

IN THE EASTERN CARIBBEAN SUPREME COURT  
IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CLAIM NO. SLUHCV 2006/0110

BETWEEN:

HYMAN JOSEPH

Claimant

and

SAINT LUCIA AIR & SEA PORTS AUTHORITY

Defendant

Appearances :

Mr. L. Faisal for Claimant

Mr. S. Anthony for Defendant

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2007: February 5;  
May 9.

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**JUDGMENT**

**Introduction**

- [1] **EDWARDS, J.:** This is an administrative claim for judicial review of the decisions of a Public Authority which prevents the Claimant from entering the Port area of the Castries Sea Port to conduct legitimate business.

**Background Facts**

- [2] The Claimant Mr. Hyman Joseph worked as a dispatcher for K.C. Trucking Co. Ltd at the Castries Sea Port from 1997 until 2002.

- [3] The Defendant St. Lucia Air and Sea Ports Authority (the Authority) is a Statutory body corporate established under Section 3 of The St. Lucia Air and Sea Ports Authority Act Cap. 8:13 of The Revised Laws of St. Lucia 2001 (the Act). The Authority is responsible for the maintenance, supervision, management and control of sea Ports in St. Lucia. The General Manager as Chief Executive Officer of the Authority, exercises all the functions entrusted to him by the Act and Regulations.
- [4] On the 28<sup>th</sup> June 2002 Mr. Joseph was denied entry to the Port area during investigations concerning his alleged involvement in the unlawful removal of lumber from the Port. The lumber was consigned to Monplaisir Supplies Ltd and it was in the custody of the Authority when it was stolen and transported from the Port. Since then Mr. Joseph has been prevented from entering the Port to perform any duties as a dispatcher, despite several attempts to obtain passes.
- [5] By a Fixed Date Claim filed on the 27<sup>th</sup> March 2006, Mr. Joseph is seeking an order to quash the decisions of the Authority to refuse him entry to the Port area. The grounds of the claim are that the Authority's actions against Mr. Joseph involved aspects of Illegality, Irrationality, Procedural Impropriety and Loss of Earnings.
- [6] In his time-honoured classification of the grounds on which administrative action is subject to control by judicial review in Council for Civil Service Unions v Minister of Civil Service [1984] 3 All E.R. 935; Lord Diplock stated at pages 950-951: that "Illegality" means "that the decision maker must understand correctly the law that regulates his decision-making power and must give effect to it." Irrationality means "what can by now be succinctly referred to as **Wednesbury unreasonableness** (See *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1947] 2 All E.R. 680). It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question

to be decided could have arrived at it . . . It is an inferred though unidentified mistake of law by the decision maker . . .” Procedural impropriety includes “failure to act with procedural fairness towards the person who will be affected by the decision . . .”

### The Statutory Framework

[7] Section 73 of the Act provides:

“(1) The Ministers may, on the recommendation of the Authority, make regulations generally with respect to the maintenance, supervision, control and management of the ports and the approaches, . . . and for the maintenance of order on any premises . . . in a port and the approaches and for the carrying out of the provisions of this Act, and without prejudice to the generality of the foregoing, regulations made under this section may contain provisions with respect to –

(a) . . .

(b) the control of all persons and vehicles on such premises, the maintenance of order thereon and the admission or exclusion of persons therefrom and the charges, if any, to be made for such admission;

(c) regulating, controlling and prohibiting the doing or omission of any thing or class of thing within the boundaries of any port or any specified part or parts of any port either at all times or on any occasion or occasions;

(d) to (m) . . .

(n) any thing required to be prescribed by this Act

and any matter or thing in respect of which it may be necessary or expedient to make regulations to give effect to the purposes of this Act.”

[8] The Saint Lucia Air and Sea Ports Authority (Sea Ports) Regulations No. 92 of 1985 (the Regulations) were made pursuant to Section 73 of the Act, and came into operation on the 7<sup>th</sup> December 1985.

[9] The Regulations define ‘port area’ in section 2 to mean “the fenced area in a port approved by Customs for the manipulation and storage of goods and any other premise or property owned or used by the Authority.”

[10] Section 3 (1) of the Regulations states that: “A person entering or remaining in a port area . . . shall be subject to the general control and direction of the General Manager. For securing the safety or protection of goods in a port area and for the prevention of crime or any contravention of these regulations the General Manager may refuse to grant permission to any person wishing to enter or remain in a port or port area without assigning any reason for such refusal and may at any time revoke any permission granted earlier to any person.”

[11] Section 3 (2) and (3) of the Regulations state:

“(2) The General Manager may authorize any person to carry out any or all of these functions under these regulations and may in a like manner revoke any such authorization at any time.

(3) The General Manager may wherever it is necessary in his or her opinion to do so close any port or part thereof to the public at such times and for such periods as he or she sees fit and may in a like manner restrict access to a port area to

such persons of vehicles or such classes of persons of vehicles as the General Manager shall determine.”

[12] Section 4 and 5 of the Regulations state:

- “4. (1) The General Manager reserves the right of admission to a port area and may restrict entry to any person unless he or she has legitimate business in a port area.
- (2) Every person entering into within or leaving a port area shall when so requested by an authorized person state his or her true name, address and the nature of his or her business and produce any written permission or authority to that authorized person.
- (3) . . .
- (4) Any authorized person may stop the entry of any person to a port area or eject any person from a port area unless he or she has legitimate business.
- (5) . . .
- (6) Any person wishing to enter a port area for a legitimate purpose between the hours of 6:00 p.m and 6:00 a.m. may apply to the General Manager who may allow such entry subject to the condition that the Authority is not liable for personal injury whether fatal or otherwise to any such person and/or loss or damage to his or her property howsoever caused.
5. (1) . . .
- (2) Any person who seeks to enter a port shall first apply for and obtain an entry pass or identification disc which may be restricted to such parts in a port area as the Authority may designate in the pass.

**(3) The General Manager without stated reasons may delay or refuse to issue any pass or identification disc or withdraw any identification disc already issued under paragraphs (1) and (2)."**

[13] The St. Lucia Port Police are established under Section 74 of The Act to prevent crime, maintain order, protect property and generally to assist in the enforcement of the provisions of the Act and Regulations.

[14] Section 88 of the Act states further that:

**"The General Manager may, by notice in writing authorize any officer of the Authority to maintain order upon any premises used by the Authority . . . and any officer so authorized shall, in the performance of such duty, have all the powers, rights, privileges and protection of a police officer."**

### **The Evidence**

[15] The parties have relied on the Affidavits filed in support of and in opposition to the claim. Though Witness Statements were filed in pursuance of an Order of the Court, they were not admitted as evidence since they were not verified by the witnesses on oath.

