SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

SLUHCV 2007/0265

BETWEEN:

CJ'S TOURING SERVICE LTD

Claimant

and

SAINT LUCIA AIR AND SEA PORTS AUTHORITY

Defendant

Before:
The Hon. Mr. Ephraim Georges — High Court Judge [Ag.]

Appearances:
Mr. Horace Fraser for Claimant
Mr. Mark D. Maragh for Defendant

2009: October 22;
2011: May 5.

DECISION

[1] **GEORGES, J. [AG.]:** On 15th July 1983 the defendant, the Saint Lucia Air and Sea Ports Authority (SLASPA), a body corporate was established by Act of Parliament No. 10 of 1983 to provide in accordance with the Act and its regulations for co-ordinated and integrated systems of airports, seaports and port services in St. Lucia and to transfer to and vest in the Authority, the assets, liabilities and generally the functions of the St. Lucia Port Authority and the assets, liabilities and functions of the Airport Division of the Ministry of Communications and Works and for other matters relating thereto and connected therewith.

[2] Subparagraph 1 of paragraph 19 of the Act empowers the Authority to levy charges and dues for the use of the facilities and services provided acting in accordance with the provisions of the Act and any regulations pertaining thereto.

[3] Subparagraph 2 of the said paragraph states that:

> "(2) Subject to the provisions of this Act the Authority may for the purpose of performing any of its functions under this Act do anything and enter into any transaction which in the opinion of the Authority is necessary to ensure the proper performance of its functions."

[4] Subparagraph 3 of section 19 states (in part):

> "(3) In particular and without prejudice to the generality of the provisions of subsection (1) and (2) it shall be the duty of the Authority to –
>
> (a) operate the ports as appears to it best calculated to serve the public interest;
>
> (b) regulate and control navigation within the limits of such ports and their approaches;
>
> (c) maintain, improve and regulate the use of such ports and the services and facilities therein as it considers necessary or desirable.
>
> 'Port' for the purpose of the Act means an airport or a seaport."

[5] Paragraph 19 of the Act concludes thus:

> "Provided that the Authority may with the approval of the Minister authorize in writing any person, corporation or other body to carry out the functions stated in this paragraph subject to such conditions and restrictions as the Authority may consider desirable."

[6] By without notice application pursuant to Part 56 of the **Civil Procedure Rules 2000** dated 30th March 2007 the claimant applied for leave to make a claim for judicial review of the defendant's decision to create a monopoly in the Southern and Vigie Taxi Associations to do airport transfers and to confer on to the said associations power to regulate and control airport transfers.

[7] The grounds of the application allege that:

(1) The respondent/defendant having formulated the decision sought to give it regulatory force pursuant to section 73 of the Saint Lucia Air and Sea Ports Authority Act No. 10 of 1983 and sought to enforce it as such.

(2) The regulations are ultra vires of Saint Lucia Air and Sea Ports Act No. 10 of 1983 in particular Section (73)(1) and (6).

(3) The regulations were in breach of natural justice.

(4) The regulations are unreasonable and irrational.

(5) The regulations are violative off the claimant's common law right to work and are contrary to public policy.

[8] The application for leave for judicial review of the defendant's decision was supported by a 25–paragraph affidavit sworn by Kervin Mitchell which concluded by declaring that should leave be granted by the court to apply for judicial review of the defendant's decision it was the claimant's intention to seek:

(a) A declaration that the defendant's decision was contrary to public policy; and

(b) An order of certiorari to quash the decision of the defendant on the grounds of (i) ultra vires (ii) breach of the rules of natural justice and (iii) unreasonableness and irrationality.

[9] By Order of the Court dated 17th May 2007 Madam Justice Sandra Mason QC granted leave to file a claim for judicial review and directed that the claim should be filed within 14 days.

[10] The claim form was in fact filed with relief from sanctions and leave of the court on 22nd June 2007 seeking declarations that the purported regulations formulated by the defendant on 17th November 2005 were ultra vires the Act irrational and unreasonable and void of legal effect as they were formulated by an unlawful assembly or body not recognized by the Act.

