

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A. No. 2812 of 2004

Between

KARAN RAMLAL

Plaintiff

AND

SIMON MACOON

First Defendant

INDIRA RAMSANAHE

(Trading as Wendy's Bargain Flea Market)

Second Defendant

Coram Master Doyle

Miss Sookhai holds for Mr. Rajcoomar for Plaintiff and later, Miss Alisa Khan holds for Mr. Rajcoomar for Plaintiff.

No appearance of /for Defendants.

REASONS

Plaintiff's claim by writ in the High Court of Justice for, inter alia, damages for nuisance by noise pursuant to Section 66 of the Environmental Management Act ("the Act") - Withdrawal of other claims in writ for injunctions and damages for diminution in value of plaintiff's property - Judgment entered in default of appearance and order made for assessment of damages for nuisance under Section 66 of the Act - The Environmental Management Authority - The Environmental Commission - Exclusivity of Jurisdiction - Whether High Court of Justice has jurisdiction - Whether Order for assessment a Nullity.

The Environmental Management Act, 2000 ("the Act") repealed and re-enacted the Environmental Management Act, 1995 and came into force in this jurisdiction on 8th March, 2000. The preamble to the Act referred, inter alia, to establishing the Environmental Management Authority ("the Authority") to co-ordinate, facilitate and oversee execution of the national environmental strategy and programmes, to promote public awareness of environmental

concerns and to establish an effective regulatory regime to protect, enhance and conserve the environment. It also referred to the establishment of the Environmental Commission (“the Commission”) for the purpose of supporting and strengthening the role of the Authority and the endowment of the Commission with the power to enforce the policies and programmes of the Authority.

Sections 6. (1) and 6. (2) of the Act state :-

“6.(1) There is hereby established a body corporate to be known as the Environmental Management Authority, which shall be governed by a Board of Directors consisting of the persons appointed in accordance with this section.

(2) The President shall appoint –

(a) a Chairman;

(b) nine other members drawn from the following disciplines or groups, namely, environmental management, ecology environmental health, engineering, labour, community-based organisations, business, economics, public administration, law and non-profit environmental non-governmental organisations.”

Section 16 provides for the functions and powers of the Authority and states, inter alia –

“16.(1) The general functions of the Authority are to :

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

And, under Section 2 of the Act, -

“pollution” means the creation or existence of any deviation from natural conditions within the environment, which based on technical, scientific or medical evidence is determined to cause or to be likely to cause harm to human health or the environment, resulting from –

(a) the presence or release of any substance; or

(b) any other type of disturbance, whether by noise, energy, radiation, temperature variation, vibration, or objectionable odors; and

“pollutant” shall have the corresponding meaning; ...” (*Emphasis mine*)

The conjoint effect of Sections 62, 63, 64 and 65 of the Act enables the Authority to require persons to comply with the Authority’s “environmental requirements,” serve a Notice of Violation (“Notice”) on persons in violation thereof, issue an Administrative Order where persons fail to make representations to the Authority within the time specified in the Notice or to resolve with the Authority all matters specified in the Notice, and, where appropriate, make a proposed administrative civil assessment .

It is important to note that under Section 67. (2) of the Act –

“Where an Administrative Order contains a proposed administrative civil assessment, that assessment is not enforceable until such time as the Commission makes an Order determining the amount of such assessment.”

(*Emphasis mine*)

What then is the jurisdiction of the Commission under the Act? The answer may be ascertained from Section 81 of the Act which states, inter alia, that -

- “(1) A tribunal to be known as the Environmental Commission is hereby established for the purpose of exercising the jurisdiction conferred upon it by this Act or by any other written law.
- (2) The Commission shall consist of a Chairman and such other members, including a Deputy Chairman, as may be appointed under or in pursuance of section 82.
- (3) The Commission shall be a superior court of record and have an official seal which shall be judicially noticed, and shall have in addition to the jurisdiction and powers conferred on it by this Act, all the powers inherent in such a Court.
- (4) The Commission shall have the power to enforce its own orders and judgments, and the same power to punish contempts as the High Court of Justice.

- (5) The Commission shall have jurisdiction to hear and determine –
- (a) appeals from decisions or actions of the Authority as specifically authorised under this Act;
 - (b) applications for deferment of decisions made under section 25 or deferment of designations made under section 41;
 - (c) applications by the Authority for the enforcement of any Consent Agreement or any final Administrative Order, as provided in section 67;
 - (d) administrative civil assessments under section 66;
 - (e) appeals from the designation of “environmentally sensitive areas or environmentally sensitive species” by the Authority pursuant to section 41;
 - (f) appeals from a decision by the Authority under section 36 to refuse to issue a certificate of environmental clearance or to grant such a certificate with conditions;
 - (g) appeals from any determination by the Authority to disclose information or materials claimed as a trade secret or confidential business information under section 23(3);
 - (h) complaints brought by persons pursuant to section 69, otherwise known as the direct private party action provision; and
 - (i) such other matters as may be prescribed by or arise under this Act or any other written law where jurisdiction in the Commission is specifically provided.” (*Emphasis mine*).