[16] The undisputed evidence is that on the 15<sup>th</sup> July 2002 Mr. Joseph was arrested and charged by the Port Police Officer Mr. Cliophus Sonson for conspiring to steal lumber valued at \$25,497.99 belonging to Monplaisir Supplies Ltd, from the Castries Sea Port, and interfering with property left in the custody of the Authority, on the 6<sup>th</sup> June 2002. Mr. Kurt Satney, an employee of the Authority and Mr. Luther Thomas, Manager of Capital Management were also arrested and charged with Mr. Joseph as co-conspirators/accomplices.

- [17] On the 28<sup>th</sup> June 2002 during the course of investigations the Authority refused to give Mr. Joseph a pass to enter the port area, having revoked his previous pass. On the 28<sup>th</sup> July 2002 Mr. Joseph was dismissed by his employer K.C. Trucking Co. Ltd. on the grounds that as a dispatcher, he was required to be present at the Port on a daily basis, failing which his employer was unable to function effectively.
- [18] Thereafter Mr. Joseph eked out a living by doing odd jobs outside of the Port precincts, for K.C. Trucking Co. Ltd wherever such jobs were available.
- [19] While the criminal case against Mr. Joseph was pending his lawyers Mr. Richard Frederick & Associates wrote the following letter to the Authority's General Manager on the 12<sup>th</sup> November 2003 –

“ . . . Dear Sir,

**HYMAN JOSEPH**

We act herein on behalf of our client at caption who was employed with K.C. Trucking but can no longer operate with the said trucking company given the fact that he has been denied entry unto the wharf, the place he most frequently functions.

Unfortunately, about a year and a half ago, our client was charged with conspiring with others to steal goods from the wharf. This is an allegation at which he professes his innocence. The matter is before the Court and is yet to be determined. For that reason, our client has been denied access to the wharf, the effect of which has left him in an economic disaster.

Whilst I do not condone the perpetuation of criminal activity or blatant transgression of the law, cognizance of the maxim “innocent until proven guilty MUST be taken. Denial of entry or in effect, having our client to suffer such financial loss (his job) is tantamount to the imposition of a penalty.

With this in mind, I am exhorting you to cause our client to be permitted to conduct legitimate business . . . on the wharf so that he could fend for himself and his family. If he is convicted in that regard, he must be willing to shoulder the fate that befalls him. Meanwhile, he ought not to be penalized.

I am afraid that should this matter remain unsettled we shall have no choice but to invoke the Court's intervention for judicial review, juxtapose to an application for loss of income and damages.

We are hoping that the need to pursue that route will be averted."

[20] The lawyers for the Authority, Caribbean Law Offices responded to this letter in the following manner on the 22<sup>nd</sup> January 2004:

"1 . . .

2. In your letter of 12<sup>th</sup> November 2003, you made a request that the Authority cause your client "to be permitted to conduct legitimate business on the wharf so he can fend for himself and his family." We are to advise that in order for any person to gain entrance into the wharf, that person must seek and obtain a Port pass in accordance with the Regulations set out in section 5 (2) of the St. Lucia Air and Sea Ports Authority (Seaport) Regulations, Statutory Instrument No. 92 of 1985.

3. Our instructions do not suggest that your client has either sought or obtained the relevant pass. In the circumstances, please be advised that until your client secures the necessary pass, he will not be allowed to enter into the wharf.

Please be guided accordingly . . ."

[21] On the 28<sup>th</sup> January 2004 Mr. Joseph's lawyers wrote to the Chief of Ports Police informing him of Mr. Joseph's predicament. Forwarding a copy of the letter from the Authority's lawyers dated 22<sup>nd</sup> January 2004, Mr. Joseph's lawyers requested that **"our client be granted a pass so that he can be relieved of his financially deprived state."**

[22] Mr. Vincent Hippolyte, General Manager of the Authority replied by letter dated 27<sup>th</sup> February 2004 thus:

**". . . We refer to your letter of application pursuant to Section 5 (2) of the Saint Lucia Air and Sea Ports (Sea Port) Regulation, Statutory Instrument No. 92 of 1985, on behalf of Mr. Hyman Joseph and dated 28<sup>th</sup> January 2004.**

**Having considered your application, regretfully, the Authority is unable to approve your application . . ."**

[23] In June 2005 the criminal proceedings against Mr. Joseph were discontinued. The parties have each advanced different reasons why this occurred. Mr. Joseph's perception is that the case was discontinued because the Authority was unable to discharge its burden of proof. According to Mr. Michael Fedee the Deputy General Manager for the Authority, the case was discontinued because the police officer who laid the charges against Mr. Joseph resigned as a Port Police and migrated to the U.S.A, and the owner of the recovered lumber had been making persistent demands for the lumber to be returned to them.

[24] Following negotiations between the lawyers for the parties, a letter of release from liability was signed by Mr. Joseph on the 10<sup>th</sup> June 2005 in the presence of Ms. Faisal his Attorney-at-law. It is important to reproduce the terms of the Letter of Release from Liability to the Manager of the Authority since it has thrown up an issue. It stated:

“Pursuant to a decision by the Saint Lucia Air and Sea Port Authority (hereinafter referred to as SLASPA) to discontinue all criminal matters against me including Case Nos. 3668 of 2002 and 3667 of 2002, relating to the removal of seven bundles of lumber bearing marks D444-102 from Port Castries consigned to Monplaisir Supplies Ltd during the month of June 2002. I hereby agree to release SLASPA, its agents and or its servants from all claims, liabilities, demands and/or actions arising out of or connected with any action taken by SLASPA including my prosecution in the said incident . . .”

[25] On the 21<sup>st</sup> June 2005 Mr. Joseph applied for, and was refused a pass by the Authority, who refunded Mr. Joseph’s \$40.00 that he paid for fees.

[26] Consequently his lawyer wrote the following letter to the Legal Officer of the Authority on the 27<sup>th</sup> June 2005:

“... It is with regret that I have to reduce to writing a concern as it relates to our client . . . [HYMAN JOSEPH].

He was employed with KC Trucking and his scope of duties demanded his presence at the wharf.

Unfortunately, he was charged by the Ports Police for conspiring to steal goods from the wharf, a charge which to my mind was unjustly preferred as there was not even an iota of evidence to substantiate this charge.

The matter had started and after numerous witnesses testified, the prosecutor came to the realization that a conviction approximated impossibility; and so, did not indulge in the further wasting of the Court’s time and had the matter withdrawn. During the period for which case was pending, our client was denied access to the wharf. By extension, he was denied the opportunity at earning an income to fend for himself.

Upon conclusion of the matter, he applied and paid for a gate pass to resume his mode of employment. After he paid for the pass and submitted the relevant documentation, he was told that he did not qualify. Madam, I invoke your involvement so that you can advise the decision makers approximately.

Should our client be refused a pass on the aforementioned grounds I shall have no choice but to seek redress from our Courts.

