

**EASTERN CARIBBEAN SUPREME COURT
FEDERATION OF ST. CHRISTOPHER AND NEVIS
NEVIS CIRCUIT**

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

SUIT NO: NEVHCV2016/0059

**In the matter of Section 47 of the
Nevis Physical Planning and Control
Ordinance Cap 6.09 (N).**

BETWEEN:

Anne Hendricks Bass

Applicant

and

Director of Physical Planning

Respondent

Appearances: Mr. Garth Wilkin for the Claimant

Ms. Rhonda Nisbett-Brown and Mrs. Kimberly Hanley Bello for the Respondent

2016: September 29
2017: January 25

JUDGMENT

[1] **WILLIAMS, J.:** The Claimant Anne Hendricks Bass of Long Haul Bay, St. James, Nevis filed a Notice of Application for leave for Judicial Review on the 5th May 2016 supported by an Affidavit deposed to by Sorell Negro acting as a representative of the Claimant.

The Claimant was granted leave to seek Judicial Review on the 7th June 2016, in particular to obtain the following;

- a) An Order of certiorari to remove into the High Court, and to quash the decisions of the Respondent made in or about January and February 2016 to deny the Applicant access to information recorded in the Department of Physical Planning register related to the HTRIP Candy Resort Villa Development.
- b) A declaration that the Applicant is entitled by virtue of Section 47(5) of the Nevis Physical Planning and Development Control Ordinance Cap 6.09(N) to be granted during ordinary business hours access to all the Information in the Registers required to be kept by the Respondent pursuant to Section 47(1) free of charge and to take copies of such information on payment of the prescribed fee.
- c) An Order of Mandamus to compel the Respondents to provide access to the Applicant or any of her agents, to all information recorded in the Department of Physical Planning register related to the HTRIP Candy Resort Villa Development and to allow the Applicant to take copies of such information on payment of the prescribed fee.
- d) An Order giving all necessary and consequential directions.
- e) An Order that the Defendant pay the costs of the Claimant and
- f) Such further or other relief the Court deems just.

[2] The Claimant shall file her Fixed Date Claim Form with supporting documents within fourteen days of the date of this Order.

[3] On the 15th June 2016, the Claimant filed a Fixed Date Claim Form with supporting Affidavit deposed to by Anne Hendricks Bass.

[4] The Claimant applied for the relief and declarations as set out in the Order of this Court dated the 7th June 2016.

Background Facts

[5] The Claimant is alleging that in January and February 2016, her agent Sorell Negro visited the Department of Physical Planning and requested copies of documents relating to the Application of HTRIP Candy Resort. Ms. Negro states that she was allowed to see the plans but was not allowed to take pictures or copies of the plans or other documents comprising that application.

[6] Consequently, the Claimant through her Attorneys wrote to the Director of Physical Planning requesting access to the documents related to the HTRIP Candy Resort Development pursuant to Section 47 of the Nevis Physical Planning and Development Control Ordinance Cap 6.09(N).

[7] There was no response to Counsel's letter by the Defendant, and the Claimant being dissatisfied filed this action for Judicial Review.

The Claimant's Case

[8] The Claimant's case emerging from the Witness Statements and from testimony at the Trial is that on the 6th January 2016, the Claimant instructed her agent Ms. Sorell Negro to visit the Department of Physical Planning to request plans and documents relating to HTRIP Candy Resort.

[9] Ms. Negro testified that she asked the staff at the Department of Physical Planning to see copies of the Site plan, the Drainage plan, an Environmental Impact Assessment (E.I.A) and any updates to the E.I.A.

She further testified that she was told by the staff that they do not show plans of current projects to the public and requested that she return later to give them an opportunity to check with their supervisor.

[10] Ms. Negro also testified that upon her return she was allowed to see the detailed plans and drawings for the road, buildings, sewage system, landscaping and water features.

She also said that she saw the certification for the project approved by the Director of Physical Planning.

[11] Ms. Negro testified however that she was instructed by the staff not to take pictures of the plans or other documents and was not provided with access to any other documents including the E.I.A.

