacated the Claimants' premises. Mr Pompey said he did not inform the Claimants to make the cheques, nor did he negotiate or approve payments or settle agreements.
64. As seen, the parties gave divergent accounts of the manner of the execution of the Writ. It is not disputed that police officers and workers were part of the execution. This is not uncommon or odd and in fact desirable. The purpose of the police and workers is axiomatic. However, their presence should not stray from their role and function. Excessive noise and other boisterous behaviour are acts outside of what is expected in

carrying out a writ of execution. The Defendant denied the allegations of any aggressive or boisterous behaviour, as stated by the Claimants.

65. Further, it is undisputed that the Claimants issued cheques. However, the Marshal's Assistant denied that he told Mr Thomas to make the cheques payable to Ms Kisto or Mr Ajodha. Also, the Marshal's Assistant denied that he was part of the discussions, which resulted in Mr Thomas issuing the cheques. It should be noted that the Writ of Execution provides that the Judgment Debtor can pay the amount due and other fees. However, the Judgment Debtor must pay the money to the Marshal and will be given a receipt. It is Mr Thomas' evidence that he read the writ. If the Claimants' evidence is believed, it would mean that the Marshal facilitated bypassing the procedure under the Writ.

66. In this matter, the Claimants did not seek to reply to any of the Defendant's affidavits or to cross-examine any of the Defendant's deponents on areas which were factually divergent. In **Pearl Lakhansingh v The Attorney General of Trinidad and Tobago**<sup>11</sup>, Smith J (as he then was) stated:

*“In public law proceedings, the onus of proof lies on the Applicant; his failure to cross-examine deponents of affidavits especially where there are allegations of bad faith, means that in cases of conflict, the Court ought to proceed upon the basis of the Respondent's affidavit;”* (Clive Lewis on Judicial Review in Public Law at page 258 was then quoted)

67. In light of there being no reply to or cross-examination of the Defendant's deponents, the Court is not disposed to agree with the Claimants' contention regarding the disputed aspects of the execution of the Writ. The Claimants have not satisfied the Court that their version of events should be weighed in their favour. Further, analysing the undisputed facts, the Court cannot find that the actions of the Defendant's servants or agents breached the Claimant's constitutional rights. For instance, while it is undisputed that Mr Thomas paid cheques, that fact, standing alone, does not lead to the finding that the Claimants' right to property or due process has been breached. There are evidential deficiencies, especially when it is disputed that the Marshal told Mr Thomas to make the cheques payable to the agent of the Judgment Creditor and the Bailiff.

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<sup>11</sup> HCA No. S827 of 1997 at page 7

68. From the facts of this case, the execution of the valid Writ per a Court Order did not breach the Claimants' constitutional rights. The Claimants did not satisfy the Court that the manner of executing the Writ by the Defendant's servants or agents breached their constitutional rights.

## **DISPOSITION**

69. Given the facts, analyses and findings above, the Court is of the opinion that on the evidence before the Court, the Claimants have not established their case and are therefore not entitled to the relief sought in their Constitutional Motion. As a consequence, the Claim ought to be dismissed.

70. Accordingly, the **Order** of the Court is as follows:

1. **The Claimants' Constitutional Motion by Fixed Date Claim filed on 10<sup>th</sup> March 2020 be and is hereby dismissed.**
2. **Costs of the Claim to be paid by the Claimants to the Defendant to be assessed in accordance with Rule 56.14(4) and (5) of the CPR 1998, in default of agreement.**
3. **Stay of execution 28 days on the order for costs.**
4. **In default of any agreement on the quantum of costs the Defendant to file and serve a Statement of Costs on or before 10 January 2023 and the Claimants are permitted to file Objections thereto on or before 31 January 2023.**
5. **Assessment of costs to be dealt with without a hearing and decision given on a date to be notified.**

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**Robin N. Mohammed**  
**Judge**