I hope there will be no need so to do.

I await a favourable response . . .”

[27] On the 6<sup>th</sup> July 2005 Mr. Joseph again applied for a pass and a one day visitor's pass was granted. However, whilst he was in the process of performing his duties in the Port area, Port Police Officer Alexander No. 15 approached Mr. Joseph, ordered him to get off the premises, and returned Mr. Joseph's driver's licence which had been retained by the Authority's Office upon issuing the pass, after he had written down information from the driver's licence into a book.

[28] According to Mr. Joseph, Officer Alexander also told him that he had warned him in the past to stay away from the Port premises and that he would not charge him if he willingly left. Mr. Joseph deposed: **“He warned me not to return. He also told the police officers at the gate that they were not to let me enter the premises in the future. I was therefore unable to complete my day's work and had to find an agent to continue to do the work that I had started on that day.”**

[29] In August 2005 an Application for an Interim Injunction against the Authority's decision to deny Mr. Joseph access to the Port, pending the hearing of a substantive claim was filed in this Court. The injunction was refused and the Claim remitted to case management for an early hearing. Eventually, on the 6<sup>th</sup> December 2005 Mr. Joseph's Solicitors withdrew this Claim because the Statutory

provision for 1 months notice to be given to the Authority prior to filing the Claim had not been met.

[30] On the 9<sup>th</sup> February 2006 an Application was filed for Leave to make a claim for Judicial Review. On the 15<sup>th</sup> March 2006 leave was granted and this Claim was filed on the 25<sup>th</sup> March 2006.

[31] On the 18<sup>th</sup> May 2006 the lawyers for the Authority wrote the following letter to Mr. Joseph's lawyers:

- "1 . . . We write further to the telephone meeting held between our Mr. Anthony and your Mrs. Faisal. We wish to repeat the information which we brought to your attention.
2. Our client, the Saint Lucia Air and Sea Port Authority, is prepared to grant your client, Hyman Joseph, a pass to enter its port facility for each occasion that he applies to do so. He must make the application for such a pass by personally presenting himself, and indicating the nature and duration of the business that he wishes to engage in.
3. Please convey the above information to your client as a matter of urgency . . ." (My emphasis).

[32] Mr. Joseph's lawyers by letter dated 22<sup>nd</sup> May 2006 replied:

". . . We are in receipt of your letter of May 18<sup>th</sup> 2006, which was delivered to our office on the following day. We note with interest your reference to the Castries Sea Port as belonging to your client. Although our client is amenable to an out of Court settlement, he is however unable to accept your offer as the terms are quite onerous. In the circumstances he is unable to accede . . .".

- [33] Mr. Joseph has deposed that his co-defendant Kurt Satney was allowed continuous access to the Port where he did work for Superior Shipping during the hearing of the criminal case in the Magistrate's Court. He has exhibited a Gate Pass Delivery Note GA No. 02375 in the name "K Satney" dated 23/11/04 in support of this allegation. Mr. Joseph deposed further that **"It was only upon receipt of my Application for leave for Judicial Review in February 2006, that the Defendant purported to prevent Kurt Satney from entering the Castries Port."**
- [34] The Authority has denied the allegations in paragraph 33 above, while stating that if Kurt Satney has been allowed access to the Port he has done so without the approval of the General Manager.
- [35] The Authority has admitted that it has denied Mr. Joseph access to the Port from the 6<sup>th</sup> June 2002, the date that the alleged criminal offences occurred. In doing so, the Authority contends that its General Manager exercised his discretion, acted under the powers granted to him by Section 3 (1) of the Regulations, and revoked the permission granted to Mr. Joseph to enter the Port premises. The Authority's Mr. Fedee has deposed that **"All relevant officers of the Defendant were informed of the fact that the Claimant was not allowed to enter the port until further notice."**
- [36] Mr. Fedee deposed also that Mr. Joseph does not have an automatic right to be on the Port, and that the right to gain entry or to remain on the Port is granted by or in the name of the General Manager. Mr. Fedee deposed further that **". . . The exercise of the Defendant's discretion is not in any way dependant on proof of any matter in a Court of law but that the discretion is exercised with regard to the best interests of the safety and security of the Ports in Saint Lucia."**

- [37] It was Lord Bingham who avowed in Chief Constable of the North Wales Police v Evans [1982] 1 WLR 1155 that: “Judicial review is concerned not with the decision, but with the decision making process. Unless that restriction on the power of the Court is observed, the Court will in my view, under the guise of preventing abuse, be itself guilty of usurping power.”
- [38] Conscious therefore that I can only examine the legality of the process adopted to reach the decisions to ban Mr. Joseph from the Port, and declare the decisions a nullity if they were not reached according to law, I shall now consider the grounds for review. Learned Counsel Ms. Faisal has identified the sole issue as being: **Whether the Authority’s decision to deny access to Mr. Joseph should be quashed once any of the grounds for Judicial Review has been satisfied, and what relief would he be entitled to?**

### Illegality

- [39] Counsel Ms. Faisal relied on Blackstones Civil Practice (2003) page 938 and Council for Civil Service Unions v Minister of Civil Service [1985] AC 374 for explaining this ground. As stated before, illegality arises when a decision maker who must understand correctly the law that regulates his or her decision making power and must give effect to it, fails to do so. A decision is said to be tainted with illegality if it was taken under legislation which contains precise limits on the circumstances in which a power or duty can be used, and the action or decision in question, either exceeds these limits, or the decision maker fails to perform the power or duty in a proper way.
- [40] Ms. Faisal contends that the Authority has been acting illegally by consistently, since June 2002, refusing to allow Mr. Joseph’s entry into the Castries Port to carry out his duties as a dispatcher. This illegality, she argued, is centred upon Section 4 of the Regulations.

[41] Sections 3 (i), 3 (2), 3 (3) and Sections 4 and 5 of the Regulations have been reproduced at paragraphs 10 to 12 of this judgment.

[42] Ms. Faisal submitted that Section 3 (1) of the Regulations gives the 3 specific grounds upon which a person may be denied access to the Port. These are:

(1) for securing the safety or protection of goods in a port area; (2) for the prevention of crime; (3) for the prevention of any contravention of these Regulations. She argued further that the presence of the words **“without assigning any reason for such refusal”** in Section 3 (1) of the Regulations, gives rise to an absurdity/ambiguity, since it conflicts with the existence of the 3 previously stated grounds. This, she said, has resulted in one part of Section 3 (1) rendering the other part redundant.

