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

**ON APPEAL FROM THE COURT OF APPEAL OF GUYANA**

**CCJ Appeal No. GYCV2018/003**
**GY Civil Appeal No. 142 of 2017**

**BETWEEN**

**SATTIE BASDEO in her capacity as trustee of the Guyana Agricultural and General Workers Union AND ROXANNE ST HILL in her capacity as trustee of The National Association of Agricultural Commercial and Industrial Employees**

**APPELLANTS**

**AND**

**GUYANA SUGAR CORPORATION LIMITED, NOEL HOLDER in his capacity as the Minister of Agriculture and on behalf of the Cabinet of Guyana AND THE ATTORNEY GENERAL OF GUYANA**

**RESPONDENTS**

**Before The Honourables** **Mr Justice Saunders, President**
**Mr Justice Wit**
**Mr Justice Hayton**
**Mr Justice Anderson**
**Mme Justice Rajnauth-Lee**

**Appearances**

**Mr Devindra Kissoon for the Appellants**

**Mr Basil Williams SC MP, Mrs Joycelin Kim Kyte-Thomas, Mrs Beverley Bishop-Cheddie and Mrs Judy Stuart-Adonis for the Respondents**

**JUDGMENT**
**of**
**The Honourable Justice Saunders, President**
**and the Honourable Justices Wit, Hayton, Anderson and Rajnauth-Lee**

**Delivered by**
**The Honourable Mr Justice Anderson**

**on the 31st day of July 2018**

## Introduction

[1] The Applicants in this matter are Ms. Sattie Basdeo, Trustee of the Guyana Agricultural and General Workers Union ("GAWU") and Ms. Roxanne St. Hill, Trustee of the National Association of Agricultural, Commercial and Industrial Employees ("NAACIE"). GAWU and NAACIE are and were at all material times trade unions, registered under the Trade Union Act[1] of the Laws of Guyana. These two trade unions represented most of the workers employed by Guyana Sugar Corporation ("Guysuco"), a sugar corporation which has a monopoly of sugar and molasses production in Guyana. Guysuco is subject to ministerial authority and direction and is a Respondent in this matter along with Mr. Noel Holder in his capacity as the Minister of Agriculture and on behalf of the Cabinet of Guyana, and the Attorney General ("the Respondents").

[2] In 2017, the Applicants an initiated action in the High Court of Guyana which sought to quash the decision of the Respondents to sever the employment of approximately 4400 sugar workers at, and to close the operations of, Rose Hall and Enmore Sugar Estates/La Bonne Intention (also known as East Demerara) ("the Estates"). The main ground advanced by the Applicants against that decision was that they had not been adequately consulted by the Respondents. Their action was dismissed by the High Court. Their arguments also did not find favour with the Court of Appeal which on February 8, 2018, dismissed their appeal and affirmed the judgment of the High Court.

[3] By Notice of Application filed March 21, 2018, the Applicants sought special leave from this Court to appeal the judgment of the Court of Appeal. Thereafter, there were significant interlocutory applications which slowed the progress of the litigation. By Order dated June 7, 2018, this Court required that the oral and written submissions of the Applicants and the Respondents should encompass all the points that would be raised on the appeal in the event that we granted special leave. The hearing of the application for special leave was held on July 10, 2018 and oral arguments also proceeded as if it was the hearing of the appeal.

[1] Cap 98:03.

**Factual Background**

[4] For the better part of four centuries[2] the sugar industry was a mainstay of the Guyanese economy and among the Country's most important socio-economic activity[3]. However, not unlike in other post-colonial jurisdictions within the Caribbean and elsewhere, the industry in Guyana has been ailing financially for the last several years. In 2015, a Commission of Inquiry ("Commission" or "COI") was established with terms of reference to develop a plan to bring the industry back to profitability and assure its long term environmental and economic sustainability. The Applicants had a representative on the Commission. The findings were published in October 2015. The Commission recognized the economic challenges faced by Guysuco, including numerous and substantial government bail outs. It also acknowledged that closure of some estates had been debated and that two Commissioners supported closure while the remaining eight opposed it[4]. The Commission considered that the effect of closing any estate without planning and adequate notice to cane farmers would have "serious consequences, not only for the employees and private farmers but for the communities as well"[5]. Accordingly, the COI recommended privatization of Guysuco with short term funding from the Government and that "while the ongoing process of amalgamation of estates for obvious economies of scale may continue, the COI does not recommend the closure of any estate at this time"[6].