[11] The claimant sought further declarations contending that the said regulations were formulated in breach of natural justice since there was no consultation with him as a stakeholder in the tourist industry and that he had a legitimate expectation to be heard and he had been afforded no such opportunity. He claimed further declarations that the purported regulations were violative of his common law right to work and were contrary to public policy and that the defendant had acted in bad faith in the formulation of the said regulations which were aimed at creating a monopoly or alternatively the defendant in formulating the purported regulations did so for an improper purpose. An order of certiorari to quash the decision of the defendant to formulate regulations on the grounds of ultra vires unreasonableness bad faith etc. is also sought.

[12] The gravamen of the claimant's case as emerges in his supporting affidavit is fully reflected in a letter dated Friday, December 23, 2005 from Vincent Hippolyte, General Manager of SLASPA ("the Authority") to the General Manager Copains Copines Tour Operators which was copied to no fewer than nine individuals or entities of SLASPA including the Deputy General Manager (Operations), the Chief of Ports Police, Director of Airports, Airport Managers, Port Police Inspectors-in-Charge Southern Taxi Association and Vigie Taxi Association and is reproduced below. It reads thus:

> "Dear Sir/Madam
>
> Re: Meeting Held at SLASPA's Conference Room, November 17 2005 on the issue of Unauthorized Operations at the Airports
>
> The Saint Lucia Air and Sea Ports Authority regrets that your organization was inadvertently omitted from the list of invitees to the above referenced meeting.
>
> 1. While the meeting was not attended by all who were invited the exercise proved worthwhile.
>
> 2. The meeting discussed the issue of the unauthorized operations of taxi/bus services at the Hewanorra International and George F L Charles Airport. All representatives had the opportunity to express their views and concerns on the issue and members were promised

that following the meeting the St. Lucia Air and Sea Ports Authority would provide them with written guidance under which clients will receive taxi/bus service.

3. It was made abundantly clear at the meeting that SLASPA has a responsibility to ensure by virtue of the St. Lucia and Sea Ports Authority Act of 1983 that law and order is established at its airports and seaports at all times.

4. While we must acknowledge that the present day technology affords many people business opportunities within the tourism industry we must never lose sight of the fact that SLASPA has the responsibility to regularize all the activities that take place at its airports and seaports while giving due recognition to persons who have used the internet to contract business.

5. Towards ensuring that law and order is maintained at the airports during the dispensation of taxi/bus services the Saint Lucia Air and Sea Ports Authority has granted concessions to Southern Taxi Association and the Vigie Taxi Association to provide a regularized taxi/bus service at Hewanorra and George F L Charles Airport respectively.

Consequently any other commercial operation of taxi/bus service at any of the airports would be illegal.

However any organization/agency/persons who have secured any arrangement for commercial taxi/bus service from any of the airports will satisfy his/her clients by observing the following:

1. The entity will contact the executive of the Southern or Vigie Taxi Association depending on whether the clients will be arriving at Hewanorra International or George F L Charles Airport sufficiently in advance of the clients' arrival.

2. Inform the respective taxi association of the expected date of arrival and service required by the clients.

3. Enter into an arrangement with the respective taxi association for the transportation of the clients from the airports to the destination that will be mutually beneficial to the organization/agency/persons and the respective taxi association.

This arrangement can involve either the respective taxi association transporting the clients for an agreed fee or the contractor of the business providing the transportation service and an agreed fee paid to the respective taxi association based on the number of passengers involved.

Alternatively the two parties can agree that the association and the contractor provide the service and are both compensated accordingly.

4. Once an agreement has been reached the respective taxi association shall inform the Ports of Police Inspector at the relevant Airport of the arrangement in place so the pickup can facilitated.

It must be noted that failure on the part of the parties to reach an agreement that provides for an otherwise non-authorized taxi to make a pick-up will result in the Ports Police at the Airport not allowing the pick-up to be effected.

This is in compliance with section 73 (1) (b) of the Saint Lucia Air and Sea Ports Authority Act. No. 10 of 1983 and the Airport Regulations Statutory Rules and Order No. 42 of 1976 which among other things allow the authority to make regulations for the control of persons and vehicles using the airports the maintenance of order thereon and the admission or exclusion of persons using the airports.

The Saint Lucia Air and Sea Ports Authority therefore solicits the cooperation of the general public hotels and transportation service providers so that law and order can be maintained at Hewanorra International and George F L Charles Airports and the right image be projected to our arriving visitors who would be free from harassment by competing transportation service providers."