[43] Article 10 of the Civil Code of St. Lucia Cap. 242 (1957 Revised Laws) states that: **“When a law is doubtful or ambiguous, it is to be interpreted so as to fulfil the intention of the Legislature and to attain the object for which it was passed.**

**The preamble which forms part of the Ordinance assists in explaining it.”** Section 10 (1) of the Interpretation Act Cap 106 states that **“The preamble to an enactment shall be construed as a part thereof intended to assist in explaining the purport and object of the enactment.”**

[45] Ms. Faisal relied on Cross on Statutory Interpretation (3<sup>rd</sup> edition) page 177. There the learned authors refer to the observations of Winn L.J. in Allen v Thorn Electrical Industries Ltd [1968] 1 Q.B. 487 at page 503 for guidance on the applicable rule of interpretation where the Statute is worded ambiguously. Winn L.J. said:

“I must reject as untenable any submission . . . that if in any case one finds (a) that a statute is worded ambiguously in any particular respect, and (b) finds also clear indications aliunde that Parliament intended that they should have the strictest and most stringent meaning possible, the Court is therefore compelled to construe the section in the sense in which Parliament would have desired it to take effect, by giving the words their most stringent possible meaning. On the contrary, I think this view is, and as I understand it always has been, that in such a case of ambiguity, it is resolved in such a way as to make the statute less onerous for the public and so as to cause less interference, then the most stringent sense would, with such rights and liabilities as existing contractual obligations.”  
(My emphasis).

- [46] Ms. Faisal referred to Lord Reid’s renowned judicial statement in Padfield v Minister of Agriculture [1968] 1 All E.R. 694. Speaking of the statutory provisions in the Agricultural Marketing Act 1958 (UK), which gave the Minister a full or unfettered discretion, to decide whether or not to refer a complaint about the milk marketing scheme to the Committee of Investigators, Lord Reid said (at page 699 para C-D):

“Parliament must have conferred the discretion with the intention that it should be used to promote the policy and objects of the Act; the policy and objects of the Act must be determined by construing the Act as a whole, and construction is always a matter of law for the Court . . .”

- [47] Counsel for Mr. Joseph invited the Court to resolve the ambiguity in Section 3 (1) of the Regulations in favour of Mr. Joseph, by holding that the Authority had a duty to give reasons for its denial of entry to Mr. Joseph. Such reasons she argued, should be in terms of Section 3 (1), and the Authority had a duty to show that Mr.

Joseph was disqualified from obtaining a pass on at least one of the 3 grounds stipulated in Section 3 (1) of the Regulations.

[48] Learned Counsel Mr. Anthony argued that there was no conflict or ambiguity between Sections 3 (1) and 3 (2) with Sections 4 (1) and 4 (2) of the Regulations. He contended that while Section 3 empowers the General Manager to grant permission to enter a Port, Section 4 deals with restrictions on entering a Port area.

[49] In the alternative, Mr. Anthony submitted that even if there was any conflict or ambiguity in the provisions they have not been identified by Claimant's Counsel. Mr. Anthony referred to the preamble to the Act which states that it is **"An Act to . . . provide for co-ordinated and integrated systems of Airports, seaports and port services, to transfer to and vest in the Authority the assets, liabilities and functions of the Saint Lucia Port Authority . . . and for other matters relating thereto and connected therewith."**

[50] Mr. Anthony contends that the duty to give reasons cannot be implied in the Regulations since Section 3 (1) expressly excludes this duty. He referred to **R v Secretary of State for Home Ex Parte Fayed** [1988] 1 WLR 763. In this case Lord Woolf M.R. considered Section 44 (2) of the British Nationality Act 1981. This provision stated that in the case of decisions to which the Section applies the Home Secretary is not **"required to assign any reason for the grant or refusal of any application under"** the Act, and the decisions **"shall not be subject to appeal to, or review in, any Court."**

[51] At page 77 of his judgment Lord Reid said: **"Mr. Beloff argued that this is a case which despite Section 44 (2) the Minister is required to give reasons. As I have indicated the Minister is not prohibited by the Section from giving reasons. On the contrary he has a clear discretion to give reasons. So Mr. Beloff argues in a case like this which cries out for reasons the discretion**

can only lawfully be exercised by giving reasons. I have already indicated that at common law there is no universal obligation to give reasons but despite this I would certainly regard this as a case where reasons should be given but for section 44 (2). However in light of the express prohibition on requiring the Secretary of State to give reasons I would not myself regard this as a case where the need for reasons is so essential that fairness cannot be achieved without reasons as long as an applicant has been given sufficient information as to the subject matter of the decision to enable him to make submissions as he wishes. I therefore reject Mr. Beloff's argument."

[52] Mr. Anthony urged the Court to construe Section 4 of the Regulations as expanding upon the General Manager's powers rather than as being in conflict with Section 3 (1) and (2). With such a construction, he argued, there can be no ambiguity.

[53] He contends that there is nowhere in the Act or Regulations any provision that gives Mr. Joseph or any other person a right to enter and/or remain on the Port. The right to gain entry or to remain on the Port, he said, is granted by or in the name of the General Manager, and as long as Mr. Joseph has not been granted permission to enter or remain on the Port then he has no right to be on the Port.

[54] Mr. Anthony concluded that far from being wrongful or illegal, all of the action taken by the Authority was consistent with and in execution of its public duty and sanctioned by the Act and Regulations.

#### Interpreting the Legislation

[55] Apart from the judicial statements of Winn L.J. in Allen v Thorn supra (at paragraph 45 above), Lord Reid in Padfield supra (at paragraph 46 above) and Lord Woolf M.R. in R v Secretary of State Ex Parte Fayed supra (at paragraph

50 above), I am guided by Article 10 of the Civil Code (reproduced at paragraph 43 above), and the following principles, in construing the Act and Regulations.

[56] (1) “When Parliament legislates . . . the role of the judiciary is confined to ascertaining from the words that Parliament has approved as expressing its intention what that intention was, and giving effect to it. Where the meaning of statutory words is plain and unambiguous it is not for the judges to invent fancied ambiguities as an excuse for failing to give effect to its plain meaning because they themselves consider that the consequences of doing so would be expedient, or even unjust or immoral.”: (Per Lord Diplock in Duport Steels Ltd v Sirs [1980] 1 All E.R. 529 at 547).

(2) “. . . [I]n construing wills and statutes, and all written instruments, the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid the absurdity and inconsistency, but no farther”: (Per Lord Wensleydale in Gray v Pearson (1857) 6 H.L. Cas. 61 at 106).

[57] I must also remember that one has to apply a certain amount of common sense in construing the Act and the Regulations, while bearing in mind the object of the Act: (Lord Goddard C.J. in Burnes v Jarvis [1953] 1 All E.R. 1061, 1063).

[58] Every provision of the Regulations has effect as the Act (Section 9 of the Interpretation Act Cap. 1:06).

[59] Looking at the Act and Regulations as a whole, I would say they contain provisions of a multifarious nature, embodying a variety of functions and services that Parliament intended the Authority to be responsible for.