[5] On December 31, 2016, a meeting was held at the Ministry of Agriculture to engage all stakeholders in the sugar industry on the future of Guysuco, including the issue of closure. In attendance were representatives of both GAWU and NAACIE as well as members of the Government, the Opposition and Guysuco. The meeting was chaired by Vice President of the Republic, Mr. Khemraj Ramjattan. Mr. Ramjattan assured the Applicants that further discussions would take place between Government and stakeholders. The Applicants were also advised by Mr. Ramjattan and Minister of State, Mr. Joseph Harmon, that no decision would be taken in relation to Guysuco until meaningful consultations

[2] 17th, 18th, 19th, and 20th centuries.
[3] Report of the Commission of Inquiry, Guyana Sugar Corporation, Vol. 1, October 2015, p 3.
[4] Ibid, p. 30 at 5.45, 5.46.
[5] Ibid, p. 31 at 5.50.
[6] Ibid, p. 37, Recommendation IV.

were undertaken as widely as possible and all views were taken into consideration. Subsequently, the Applicants were involved in approximately four hours of consultations regarding the closure of the estates. This included a two-hour presentation made by GAWU on February 17, 2017.

[6] On May 8, 2017, the Minister of Agriculture, Mr. Noel Holder, presented a State Paper on the Future of the Sugar Industry to the National Assembly. The Minister outlined the history of the sugar industry, including its triumphant years, and the economic challenges faced by Guysuco as the industry had evolved. Noting that action was needed to save the ailing industry, he stated that "the future of the industry is considered to lie in a smaller sugar sector", and then outlined a plan to amalgamate the estates which would result in the closure of the Rose Hall and Enmore factories. The Minister also pointed out that Guysuco "will retain as many workers needed for all operations on the merged estates/factories". The Estates were officially closed on December 29, 2017.

## **Procedural History**

### High Court

[7] On October 20, 2017, the Applicants filed a without notice Fixed Date Application in the High Court. A nisi order of certiorari was sought to quash the decision of the Respondents to close the Estates and sever the employment of the sugar workers and an order of mandamus was sought to compel compliance by Guysuco with section 23(4) of the Trade Union Recognition Act[7]. The Applicants also sought two orders of prohibition to prohibit the Respondents from taking any step or doing any act in furtherance of the decision to terminate the employees of Guysuco unless Guysuco complied with section 23(4), and to prohibit the Respondents from taking any decision concerning the closure of the Estates and severance of workers therefrom until the Respondents fairly and meaningfully consulted with the Applicants and those they represented. The Applicants also contended that the decision to close the estates and terminate the employment of the sugar workers without any offer of alternative employment or guarantee of pension or otherwise was in breach of their

[7] Cap 98:07.

constitutional right to work and/or Articles 1,8,9, 13,21,22, 18, 38A, 40, 138,141,142, 144, 149A, 149B, 149C, 1490, 154 and 154A of the Constitution of Guyana[8]. An order was also sought to consolidate the constitutional matter with the administrative claim.

[8] The matter was heard by the Honourable Madam Chief Justice (ag) Roxane George-Wiltshire on October 25, 2017 and a decision rendered on November 9, 2017. The learned Acting Chief Justice dismissed the application and refused to grant the relief sought. She looked specifically at the allegation of inadequate consultation and ruled that "the commission of inquiry held was sufficient to satisfy the obligation to consult and that the criminal remedies contained in the acts provided a sufficient alternative form or relief for the Applicants". She also found, contrary to the Applicants' contention that they were not notified of the decision to close the estates, that the documents exhibited and relied on suggested otherwise. She therefore refused to grant the certiorari and prohibition nisi orders sought. As to the mandamus order, the judge held that section 23(4) did not create a general public duty, and significantly did not bar an employer from closing an entity for non-compliance with section 23(4) and (5). The learned Acting Chief Justice pointed out that section 23(6) provided for a penalty for non-compliance and refused to grant the order.

[9] It should be noted that before dismissing the application, the learned Acting Chief Justice took notice of the Applicants' failure to adequately disclose facts, specifically stating that "there are a number of instances where the applicants sought to rely on information and belief of what they claimed to be facts from sources that were not disclosed. This is impermissible in an application such as this which is substantive and not interlocutory".

Court of Appeal

[10] The Applicants filed a Notice of Appeal on November 17, 2017 as well as an application for an urgent hearing on or before December 29, 2017. The Court of Appeal comprising Acting Chancellor Cummings-Edwards and Justices of

[8] Cap 1:01.

Appeal Gregory and Persaud denied the application for an urgent hearing on December 21, 2017 and set down the hearing for January 15, 2018.

*Interlocutory Application to the Caribbean Court of Justice*

[11] On December 21, 2017 the Applicants made a without notice application to this Court for special leave to appeal the Court of Appeal's refusal to hear the appeal on or before December 29, 2017. They also sought an Order directing the Court of Appeal to urgently hear and decide the appeal of the decision of George-Wiltshire CJ (ag) on or before December 27, 2017 or alternatively, asked that this Court hear and decide the appeal. Counsel for the Applicants made oral submissions before us on December 22, 2017[9] but the application was dismissed. The Court was of the view that the importance of the matter warranted submissions from both parties which would take matters beyond the relevant dates.