I pause at this juncture to say that it is plainly incorrect and an obvious misconception to say that section 73(1)(b) of the Act and the Airport Regulations SR&O No. 42 of 1976 allow the Authority to make regulations for the control of persons and vehicles using the airports and that fact is recognized in paragraph 7 of the affidavit sworn and filed on 2nd November 2007 by Peter Ferguson Jean Director of Airports on behalf of the defendant where he says so and goes on to point out that notwithstanding that Regulation 6 made under the Act does specifically prohibit the carrying on of any trade or business by any person on an airport except with the approval of the Minister of Civil Aviation.

In keeping with subparagraph 73(1) of the Act the Minister may **on the recommendation of the Authority** make regulations generally and in particular for the carrying out of the provisions of the Act etc. (My emphasis)

And it is consequently the Minister who is responsible for having regulations so made laid before Parliament subject to negative resolution of Parliament within six weeks in accordance with subparagraph 73(6) of the Act.

The Airport Regulations were made under the Airport Act 1965 and that Act was repealed by the Act of 1983 but the Regulations were saved by section 99.

As stated at paragraph 2 of the letter dated December 23, 2005 from the General Manager of SLASPA to the General Manager Copains Copines the purpose of the meeting held at SLASPA's Conference Room on November 17, 2005 was on the issue of unauthorized operations of taxibus service at the Airports at which all representatives had the opportunity to express their views and concerns following which SLASPA promised to provide **written guidance** under which clients would receive taxi/bus service. (My emphasis)

It would therefore in my view be quite wrong for the claimant to allege that the defendant on the 17th November 2005 purported to formulate regulations which are ultra vires the Act irrational and unreasonable and that the purported regulations were formulated by an unlawful assembly or body not recognized by Parliament in the Act and thus rendering them void of any effect.

In paragraphs 2 to 5 of this judgment subparagraphs 1, 2 and 3 of paragraph 19 of the Act states that the Authority may for the purpose of performing its functions do anything and enter into any transaction which in its opinion is necessary to ensure the proper performance of its functions and it shall be the duty of the Authority to operate the ports as appears to it best calculated to serve the public interest and to maintain improve and regulate the use of such ports and the services and facilities therein as it considers necessary or desirable.

And indeed the proviso of the said paragraph 19 provides that the Authority may with the approval of the Minister authorize in writing any person corporate or **other**

body to carry out the functions stated in this paragraph subject to such conditions and restrictions as the Authority may consider desirable. (My emphasis)

Furthermore subsection (3) of section 17 of the Interpretation Act Chapter 1.06 of the Laws of St. Lucia provides that:

> "where an enactment empowers any person or authority to do any act or thing all such powers shall be deemed to be also given as are reasonably necessary to enable that authority to do that act or thing as are incidental to the doing thereof."

[13] On 16th August 2006 Mr. Hippolyte wrote to Mr. Ignacio Perez Regional Director Eastern Caribbean **Sandals Resorts International** Eastern Caribbean Castries on the subject of Transfers from Airports in which the provisions of subparagraphs 19(1) (2) and 3(c) of the Act were set out [see paragraphs 2, 3 and 4 herein]. The said letter continued thus:

> "In furtherance of these objectives a system was established whereby a concession was granted to the Southern Taxi Association to operate transportation services for passengers from Hewanorra International Airport ('the Airport'). This arrangement has been in existence for some time and worked satisfactorily. However in recent times developments have occurred which threaten the good order which prevailed at the Airport. (My underlining)

In the circumstances and in order that consideration be given to all the issues that are relevant to securing what can serve the public interest the Government of Saint Lucia in conjunction with all the major stakeholders of the Tourism Industry has established a Committee to review the existing airports' taxi system and to make recommendations for the consideration of the Cabinet of Ministers. The Committee had commenced its work.

While the Committee continues its work the procedures that have been approved by SLASPA relating to the transportation of persons from the airports remain in effect.

We are specifically concerned with what appears to be an undesirable situation developing between the Southern Taxi Association and Sandals at the Airport. We take seriously our responsibility to regulate the use of the Airport in order that the activities at the Airport are in conformity with Airport Regulations.

We reproduce for your information certain provisions of these Regulations:
Regulation 6: Carrying on Trade or Business

(1) A person shall not carry on any trade or business on an airport except with the approval of the Minister and under such terms and conditions as he or she may determine.

(2) Any person who contravenes sub-regulation (1) commits an offence and is liable on summary conviction to a fine of $200 or to imprisonment for 3 months.