[60] Parliament intended that the Authority through its General Manager should maintain, supervise, control, and manage the Ports, and also have power to admit and exclude persons therefrom (See Section 73 (1) (b) of the Act reproduced at paragraph 7 above). A careful reading of the Act and Regulations provides understanding of the many purposes and objectives the legislator contemplated, and sets a context in which to exercise critical judgment.

### Statutory Users of the Port Area

[61] The Act contemplates that there will be specific categories of persons using the Port area and therefore having access to the Port area. The various categories of persons relate to the **“co-ordinated and integrated systems . . . of seaports and port services”** and the liabilities and functions of the Authority. Section 13 of the Act identifies officers and staff of the Authority for carrying out the functions under the Act as may be assigned to them by the General Manager. Section 74 of the Act envisages that Port Police Constables will be present at the Port to prevent crime, maintain order within the Ports, protect and ensure the safety of goods and assist in the enforcement of the Regulations.

[62] Section 73 (1) (m) enables Regulations to be made for the **“licensing of shipping agents, custom brokers, landing agents, forwarding agents, baggage and parcel agents, porters, contractors for supplies and victualling and other persons concerned in or engaged in or performing any service or work in connection with the ports.”** Section 156 of the Regulations states that: **“A person shall not in a port area undertake stevedoring, ships work, ship chandlery or clearing and forwarding of goods from a port area without a licence granted by the General Manager for that purpose and on payment of such fees as may be prescribed in the Tariff Book. The General Manager is hereby authorized to grant and endorse such conditions as he or she sees fit with such licences.”** Section 157 of the Regulations provides that **“Save as where otherwise herein these Regulations specially provided or with the**

written permission of the General Manager specifically in that regard a person shall not in any port perform or cause to be performed any work, service or facility . . .”

- [63] Sections 54 to 64 of the Act speak about Pilots being employed by the Authority to pilot ships, while Section 73 (1) (h) of the Act enables Regulations for **“the examination, licensing, duties and obligations, and the conduct and discipline of Authority pilots . . .”**
- [64] Section 73 (3) of the Act enables the making of Regulations concerning the movement and berthing of ships and limitations on their officers, engineers and passengers. Sections 33 to 47 of the Regulations deal with this.
- [65] Section 40 of the Regulations envisages that Customs and Immigration Officers will also have a presence at the port and port area.
- [66] Section 49 of the Act contemplates that the Consignors of or the persons tendering goods for carriage or warehousing by the Authority, and on request of the General Manager, **“the consignee of or person receiving any goods which have been carried or warehoused by the Authority”** must also use the Port area.
- [67] Section 51 of the Act contemplates that the owner of goods in the custody of the Authority and on the premises of the Authority, must have access to the Port area so as to remove such goods within a period of 15 days from the time such goods are warehoused by the Authority, failing which **“. . . the General Manager shall cause a notice to be served on the owner requiring him to remove the goods . . .”**
- [68] Section 3 (3) of the Regulations envisages that members of the public will use the Port or part thereof and that specific classes of persons prescribed by the General

Manager may have access to or be restricted from entering a specific port area designated by the General Manager at various times.

### Securing Goods

- [69] The Act (Section 2) defines 'goods' to mean **"all kinds of movable property including animals"**, and Section 73 (1) (e) of the Act authorizes the making of Regulations **"relating to the protection of life and property."** Section 73 (1) (f) enables Regulations with respect to **"the protection of ships . . . and their cargoes."** Section 73 (1) (i) enables Regulations **"regulating the times, places, order and mode of loading, unloading, warehousing, storing and the depositing of goods."**
- [70] Section 73 (2) (a) to (h) of the Act contemplates the making of Regulations concerning the conveying, unloading, and storing of **"dangerous goods"** within the limits of the Port. Section 73 (1) (c) enable Regulations for **"controlling and prohibiting the doing or omission of any thing or class of thing within the boundaries of the port or any specified part or parts of any port at all times and on all occasions or on any occasion."** There are several other numerous provisions in the Regulations for the obvious purpose of securing the safety and protection of goods in a Port or Port area.
- [71] The relevant provisions in Sections 3 and 4 of the Regulations (reproduced at paragraphs 10 to 12 of this judgment) which must be construed, cannot be construed in isolation from the purpose for which the provisions were passed. The place of these provisions and their objectives within the general scheme of the legislation must be taken into account. Consequently, though Section 3 (1) and (2) of the Regulations may be regarded as being internally clear, precise and consistent provisions despite Ms. Faisal's contention, in my view it is not an invention of fancied ambiguities to state, that an anomaly or absurdity may be perceived in Section 3 (1) and (2) within the context of other provisions, and in

particular Section 4 (1) and (4) of the Regulations. Such an anomaly or absurdity is perceived where it appears that Section 3 (1) and (2) **“is inconsistent with the purpose of the Statute . . . [or] the general purposes of the law into which the purpose and provision of the Statute are presumed to have been intended to fit coherently:”** (Cross on Statutory Interpretation (3<sup>rd</sup> edition) at page 92). It is pointed out further there that **“Consistency with other provisions of the Act is but one instance of the wider obligation of judges to ensure that the provisions of the law are, as far as possible, interpreted in a way which is coherent and consistent.”** At page 88 op.cit, the author states:

**“Since the legislator is presumed to have intended a result which is coherent and consistent with the statutory and common law rules which he has left in force, the judge will seek an interpretation of statutory words which does not produce incoherence or an inconsistency in the law as a whole and in the policies which the legislator is pursuing in a particular area.”**

[72] An isolationist construction of the language in Section 3 (1) and (2) of the Regulations in a grammatical and ordinary sense would, in my view, lead to a conclusion, that the General Manager has an absolute discretion without assigning any reason, to refuse to grant permission to any person wishing to enter or remain in a Port or Port area, on the grounds that the General Manager is securing the safety or protection of goods in a Port area, and for the prevention of crime or any contravention of the Regulations.

[73] The import of Section 3 (1) is that at least one of the reasons for refusal of entry stipulated by Section 3 (1) must exist, but the General Manager does not have to tell the person prevented from entering the Port or Port area the reason, it does not have to be disclosed. The words **“without assigning any reason for such refusal”** in Section 3 (1) were obviously included by the legislator to promote administrative efficiency.

[74] It is significant to note that Section 3 (1) does not state that the General Manager should not assign a reason. The legislator leaves it to the General Manager to decide whether or not he will assign a reason. I must also note that in my view, the language in Section 3 (1) is silent as to whether the General Manager has the discretion not to assign any reason where he decides to revoke any permission granted earlier to any person.

[75] Turning now to Section 4 (1) and (2) of the Regulations, it is true that these provisions relate only to a Port area as defined by Section 2 of the Regulations (reproduced at paragraph 9 above).