*Substantive Decision of the Court of Appeal*

[12] On February 8, 2018, the Court of Appeal dismissed the appeal. There was no written decision. The court delivered an order which recounted the history of the litigation and then simply ordered "that this appeal be and is hereby dismissed and the Order of the Honourable Madam Chief Justice (ag) Roxanne George-Wiltshire dated the 10th day of November 2017 be affirmed". It also ordered that there be no Orders as to Costs.

## Special Leave Application to the CCJ

[13] The Applicants are now seeking special leave to appeal the decision of the Court of Appeal. They claim that the relief requested in the High Court ought to have been granted, and that constitutional, vindicatory and exemplary damages should be awarded against the State for the breaches and contraventions of the Applicants' members' constitutional rights. The Applicants are also seeking compensation in respect of (i) each affected worker who has lost his right to be continuously employed by the State to retirement, including compensation for lost periodic raises in salary, in an amount to be determined at trial; (ii) each

[9] The Court delivered its decision orally following the hearing.

affected worker who has lost his right to benefits such as pension and healthcare, in an amount to be determined at trial; and (iii) a corresponding Order setting the matter down for trial to determine the amount of damages as aforesaid to be awarded to the Applicants' members.

[14] Before us, the Applicants argued that they were entitled to these declarations because of the violations of their right to be consulted and because of breaches of their constitutional rights. The Respondents resisted these contentions and submitted that the application should also be dismissed on grounds that the incorrect procedure was employed to initiate the suit and that the appeal had become academic. It is convenient to consider these preliminary objections before discussing whether there were breaches in the Applicants' consultation and constitutional rights.

Propriety of Procedure

[15] The Applicants submitted a without notice Fixed Date Application on October 20, 2017 using the Pre-CPR without-notice Nisi Order procedure. In *Medical Council of Guyana v Jose Ocampo Trueba*[10] this Court confirmed that since the introduction of the Civil Procedure Rules ("CPR") in February 2017, Part 56 of the CPR must be used by litigants seeking judicial review and, therefore, every other form of practice formerly applicable, such as the practice of obtaining *ex parte* orders nisi with the need for the respondent to show cause against making the orders absolute, was by implication excluded.[11] The basis of the application (the pre-CPR without notice Nisi Order) is now excluded by the CPR. As such, this matter should have ordinarily been commenced by a Statement of Claim, for a Fixed Date Application made on notice, for administrative orders pursuant to Part 56 of the CPR. The procedure adopted in this case was therefore erroneous.

[16] Part 17.01 (3) of the CPR does make provision for fixed date applications without notice when: (a) there was good reason for not giving notice or (b) in the case of urgency, it was not reasonably possible to give notice, or (c) giving

[10] [2018] CCJ 8 (AJ).
[11] Ibid at [15].

notice would have defeated the purpose of the application. The Applicants failed to satisfy any of these requirements. The Estates were scheduled to be closed in December 2017 and given the national implications of a court's interference with such an important executive decision as well as the social and economic impact of closure, the application should have been made with notice so as to allow the Respondents to defend their position.

[17] There also appears to be merit in the allegation by the Respondents that the application was attended by material nondisclosure by the Applicants. The Applicants allege no consultation in some instances and insufficient consultation in others and consistently maintain that they were left in the dark as to the final decision to close. However, the Record of Appeal is replete with evidence that the Respondents consulted with the Applicants. Further, the decision to close was publicly announced on May 8, 2017 and was the subject of intense media coverage. Lack of full disclosure was contrary to the rule that parties must act with utmost transparency and good faith in making *ex parte* applications. Accordingly, the Applicants' actions in seeking an *ex parte* application was without justification, did not fall within the grounds on which such an application can be made, and failed on the duty to fully and frankly disclose all material to the court.

[18] This finding on this procedural point is sufficient to dismiss the appeal. However, the parties, particularly the Applicants, requested guidance on the other matters raised in the application. Out of deference for this request, the social impact of the impugned Decisions and the conflicting arguments deployed in relation to these matters, we propose to give our views on the issues that follow.

Academic Appeal

[19] It was argued by the Respondents that the appeal had become academic since some 50% of the workers had been paid their full severance between January to March 2018, whilst others had since also been paid their full severance. The remaining workers are expected to be paid their full severance in the second half of the year.

[20] It is widely accepted that courts do not decide cases where there are no live issues between the parties. In *Ya'axche Conservation Trust v Wilder Sabido, Chief Forest Officer et al*[12] this Court held that it was an important feature of our judicial system that the Court decides disputes between the parties before it and does not pronounce on abstract or hypothetical questions of law where there is no dispute to be resolved. In general, there must exist between the parties a matter in actual dispute or controversy which this Court can decide as a live issue.[13] The basic premise of these pronouncements is reflected in three Ugandan cases[14] cited by the Respondent. To hear matters that are moot would be an abuse of the court process because their decisions would have no consequences.[15] Courts do not decide cases for academic purposes; judicial orders must above all have practical effect.[16]