[12] Ms. Negro stated that when she viewed the plans on 6th January 2016, she did not observe any sensitive information about the Candy Resort and on the 7th January 2016, she returned to the said Department with her Attorney to make copies of the Documents on file.

[13] She states further that on that date the staff again told her that they were not supposed to make current project plans available to the public.

[14] On the 3rd February 2016, Ms. Negro states that she again returned to the Department to view an application relating to fencing of the Resort but was told that it was being processed, and further that a Court case was pending.

[15] The Claimant's case in essence is that Section 47 of the Nevis Physical Planning and Control Ordinance entitles her to see and make copies of all documents relating to the file or application of HTRIP Candy Resort. Further that the Director of Physical Planning has acted contrary to Section 47 by denying her request to make copies of all the documents.

[16] The Claimant also submits that the following unlawful omissions and actions by the Director of Physical Planning were revealed in the evidence at the Trial.

- a) The Director of Physical Planning did not maintain the registers required to be kept by Section 47 of the Ordinance.
- b) The Director of Physical Planning did not include an index to the register in the form of a map, in breach of Section 47(2) of the Ordinance.
- c) The Director of Physical Planning did not enter every entry into the register within seven days of the date on which the decision notice or event to which it relates were made, filed or issued or done, in breach of Section 47(4) of the Ordinance.
- d) The Register was not kept by the Director of Physical Planning who has taken a decision to unlawfully restrict public access to information regarding applications for development and has created an ultra vires policy where the Director of Physical Planning exercises his own discretion without any guidelines or authority under Law.

The Defendant's case- (Written Submissions)

[17] The Defendant's case is that he is familiar with the Nevis Physical Planning and Development Control Ordinance Chapter 6.09(N) in particular Section 47 as he uses it regularly in the course of his duties as Acting Director of Physical Planning.

[18] The Defendant in the person of Joel Williams Acting Director of Physical Planning states he is aware that registers are to be kept by the Department and the procedure in which information recorded in these registers is to be made available to the public.

[19] The Defendant produced a copy of the register which he stated was used by the Physical Planning Department as part of his evidence.

- [20] The Defendant states that on the 25th September 2014, the Caribbean Development Consultant Ltd (HTRIP) Candy Resort submitted to the Department of Physical Planning an application for permission to develop land in St. James Parish, Nevis, and forming part of the application were plans, personal documents and Information from the said developer.
- [21] The Defendant further states that in January and February 2016, Ms. Sorell Negro, the agent for the Claimant came to the Department of Physical Planning and requested copies of documents relating to the application of HTRIP Candy Resort Development.
- [22] The Defendant also states that no copies of documents were given to Ms. Negro neither was she allowed to copy or photograph any documents.
- [23] The Defendant contends that the staff of the Department of Physical Planning was correct in not providing copies of the said application to Ms. Negro since Section 47 of the Ordinance stipulates that the Registers must record particulars of the Application for permission to develop land, and there is no mention in the said Ordinance of the public having access to copies of the documents that they request.
- [24] The Acting Director of Physical Planning, Joel Williams stated in his evidence that in the exercise of the Director of Physical Planning's discretion although not mandated by Law, the public is sometimes allowed to see plans and documents of current projects, but not to take copies as this was not stated in the Ordinance.
- [25] Mr. Williams states further that the application for permission to develop land is not within the public domain and therefore the public do not have a right of access to the documents.
- [26] Mr. Williams also stated in his evidence that there is a lack of facilities to copy plans in the Department and since the legislation was enacted some 10 years ago, there have been no facilities available to copy plans.

He further stated that it was not the intention of Parliament to provide such a strain on the Physical Planning Department and the Legislation does not expressly provide for making copies of numerous and massive documents which could run the risk of loss of those plans or infringement of copyright designs.

Issues

[27] The Issues for determination by this Court are;

- 1) What is the scope of Section 47 of the **Nevis Physical Planning and Development Ordinance Cap 6.09 (N)**
- 2) Did the Director of Physical Planning breach Section 47 of the said Ordinance by his actions.