[76] The following meanings are provided by the New Oxford English Dictionary 2001, 2002 for the words **“restrict”** **“legitimate”** and **“business”** at pages 712, 478 and 110 respectively:

- |                   |          |  |
|-------------------|----------|--|
| <b>“restrict</b>  | <b>=</b> | <b>1. put a limit on</b><br><b>2. stop (someone) moving or acting as they wish</b>   |
| <b>legitimate</b> | <b>=</b> | <b>1. allowed by the law or rules 2. able to be defended with reasoning</b>  |
| <b>business</b>   | <b>=</b> | <b>1. a person’s regular occupation 2. work to be done or matters to be attended to. 3. a person’s concern. 4. commercial activity.”</b> |

[77] The language of Section 4 (1) in its grammatical and ordinary sense means in my opinion, that the General Manager retains the power and authority to admit persons to a Port area and he may stop a person from entering a Port area unless/except where that person has legitimate business in a Port area. It appears to me therefore that the legislator has modified the apparent absolute discretion given to the General Manager under Section 3 (1) and (2) and (3), since Section 4 (1) and 4 (4) in effect state that the General Manager has no authority to

stop a person having legitimate business from entering a port area, or eject a person having legitimate business from a Port area.

- [78] The question therefore is who are these persons who may be said to have 'legitimate business' in a Port area? Neither the Act nor any provision in the Regulations defines or expressly identifies which persons have or are deemed to have legitimate business in a Port area.
- [79] Applying the dictionary meaning of "**legitimate business**" to Section 4 (1) and 4 (4), the persons who in a Port area have work to be done, or matters to be attended to, or commercial activity, or regular occupation, which is allowed by the law or rules under the Act or Regulations or which can be defended with reasoning, are persons who have legitimate business in a Port area.
- [80] The provisions of the Act and Regulations have provided the Statutory framework from which the Court may infer and declare the various categories of persons who may be deemed to have legitimate business in a Port area in my view. Such persons who ought not be restricted by the General Manager from entering the Port area are those qualifying under the statutory provisions mentioned at paragraphs 61 to 67 above, who I refer to as the Statutory users of the Port area.
- [81] How will the General Manager determine who has legitimate business in a Port area? Section 4 (3) of the Regulations requires that all persons entering or leaving a Port area must do so only through the designated entrances or exit. Pursuant to Section 4 (2), authorized persons will request the name, true address and nature of the person's business and that person is required to produce written permission or authority to enter the Port area. Such written permission may be in the form of an entry pass or identification disc issued by the General Manager, and Section 5 (2) requires that "**Any person who seeks to enter a port area shall first apply for and obtain an entry pass or identification disc which may be restricted to such parts in a port area as the Authority may designate in the pass.**"

- [82] Pursuant to Section 5 (1) persons employed or habitually visiting a Port area must carry and exhibit identification discs or passes prescribed by the Authority.
- [83] Section 5 (3) of the Regulations reinforces the General Manager's control over persons seeking to enter a Port area, and persons employed within or habitually visiting a Port area, by stating that the General Manager may delay or refuse to issue a pass or identification disc to them without disclosing any reason. Section 5 (3) supplements Section 3 (1) where it provides for the General Manager to withdraw any pass or identification disc already issued to persons employed within or habitually visiting a port area, and from other persons who have obtained such identification discs or passes, without stating reasons.
- [84] The Act and Regulations also contain provisions concerning the type of conduct within a Port area that may cause a person authorized by the General Manager or a Port police constable to eject a person from a Port area or remove a person from an area within the Port.
- [85] Section 18 (a) to (r) of the Regulations identifies 18 types of activity within a Port or Port area which require the permission of the General Manager, without which, are offences.
- [86] Section 19 (a) to (o) of the Regulations prohibits 15 types of conduct in a Port or Port area.
- [87] Section 20 of the Regulations states that **"A person who commits a breach of regulation 18 or 19 may without prejudice to his or her liability to other penalty at law be removed from the port area by an authorized person."**
- [88] Section 99 of the Act states: **"Any person suspected of having contravened or of being about to contravene any of the provisions of, or Regulations made under this Act shall upon being requested to do so by a police officer or port**

constable or by any other person authorized on that behalf in writing by the General Manager correctly state his name and address and the purpose of his being on the port, and upon his failure to do so may be removed from the Port or any part thereof by such police officer, port constable or person authorized by the General Manager, as the case may be.”

- [89] Section 100 of the Act provides: “Any person found contravening any provision of or regulation made under this Act, and any vehicle animal found in the area in contravention of any such provision or regulation, may be removed from the area to which the provision or regulation applies by a police officer or port constable or by any other person authorized in that behalf in writing by the General Manager . . .”

### FINDINGS

- [90] I have concluded therefore from my approach to construing the relevant provisions that the legislator intended that persons who have legitimate business interests in a Port area would not be denied access to or removed from a Port area, or Port where they have such legitimate business interests except where such persons:

- (i) Contravened any of the Regulations under Sections 18 and 19 of the Regulations (Sec. 20 of the Regulations); or
- (ii) Are suspected of having contravened or of being about to contravene any of the provisions under the Act or Regulations AND such persons have failed to state their names and addresses and the purpose of their being on the Port or Port area upon being requested to do so by a police officer, or port Constables, or a person authorized in writing by the General Manager (Section 99 of the Act); or
- (iii) Are found contravening any of the provisions of the Act or Regulations;

(iv) or where the General Manager is exercising his discretion pursuant to Section 3 (3) of the Regulations.

[91] It appears to me that there are no statutory provisions in the Act or Regulations which may be interpreted as authorizing the General Manager to impose a permanent bann or prohibition on any person, thereby preventing that person from having access to a Port or Port area. I have scoured the Act and Regulations for such a provision, and if it exists, I must confess that it has escaped my view.

[92] The evidence is that Mr. Joseph is a 'dispatcher'. I do not know if there is any technicality in the work of a 'dispatcher', but applying the ordinary meaning of the word, I am of the view that Mr. Joseph would either be involved in the occupational activity relating to the forwarding or clearing of goods pursuant to Sections 49 and 50 of the Act. In that regard he would probably be a person having legitimate business under the legislation.

[93] It is evident from my review and analysis of the Act and Regulations, that there are numerous matters expressed in the legislation by the legislator, or implied by law, that the General Manager should have had regard to, in exercising his discretion whether or not to permit a person to enter a Port area. Lord Greene M.R. in Wednesbury (supra) speaking of the principles governing the exercise of a discretion entrusted to an authority by Parliament said that "If, in the statute conferring the discretion, there is to be found expressly or by implication matters which the authority exercising the discretion ought to have regard to, then in exercising the discretion it must have regard to those matters. Conversely, if the nature of the subject matter and the general interpretation of the Act make it clear that certain matters would not be germane to the matter in question, the authority must disregard those irrelevant collateral matters."