Now, more than four years after the commencement of the Act a generally endorsed writ of summons was issued on 22nd October 2004 in the High Court of Justice by the above-named plaintiff claiming -

- “ (a) An injunction to restrain the Defendants [and each of them] by themselves their servants or agents or otherwise howsoever from playing loud music at Endeavour Road, or causing or permitting loud music to be played thereat so as to cause a nuisance to the Plaintiff by noise to the Plaintiff’s premises at 879, Montrose Crown Trace, Lange Park, Chaguanas and
- (b) An injunction to restrain the Defendants (and each of them) by themselves their servants and or agents or otherwise howsoever from molesting, threatening, annoying or in any way interfering with the Plaintiff his servants and or agents.
- (c) Damages for nuisance by noise from the Defendants’ premises at Corner Rodney Branch Road and Crown Trace, Chaguanas **pursuant to Section 66d of the Environmental Management Act 1995, No. 2 of 2002.** (*Emphasis mine*).
- (d) Damages for diminution in value of the Plaintiff’s property by reason of the said nuisance by the Defendants
- (e) Interest;
- (f) Costs;
- (g) Such further and/or other relief as the Honourable Court may deem fit.”

The aforesaid Writ of Summons was accompanied by a Statement of Claim which referred, inter alia, to alleged conduct of the defendants from October 2003 and consequential action taken by the “Environmental Management Authority” from July to September 2004. In the final paragraph of the Statement of Claim the plaintiff claimed the exact relief as endorsed on the writ of summons (supra).

By an ex-parte application for a default judgment made before the Honourable Mr. Justice Jamadar the following order was made on 4th May 2005, approved on 24th May 2005 **and entered** on 8th June 2005:-

“ *UPON HEARING* this Application for Judgment in default of appearance this day made unto the Court
AND UPON HEARING Attorney-at-law for the Plaintiff

AND UPON READING the affidavit of Alicia Khan with exhibits filed herein on the 8th April 2005

The Plaintiff by his Attorney-at-law **withdrawing claims A, B and D of the Writ of Summons filed herein on October 22nd 2004**

IT IS HEREBY ORDERED AS FOLLOWS:

- A. That damages for nuisance by noise be assessed by a Master in Chambers sitting in Port-of-Spain on a date to be fixed by the Registrar **pursuant to the Environmental Management Act No.3 of 2000.**
- B. The defendants to pay the Plaintiff's costs.

LAB Khan
Ass't. Registrar
Lesley-Ann Banfield Khan
Assistant Registrar, Supreme Court".
(Emphasis mine)

On 22nd July 2005 the plaintiff's attorney-at-law requested the Registrar of the High Court of Justice to -

“fix a date for the assessment of the Plaintiff's Damages obtained pursuant to a judgment dated the 4th day of May 2005.”

By Notice dated 17th August 2005 the Registrar notified the plaintiff's attorney that the assessment of damages will be heard on Tuesday the 11th day of October 2005 at the High Court of Justice before the 1st Master in Chambers and to inform the defendants of the date of assessment and provide proof of the same.

On Tuesday 11th October, 2005 the attorney-at-law who had obtained the default judgment before Jamadar J. appeared before this Court. The Court expressed its concern on –

- (a) the absence of the defendants; and
(b) the jurisdiction of the High Court with respect to the Order for an assessment under the Act.

The Court ordered the purported assessment to be adjourned to 29th November 2005 subject to 14 clear days' notice to the defendants.

At the adjourned hearing the defendants did not appear but, there was an affidavit of service filed on behalf of the plaintiff wherein Faustin Noel deposed to notifying both defendants of the adjourned date of the purported assessment. The Court invited attorney-at-law for the plaintiff to address the Court on the entered Order of 4th May 2005. The Court was concerned that apart from costs the effect of the entered Order was to leave the plaintiff only with a purported order for an administrative civil assessment (per the Act) in the High Court, leave having been granted to withdraw the plaintiff's valid High Court claims for

- (a) injunctions against the defendants and
- (b) damages for diminution in value of the plaintiff's property.