[21] *Ya'axche* did hold that there was no absolute rule that bars the hearing of a matter even if by the time the appeal reaches this Court there is no longer a live issue between the parties. We expressed the view that an academic appeal may be heard if it raises an issue of public interest involving a distinct or discrete point of statutory interpretation which has arisen in the past and may arise again in the future. It may also be appropriate to hear such an appeal where the issue is a recurrent one that is likely to become moot before it reaches the ultimate court of appeal; such as an issue concerned with the legality of an annual licence. But we agreed that this Court should be cautious in the exercise of its discretion to entertain an academic appeal and should in principle only do so where the question is one of public law (as distinct from private law rights disputes between parties) and where there are good reasons in the public interest to hear such an appeal.[17]

[22] We agree with the Applicants that the alleged academic nature of the appeal should not prevent the hearing of the appeal in this case. The determination of

---

[12] [2014] CCJ 14 (AJ).
[13] Ibid at [3].
[14] *Human Rights Network for Journalists & Another versus Uganda Commission Uganda Communications Commission & Others Miscellaneous Cause No. 219 of 2013*; *Uganda Telecom Ltd v Ward Telecom (Uganda) Limited Civ App No. 28 of 2017*; *An Application for Judicial Review Between Julius Maganda v National Resistance Movement High Court Miscellaneous Application No. 154 of 2010*.
[15] See: Justice Yasin Nyanzi in *Human Rights Network for Journalists & Another versus Uganda Commission Uganda Communications Commission & Others Miscellaneous Cause* No. 219 of 2013.
[16] See: Musota Stephen J in *An Application for Judicial Review Between Julius Maganda v National Resistance Movement High Court Miscellaneous Application* No. 154 of 2010 at p 10.
[17] Supra (n12) at [4] – [5].

the dispute is of national importance since "(i) there is a real possibility that the remaining three estates can be closed without adherence to the Respondents' duty to consult, Guysuco failing to comply with its duty to consult during the prior closure of Wales Estates, (ii) the duty to consult is a regular feature in Guyanese legislation and the Constitution, (iii) the Applicants' members constitutional rights need to be determined to prevent future abuses thereof, (iv) rarely do litigants get an opportunity or have the resources to reach the Caribbean Court of Justice on matters concerning the duty to consult since matters become moot during High Court proceedings, (v) guidance is desperately needed as to how courts should treat urgent public law and constitutional matters so that litigants are afforded a fair opportunity to be heard, and (vi) procedural guidance is needed to enable the Courts to hear and determine urgent judicial review and constitutional law matters in the same proceeding."[18]

[23] In short, it is not entirely clear that the appeal is academic. No evidence was presented that all the workers have received their full compensation. Further, if there were indeed significant breaches of the consultation and constitutional rights, the purported closure of the Estates would not necessarily prevail merely by presenting such closure as a *fait accompli*. In any event, there is a strong public interest in ascertaining and clarifying the nature and extent of the consultation and constitutional rights of the Applicants.

Consultations

[24] The substance of the Applicants' contentions was that there was a lack of consultation by the Respondents with regards to the termination of workers and the closure of the sugar estates. The Applicants claimed that there is a longstanding practice of consultations on matters pertaining to workers of the estates which had given rise to a legitimate expectation that they would be consulted on important matters affecting them. The Applicants also submitted that the actions of the Respondents illustrated a blatant disregard for the principles governing employers' duties to employees, the engagement of the

[18] Applicants' Written Submissions, p 933 of CCJ Record.

union, adherence to the Trade Union Recognition Act and workers' rights to be treated fairly. In their view, the COI and meetings that were conducted on the issues facing the sugar estates were not consultations and had been incorrectly interpreted as such by the lower courts.

[25] The Respondents countered that the evidence of the various affidavits and correspondences submitted proved that there was sufficient consultation including the COI, the various meetings conducted and the fact that a representative of the Applicants was on the COI. At all material times, the Applicants were aware of the issues faced by Guysuco and its possible future. Further, the studies, meetings, letters to the Applicants, State Paper and COI collectively reflect reasonable sources for the Appellants being aware of a real possibility of closure.

[26] The obligation to consult may arise from several sources. The practice of one party may give rise to a legitimate expectation that consultation will occur. This principle was considered by Sykes J (as he then was) in the Supreme Court of Jamaica case, *The Northern Jamaica Conservation Association (and ors) v The Natural Resources Conservation Authority and the National Environment and Planning Agency*[19]. In that case, the applicants sought judicial review of a decision to grant an environmental permit to hotel developers to build a hotel in an area known as Pear Tree Bottom Jamaica. Justice Sykes affirmed the dicta of Woolf J in *R v North and East Devon Health Authority, Ex parte Coughlan*[20] where he considered that one of the ways in which a legitimate expectation can arise was by promise or practice. This, he held, induces a legitimate expectation of being consulted before a particular decision is taken. He continued 'the court itself will require the opportunity for consultation to be given unless there is an overriding reason to resile from it, in which case the court will itself judge the adequacy of the reason advanced for the change of policy, taking into account what fairness requires'.[21] We accept these pronouncements as good law.