The Law and Analysis

[28] Section 3 of the Nevis Physical Planning and Development Ordinance Cap 6.09(N) entitled "Objects of the Ordinance" states as follows;

The Objects of the Ordinance are to;

- a) Ensure that appropriate and sustainable use is made of all publicly owned and privately owned land in Nevis in the public interest.
- b) Maintain and improve the quality of the physical environment in Nevis including its amenities;
- c) Provide for the orderly subdivision of land and the provision of Infrastructure and services in relation thereto
- d) Maintain and improve the standard of building construction so as to enhance human health and safety.
- e) Provide for Physical Planning and development control processes that are fair, open, accessible, timely and efficient and

f) Protect and conserve the natural and built heritage of Nevis.

(2) This Ordinance must receive such purposive and liberal construction and interpretation as will best ensure the attainment of its objectives.

[29] Section 47 of the said Ordinance provides as follows;

- 1) The Director of Physical Planning must maintain such registers as may be necessary or convenient for recording particulars of
 - a) Any application for permission to develop land including
 - i. The name and address of the Applicant
 - ii. The date of the Application
 - iii. The proposed development forming the subject of the application.
 - iv. The date and effect of any decision made in respect of the application.
 - v. Any appeal in respect of the original decision and the decision made on the Appeal.
 - vi. Any modification or revocation of any permission granted in respect of any such application;
 - b) Any enforcement notice or stop notice issued in respect of any development of Land.
 - c) Any commencement notice received and any completion certificate issued and any other matter which may be prescribed by regulations made under this ordinance.
- 2) Any register kept by the Director of Physical Planning pursuant to subsection (1)
 - (a) and (b) must have an index in the form of a map.

- 3) The Director of Physical Planning may maintain any register or index map required to be kept pursuant to subsection (1) in an electronic data storage and retrieval system.
- 4) Every entry in the register must be made within seven days of the date on which the decision, notice or event to which it relates was made, filed, issued or done.
- 5) The Register must be kept at the office of the Department of the Nevis Island Administration charged with the responsibility for Physical Planning and Development Control and any person is entitled during the ordinary business hours to have access to the Information recorded therein free of charge and to take copies of such information on payment of the prescribed fee.

Court's Analysis

[30] In order to determine this first Issue the Court must seek to interpret Section 47 of the said Ordinance. In so doing, the Court must ensure that it ascertains what the intention of the legislature was, at the time of the enactment. The Court usually has regard to the Literal rule of Interpretation which requires, in the interpretation or construction of an Act of Parliament the acceptance of words which are precise and unambiguous.

See: Lennox Linton vs A.G of Antigua and Barbuda-

See: Sussex Peerage case¹

However, where the literal interpretation of the statutory provision leads to an absurdity or yields unjust results, the Courts have from time to time utilised the rules of Interpretation. The Mischief or the Golden rule of Interpretation enables the Court to ascertain the meaning of words in order to avoid repugnance or absurdity. **See: Grey vs Pearson.²**

¹ [1844] 1C1 & F85

² [1857] 6HLC 61

It is the general principle of Statutory Interpretation that every clause or Act must be construed in the context of, and with reference to the other clauses or sections of that statute. The Court must always seek to determine the Legislative intention.

[31] Justice Hariprashard-Charles in the case of **Bebo Investments Ltd. vs The Financial Secretary**³ observed that the dominant purpose in construing a statute is to ascertain the intention of the Legislature as expressed in the statute, considering it as a whole, and in its context. The intention is primarily to be sought in the words used in the statute itself, which must, if they are plain and unambiguous be applied, as they stand however strongly it may be suspected that the result does not represent the real intention of Parliament.

[32] In **Pinner vs Everett**⁴ Lord Reid stated this principle in the following terms;
“In determining the meaning of any word or phrase in a statute, the first question is what is the natural or ordinary meaning of that word or phrase in its context in the statute. It is only when the meaning leads to some result which cannot reasonably be supposed to have been the intention of the Legislature, that it is proper to look for some other permissible meaning of the word or phrase.”

[33] In **Abel vs Lee**⁵ Willes J stated that:
“No doubt the general rule is that the language of an Act is to be read according to its ordinary grammatical construction unless so reading it would entail some absurdity, repugnancy or Injustice... But I utterly repudiate the notion that it is competent to a Judge to modify the language of an Act of Parliament in order to bring it in accordance with his views as to what is right or reasonable.”