Regulation 7: Soliciting

(1) A person shall not solicit for any purpose whatever in an airport without the permission of the Superintendent.

(2) Any person who contravenes sub-regulation (1) commits an offence and is liable on summary conviction to a fine of $100 or to imprisonment for 3 months.

We have directed the Ports Police at the airports to ensure that these regulations are complied with and that the law is enforced. Should you know or have reason to believe that any activity is being undertaken which contravenes these Regulations we request that you use your good offices to ensure that such activities are immediately brought to an end."

That letter as well was circulated to the Deputy General Manager (Operations) Deputy General Manager Chief of Ports Police etc.

[14] On 17th August 2006 the claimant disclosed at paragraph 14 of his supporting affidavit that Mr. Perez had shown him a copy of the letter written to him by the General Manager of SLASPA and on Friday 18th August 2006 two of his employees he averred had been arrested detained and charged by the Port Police at Hewanorra Airport for attempting to pick up tourists arriving in St. Lucia on behalf of Sandals.

[15] The claimant asserts that since 1992 he had in his individual capacity picked up tourists arriving at George F. L. Charles Airport and at Hewanorra without let or hindrance and since 1999 under the name of C.J's Touring Services which at present operates as a taxi service provider and employs twenty eight persons. The business' sole source of income he declared came from its transfer of tourist passengers and business executives on behalf of Sandals and Windjammer Hotel to whom he was contracted to provide the said service.

[16] The claimant contends that the purported regulations formulated by SLASPA was an attempt to create a monopoly of taxi providers in the Southern and Vigie Taxi Associations in relation to the two airports and at the same time outlaw tour operators like himself from doing transfers of tourists from the airports. That contention is not in my view altogether correct as there are arrangements in place within the general regulatory framework (which are set out in paragraph 13 and numbered 1 to 3) that to my mind make ample and reasonable provision for accommodation of taixi/bus service providers who like the claimant are not affiliated to either association.

[17] Subparagraphs 1, 2 and 3(a) and (c) of paragraph 19 of the Act (the provisions of which are set out at paragraphs 2, 3 and 4 of the judgment) outline the general powers and duties of the Authority with regard to the operations of the airports and the duty in particular to so operate them in a manner which is fair and appears to it best calculated to serve the public interest. That as I see it is the overriding consideration which must be borne in mind in construing the regulatory provisions of the Act. In other words reasonableness and fairness are the twin canons by which one must be guided in the construction and interpretation of the Act and in the regulations made thereunder.

[18] At paragraph 6 of his affidavit in support the claimant deposed that he had obtained a certificate from the Minister of Tourism in August 1999 to operate as a taxi service provider within the tourist industry which included picking up and setting down passengers at the Air and Sea Ports in St. Lucia as this is where a tourist holiday begins and ends. He also exhibited a certificate in support of that averment.

[19] At the inception of his cross-examination he however conceded that neither himself in his personal capacity nor C.J. Touring Services had a permit to operate a taxi at either airport in St. Lucia from the Superintendent of the Airport nor did they have a permit from the Superintendent to solicit business there. This would have infringed Regulations 6 and 7. The certificate exhibited by him was in actual

fact a certificate of participation from the Sir Arthur Lewis Community College and the Ministry of Tourism for his successful completion of a National Taxi Operatives Training Programme in **September 2003** covering 30 hours. (My emphasis)

[20] Under further cross-examination whilst admitting that he operated a taxi service and that the nature of his business was to pick up and drop off passengers at the airport, he was not aware that he had operated that service at the airport without a valid permit from the Superintendent of SLASPA. That clearly cannot be true, in light of his assertion in paragraph 6 of his affidavit that he had obtained a certificate from the Minister of Tourism in August 1999 to operate as a taxi service provider within the tourist industry and his subsequent denial that he had a permit to operate taxi at either airport in St. Lucia. The Claimant further deposed at paragraph 7 of his affidavit that he had in his individual capacity picked up tourists arriving in Saint Lucia and set them down at George F L Charles and Hewanorra International Airports since 1992 and since 1999 under the name of C.J.'s Touring Services. Yet C.J's Touring Services was in actual fact only registered as a business name on 4th September 2001. Further at paragraph 8 he declared that **his sole source of income** came from the transfer of tourist passengers and business executives on behalf of Sandals Hotel and Resort and Winjammer Hotel with whom he was contracted to provide the said service. (My emphasis)