[19] Claim No. HCV 3022 of 2005.
[20] [2001] QB 21.
[21] Supra (n20) at [29].

[27] In this case, the primary source of the duty to consult was statutory. Section 23(5) of the Trade Union Recognition Act provides, that where a trade union has been certified and an employer considers closing an undertaking, "The union concerned must be consulted before a final decision to close is taken." In interpreting the meaning and extent of this provision, the common law duty to consult, repeatedly stated in the jurisprudence, is relevant. *R v. Brent London Borough Council ex parte Gunning*[22] pronounced certain basic principles (commonly known as the *Gunning* principles"). There ought to be:

i. Consultation when the proposals are still at a formative stage;
ii. Adequate information on which to respond;
iii. Adequate time in which to respond;
iv. Conscientious consideration by an authority to the consultation.[23]

[28] The *Gunning* principles have been widely accepted and applied.[24] Modern trends indicate that the consultation process embraces more than just affording an opportunity to express views and receive advice. It involves meaningful participation and overall fairness.[25] Representation from those affected by the proposed decision need not, unless the statutory provisions indicate to the contrary, be accepted or even responded to. But they must be taken into consideration.[26]

[29] In this case there was a legitimate expectation that the Applicants would have been consulted prior to the closure of the sugar Estates both because of longstanding Guysuco policies and the specific promises by Vice President Ramjattan and Minister of State Harmon that there would be meaningful consultations prior to any such closure. Furthermore, statute specified that a trade union should be consulted before a final decision to close was taken. The learned Acting Chief Justice held that "the commission of inquiry held was sufficient to satisfy the obligation to consult and that the criminal remedies contained in the acts provided a sufficient alternative form of relief for the

[22] [1985] 84 LGR 168.
[23] Ibid at 169.
[24] *R (Moseley) v Haringey London Borough Council* [2014] UKSC 56; Supperstone, Goudie and Walker on Judicial Review, 6th Ed., 2017 at 10.34; De Smith's Judicial Review (6th ed., 2007) at 7-053.
[25] See: Bernard CJ, in the application of *Carl Hanoman – HCSCJ No 23rd of 1999* (GY).
[26] Supperstone, Goudie and Walker on Judicial Review, 6th Ed., 2017 at 10.38.

Applicants". The Court of Appeal simply affirmed this decision. We regret that we cannot agree.

[30] The financial problems plaguing Guysuco were well known by all stakeholders. It was also common knowledge that the Government of Guyana had to decide on its future. In an Affidavit sworn by Sattie Basdeo, Roxanne St. Hill and Seepaul Narine, the Applicants admitted knowledge of the financial issues: "It is a notorious fact that Guysuco has had mixed financial fortunes over the last 40 years. Numerous contributing factors have resulted in recent unfavourable financial results." It was against this backdrop that the COI was conducted. But, while it set the stage for the eventual closure of the Estates, and did in fact discuss and debate closure, at the time that the COI was conducted, there was a general undertaking with regard to ensuring the feasibility of the corporation. The primary recommendation was privatization and it was expressly stated that closure was not recommended at that time. As stated above, consultations are to be held at a formative stage. Closure was not an express option at the time the COI was conducted. The stakeholders were therefore not able to make representations on that specific option. As such, it cannot be said that the COI was part of the consultation process. The most that can be said is that the COI made clear to the Applicants that closure was an option favoured by some of the stakeholders.

[31] The consultation process properly began after the initial meeting of the stakeholders on 31 December 2016. Vice President Ramjattan and Minister of State Harmon were asked specifically about the inclusion of closure in the Government's proposals. At this point, all relevant stakeholders would have been made aware that the State was exploring closure. It was at that meeting that state officials assured the unions of meaningful consultation before a final decision was taken.[27]

[32] There were two subsequent meetings, both entitled 'Stakeholders Meeting to Discuss the Future of Guysuco'. The first was held on February 3, 2017 and the second on February 17, 2017. The agenda for the February 3 meeting listed

[27] Minutes of First Stakeholder Meeting on Future of the Sugar Industry, p. 576 – 595 of the CCJ Record.

Reports from the Government, the Opposition and the unions followed by a Discussion on Proposals, though the minutes indicate that much of the meeting was focussed on whether the government would be conducting a social and economic impact assessment before making a final decision to close. That meeting lasted 55 minutes and was adjourned until February 17.

[33] Similarly, the agenda for February 17 illustrated that the sole purpose of the meeting was for stakeholders to present and discuss proposals. It was at this meeting that GAWU made an extensive two-hour presentation titled 'Securing Guyana's Sugar Industry: GAWU's Presentation to the Government of Guyana on the Future of the Guyana Sugar Corporation (Guysuco)'. The preface to GAWU's presentation is clear evidence that it was made with the knowledge that the Government was considering the closure of the Estates. It stated: *"The article also shows the Union's opposition to closure of Rose Hall and Enmore/LBI Estates and its regret of what has taken place at Wales Estate."* It is clear that the Applicants were aware of Guysuco's intention and were given the opportunity to make representations, which they did.