³ BVIHCV2007/0151

⁴ [1969] 3 AllER 257-258

⁵ [1871]

[34] In my opinion it is pellucid from the authorities cited that if the language of the statute is plain and suggests only one meaning, the Court should give effect to those words in light of the legislative intent, notwithstanding the fact that such may result in a harsh result. The Court is allowed to apply the rules of construction where an anomaly exists. But the Court has to be wary in doing so, as not to modify the language of the statute. Lord Simon adumbrated similar sentiments in the case of Stock vs Frank Jones (Tipton Ltd.)⁶ as follows;

“A court would only be justified in departing from the plain words of the statute were it satisfied that

- 1) there is clear and gross balance of anomaly
- 2) Parliament, the legislative promoters and the draftsman could not have envisaged such anomaly, and could not have been prepared to accept it in the interests of a supervening legislative objective
- 3) The anomaly can be obviated without detriment to such legislative objective
- 4) The language of the statute is susceptible to the modification required to obviate the anomaly.”

[35] Lord Scarman in the said case of Stock vs Frank Jones (Tipton Ltd.) stated;

“If the words used by Parliament are plain, there is no room for the “anomalies” test, unless the consequences are so absurd that, without going outside the statute, one can see that Parliament must have made a drafting mistake. If words have been inadvertently used, it is legitimate for the Court to substitute what is apt to avoid the intention of the Legislature being defeated. This is an acceptable exception to the general rule that plain language excludes a consideration of anomalies (i.e.) mischievous or absurd

⁶ [1978] 3A11 ER 948-954

consequences. If a study of a statute as a whole leads inexorably to the conclusion that Parliament has erred in its choice of words, the Courts can and must eliminate the error by Interpretation; but mere “manifest absurdity” is not enough; it must be an error of commission or omission which in its context defeats the intention of the Act.”

[36] These authorities raise one fundamental issue: what is the test to be applied?

[37] Mr. Wilkin, Learned Counsel for the Claimant argued that the Court should adopt a purposive approach which seeks to give effect to the true purpose of the legislation. Learned Counsel submits that this approach is consistent with other provisions of the ordinance and does not modify the Ordinance in any way.

[38] Mr. Wilkin contends that Section 47(1) of the Ordinance refers to “such registers as may be necessary and convenient for recording particulars of any application for permission to develop land including...”

Counsel argues that the use of a comma, and then the word “including” means that the list that follows is not an exhaustive list. Further he submits that the Information listed in Section 47(1) must be included in the register as the particulars of the application as well as other particulars.

[39] Learned Counsel contends that the legislation already has a requirement in Section 17, that an application for permission to develop land includes a map sufficient to identify the land to which it relates and such plans, drawings and other material drawn by an Engineer, architect or licensed land surveyor as are necessary to describe the development that is the subject of the application.

[40] Therefore, the Legislature could have only intended that particulars of the proposed development forming the subject of the application would mean the actual map and plans submitted with the application.

[41] Learned Counsel also contended that the Legislature could not have intended that a mere description in words subjectively created by the Director of Physical Planning of the numerous elements of a project would be sufficient to discharge his or her responsibility under Section 47 (1) (a) (iii) of the said Ordinance.

Mr. Wilkin also contends that the Ordinance does not call for the Director of Physical Planning to create a summary or provide guidelines for the manner in which the Director of Physical Planning should exercise his/her discretion in determining which details of an application are important enough to be included in the summary and which details should not be made available to the public.

[42] Mr. Wilkin also submits that the Legislature could only have intended that the Register referred to in Section 47 would be a mechanism by which the public would have open access to development applications, and the details contained therein by way of a bundle of documents with an Index.

Defendant's Submissions

[43] Learned Counsel for the Defendant Ms. Rhonda Nisbett-Brown submits that the granting of a discretionary remedy of Judicial Review which the Claimant seeks is adequately set out in the landmark case of:

Counsel of the Civil Service Union vs The Minister for the Civil Service⁷ where Lord Diplock sets out three grounds upon which Administrative action is subject to Judicial Review.