[21] Under cross examination he however admitted that he did operate a taxi business and that **apart from that** he picked up passengers from the airport and that constituted the critical part of his business. When asked if he had approval for operating a taxi at the airport he replied yes and no in the sense that following the incident of 18th August 2006 when two of his employees had been arrested at the Hewanorra Airport he was then restricted to operating 4 cars for the day at the airport for Sandals. Hitherto he added that on a busy day he employed 7 cars and prior thereto he never had the approval of the Minister of Civil Aviation to operate taxi at the airport. (My emphasis)

[22] I must confess that the testimony of the claimant on the issue of his being unaware

of the requirement of a permit from the Minister to operate taxi at the Hewanorra Airport strikes me as being ambivalent. For on the one hand he deposed at paragraph 6 of his affidavit that he had obtained a certificate from the Minister of Tourism in August 1999 to operate as a taxi service provider within the tourist industry which included the air and sea ports in St. Lucia and exhibited a certificate of participation in a 30-hour training programme for taxi operatives dated September 2003 to substantiate this and on the other hand he claims that not until 18th August 2006 did he first become aware of the need for a permit from the Minister to operate taxi at Hewanorra Airport which curiously enough practically coincided with his being shown a letter dated 16th August 2006 the previous day by Mr. Ignatius Perez, Regional Director of Eastern Caribbean Sandals Resorts in which in his view the writer the General Manager of SLASPA "threatened and tried to intimidate Sandals into preventing tour operators like himself (the claimant) from doing transfers on their (Sandals) behalf."

[23] In concluding his cross-examination, the claimant acknowledged that in 1992 he was aware of some sort of arrangement between the Vigie Taxi Association and the Southern Taxi Association and SLASPA but was not aware, that as a result of that arrangement concessions had been granted by SLASPA ("the Authority") to the associations to operate taxi at the airport. He was never aware, he added that between 1992 and August 2006 that the two associations had an executive arrangement with SLASPA to operate taxi at the airport.

[24] He first began picking up passengers on behalf of Sandals from and to the airport since 1992 he deposed. At that time he was never stopped by Southern Taxi Association. Within the year **2005** he revealed that they (meaning the drivers of the Southern Taxi Association) were saying I am not supposed to pick up (passengers) at the airport. They did tell him, he admitted that he should not pick up passengers there because they alone had the right to do so. That surely was prior to 18th August 2006, when he told the court that he first became aware of restrictions in picking up passengers arriving at Hewanorra Airport.

[25] At the close of the hearing, Mr. Fraser was ordered to file and serve his written submissions on or before 31st October 2008 and Mr. Maragh to file and serve his legal submissions on or before 7th November 2008. Mr. Fraser filed his legal submissions late and Mr. Maragh did not do so at all resulting in inordinate delay in rendering this decision. In his written submissions, Mr. Fraser first responded to a preliminary objection raised by Mr. Maragh in an affidavit sworn and filed 2nd November 2007 by Peter Ferguson Jean Director of Airports to the effect (at paragraph 6) that the requisite written notice (of intention to institute proceedings against the defendant) had not been served on its General Manager or agent as stipulated by subsection 90(a) of the Act and the claim could not in the circumstances be maintained and ought therefore to be dismissed.

[26] Section 90 of the Act so far as is relevant reads:

> **"90 LIMITATION**
> Where, after the commencement of this Act, any legal proceedings is commenced against the Authority for any act done in pursuance, or execution or intended execution of this Act, or regulations or of any public duty or authority imposed or conferred by this act or any regulations, or in respect of any alleged neglect or default in the execution of this act, such regulations or of any such duty or authority, the following provisions shall have effect despite anything contained in any enactment, that is to say
>
> (a) the legal proceeding shall not commence until at least one month after written notice containing the particulars of the claim, and of the intention to commence legal proceedings, has been served upon the General Manager by the plaintiff or his agent."

