

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE OF GUYANA

COMMERCIAL JURISDICTION

2013-HC-DEM-CD-777

BETWEEN:-

**GANESH DEONARINE**, trading under the name and style of G&P IMPORT AND EXPORT of Lot 5 Thirens, Leguan, Essequibo River, Guyana  
Applicant

-and-

**TOWN CLERK OF THE MAYOR AND TOWN COUNCIL OF BARTICA**, the successor of **THE BARTICA NEIGHBOURHOOD DEMOCRATIC COUNCIL**, by virtue of Order No. 19 of 2015, made by the Honourable Minister of Communities, under Section 34 of the Municipal and District Councils Act, Cap. 28:01, and published in the Official Gazette dated the 21st October, 2015  
Respondent

**BEFORE THE HON. JUSTICE NARESHWAR HARNANAN**

**APPEARANCES:**

**Mr. Manoj Narayan - Applicant**

**Mr. Roger Yearwood - Respondent**

**DECISION:**

1. On the 27<sup>th</sup> October 2017, in action number 777-CD of 2013, a charging order was directed against the respondent, charging their interest in moneys standing in its name at Citizens Bank in 2 accounts, with payment of the sum of \$9,364,200.00 and \$22,000.00 being judgment and costs, respectively, awarded to the applicant against the Bartica Neighbourhood Democratic Council (NDC) on the 7<sup>th</sup> May, 2014, unless cause is shown by the respondent why this charging order should not be made absolute.
2. The applicant names the Town Clerk of the Mayor and Town Council of Bartica (MTCB) as the respondent in this charging order application, being

the successor of the NDC (who was the defendant in Action No. 777-CD of 2013), by virtue of Order 19 of 2015 by the Minister of Communities, which constituted Bartica, a town.

3. The respondent MTCB, takes issue with what they claim to be a unilateral change in parties by the applicant in the instant application, which is bad in law, since the present respondent was not in existence in 2014.
4. They further contend that the charging order application is misconceived in law insofar as the applicant's claim that the liabilities of the NDC has become the liabilities of the MTCB; in addition to the foundation upon which the applicant relies on as the basis for the grant of the charging order.
5. The respondent contends that the moneys in the MTCB bank accounts are not theirs, but that of the Government of Guyana, who they must account to in relation for the purposes earmarked.
6. The issue before this Court is whether the charging order issued herein was properly issued considering the objections arising, and if so, whether the order should be made absolute.
7. The respondent's argument regarding the unilateral change in parties in the instant action is rejected at the outset. This Court is prepared to treat with the charging order application in context of the Ministerial Order made under written law, being **section 34** of the ***Municipal and District Councils Act, Cap 28:01***. The Order constituted the town of Bartica. The gazetting of this Order would have the effect of disestablishing and superseding the Bartica NDC, which existed previously under a written law, being the ***Local Democratic Organs Act, No. 20 of 1980***.
8. As a matter of practical justice, and having regard to the *interests of justice*, being cognizant that orders of court are never made in vain, the instant charging order must be directed to a subsisting legal entity, for it to have legal effect.
9. Further, it is noted that there is no removal of the NDC, as a party, *per se*, in that it is stated in the rubric that the MTCB is the 'successor' of the Bartica NDC. Whilst it might be argued that the rubric ought to remain the

same, and the MTCB be inserted with the apt description - the manner of how it was done in the instant application, is inconsequential, nor is it fatal to the charging order issued.

10. In ***Gladston Watson v. Rosedale Fernandes*** [2007] CCJ 1 (AJ) the Honourable Justices Saunders and Hayton in delivering jointly the decision of the Court stated at paragraph 34 of the report, said that:

***“Both the High Court and the Court of Appeal Rules require the interests of justice to be an overriding concern in the application of these rules.*** Order 54 of the High Court Rules states:

"Non-compliance with any of these Rules or with any rule of practice for the time being in force shall not render any proceedings void unless the court or a Judge shall so direct but such proceedings may be set aside either wholly or in part as irregular, or amended, or otherwise dealt with in such manner and upon such terms as the court or Judge shall think fit".

Order I rule 8 of the Court of Appeal Rules states:

"Subject to the provisions of section 19(2) of the Act (relating to the time within which an appeal may be brought in a capital case to the Court) and to Order II, 3 (3) of these Rules, the court may enlarge the time prescribed by these Rules for the doing of anything to which these Rules apply, or may direct a departure from these Rules in any other way ***where this is required in the interests of justice***".