The first ground is **illegality**, the second is **irrationality** and the third procedural ground is **impropriety**. Learned Counsel contends that the head under which the Claimant bases the action of the Director of Physical Planning is **illegality** and that the Claimant is

⁷ [1985] 1 A.C 374

suggesting that the Director of Physical Planning is guilty of an error of Law in his decision not to allow the inspection and copying of the documents as requested.

[44] Ms. Nisbett-Brown submits that based on what the Claimant has provided by way of Affidavit and oral evidence, the Director of Physical Planning has not contravened the Law, has not made an error in his interpretation of the legislation, nor has there been a misconstruction of the terms of the statutory provision of Section 47 of the Ordinance.

[45] Learned Counsel contends that it is important to understand what Parliament specifically intended when the **Nevis Physical Planning and Development Ordinance** was enacted and submits that an interpretation of the meaning of Section 47 of the Legislation can be deduced in the light of the established principles of interpretation and construction which is the “Literal rule” of statutory interpretation which should be the first rule to be applied.

Learned Counsel referred to the case of **Roddy Felix vs Magistrate**⁸ and further submitted that to understand Parliamentary intent in the enactment of Section 47 of the Ordinance, requires an interpretation of the meaning of the ordinary words used.

Counsel contends that the words are clear and do not produce any ambiguity or absurdity requiring a purposive interpretation and referred to the reasoning of **Blenman J** in the case of **Lennox Linton vs The Attorney General of Antigua and Barbuda**⁹

[46] Ms. Nisbett-Brown contends that to determine the meaning of “recorded” as used in Section 47, the Interpretation Act Cap 1.02 of the Revised Edition 2009 had to be referenced. That Act defines “recorded” as “used with reference to a document, means recorded under the provisions of the Law applicable to the recording of such document.”

⁸ GDAHCV2012/0021

⁹ ANUHCV2007/0354

Counsel further contends that the meaning of “register” as stated in the Oxford Dictionary is defined as “An official list or record of name or items.”

The meaning of “particulars” is defined in the Collins Dictionary as “the particulars of something or someone are the facts or details about them which are written down and kept as a record.”

[47] Learned Counsel contends that from these definitions of the natural and ordinary meaning of the terms, Section 47 of the Ordinance cannot be interpreted to mean the public having access to the copying of documents including all plans and other documents submitted by the developer HTRIP Candy Resort Villa Development.

[48] Counsel also contends that the meaning of “permission to develop land” is also relevant and the meaning and nature of the Application for permission to develop land must be considered.

Learned Counsel refers to Section 17 of the said Ordinance, and contends that the Section refers to a private and individual developer.

[49] Learned Counsel argues that the documents forming the application for HTRIP Candy Resort Development are of a private nature in particular the evidence of ownership, the statutory consent, certification and evidence of payment of fees. Learned Counsel also contends that the public access to the documents forming part of the application to develop land would result in the access of the Developer’s evidence of ownership, certification, evidence of payment and other documents which are not listed in Section 47 of the Ordinance.

[50] Learned Counsel submits that Parliament has created two separate and distinct sections on public accessibility and public copies (Section 47 & Section 12) and that the Director of Physical Planning can only act within the confines of the Ordinance and not be subjected

to lawsuits by a Developer for allowing the Public to take copies of the application, plans and correspondence of a proposed project or a residential application.

[51] Ms. Nisbett-Brown posits the view that Section 47 does not provide for actual physical copies, and certainly not copies or information relating to correspondence between the Applicant and the Department. Learned Counsel states that the legislation refers to a copy of Information recorded in the register, and that it was not the intention of Parliament for copies of documents to be made, as the legislation does not expressly say so.

[52] Learned Counsel referred to the case of Denys Barrow vs Attorney-General of Saint Lucia¹⁰ where Counsel submitted that the Court applied the literal interpretation to words in a statute dealing with “pensionable circumstances”.

Counsel argues that every word in any legislation must be given its natural and ordinary meaning to create an interpretation that is clear and sensible.