The Court was aware that in *Stebbing v. Holst & Co. Ltd.*, (1953) 1 All E.R. 925 a Court considered the claims on a writ issued in the High Court, held part of the writ to be valid and the remainder to be a nullity. Further, this Court was guided by the decision of a highly respected Court of Appeal of this jurisdiction (Wooding C.J., Hyatali and Phillips, JJA) in *Re Weston. Kumar v. Julien* (1963) 6W.I.R. 385 where it was held, inter alia, that where it came to the knowledge of a court in the course of the hearing of an application that orders referred to in the application were null and void the court should of its own motion set the said orders aside (per *Daimler Co. Ltd. v. Continental Tyre and Rubber Co. (Great Britain) Ltd.* 32 T.L. R. 264 and *Lazard Bros. and Co. v. Banque Industrielle de Moscou* (1932) 1 K. B. 617). Again, in *Civil Appeal No. 47 of 1984 the Attorney General of Trinidad and Tobago v. Chaman Algoo*, guidance was given by the Court of Appeal as des lles and Mc Millan JJA agreed with the following dicta of Davis J.A at page 4 –

“In my view a court of law must always be astute to determine whether in any particular matter before it, it has jurisdiction to entertain that matter, and I think this is even more the case where a matter before it appears to be governed by the provisions of special legislation; bearing in mind that want of jurisdiction cannot be cured by consent - see for example *Simons v. Simons* (1939) 1.K.B. 490” (*Emphasis mine*).

NB

Attorney-at-law for the plaintiff referred the court to Section 4 of the Act, to wit –

“ 4. The objects of this Act are to –

(a) promote and encourage among all persons a better understanding and appreciation of the environment;

(b) encourage the integration of environmental concerns into private and public decisions;

(c) ensure the establishment of an integrated environmental management system in which the Authority, in consultation with other persons, determines priorities and facilitates co-ordination among governmental entities to effectively harmonise activities designed to protect, enhance and conserve the environment;

(d) develop and effectively implement written laws, policies and other programmes for and in relation to –

(i) the conservation and wise use of the environment to provide adequately for meeting the needs of present and future generations and enhancing the quality of life;

(ii) the Government's commitment to achieve economic growth in accordance with sound environmental practices;

(iii) the Government's international obligations; and

(e) enhance the legal, regulatory and institutional framework for environmental management.”

The Court was also informed that the order for the assessment was made after Jamadar J. had been referred by attorneys for the plaintiff to Section 66 of the Act, to wit –

“66.(1) For the purposes of sections 65 and 81(5) (d), the Authority or the Commission may make an administrative civil assessment of –

(a) compensation for actual costs incurred by the Authority to respond to environmental conditions or other circumstances arising out of the violation referenced in the Administrative Order;

- (b) compensation for damages to the environment associated with public lands or holdings which arise out of the violation referenced in the Administrative Order;
- (c) damages for any economic benefit or amount saved by a person through failure to comply with applicable environmental requirements; and
- (d) damages for the failure of a person to comply with applicable environmental requirements, in an amount determined pursuant to subsections (2) and (3).

(2) In determining the amount of damages to be assessed under subsections (1) (c) and (d), the Authority or the Commission shall take into account –

- (a) the nature, circumstances, extent and gravity of the violation;
- (b) any history of prior violations; and
- (c) the degree of willfulness or culpability in committing the violation and any good faith efforts to co-operate with the Authority.

(3) The total amount of any damages under subsection (1) (d), shall not exceed –

- (a) for an individual, five thousand dollars for each violation and, in the case of continuing or recurrent violation, one thousand dollars per day for each such instance until the violation is remedied or abated; or
- (b) for a person other than an individual, ten thousand dollars for each violation and, in the case of continuing or recurrent violations, five thousand dollars per day for each such instance until the violation is remedied or abated.” (*Emphasis mine*).

In this Court’s respectful view the aforesaid sections did not include the High Court of Justice as a forum for administrative civil assessments under the Act.

11/23

Now, as long ago as 1859, in considering the form of remedy prescribed by a statute, Willes J. stated, inter alia, in *The Wolverhampton New Waterworks Company v. Hawkesford* 6 C.B.(N.S.) 335 at 356 -

“There are three classes of cases in which a liability may be established founded upon a statute. One is, where there was a liability existing at common law, and that liability is affirmed by a statute which gives a special and peculiar form of remedy different from the remedy which existed at common law: there, unless the statute contains words which expressly or by necessary implication exclude the common –law remedy, and the party suing has his election to pursue either that or the statutory remedy. The second class of cases is, where the statute gives the right to sue merely, but provides no particular form of remedy: there, the party can only proceed by action at common law. But there is a third class, viz. where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it. The present case falls within this latter class, if any liability at all exists. The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to”...(*Emphasis mine*).

Indubitably, environmental Administrative Orders and liability for breach thereof did not exist at common law. The plaintiff had no choice but to adopt and adhere to the provisions of the Act, (particularly Section 66 thereof) as, the statement of claim averred to action taken by the Authority on the initiative of the plaintiff.

Indeed, in *Barracough v. Brown and Others* (1897) A.C. 615 the exclusion of the High Court of Justice from jurisdiction was considered. The House of Lords held that where a statute gives a right to recover expenses in a court of summary jurisdiction from a person who is not otherwise liable, there is no right to come to the High Court for a declaration that the applicant has a right to recover the expenses in a court of summary jurisdiction: he can only take proceedings in the latter court.

