

**BARBADOS**

**IN THE SUPREME COURT OF JUDICATURE**

**HIGH COURT**

**CIVIL DIVISION**

**Civil Suit No: 201 of 2016**

**IN THE MATTER of the Administrative Justice Act, Cap. 109B of the Laws of Barbados, the Supreme Court of Judicature Act, Cap. 117A of the Laws of Barbados, the Town and Country Planning Act, Cap. 240 of the Laws of Barbados and the Rules of the Supreme Court (Civil Procedure) 2008**

**AND IN THE MATTER of the CONSTITUTION of Barbados**

**AND IN THE MATTER of an application for an order of Certiorari**

**AND IN THE MATTER of an application for an order of Mandamus**

**AND IN THE MATTER of an application for an order of Prohibition**

**AND IN THE MATTER of an application for Injunctive Relief**

**AND IN THE MATTER of an application for Declarations**

**BETWEEN**

**EMILE PETER ELIAS**

**APPLICANT**

**AND**

**THE CHIEF TOWN PLANNER  
THE ATTORNEY GENERAL**

**FIRST RESPONDENT  
SECOND RESPONDENT**

*Before The Honourable Madam Justice Pamela Beckles, Judge of the High Court*

**2017: March 03**

**2018: August 31**

**Appearances:**

**Mr. Ebrahim Lakhi, Attorney-at-law for the Applicant**

**Ms. Deidre Gay-McKenna, Attorney-at-law for the Respondents**

## **DECISION**

### **Introduction**

[1] The First and Second Respondent filed an application, supported by an affidavit in support on the 4<sup>th</sup> August, 2016 for an order striking them out as parties to these proceedings. The grounds of the application to strike out the claim were stated therein as follows:

- “1. The Applicant’s statement of case filed on the 18<sup>th</sup> day of February, 2016 discloses no reasonable ground for bringing a claim against the First and Second Respondents; and
2. The First and Second Respondents are not proper parties to these proceedings.”

[2] The Applicant contends that the grounds of his application are in accordance with **section 4** of the Administration of Justice Act, Cap. 109B (the AJA), which lists the grounds on which the court may grant relief by way of remedies, mentioned in the AJA.

### **Factual Background**

- [3] Before dealing with the current application, it is necessary to provide the background to the substantive application which is for certain court orders pursuant to Rule 56.3 of the Civil Procedure Rules (2008) (the CPR).
- [4] The application was filed on February 18, 2016 and concerns inter alia “the expansion, development, demolition and/or construction on lands in or around Andrews Plantations, St. Joseph, under which currently is or previously was the sugar factory, known as Andrews Sugar Factory together with adjacent and surrounding lands acquired or reserved for the expansion, development, demolition and construction of a sugar factory.” It is the Applicant’s contention that the lands referred to above will be developed into a multipurpose industrial estate (the Andrews Project) in or around the current location of the Andrews Factory and all such lands will be acquired or reserved for the same.
- [5] The Applicant who is the owner of the fee simple absolute in possession of the property known as “Andrew Great House” is of the view that the First Respondent is not in receipt of an application for permission to develop lands in relation to the Andrews Project but received an application for the subdivision of land from other lands of

- Andrews Plantation to be added to adjoining lands for industrial purposes.
- [6] The Applicant believes that the Andrews Project will fundamentally affect his property as well as property of other residents in neighbouring areas. He noted that the properties will be affected by an increase in traffic and that the water supply and air quality will be affected as well thereby affecting the overall health and well-being of the residents.
- [7] It is also the Applicant's position that there were no formal public meetings of the Andrews Project and further, no information was disseminated to the public regarding the same.
- [8] The Applicant is of the view that he had a legitimate expectation that certain procedures would have been completed prior to the granting of permission for the Andrews Project but so far none of these procedures have been complied with.
- [9] The Applicant noted that the development of the afore-mentioned lands is contrary to the Town and Country Planning Act, Cap. 240 and the First Respondent has failed to issue and serve an enforcement Notice in spite of a letter written by him asking that such notice be issued. Further, no permission to commence work on the Andrews Project

was issued by the First Respondent and if any was granted without his knowledge it would be ultra vires as it would have been issued without the completion of an Environmental Impact Assessment and Social Assessment and/or affording him a full opportunity to be heard.