[34] Some three months after GAWU's presentation, the decision to close the estates was formally made to the National Assembly by Minister Holder, who presented a State Paper on the future of Guysuco. The Applicants also complain that the Government did not conscientiously consider their proposal, but we cannot agree. Without an express statutory requirement to respond to stakeholder proposals, it would be difficult for any court to find that the Government did not consider the proposals. The passage of time between GAWU's presentation and the decision to close coupled with the overwhelming evidence on the economic failings of the corporation are, in our view, equally consistent with a 'conscientious consideration by an authority'. The Applicants have certainly not presented any evidence which indicates otherwise.

[35] The learned trial judge correctly pointed out that "consultation does not mean agreement with the views expressed by a consultant or with those consulted" and that it may take different formats including meetings and representations. Though the judge should have stopped short of finding that the COI formed part of and satisfied the consultation process, the three meetings on December 31,

February 3, and February 17, GAWU's presentation and the State Paper (all of which were underpinned by the proven economic challenges facing sugar industry and by extension the State) met at least the minimum standard for adequate consultation.

[36] The Applicants also alleged that section 23(4) of the Trade Recognition Act was breached. That section lists the steps in the context of consultation on the closing of the Estates. Section 23(4) of the Trade Union Recognition Act provides that:

> "23(4) Where a trade union has been certified under section 22, or has made application for certification under section 18, an employer who decides to close an undertaking must give the Board and the concerned Trade union:
> (a) reasonable notice of his intention;
> (b) reasons for his decision; and
> (c) the numbers and categories of workers to be affected."

[37] The allegation that section 23(4) was breached is troubling. The announcement to close the estates was made on May 8, and the record illustrates that the process for redundancy began in late September/early October. This is evidenced by a letter sent to the General Secretary of GAWU on October 2. That letter spoke specifically to redundancy which suggests that both the Government and unions knew that closure was imminent[28] and were focused on the retrenchment of the workers. The letter also refers to a telephone conversation between the General Secretary of GAWU and a state official on September 29, which indicated that the unions and Guysuco had been in communication prior to the letter. The extent of this communication is unknown because the record is virtually silent on what transpired between May 8, and October 2. It is relevant that several letters from Guysuco to the union representatives were exhibited from October onwards discussing redundancy including the numbers and categories of workers to be affected. The workers were formally notified of termination by letter on November 29, one month before the December 29 closure date.

[38] This is not to say that the process of consultation was perfect or ideal. In a matter of such national importance impacting such large numbers of workers the

[28] Additionally, given the intense media coverage following the presentation of the State Paper in May 8th, the unions were aware of the decision to close. This media coverage was extensively exhibited by the Applicants.

process could have been more extensive and more responsive to the concerns of the Applicants. Notwithstanding the absence of a statutory obligation, the Respondents ought to have given a considered response (whether written or oral) to the GAWU's proposals explaining why they were not adopted. The Applicants could have been more fully appraised of the plans for providing alternative employment after the closure in an effort to ease the concerns of the Applicants.

[39] Nor do we accept that the only remedy for non-compliance with the Trade Union Recognition Act is that provided in section 23(6) which makes an employer who violates subsections (4) and (5) guilty of an offence and liable on summary conviction to a fine of fifty-six thousand dollars and to imprisonment for six months. It is also the case that workers may have recourse under the Termination of Employment and Severance Pay Act[29]. Nothing in these statutes bars or prevents the institution of claims for administrative relief.

[40] In our view, however, the consultation process, although not perfect, did meet the minimum requirements for meaningful consultation and therefore the question of remedies for its breach does not arise.

Constitutional Claims

[41] The Constitution of Guyana guarantees certain fundamental rights to citizens to ensure their wellbeing and the social and economic development of country. The Applicants argue that the right to employment and the right to life with regard to securing and maintaining a reasonable standard of living are fundamental rights violated by the closure of the Estates without due participation in the decision-making process by the Applicants (on behalf of the workers), or without securing alternative employment. The Respondents agreed that the right to work is a constitutional right but argue that it is one which is subject to public law considerations. To base a claim under this constitutional ground it is imperative that the right is unique to the individual who has a right to exclude others. If the interest claimed belongs to a wide group or the public at large it will not be regarded as a property right.[30] To this end the Respondents

[29] Act No. 19 of 1997 as amended by Act No. 7 of 1999.
[30] See: Robinson et al (2015) Fundamentals of Caribbean Constitutional Law at p. 248.

argue that the Applicants fell into the latter category and failed to show that the rights affected were unique to the individuals. The Respondents submit that economic circumstances and policies played the decisive role in the decisions regarding the sugar estates, and it was in keeping with good governance and in the national interest that the estates were closed, and the workers' employments were severed.