Lord Herschell stated, inter alia, at pages 619 – 620, –

“I feel bound to hold that it was not competent for the appellant to recover the expenses, even if the respondents were liable for them, by action in the

High Court ... I do not think the appellant can claim to recover by virtue of the statute, and at the same time insist upon doing so by means other than those prescribed by the statute which alone confers the right." (*Emphasis mine*).

Lord Watson, at page 622, was also very instructive, per –

... “ The only right which the undertakers have to recover from an owner is conferred by these words: “Or the undertakers may, if they think fit, recover such expenses from the owner of such boat, barge or vessel in a court of summary jurisdiction”. The right and the remedy are given uno flatu, and the one cannot be disassociated from the other ...It cannot be the duty of any Court to pronounce an order when it plainly appears that, in so doing, the Court would be using a jurisdiction which the Legislature has forbidden it to exercise ...”(*Emphasis mine*).

Lord Davey, in agreeing with the foregoing, also considered the interesting submission that although the High Court could not make any judgment or give any relief in an action the Court was enabled by one of the Rules of Court to make a declaration binding the rights of the parties and astutely concluded –

“ But there is nothing whatever in the rule to enable the Court to make a declaration on a subject as to which its jurisdiction to give relief is excluded by statute. It would obviously be incompetent for the judges or the Rule Committee under a power to make rules of procedure to give the Court power to deal with a matter which is outside its jurisdiction.” (*Emphasis mine*).

By analogy, the plaintiff herein could not invoke the provisions of the Act and attempt thereunder to seek an administrative civil assessment before the High Court. It

was cogently stated by Dr. Winston Anderson, General Counsel to the Caribbean Community Secretariat at the Environmental Commission's National Launch of its Informational Material on 23rd February 2005 that –

(page. 2) ... “Trinidad and Tobago ... holds the distinction of being the Caribbean Community Member State with, arguably, the most advanced environmental legislation in the region. The Environmental Management Act, 1995 (as repealed and replaced by the Environmental Management Act, 2000) creates vanguard institutions and procedures for the wise use of the country's environmental assets. One of these structures is the Environmental Commission (EC), a specialist tribunal that handles some environmental disputes arising under the E. M. Act. Following the Trinidad and Tobago lead, the Environmental Protection Act of Guyana established the Environmental Appeals Tribunal (EAT) for that country...

(pages 4 & 5)...The post – 1990 environmental legislation thus creates judicial bodies for environmental adjudication in Trinidad and Tobago and Guyana. The legislative scheme suggests these environmental tribunals are specialised courts, and as such they have specialist tools to oversee efficient environmental management....

(page. 8) It is now a matter for the Environmental Commission, within the limits of the mandate it has been given, to define and develop an environmental jurisprudence that will inspire other jurisdictions within the Community to wiser and more sustainable use of our environmental assets”... (*Emphasis mine*).

The aforementioned “advanced environmental legislation” gives exclusive jurisdiction to the Authority and the Commission for the issue of Administrative Orders and proposed administrative civil assessments thereunder. As was stated by this Court at page 4 of the unreported decision in the assessment of damages for breach of the applicant's rights in the Constitutional Motion No. S.463 of 2000 Baldeo Rambally v. The Attorney General of Trinidad and Tobago –

“Respectfully, there is a distinction between the wrongful exercise of a jurisdiction vested in a court and the usurpation of a jurisdiction which a court does not possess.”

This Court was fortified by the authority of *Pasmore and Others v. The Oswaldtwistle Urban District Council* (1898) A.C. 387, 394, where the Earl of Halsbury L.C. said:

“The principle that where a specific remedy is given by a statute, it thereby deprives the person who insists upon a remedy of any other form of remedy than that given by the statute, is one which is very familiar and which runs through the law. I think Lord Tenterden accurately states that principle in the case of *Doe v. Bridges* (1831) (1B. & Ad. 847,859). He says: “where an Act creates an obligation and enforces the performance in a specified manner, we take it to be a general rule that performance cannot be enforced in any other manner.”....

In summary, the plaintiff herein issued proceedings in the High Court of Justice on 22nd October 2004 claiming reliefs both within and outwith the jurisdiction of the High Court, obtained leave of a judge on 4th May 2005 to withdraw the claims within the jurisdiction of the High Court (save costs) and a purported default judgment for relief outwith the High Court’s jurisdiction i.e. a proposed administrative civil assessment under Section 66 of the Act. In the premises this Court held that the High Court of Justice has no jurisdiction under the Environmental Management Act, 2000 and the Order for an assessment to be a nullity.

Ralph Doyle
Master of the High Court.