[10] The First and Second Respondents however contends that there is no act or omission on their part with respect to the matters complained of and therefore they are resisting the application. It is their view that they are not the entity responsible for granting applications for the sub- development of land and neither do they have any authority to grant or deny any application for planning permission or development permission for agricultural land over the size of two acres. They have not purported to exercise any power or statutory duty conferred or imposed upon them, neither have they failed to exercise any power or statutory duty conferred or imposed upon them.

[11] It is the contention of the Respondents that pursuant to **section 9** of the Town and Country Planning Act, Cap. 240 only the Minister responsible for Town Planning can grant an application for planning or development permission for agricultural land over two acres. The First and Second Respondents are of the view that the Minister responsible for Town and Country Planning permission should be the

entity named as a party to these proceedings, and not either of them and hence the reason for this current application.

**Issue(s)**

- [12] The issues to be determined are whether the First and Second Respondents are proper parties to the proceedings and if not whether they should be struck out as parties.

**The Law**

- [13] The courts will invariably strike out a claim where it is clear that the wrong party or parties are before the court, for the simple reason, that the claim would have no real likelihood of succeeding. This should be done at the earliest opportunity if the objectives of the CPR, that is, to deal with matters expeditiously and to save costs and time are to be adhered to.
- [14] It is therefore necessary to determine at this stage whether the First and Second Respondents are proper parties to these proceedings or whether they should be struck out.
- [15] The substantive matter before the court concerns an application submitted to the Town and Country Planning office for a sub-division of lands from other lands of Andrews Plantation in the parish of St. Joseph to be added to adjoining lands for industrial purposes,

being the extension to and renovation of an existing factory and erection of ancillary buildings.

[16] I do not think that it can be disputed that the First Respondent, the Chief Town Planner (the CTP) is the statutory functionary who by virtue of the Town and Planning Act, Cap 240 has responsibility for planning control and enforcement matters and that the statutory provisions which governs applications for planning permission are contained in this primary act, that is, the Town and Country Planning Act and the subsidiary provisions found in the Town and Country Planning Regulations 1972 and the Town and Country Planning Development Order 1972. These pieces of legislation govern and provide the framework under which town planning matters in general, are assessed.

[17] It is also correct to say that pursuant to **section 9** of the Act, the Minister responsible for Town Planning exercises significant authority with respect to the granting of applications for planning or development permission for agricultural land (over two acres).

[18] The Applicant has not sought to add the Minister responsible for Town Planning as a Respondent in these proceedings. However since it is at the beginning stage of litigation the court is of the view that

“the ends of justice would be better served and the court’s resources more efficiently utilized if all of the parties to the dispute are before the court so that its decision will bind all of them.” – *Commonwealth Caribbean Civil Procedure, 3<sup>rd</sup> ed., page 41.*

[19] The court does not agree with counsel for the Respondents’ submission that the Chief Town Planner is not a proper party to these proceedings – the very nature of the applications before the court makes it imperative for the Chief Town Planner to remain a party to these proceedings and for the appropriate application to be made by counsel for the Claimant to add the Minister responsible for Town Planning as soon as practicable as a party to these proceedings. It is the court’s opinion that these parties are critical to the determination of the triable issues in the substantive application, in other words the retention of the Chief Town Planner as a party to these proceedings and the addition of the Minister responsible for Town Planning upon the appropriate application as a party to the proceedings is necessary to facilitate the resolution of all matters in dispute in this case, more specifically those matters set out in the application of the Claimant filed on February 18, 2016.

[20] The matters concern declarations and orders against the Chief Town Planner and the Minister responsible for Town Planning (even though he has not been added as a party to the proceedings) and are in respect of actions and/or omissions of these parties who are very capable of being sued in their own right.

[21] I am of the opinion that the First Respondent is a correct party to be subject to these proceedings and that the appropriate application should be made by counsel for the Claimant to join the Minister responsible for Town Planning as a party to these proceedings.

[22] The issue is more difficult when it comes to determining whether or not the Attorney General is a proper party to these proceedings and whether or not he should remain as a party or be struck out as a party. In spite of the numerous decisions both for and against joining the Attorney General as a party to the proceedings especially where he is not responsible for any act or omission within **section 2** of the Administration of Justice Act, there is no clear cut resolution and the court must exercise its discretion based on the particular case before it.