[42] We do not propose to pronounce on this occasion on the implications of the right to work enshrined in the Constitution. Critically, the Applicants link the alleged violation of this right to the breach of the duty to consult and we have found that there was no such breach. There does remain, however, the issue of the procedure for instituting constitutional claims. The Applicants allege that the lower courts refused to consider the constitutional arguments on the basis that a separate claim had to be filed despite the express provision of 56.03 of the CPR. It is to be remembered that the application before the High Court did not originate under Rule 56.03 but was a without notice Fixed Date Application. Nevertheless, some comment on the issue is warranted.

[43] Rule 56.03 states:

> "56.03 Joinder of Claims for Other Relief
> (1) A Claimant may include in its originating process, in addition to seeking an administrative order, a claim for any other relief or remedy that arises out of or is related or connected to the subject matter.
> (2) In a proceeding for judicial review or for relief under the Constitution, where the facts set out justify the granting of any other remedy arising out of any matter to which the claim for an administrative order relates, and the Court is satisfied that at the time when the proceeding was issued the Applicant could have sought such remedy, the Court may award damages, restitution or an order for return of property.
> (3) Where the Court considers it appropriate, it may at any stage direct that any claim for other relief be dealt with separately from the claim for an administrative order."

[44] Rule 56.03 clearly provides that while claims can be joined, the court retains a discretion as to whether claims should be heard separately. The dicta of Saunders JCCJ (as he then was) in *Lucas and another v Chief Education Officer*[31], discussed the joinder of constitutional and administrative claims in

[31] [2015] CCJ 6 (AJ).

Belize. Rule 56.8 in the Belize Supreme Court Rules is more comprehensive than its counterpart in Guyana, but the extract is nonetheless instructive. Speaking of the pre-CPR decision in *Harrikissoon v Attorney General of Trinidad and Tobago*[32], which had long been the authority for the proposition that seeking an alternative remedy was an abuse of process, Justice Saunders said:

> "[135] *Harrikisoon* must also be considered in light of new procedural rules which simplify the processes for initiating claims, strengthen the court's extensive case management powers and specifically authorise litigants to claim damages, as relief under the Constitution, in judicial review proceedings. Part 56 entitles a litigant to include in an application for judicial review a claim for any other relief or remedy that arises out of or is related or connected to the subject matter of the claim. Part 56 specifically permits a litigant to seek constitutional relief (and in particular, damages) in a judicial review application. These are sensible procedural provisions. A pure administrative judicial review application (what we used to refer to as a writ for a prerogative order) yields inflexible remedies that may be hopelessly inadequate and the court should discourage a multiplicity of actions when one alone can suffice. The onus is on the court, not the litigant, to manage filed cases and police the appropriate use of any jurisdiction conferred on the court. The civil procedure rules encourage and equip judges with all the necessary tools so to do. At an early stage the court may dismiss a claim for constitutional relief if it is vexatious or has no realistic prospects of success."[33]

[45] These observations are apposite, also, in this particular case, where the allegations of constitutional breaches flowed from an administrative act. Thus, as the claim was primarily grounded in administrative law, it would have been prudent for the constitutional claim to be joined to facilitate better case management, allocation of court resources and avoid arguments by the respective parties.

Attorney General Representation

[46] A final matter of some interest concerns the permissibility of the office of the Attorney General to represent the public corporation of Guysuco. The Applicants argued that the Attorney-General is the legal adviser to the Government and as such cannot represent a corporate entity that does not form

[32] [1980] AC 265.
[33] Supra (n32) at [135].

part of the State. The Respondents submitted that whilst the State cannot be sued on behalf of Guysuco, there was no legal bar to prevent the Attorney General from representing this state-owned enterprise even though it was a body corporate with its own legal personality separate from that of the State.

[47] Article 112(1) of the Guyana Constitution provides that, "There shall be an Attorney General of Guyana who shall be the principal legal adviser to the Government of Guyana and who shall be appointed by the President." Section 10 of the State Liability and Proceedings Act[34] provides that proceedings by or against the State shall be brought by or against the Attorney General. Section 10 of this Act specifically provides that where civil proceedings are instituted against the State, the Attorney General or other officer authorised by him shall, if the Attorney General decides to oppose the claim in the proceedings, enter an appearance or appear, as the case may be.