They further noted at paragraph 39 of the report:

***“Courts exist to do justice between the litigants,*** though balancing the interests of an individual litigant against the interests of litigants as a whole in a judicial system that proceeds

with speed and efficiency, as we made clear in **Barbados Rediffusion Services Ltd v Mirchandani** [2006] 1 CCJ (AJ) at [44],[45] and [53]. **Justice is not served by depriving parties of the ability to have their cases decided on the merits because of a purely technical procedural breach committed by their attorneys.** With great respect to the court below we disagree that there is anything in these rules to suggest that there is a time limit on the court's ability to excuse non-compliance with the rules or permit it to be remedied, **if the interests of justice so require. The court retains that jurisdiction at all times.**" (emphasis supplied)

And then at paragraph 40 of the report:

In **Baptiste v Supersad** (1967) 12 WIR 140 at 144B, Chief Justice Wooding cautioned that "**The law is not a game, nor is the court an arena. It is ... the function and duty of a judge to see that justice is done as far as may be according to the merits**". Indeed, as Musmanno J has said [in **Potter Title & Trust Co v Lattavo Bros Inc** 88A.2d 91 at 93 (Pennsylvania 1952)], "**The attainment of true justice is over the highway of realities and not through the alley of technicalities**". (emphasis supplied)

11. See also cited therein, the case of **Mustapha Ally v Hand-in-Hand Fire Insurance Company Limited** (1967) 11 WIR 202, where the Court of Appeal exercised its discretion under *Order I rule 8* to depart from the rules as "**the only way of avoiding the perpetuation of an injustice**" (emphasis supplied).
12. The principle simply demonstrates that inherent jurisdiction we have as judges, to do justice between, or amongst the parties before the court.
13. Further, this Court treats the objection to the contention that liabilities of the NDC are assumed by the MTCB, as being similarly unmeritorious. This Court finds this objection surprising as it is clear from the record, the MTCB

has replaced the NDC in the manner as mentioned above. It goes without saying that the MTCB is entitled to receive the rates and taxes, rents and other charges of its residents, which they admittedly accept, in the same manner as how the NDC would have collected. It is also in the same manner a delinquent rate payer would be prosecuted for their delinquency, by the existing MTCB, for rates owed.

14. This Court would have had judicial notice of the original action, and it is clear that the premises being held now by the MTCB is the same from which the NDC operated, and even their current Bank, directs correspondence to that address. The Bank also makes reference to accounts of the MTCB, which were opened previous to the declaration of town Order. Clearly, the MTCB would not have been in existence on the 25<sup>th</sup> July, 2014 and the 5<sup>th</sup> of August, 2007 – when the bank accounts were opened. For the avoidance of doubt, the gazetted order is dated the 21<sup>st</sup> October, 2015.
15. Further, **Section 54** of the ***Interpretation and General Clauses Act, Cap. 2:01***, states:

Where a written law made after 15<sup>th</sup> July, 1891, repeals any other written law then, unless the context otherwise requires, the repeal shall not –

- (a) revive anything not in force or existing at the time at which the repeal takes effect; or
- (b) affect the previous operation of any written law so repealed or anything duly done or suffered under any written law so repealed; or
- (c) *affect any right, privilege, obligation, or liability acquired, accrued, or incurred* under any written law so repealed; or
- (d) *affect any penalty, forfeiture, or punishment incurred* in respect of any offence committed against any written law so repealed; or

*(e) affect any investigation, legal proceeding, or remedy in respect of any right, privilege, obligation, liability, penalty, forfeiture, or punishment aforesaid;*

*And the investigation, legal proceeding, or remedy may be instituted, continued or enforced, and the penalty, forfeiture or punishment may be imposed as if the repealing written law had not been made. [emphasis supplied].*

16. Clearly, it is envisaged, expressly, and by implication, in law and otherwise, that there be continuity, in good administration, when there is a change in circumstances affecting the existence of bodies like the NDC. It is perhaps a legal fiction of, or intrinsic within the Order constituting the township, that there be continuity of purpose, rights, privileges, obligations, liabilities and penalties at the instance of the MTCB, flowing from the previous existence of the Bartica NDC. The record so reflects, as recounted above. So too the debts incurred, as reflected in the court order which the applicant is seeking enforcement.
17. It could never have been the intention of the legislature in giving the Minister the power to declare an area a town, have the effect of removing by that Ministerial Order, an enforceable judgment of a Court of competent jurisdiction.
18. Finally, the contention of the respondent that the moneys in the bank account are not their own is rejected, without more. The accounts holder is the MTCB. Citizens Bank is a debtor of the MTCB, in respect of funds being held in their accounts. Clearly, in the circumstances, and as the respondent contends, they are accountable in respect of subventions received from Central Government. It does not however, qualify the ownership of moneys which are in the accounts of the MTCB. It is their funds which have been administratively earmarked for certain projects.
19. Judgments of a Court of competent jurisdiction must be respected, unless it has been set aside, or its terms varied. The instant order has been a debt of the NDC from date of judgment being the 7<sup>th</sup> May, 2014, and subsists as a debt of the MTCB. There has been no effort made on the record of this Court,

by the NDC, or now the MTCB to appeal the decision by the Judge, or engage in payment terms, or to negotiate with the applicant in respect of an instalment plan, or otherwise. It is clearly indicative of the respondent's intention to avoid the liability.

20. In the circumstances, this Court can find no reason or cause to suggest that the charging order issued herein, not be made absolute. Therefore, it is the order by this Court that the charging order issued on the 27<sup>th</sup> day of October, 2017 be made **absolute**. There will be costs to the applicant in the sum of **\$150,000.00**.



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**Nareshwar Harnanan**  
**Puisne Judge**  
**February 9, 2018**