

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE  
CIVIL JURISDICTION

2020-HC-DEM-CIV-FDA-551

BETWEEN:-

GLENN LALL

Applicant

-and-

1. NATIONAL INDUSTRIAL AND COMMERCIAL INVESTMENTS LIMITED; a company incorporated and organized in accordance with the Laws of Guyana.
2. WINSTON JORDAN, Minister of Finance
3. ATTORNEY GENERAL

Respondents

**SANJEEV DATADIN Counsel for the Applicant**

**DEVINDRA KISSOON & ARIANA McLEAN, Counsel for the N0. 1  
Respondent**

**Mr. NIGEL HAWKE & REHANNA CLARKE Counsel for N0s 2 and 3  
Respondents**

**MR NIGEL HUGHES & VASCONCELLAS Counsel for the Intervenor**

**RULING**

**DATED THE 20<sup>TH</sup> DAY OF AUGUST, 2020**

The Claimant caused a Fixed Date Application to be filed on the 9<sup>th</sup>  
day of July, 2020, seeking :

A declaration that there is no power or authority vested in the First named Respondent or the Second Named respondent pursuant to section 8 and/or 11 of the Public Corporations Act; Cap 19:05 to convey or transfer any property under its or his control to any person or entity not under the control of the Minister

An order of Certiorari quashing the decision made on the 11<sup>th</sup> day of June, 2020 by the Minister of Finance, the second Respondent, and published in the Extraordinary Edition of the Official Gazette of Guyana dated the 11<sup>th</sup> day of June, 2020 and numbered Order N0/ . 64, 66, 67,68, 69, 70,71,72 & 73 purportedly made under sections 8 and 11 of the Public Corporations Act Cap 19:05 on the ground that the said decision is unlawful, made without legal authority, ultra vires, malicious, made in excess of jurisdiction, made without legal consideration, null, void and of no legal effect.

The Court having heard arguments for and on behalf of the Claimant and for the Respondents, and the N0s 2 and 3 Respondents as well as the Intervenor have indicated to the Court that they agree fully with the submissions of Counsel for the N0s 1 Respondent.

AND the Court having read the arguments submitted by Counsel for the Parties, will now address and pronounce on the following:-

Whether the Claimant has the standing to bring this claim:

Section 4 of the Judicial Review Act and Part 56 .01 (4) of the Civil Procedure Rules, stipulates to whom the court may grant relief and by whom such relief may be brought. The Court finds that the Claimant has no standing to prosecute this claim, since (a) he failed to comply with Part 56:02 prior to the filing of this claim, . The Rules stipulated that : when issuing a proceeding for an administrative order, the Applicant must file a Notice of claim for an Administrative Order. The court will address more fully this issue at the appropriate time.

(b) The Claimant has failed to establish or satisfy this court that his or the public interest is being affected, as required under Section 4 of the JRA and CPR 56.01 (4) of the CPR. In paragraph 12 of his Affidavit in Support of Application where he merely states that: **“ the transfer of property was unlawful and deprived the State of Millions of dollars in revenue by being conveyed outside of the normal conveyance procedures, which would have required the payment of taxes and duties to the State and the payment of legal fees. Under the present regime of transfer none of the foregoing fees are payable.”**

Section 8 of the Public Corporation Act states as follows:-

**The Minister, may by order, transfer to a corporation or to any other person, or place under its or his control the whole or part of**

**(a) any undertaking or any other property of any corporation or any other person or other body corporate owned by the State or in which the controlling interest is vested in the State or any agency on behalf of the state;**

**Any commercial, manufacturing or research undertaking of the State.**

**The corporation, other body corporate or undertaking affected by an order made under subsection (1) shall comply with any directions which may be given to it by, or under the directions of the minister, so as to give effect to the order”.**

The argument of Counsel for the Claimant is that the essential and key precondition of the statute is that it applies to property of the State being transferred to an entity under the control of the Minister, and that there is no authority to vest the specific state assets to these companies as mentioned in the Orders published in the Official Gazette referred to in the claim

The Court however accepts the argument of Counsel for the Respondent, that, taken in its literal sense, section 8 of the PCA empowers the Minister to do, just that which he has done. Moreover, Counsel for the Claimant overlooked or omitted the reason and purpose of the transaction between the Minister of Finance and the Companies named. Such transaction was to privatize and transfer properties to investors, and more importantly to

repay the State's debt obligations imposed by the Guysuco Bond which in itself is serving the public interest.

Additionally, Counsel for the Claimant did not supply supporting evidence to assist the court with the amount of the revenue received or lost, if any, by the alleged failure of the minister of finance to follow the normal conveyance procedures.

In this regard, the Court adopts the view of then Hon CJ Ian Chang in the case of Ramon Gaskin, in that whilst the powers and authority of the minister to execute the transactions as he did, may be regarded as a matter of some public doubt and concern--- this has to be balanced against the importance of discharging the obligations under the Guysuco Bond as against the issue of the writ of certiorari as sought by the Claimant

As regards the issue of non compliance of the rules by the claimant, the court chose to address this argument lastly, so that no one is mistaken that it over rides the other issues in order of importance.

The court finds that the claimant is in default regarding the filing of the Notice of Claim for Administrative Order, Section 56.02 (1) states that " when issuing a proceedings for an administrative order, as in the matter at Bar, the Applicant must file a Notice of claim for an Administrative Order."

This was compounded by the claimant's failure to correct the defect by seeking relief from sanctions as stipulated under CPR 14.01 (1) (b) and CPR 27.

The fact that CPR 27.01 (3) stipulates that the omission may be deemed an irregularity, Part 27.2 (3). Specifically stipulates when the court may exercise its discretion in granting such relief. In this case, the court finds that the Claimant made no effort to comply or to offer an explanation for not doing so, instead Counsel for the Claimant sought to argue that Procedural errors and objections ought not to be entertained at the expense of justice and that the Court should always discourage engaging in procedural objections and hear proceedings so as to settle the matters of dispute between the parties.

Whilst the Court agrees that procedural errors and objections should not override the pursuit of justice, in the matter at Bar there are several named companies with whom the Minister of Finance engaged, and which were or are alleged to have been all totally uninformed and ignorant of the claim before this Court, simply because an important precondition of the issuing of the claim was ignored, and so they were denied the opportunity to be heard.

The Court is of the view that in exercising its discretion regarding sanctions one must also examine the nature and effects of the case and the consequences resulting from the failure to comply with the Rules.

The Court also noted that the objections raised by Counsel for the Claimant in paragraphs 1 to 8 of his submissions is without base and superfluous to say the least. The Court directs attention to Part 1.01 and Part 1.02 (2) of the CPR which speaks to the Overriding Objective.

Taking into consideration the perceived injustice to the Claimant and the public by the action of the Minister of Finance, and the importance of the transaction, which as a result of this Claim, has been held in abeyance until the hearing and determination hereof, the Court is of the opinion that given the national importance disclosed in the pleadings, the overriding objective in part 1.02 and Part 25 requires that which has been done, to effectively and expeditiously conclude the matter.

Consequently, and in view of the evidence adduced, and the findings of this court, the Court hereby dismisses the Claimant's claim against all parties, and awards costs in the sum of 300,000, being 100.000 to be paid to each Respondent.

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Justice Kurtzious