[27] In response to Mr. Maragh's preliminary objection Mr. Mitchelle (sic) by affidavit filed and sworn on 8th November 2007, deposed (at paragraph 3) that he had been advised by counsel, (Mr. Fraser) and verily believed that "the requisite notice before the commencement of suit against the defendant was duly served on the 6th February 2007." Indeed in paragraph 22(v) of the supporting affidavit to his application for leave to make a claim for judicial review, against the respondent's/ defendant's decision, Mr. Mitchell attested that on 6th February 2007, he gave the respondent/defendant notice of his intention to challenge the said purported regulations and "attached exhibited and marked KM 7 was a true copy of the said

notice." Yet nowhere in the claimant's list of exhibits filed 22nd June 2007, is Exhibit KM 7 shown nor is Exhibit KM 7 itself displayed anywhere on file. When questioned at trial about the notice the cross-examination reads:

> "Q. Have you ever seen a copy of section 90 notice of intention to institute legal proceedings against SLASPA?
> A. No Your Lordship. And I have no idea that the document was served on SLASPA."

From this it is clear and I entertain no doubt whatsoever that the requisite notice of intention to challenge the defendant's decision by way of judicial review was never served on the General Manager of SLASPA or his agent as stipulated by subsection 90(a) of the Act and this would as a result be fatal to the claimant's claim which is accordingly dismissed with costs to the defendant in the sum of $500.00

[28] In **Costilo v Carozal Town Board and Another** (1983) 37 WIR 86 the Court of Appeal of Belize (Sir John Summerfield P) held that when proceedings are instituted against a public authority and the plaintiff fails to prove at the hearing that he has given notice of the proceedings under Section 3(1) the trial judge has no discretion in the matter and is bound to enter judgment for the defence with costs. The defendant is not required to plead the Ordinance. Per incuriam: it is incumbent on the plaintiff in such a case to plead and prove compliance with section 3(1) of the Ordinance in his statement of claim to lay the foundation for his right to sue the public authority.

[29] I pause to mention that it is wholly inappropriate for counsel for the claimant to tack his response to Mr. Maragh's preliminary objection to his legal submissions notwithstanding counsel's reminder at the commencement of the trial that he would be relying on his preliminary objection. As a matter of inveterate practice any point or points in limine should first be argued before trial as the outcome/result could well dispose of the matter then and so save time and costs. And I am sure that experienced counsel knows that.

[30] Learned counsel went on to submit (at paragraph 1.3(iv) that "where an authority

has the protection of such a provision (i.e. section 90(a) of the Act) it cannot avail itself of it where the suit brought against it complains of actions on its part that are illegal and unlawful "claiming that the defendant authority had acted illegally and unlawfully and outside the statutory regime of the Act and its regulations and had acted in abuse of its powers." These are matters really for trial – assertions which must be proved.

[31] In his view the defendant (Authority) could only rely on the protection afforded by section 90(a) if it had acted genuinely in carrying out its legislative mandate but not when it was guilty of abusing its power. Arresting the claimant's employees (on 18th August 2006) for offences that did not legally exist and pursuant to regulations which did not empower officers to arrest and pursuant to "regulations" which were unlawful and impermissible Counsel submitted took the defendant outside of the scope 90(a) altogether as it was not acting "in pursuance or execution or intended execution of the Act or regulations or of any public duty or authority imposed or conferred by the Act or regulations" referring to the Jamaican case of **Bryan v Lindo** [1986] 44 WIR 295 and **Attorney General of Antigua & Barbuda v Samuel Williams** [1993] 45 WIR 169.

[32] I must respectfully demur as for one thing there is to my mind no parallel between those cases and the instant case. In **Bryan v Lindo,** the Jamaican Court of Appeal had to consider language in the first part of section 2 of the Public Authorities Protection Act (PAPA) which is in very similar language to section 90 (a) of the Act.

[33] In that case a soldier during a state of emergency arrested a civilian and took him to a police station where the soldier with no apparent justification fired his weapon at point blank range seriously injuring him. The civilian plaintiff sued the soldier for assault and the court of first instance found this to have been a deliberate and gratuitous shooting of the plaintiff, (which was plainly illegal) and not an act done in pursuance or in execution or even intended execution of any law, and that the defendant could not therefore claim the protection of the Public Authorities

Protection Act (PAPA) which required proceedings to be instituted within a one year period of limitation.

[34] In dismissing the appeal, the Court of Appeal held that although the act complained of had been committed by a person (i.e. a soldier) who as a member of the armed forces was prima facie entitled to the protection of the PAPA the act complained of had not been performed in pursuance of any law or public authority but in response to the jeering of police personnel who were present and the defendant was not therefore (quite understandably) entitled to the protection of the PAPA which is clearly not the case here where the Authority was legally authorized empowered and had a duty to control persons and vehicles using the airports in keeping with the Act and the regulations pertaining thereto in the public interest.