[94] It is obvious from the evidence for the Authority and the submissions of Counsel Mr. Anthony that the General Manager failed to direct himself properly in law and failed to call his own attention to material matters that he was bound to consider. To have ignored the other relevant provisions, and isolatedly interpret Section 3 (1) and (2) of the Regulations, as giving him an absolute discretion to ban or prohibit, or permanently prevent a person having legitimate business from entering a Port area, without giving any reason, after that person had been accused, not convicted, but discharged of an offence under the Act and Regulations, is inconsistent with the purpose of the legislation and applicable common law principles. The reasons why Mr. Joseph was discharged by the Court is an irrelevant collateral matter in my view, the fact is he was not convicted, the allegations remained unproven.

[95] The longstanding principles of Administrative law are assumed by the Courts to have been taken for granted where Parliament confers an administrative discretion on a public Authority. In Secretary of State Ex Parte Doody [1994] 1 A.C. 531, 560 Lord Mustill stated the law in the following manner:

“ . . . (1) Where an Act of Parliament confers an administrative power there is a presumption that it will be exercised in a manner which is fair in all the circumstances. (2) The standards of fairness are not immutable. They may change with the passage of time both in the general and in their application to decisions of a particular type . . . (3) What fairness demands is dependent on the context of the decision and this is to be taken into account in all its aspects. (4) An essential feature of the context is the statute which creates the discretion, as regards both its language and the shape of the legal and administrative system within which the decision is taken. (5) Fairness will very often require that a person who may be adversely affected by the decision will have an opportunity to make representations on his own behalf either before the decision is taken

with a view to producing a favourable result, or after it is taken, with a view to procuring its modification, or both. (6) Since the person affected usually cannot make worthwhile representations without knowing what facts may weigh against his interests, fairness will very often require that he is informed of the gist of the case which he is to answer.”

[96] These principles were applied in Regina v Home Secretary Ex Parte Fayed [1998] 1 W.L.R. 763. It is important to briefly state some facts. The 2 Fayed brothers had applied for neutralization under Sections 6 (1) and 6 (2) of The British Nationality Act 1981. In 1995 the Secretary of State refused both applications and declined to give reasons pursuant to Section 44 of the Act which stated:

- “(1) Any decision vested by or under this Act in the Secretary of State shall be exercised without regard to the race, colour or religion of any person who may be affected by its exercise.
- (2) The Secretary of State . . . shall not be required to assign any reason for the grant or refusal of any application under this Act the decision on which is at his discretion, and the decision . . . shall not be subject to appeal to or review in, any Court.
- (3) Nothing in this section affects the jurisdiction of any Court to entertain proceedings of any description concerning the rights of any person under any provision of this Act.”

[97] It was held by the Court of Appeal: that although Section 44 (2) relieved the Secretary of State from the obligations of giving reasons in respect of decisions made in the exercise of his discretion, he was not relieved of the obligation to act fairly, in this context fairness required that before reaching his decision he should inform an applicant of the nature of any matter weighing against the grant of the

application, and afford him an opportunity of addressing them. In failing to adopt such a course his decisions had been reached unlawfully.

[98] The evidence in Mr. Joseph's case, does not disclose that the Authority's General Manager informed him or his lawyers of the nature of any matters weighing against the grant of the pass, and afford him an opportunity of addressing them.

[99] To tell Mr. Joseph that **"he must make the application for such a pass by personally presenting himself, and indicating the nature and discretion of the business that he wishes to engage in"** for each occasion that he applies to do so, after the claim for judicial review was filed, does in my view indicate, that the General Manager has already made up his mind as to how he will exercise his discretion on each occasion in the future. The Regulations have obviously envisaged that persons having legitimate business which calls for habitual visits to a Port area will be given similar consideration as persons employed within a Port area, hence Section 5 (1) of the Regulations previously mentioned at paragraph 82 above.

[100] Mr. Joseph testified that he was required to pay \$40 to obtain a one day visitor's pass on the 6<sup>th</sup> July 2005. By requiring Mr. Joseph to apply for a pass on each occasion means that he would be paying \$40 for each day that his job as a dispatcher calls for him to visit the Port area. The General Manager has a duty under the Regulations to exercise his discretion reasonably.

[101] I therefore hold that paragraph 2 of the letter dated 18<sup>th</sup> May 2006 reflects an unreasonable exercise of the General Manager's discretion, disclosing that the General Manager has ignored relevant matters for his consideration under the Regulations.

[102] It seems to me therefore, that on this ground of 'Illegality', Mr. Joseph is entitled to succeed.

[103] In that regard, there is no need for me to burden this judgment with the submissions of Counsel on the other grounds. Suffice it to say that **“Irrationality overlaps to some extent with ‘Illegality’**. Hence, for the ground of Irrationality, Mr. Joseph is entitled to succeed where as he has contended, the Authority’s General Manager has had regard to matters which are legally irrelevant, or has failed to have regard to matters which are legally relevant, or his decision has frustrated the policy of the Act from which he has obtained his Authority.

[104] Although Section 3 (1) of the Regulations left it to the General Manager to decide whether or not to assign a reason for his refusal, the absence of reasons may lead the Court to draw unfavourable inferences. In **R v Secretary of State for Trade and Industry Ex Parte Lonrho Plc** [1989] 1 W.L.R. 525, Lord Keith of Kinkel stated at page 540 para A:

**“The only significance of the absence of reasons is that if all other facts and circumstances appear to point overwhelmingly in favour of a different decision, the decision-maker, who has given no reasons, cannot complain if the Court draws the inference that he had no rational reason for his decision.”**

[105] I shall now consider the relief sought by Mr. Joseph.

### **RELIEF**

[106] Learned Counsel Ms. Faisal has referred to the evidence of Mr. Joseph in his Affidavit, in support of his claim for loss of earnings. She pointed to the evidence disclosing that Mr. Joseph’s monthly earnings have been reduced by an amount averaging \$400.00 monthly from July 2002.

[107] Ms. Faisal submitted that Mr. Joseph was entitled to damages in the circumstances on the authority of PART 56.1 (1) and (4) of CPR 2000 and Florence Nagle v Fielden and Others [1967] 2 WLR 1027.

[108] PART 56.1 (1) (c) and (d) and (4) state:

- “56.1 (1) This Part deals with applications –
- (c) for judicial review; and
  - (d) where the Court has power by virtue of any enactment or at common law to quash any order, . . . any decision of a Minister or government department or any action on the part of a Minister or Government Department.
- (2)- (3) . . .
- (4) In addition to or instead of an administrative order the Court may without requiring the issue of any further proceedings, grant -
- (a) an injunction;
  - (b) an order for the return of any property, real or personal; or
  - (c) restitution or damages.

