

**IN THE CARIBBEAN COURT OF JUSTICE
Appellate Jurisdiction**

**ON APPEAL FROM THE COURT OF APPEAL OF
THE CO-OPERATIVE REPUBLIC OF GUYANA**

**CCJ Application No. GYCV2014/007
GY Civil Appeal No. 32/2008**

Between

NARINE DATT SOOKNANAN

Applicant

And

THE MEDICAL COUNCIL OF GUYANA

Respondent

Before the Honourables

**Mr. Justice Wit
Mr. Justice Hayton
Mr. Justice Anderson**

Appearances

Sir Fenton Ramsahoye, SC and Ms. Jamela A. Ali for the Applicant

Mr. Kamal Ramkarran for the Respondent

**JUDGMENT
of
Justices Wit, Hayton and Anderson
Delivered by
The Honourable Mr. Justice Wit
on the 28th day of November 2014**

JUDGMENT

- [1] This application filed by the Applicant, a Medical Practitioner, is for special leave to appeal a judgment of the Court of Appeal dated 31st July 2014. After an investigation into a complaint concerning the Applicant's patient who had died on 13th October 2003, the Medical Council of Guyana invited the Applicant to appear before it, heard him and concluded that he had "demonstrated gross negligence in the management of the patient as well as gross professional misconduct in shirking [his] duty to have proper reports submitted on this case". Accordingly, the Medical Council decided, on 4th August 2006, to erase the Applicant's name from the Register of Medical Practitioners.
- [2] In judicial review proceedings before a Judge of the High Court this decision was quashed for the reason that the Medical Council had taken into consideration a report by an "independent obstetrician and gynaecologist" without affording the Applicant an opportunity to study the report and to react to its contents. The Medical Council consented to the quashing order and subsequently invited the Applicant to a rehearing of the matter, an invitation that triggered further judicial review proceedings by the Applicant in which he was successful at first instance but unsuccessful in the subsequent appeal. It is this judgment of the Court of Appeal that the Applicant now seeks to appeal.
- [3] The scope of the proposed appeal has been narrowed down in this Application. The sole legal issue placed before this Court is whether the Medical Council, a statutory disciplinary body, after having heard *and determined* a complaint against a Practitioner, would be entitled to conduct a second disciplinary hearing against that same Practitioner and for the same alleged professional misconduct where its earlier determinations have been quashed in *judicial review proceedings* for reasons of procedural fairness. The Applicant submitted, and the High Court agreed, that such a second hearing is barred by the principle of *res judicata*, but the Court of Appeal ruled that *res judicata* does not apply in a case like this.
- [4] It has to be noted upfront that the matter has become academic since the Medical Council has given an undertaking (which this Court accepts) that it will not now pursue any further proceedings against the Applicant in respect of the patient's death in 2003. It is true that certain issues, notwithstanding the fact that they have become academic, may in exceptional circumstances be the object of an appeal: *Ya' Axchè Conservation Trust v*

*Chief Forest Officer and others*¹. However, no valid arguments have been advanced to show why this would be such a case; and even assuming that it would be appropriate for us to hear the appeal on this particular significant issue, the appeal should at least be an arguable one. In our view it clearly is not.

[5] It is an ancient legal principle going back to the Roman and Canon law (if not to the Greek Law and the Old Testament) that a matter which has been decided by a competent tribunal cannot be re-litigated when certain conditions have been met. Only then can it be said that the matter is *res judicata* (*pro veritate accipitur*²). One of those conditions is that the decision must be final. In the case before us there is no such final decision by the Medical Council as it has been quashed by the High Court. But this is not the end of the argument. If the decision had been quashed, in a real sense, on the merits, there would have been a *res judicata* (constituted by the judgment of the High Court). It is clear that in the case before us the decision of the Medical Council was quashed on purely procedural grounds and not in any way on the merits. Thus *res judicata* would only apply if in new proceedings it were alleged that the decision had not been quashed.

[6] Confronted with the logic of the foregoing, Sir Fenton Ramsahoye SC on behalf of the Applicant called to the rescue a recent judgment of the Supreme Court of the United Kingdom, *R (on the application of Coke-Wallis) v Institute of Chartered Accountants of England and Wales*,³ which in his view presented an authoritative precedent in favour of his submission that the principle of *res judicata* does indeed apply in this case. That judgment, however, dealt with a disciplinary body that had decided to dismiss a complaint against a chartered accountant because conviction for a Jersey criminal offence was inadequate foundation for the complaint and then, with their first decision still intact, decided to rehear the case on basically the same complaint against the same person but with better relevant evidence. This, the Court found, did constitute a *res judicata* and we have no difficulty in agreeing with that reasoning. The difference with this case, of course, is that here the decision of the Medical Council is not intact and that the Court in quashing it has not done so on the basis of the merits of the case. It follows therefore that both on reason and on precedent⁴ the principle of *res judicata* does not and cannot apply in this case. And that conclusion definitively closes the curtain on this Application. Special leave to appeal must therefore be refused.

¹ [2014] CCJ 14 (AJ)

² "The judgment (of a competent tribunal) is taken for the truth": Ulpian in Dig. xii. 6.2

³ [2011] UKSC 1

⁴ See e.g. *Ridge v Baldwin* [1964] AC 40 at 79 per Lord Reid, *Attorney General for Hong Kong v Ng Yuen Shiu* [1983] 2 AC 629 at 639 per Lord Fraser; *R (on the application of Mackaill) v Independent Police Complaints Commission* [2014] EWHC 3170 (Admin) at [103]-[108] per Davis LJ.