[48] The English case of *Tamlin v Hannaford*[35] concerned the British Transport Commission which took over the British railway industry when it was nationalized by the Transport Act 1947. Denning LJ reviewed the Minister's power to give general policy directions to the Commission but concluded that this did not mean that the corporation was the Minister's agent; it was not the Crown and had none of the immunities or privileges of the Crown.[36] These observations were approved by the Privy Council in *Perch v Attorney-General of Trinidad and Tobago*[37] which found that the Parliament had transferred the postal service from Government to a body established by the Trinidad and Tobago Postal Corporation Act 1999. The Privy Council decided that the employees of the new corporation were not holders of any public office and not employed in the service of the Government in a civil capacity.[38] Both *Tamlin* and *Perch* were cited with approval by this Court in *Brent Griffith v Guyana Revenue Authority*[39] to support our decision that the Guyana Revenue Authority was "a new corporate entity distinct from the government although it is a public corporation. The employees of the Revenue Authority are not holders of any

[34] Cap 6:05.
[35] [1950] 1 KB 18.
[36] Ibid, p. 24.
[37] (2003) 62 WIR 461 (PC).
[38] Ibid at [15].
[39] [2006] CCJ 1 (AJ).

public office nor are they employed in the service of the government of Guyana in a civil capacity."[40]

[49] In the subsequent case of *Attorney General of Trinidad and Tobago v Carmel Smith*[41], the Privy Council considered the scope of state responsibility. In that case, the Attorney General of Trinidad and Tobago objected to being made the sole defendant in a constitutional claim. He argued that the Statutory Authorities Service Commission ('SASC') was the proper defendant against the appellant's claims that she was discriminated against as treated unequally in violation of her rights under the Constitution. The appellant was an employee of a statutory authority, whose employees fell within the jurisdiction of the SASC. In rendering its decision, the Privy Council looked at the State Liability and Proceedings Act, particularly section 19 which is entitled 'Method of making the State party to proceedings':

> "…
> (2) Subject to this Act and to any other written law, proceedings against the State shall be instituted against the Attorney General.
>
> …
>
> (8) Proceedings against an authority established by the Constitution or a member thereof arising out of or in connection with the exercise of the powers of the authority or the performance of its functions or duties are deemed to be proceedings against the State.
>
> (9) In this section, "authority" means a Service Commission as defined in section 3(1) of the Constitution."

[50] The Appellant relied on section 19(2) to argue that the actions of the SASC were the actions of the State while the Attorney General relied on the distinction between the four Service Commissions referred to in section 19(9), on the one hand, and the Integrity Commission, the Salaries Review Commission and the SASC, on the other hand. The court held that the Attorney General is to represent the State as well as statutory bodies[42] which are deemed by section 19(8) and (9) to be part of the State, but that other statutory bodies, even public

[40] Ibid at [46].
[41] [2009] UKPC 50.
[42] Except in judicial review proceedings.

authorities amenable to constitutional redress proceedings under section 14 of the Constitution, are not part of the State, and are not deemed to be part of the State.[43]

[51] These cases did not exactly decide the precise point under discussion in the present proceedings. Nevertheless, in the light of their dicta, we are of the view that the Guyana constitutional and legislative provisions, cited at [47], suggest that the Attorney General was appointed to be the State's lawyer and not the lawyer of corporate entities not part of the State. The Attorney General therefore cannot represent the interest of entities, whether public or private, which are not part of the State.

[52] The Guyana Sugar Corporation Limited is a private corporation incorporated under the Companies Act[44] wholly owned by the State. It is not the State nor does it form part of the State. Hence, the Attorney General does not have standing to represent Guysuco in this matter. The Attorney General did, however, have standing to represent the State in this application which sought constitutional relief for alleged breaches of the Applicants' constitutional rights. It is unfortunate that the application did not particularize the actions by the State (as distinct from Guysuco) which were considered to have breached their constitutional rights. In the circumstances where blanket allegations of constitutional violations were made against 'the Respondents' it was understandable, even if not technically correct, that the Attorney General would have sought to oppose those allegations on behalf of all the Respondents.

## Conclusion

[53] The sugar industry has undoubtedly played a large part in the socio-economic development of Guyana. Thus, its future was an issue of national importance and required vigorous discussion with all stakeholders before an informed decision could be made. In this regard, the Respondents could have engaged with the Applicants on a deeper level, in particular, responding to GAWU's proposal and generally ensuring that they were appraised on plans for alternative

[43] Ibid at [24].
[44] Cap 89:01.

employment. Nevertheless, we are of the view that the minimum requirements for meaningful consultation were met and there was no breach of the common law right to meaningful consultations or sections 23(4) and (5) of the Trade Union Recognition Act. There was also no need to consider the allegation that the constitutional right to work was infringed as it arose from the contention that the consultations were inadequate. Given these findings, we cannot grant any of the relief sought.

**Disposition**

[54] The application for special leave is granted.

[55] The appeal against the decision of the Court of Appeal dated February 8, 2018, is dismissed.

[56] There will be no order as to costs.

/s/ A. Saunders

**The Hon Mr Justice A Saunders**

/s/ J Wit

**The Hon Mr Justice J Wit**

/s/ D Hayton

**The Hon Mr Justice D Hayton**

/s/ W Anderson

**The Hon Mr Justice W Anderson**

/s/ M Rajnauth-Lee

**The Hon Mme Justice M Rajnauth-Lee**