[109] Ms. Faisal submitted that the common law position is well documented in so far as the denial of a licence to work is concerned, in the following statement of Lord Denning M.R. in Nagle v Fielden (supra) (at page 17 of the original judgment) delivered 22/2/66:

“The common law of England has for centuries recognized that a man has a right to work at his trade or profession without being

unjustly excluded from it at the whim of those having the governance of it . . . [W]hen an association, who have the governance of a trade, take it upon themselves to license persons to take part in it, then it is at least arguable that they are not at liberty to withdraw a man's licence and thus put him out of business without hearing him. Nor can they refuse a man a licence and thus prevent him from carrying out his business in their uncontrolled discretion. If they reject him arbitrarily or capriciously, then there is a ground for thinking that the Courts can intervene . . . [T]he right to work has become far better recognized since that time. So has the jurisdiction of Courts to control licensing authorities. When those authorities exercise a predominant power over the exercise of a trade or profession, the Courts may have the jurisdiction to see that this power is not abused . . ."

[110] Lord Dunckwerts said in Nagle v Fieldon also:

" . . . In the case of the Jockey Club there does not appear to be any check upon their discretion, and unless some protection is provided for persons whose livelihood is involved, some persons are at the mercy of the decision which may be made capriciously and without any consideration of the merit of the case."

[111] Ms. Faisal argued further, that despite Mr. Joseph's rejection of the offer made by the Authority through its lawyers in their letter dated 18<sup>th</sup> May 2006, this should in no way impede his entitlement to an award of damages for the loss of income he suffered from July 2002 to date.

[112] Learned Counsel Mr. Anthony submitted that the Claimant had not set out the facts on which his claim for loss of earning is based, contrary to PART 56.7 (4) (b)

(ii) of CPR 2000. I do not agree with Mr. Anthony, in my opinion there has been compliance with this Rule.

[113] Mr. Anthony argued further that I should refuse the remedy sought since: (a) Judicial Review is a discretionary remedy; (b) the letter dated 18<sup>th</sup> May 2006 which the Claimant failed to disclose; has informed Mr. Joseph that his application for a pass will be considered; (c) to grant the application would be bad for the good administration of the Port and a heavy burden will be imposed on the Authority; (d) the Claimant agreed to release the Defendant from all claims, actions, liabilities, demands and/or actions arising out of or connected with any action taken by the Defendant, and therefore has acquiesced with the decision taken by the Defendant; (e) this release gives rise to an estoppel which should prevent the Court from granting any relief sought.

[114] Mr. Anthony referred to and provided the Court with the following cases in support of these submissions: R v Secretary of State for Foreign & Commonwealth Affairs Ex Parte Everette [1989] 2 W.L.R. 224, R v Kensington Income Tax Commissioners [1917] 1 K.B. 486, R v Secretary of State Ex Parte Association of Metropolitan Authorities [1986] 1 W.L.R. at 15.

[115] The release which Mr. Joseph signed (reproduced at paragraph 24 above) relates to claims, liabilities, demands and/or actions arising out of or connection with the Authority's decision to bring criminal charges against Mr. Joseph and which the Authority discontinued. These judicial review proceedings have not challenged the Authority's decision to bring criminal proceedings, neither is Mr. Joseph seeking any damages relating to this prosecution of the criminal charges brought against him. I therefore agree with Counsel Ms. Faisal who submitted that the judicial review claim is not related to the release. I therefore find that this release cannot operate as an estoppel or acquiescence in the present matter. I have already made pronouncements on the letter of the 18<sup>th</sup> May 2006 at paragraphs 99 to 101 of this judgment.

[116] There has been no evidence of unmeritorious or unreasonable behaviour by Mr. Joseph, in my view, that should prevent this Court from granting certiorari to quash the decisions of the Authority.

[117] I am not convinced that quashing the decisions of the Authority would inhibit the General Manager from controlling the Port area, and securing the safety or protection of goods in a Port area, and preventing crime or contravention of the Act or Regulations. I therefore cannot perceive of any damage that might be done to the public interest or administrative efficiency by granting certiorari.

[118] For Mr. Joseph to be awarded damages for loss of earnings, he has to show that damage under a head recognized by the law has been suffered by him as a result of the Authority's breach of the law, or interference with a right of his also recognized by law.

[119] PART 56.8 states:

**"56.8 (1) The general rule is that, where permitted by the substantive law, an applicant may include in an application for an administrative order a claim for any other relief or remedy that –**

**(a) arises out of; or**

**(b) is related or connected to;**

**the subject matter of an application for an administrative order.**

**(2) In particular the Court may, on a claim for judicial review . . . award -**

**(a) damages;**

**(b) - (c) . . .**

**if the – (i) Claimant has included in the claim form a claim for any such remedy arising out of any matter**

to which the claim for an administrative order relates; or (ii) facts sets out in the Claimant's Affidavit or Statement of case justify the granting of such remedy or relief; and (iii) Court is satisfied that, at the time when the application was made the Claimant could have issued a claim for such remedy.

- [120] Clerk & Lindsell on Torts (19<sup>th</sup> ed) (2006) at para 25-73 points out that a Claimant cannot bring a civil action where there is a breach of a statutory obligation, **“unless, in respect of the breach of statute committed or threatened, he can point out a “private right,” arising from the true construction of the statute, what is often called a statutory tort.”** Learned Counsel Ms. Faisal has not identified the cause of action that would accrue to Mr. Joseph for which she would have been able to issue a claim independent of the judicial review proceedings. Though Mr. Joseph has suffered an economic loss, it is not every economic loss that gives rise to a recognized cause of action.
- [121] It is not sufficient for a Claimant in an administrative claim to simply claim damages in my view. The Claimant has to satisfy the Court in the pleadings, that at the time when the administrative claim was filed, the Claimant could have issued a claim for damages against the Defendant for a recognized cause of action. In my opinion the facts in Nagle v Fieldon (supra) must be distinguished in that regard, as being different from Mr. Joseph's case.
- [122] These observations are not the only reason why I am refraining from awarding special damages for loss of earnings in this case. Section 72 of the Act states: **“The Authority shall not be liable for any mala fide act, omission or default of the General Manager.”** The constitutionality of this provision is for another case, time, and place.

[123] It seems to me for now, that a Court is precluded from awarding damages against the Authority where the General Manager has breached the Act or Regulations in the exercise of his discretion.

**CONCLUSION**

[124] The decisions of the Authority since the 28<sup>th</sup> June 2002 to refuse the Claimant entry to the Port Area of the Castries Sea Port are invalid.

[125] Certiorari lies to quash these decisions of the Authority.

[126] The Defendant shall pay to the Claimant costs pursuant to PART 65.5 (1) and (2) (b) (iii) and Appendix A being \$14,000.00.

Dated this 27<sup>th</sup> April, 2007

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**OLA MAE EDWARDS  
HIGH COURT JUDGE**