[23] A thorough perusal of the Claimant's pleadings does not even mention the Second Respondent, the Attorney General. Nowhere in the

pleadings has it been suggested that the Second Respondent has exercised or failed to exercise any power or duty conferred upon him by statute. Rather throughout the pleadings there is reference to the First Respondent, the Chief Town Planning and the Minister responsible for Town Planning which suggests that they have not exercised or have failed to exercise certain powers or statutory duties conferred or imposed on them. Even the relief sought as set out relates to either actions or failures in respect of the First Respondent and the Minister responsible for Town Planning.

[24] So that in cases where the Attorney General was considered to be a proper party to the proceedings, the court found that where the act or omission is that of the Governor-General, it would be appropriate in the circumstances to add the Attorney General. This is in keeping with the decision of *Hochoy Nuge [1964] 7 W.I.R. 174 and others*, which established that the Attorney General was “the party to be sued when the Governor-General performed an act of state that was the subject of an action for judicial review.”

[25] The practice in *Hochoy (supra)* was upheld in the case of *Williams Construction v. Blackman (1989) 41 W.I.R.* – this case seems to suggest that if no prejudice is likely to result, the Attorney General

should be a party to the proceedings. **Williams, CJ.** stated the following at page 46:

“As to the naming of the Attorney General as a Defendant I see no prejudice as likely to result from adopting this procedure which is in keeping with the approach of Wooding CJ and Hyatali JA in *Hochoy v. Nuge* moreover the affidavits disclose that the Attorney General is a member of the Cabinet.”

[26] Also in *Shazar V. Distributors Inc. v. the Attorney General et al BB 2006 HC 13 Kentish J.* in determining a similar application, dismissed the application to strike out the Attorney General as a party to the proceedings noting that it was a well-established practice in this jurisdiction to name the Attorney General as a party to judicial review proceedings.

[27] Similarly in *Mount Six Mens Company Limited v. The Chief Town Planner HC 274 of 1999* (delivered June 26, 2003), the court found the Applicant to be seeking a declaratory judgment against the crown and invoking the principles espoused in *Dyson v. Attorney General* found it proper to allow the Attorney General to continue as a party to the proceedings.

[28] However, where the court struck out the Attorney General as a party to the proceedings, the court considered whether the Attorney General exercised or failed to exercise any power conferred on him by statute.

In Steve Straughn v. The Judicial and Legal Services Commission and The Attorney General No. 1140 of 2010, a judicial review matter, the court followed the learning in I.D.M. Direct Marketing Corporation v. The Attorney General et al No. 1188 of 1996 and found that in the circumstances, no power was conferred on the Attorney General under the respective statutory enactment referred to in the pleadings and submissions and concluded that there was no act or omission that he would have exercised or failed to exercise. **Worrell J.** noted that these proceedings were different from ordinary civil proceedings against the crown under **section 18** of the Crown Proceedings Act where the Attorney General must be made a Respondent in such proceedings against the crown. See also **Reifer J.** in Paul Lewis v. the Attorney General of Barbados et al HC 1206 of 2016.

[29] The courts have therefore held that in circumstances where there is no separate representation of the parties since the Attorney General is representing both parties, there will be no prejudice or injustice to the Attorney General as a party to the proceedings.

[30] In the case at bar the court finds that in considering the circumstances of this case, and bearing in mind the overriding objectives of the CPR, namely in determining the proper parties and/or who has a sufficient

interest to be heard, in addition to saving expense and disposing of matters expeditiously, that there are insufficient reasons for exercising its discretion in favour of allowing the Attorney General to remain as a party to the action.

**Disposal**

- [31] After a review of the submissions and the authorities the court is of the view that this case concerns declarations and orders against the Chief Town Planner and the Minister responsible for Town Planning. It is therefore the opinion of the court that the correct parties to this action ought to be the said Chief Town Planner and the Minister responsible for Town Planning. The Minister responsible for Town Planning should therefore be added as a party to the action.
- [32] From the pleadings in this matter there is nothing to suggest that the Attorney General has exercised or failed to exercise any power conferred on him by any statute.
- [33] If allowed to remain as a party to these proceedings, the Attorney General would be forced to acknowledge and defend an application where it is clear from the pleadings that he has no role to play as it relates to the application before the court. Therefore since the parties are at the beginning of these proceedings it is the opinion of the court

that the Attorney General is not a proper party to the proceedings and therefore the application to strike out the Attorney General as a party to these proceeding is allowed.

**PAMELA A. BECKLES**  
Judge of the High Court