Court’s Analysis

[53] Section 3 (2) of the Nevis Physical Planning and Development Control Ordinance Cap 6.09 states as follows;

“This ordinance must receive such purposive and liberal construction and interpretation as will best ensure the attainment of its objects.”

[54] Learned Counsel for the Claimant Mr. Wilkin argued that the Court must give legal meaning to the words “purposive” and “liberal” and referred to the locus classicus decision in Pepper vs Hart¹¹ where Bridge J stated as follows:

“The days have long passed when the Courts adopted a strict constructionist view of interpretation which required them to adopt the literal meaning of the language. The Courts

¹⁰ SLUHCV2013/0001

¹¹ [1993] 1 A11ER 42-50

now adopt a purposive approach which seeks to give effect to the true purpose of legislation and are prepared to look at much extraneous material that bears on the background against which the legislation was enacted.”

[55] The word “liberal” according to Mr. Wilkin as defined by the Oxford Dictionary an approach as “one broadly construed or understood; not strictly literal.”

[56] In the case of the **DPP vs Schildkamp**¹², Lord Upjohn articulated that; “The task of the Court is to ascertain the intention of Parliament; one cannot look at a section, still less a subsection in isolation, to ascertain that intention, one must look at the admissible surrounding circumstances before starting to construe the Act.”

[57] I am of the respectful view that to interpret the **Nevis Physical Planning and Development Control Ordinance** in the way that learned Counsel for the Respondents suggest would defeat the purposes of Section 47 of the said Ordinance, and import absurdity into the objectives of the Ordinance that is contrary to its expressed language.

[58] At Section 3 of the Ordinance it provides inter alia that;

- 1) “**The objects of this ordinance** are to;
 - a) Ensure that appropriate and sustainable use is made of all publicly owned and privately owned land in Nevis in the public interest.
 - b) Provide for physical planning and development control processes that are fair, open, accessible, timely and efficient....”

[59] The Director of Physical Planning in his oral testimony referred the Court to a document which he stated was “the Physical Planning Register” which is completed by his Department and where certain particulars are inserted from the Application submitted by an applicant.

¹² [1969] 3 AllER 1640

It is a one page document with the bare essentials of Information, and to accord Section 47 the meaning urged by Learned Counsel for the Respondents and the Director of Physical Planning would yield absurd results and would run counter to the clear intention of Parliament. If Ms. Nisbett-Brown is correct, it would mean that documents forming the application for planning permission and for which the public would have access to would be restricted to the following:

1. The Name of the Applicant
2. Proposed Development with limited description
3. Date of Application
4. Address of Applicant
5. Approval date
6. Appeal date
7. Notice of Revocation
8. Enforcement Notice
9. Stop Notice
10. Commencement Notice
11. Completion Certificate
12. Related application

[60] In my respectful view it could not be in the interests of Justice to give the section such a rigid interpretation which would possibly yield to absurdity and which would be contrary to the intention of the Legislature.

It is pellucidly clear to the Court that a purposive approach as envisaged by Section 3 (2) of the Ordinance must be given to the interpretation of Section 47.

I am fortified in this view, since there is nothing in the scheme of the legislation that will support the Court giving such a narrow and restrictive Interpretation.

In summary, the Court is of the considered view that the case at Bar requires the application of the Golden rule of Interpretation. If this Court was to apply the austere interpretation to the section that learned counsel for the Respondents has submitted it would yield results that are repugnant to both the intention of the Parliament and to common sense.

[61] Consequently and for the sake of completeness and emphasis, I reiterate that Section 47 of the **Nevis Physical Planning and Development Ordinance** must be construed in the context of and with reference to the other clauses or sections of the Ordinance.

On that basis I am persuaded that the meaning and intention of the Legislature was to allow public access to the Register containing all the Physical plans and documentation on which an application for permission to develop land was made. Further the section contemplated that access to the said documents were to be made free of charge and to take copies of such information on payment of the prescribed fee.

Issue No. 2

[62] Did the Director of Physical Planning breach Section 47 of the **Physical Planning and Development Ordinance** by his actions?