[35] In the event that I am wrong regarding the failure of the claimant to serve the General Manager or his agent with the requisite written notice of intention to institute proceedings against the Authority, I shall proceed to address the issues raised by the claimant in paragraphs 10 and 11 of its claim that:

(1) The purported regulations formulated by the defendant on 17th December 2005 were ultra vires the Act irrational and unreasonable and void of legal effect as they were formulated by an unlawful assembly or body not recognized by the Act; and

(2) The said regulations were formulated in breach of natural justice since there was no consultation with him as a stakeholder in the tourist industry and that he had a legitimate expectation to be heard and he had been afforded no such opportunity and that the purported regulations were violative of his common law right to work and were contrary to public policy and the defendant had acted in bad faith in formulating the said regulations which were aimed at creating a monopoly or alternatively in so doing did so for an improper purpose.

[36] The issues in paragraph (1) are in my view comprehensively addressed at pages

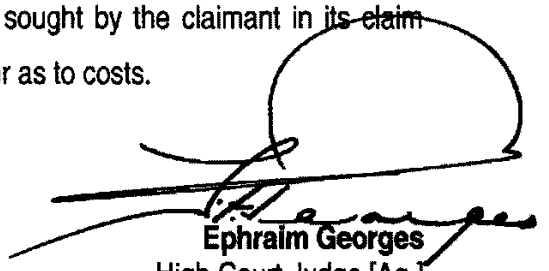
6, 7 and the top of page 8 of this judgment and the mistaken beliefby the General Manager of SLASPA in the penultimate paragraph of his letter dated Friday December 23, 2005 to Mr. Copains Copins that section 73(1)(b) of the Act and the Airport Regulations allowed the Authority to make regulations for the control of persons and vehicles using the airports would not and does not to my mind affect the position as at paragraph 2 of the said letter the purpose of the November 17, 2005 meeting is declared/stated to have been to canvas the views and concerns of members on the issue of unauthorized operations at the airports and to provide them with written guidance under which clients would receive taxi/bus service.

[37] So that there were no regulations purportedly formulated by the Authority on 17th November 2005 as such or by any unlawful assembly or body not recognized by the Act as the claimant alleges. And as this in effect constitutes the matrix of the claimant's case it must in my view inevitably fail. It is of course recognized that a public authority that has been granted powers whether by the constitution, statute or some other instrument must not exceed the powers so granted and that it will be taken to have exceeded its powers if it has done or decided to do an act that it does not have the legal capacity to do. But granted the statutory basis of the doctrine of ultra vires it must be appreciated that most statutes are not wholly comprehensive and sometimes powers are left to be implied and it is necessary to invoke the reasonably incidental rule to those powers.

[38] By way of illustration Hanschell J had no difficulty in **Taylor v Mayor Aldermen – Citizens of Bridgetown Suit No. 365 of 1990.** High Court of Barbados in holding that the statutory right to create posts "walks hand in hand with the right to abolish such posts" On the other hand in **AG v Coconut Marketing Board** (1944) 4JLR 189 it was held that a Board which had power to **trade** in coconut and coconut products had no incidental power to **manufacture** coconut products. As I have earlier emphasized a great deal turns in the final analysis on the interpretation and construction of the statute. And as pointed out earlier, most Interpretation Acts do contain provisions on "implied powers" as well.

[39] On the claimant's complaint that the regulations were formulated in breach of natural justice since there was no consultation with him as a stakeholder in the tourist industry and that he had a legitimate expectation to be heard and had not been afforded any such opportunity. Suffice it to say that it is for one thing substantially based on the false and mistaken premise that a decision had in actual fact been taken by the Authority at the 17th November 2005 meeting to formulate regulations which was not in actual fact the case. And whilst ideally a broad spectrum of stakeholders in the tourist industry ought to have been invited to this consultative meeting inevitably some would inevitably and indeed were inadvertently omitted. And I would certainly not subscribe to the unsupported allegation that the so-called purported regulations were violative of the claimant's right to work and were hence contrary to public policiy nor to the indictment that the Authority had in the circumstances acted in bad faith or for an improper purpose.

[40] So that in the final analysis the declarations sought by the claimant in its claim dated 22nd June 2007 are refused with no order as to costs.



Ephraim Georges
High Court Judge [Ag.]