[63] The Ag. Director of Physical Planning Mr. Joel Williams in his testimony stated as follows:
“The Register is a documentation of all the development applications as received by the Department of Physical Planning. The procedure includes taking the information from the application and recording the particulars as it relates to Section 47... I do not allow members of the public to take documents for photocopying; I do not allow persons to come in to take copies of the actual physical plans; In some cases where it is the owner of the

plan that is requesting it, it may be allowed. At the Department, we process many plans which include residential plans. Most people consider their home private, so information in these plans can be deemed as private in many instances, and in this regard, we are very cautious in terms of letting the public view the specific information relating to that plan.”

Under Cross-examination by learned Counsel Mr. Garth Wilkin, Mr. Williams stated that there are certain particulars of an application that are recorded in log books. The particulars that are recorded in a book would contain the “name and address of the Applicant, the location of the project, how many storeys, the certification date and would be signed by the Applicant. The log book is the Register, and the documents contain all the information relating to Section 47. The Register is in the form of a record keeping book and I understand that other particulars must be added to comply with Section 47 of the Ordinance.”

[64] Mr. Williams also stated in his evidence under cross-examination that “It is not mandated by the Ordinance for the public to see the physical plans, and the reason for not allowing access to the public is because certain documents are private. **It is in my discretion to allow parties to see plans once we get to approval stage.**” (My emphasis)

[65] The question before this Court is therefore whether any power, authority or discretion was vested in the Director of Physical Planning in deciding whether the general public should have access to particulars of any application for permission to develop land pursuant to Section 47 of the Ordinance.

[66] After reviewing the evidence of the Director of Physical Planning and his subordinate staff. I have no doubt that the actions of the Director of Physical Planning severely diminished the value of the access that was given to the public by the Legislature to view and take copies of the Information on any application for permission to develop land.

[67] In the circumstances I accept the submissions of learned Counsel Mr. Garth Wilkin and adopt a purposive approach which seeks to give effect to the true purpose of the legislation and further hold that the Director of Physical Planning's decision to restrict public access to information regarding Applications for development purposes is unlawful and illegal and in breach of Section 47 of the **Nevis Physical Planning and Development Control Ordinance**. Mr. Williams has acted ultra vires and reached a conclusion on an erroneous basis and interpretation of the Law.

Conclusion

[68] For the reasons already stated I hereby grant:

- a) An Order of certiorari to remove into the High Court and to quash the actions, omissions and decisions of the Defendant made in or about January to May 2016 to deny the Claimant access to information recorded in the Department of Physical Planning register related to the HRTIP Candy Resort Villa Development.
- b) A Declaration that the Claimant is entitled by virtue of Section 47 (5) of the Nevis Physical Planning and Development Control Ordinance Cap 6.09(N) to be granted during ordinary business hours, access to all information in the registers required to be kept by the Defendant pursuant to Section 47 (5).
- c) An Order of mandamus to compel the Defendant to provide access to the Claimant or any of her agents to all information recorded in the Department of Physical Planning register related to the HTRIP Candy Resort Villa Development and to allow the Claimant to take copies of such information on payment of the prescribed fee.

- d) A Declaration that the Register as contemplated by Section 47 (1) of the Nevis Physical Planning and Development Control Ordinance are documents including but not limited to
- i. The actual application made for planning permission
 - ii. The plans of the project
 - iii. Any amendments or revisions to the Application
 - iv. Related applications
 - v. Environmental Impact Assessments amended thereto or supplemental Environmental Impact Assessments.
 - vi. Any Notices issued and all relevant documents in relation to that particular application for Development
- e) A Declaration that the actions of the Director of Physical Planning whereby he exercises his own discretion in not allowing the members of the public to view and take copies of documents forming an application for development of land are unlawful.
- f) An Order that the Director of Physical Planning take all lawful measures to be in compliance with Section 47 of the **Nevis Physical Planning and Development Control Ordinance Cap 6.09(N)**.

[69] This is a matter of Public Law and the practice is and has been that each party will bear its own costs. Therefore I make no order as to costs.

[70] I thank Counsels on both sides for their helpful submissions and enlightening arguments.

Lorraine Williams

High Court Judge.