

BARBADOS

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

CIVIL DIVISION

CV No.336 of 2017

BETWEEN:

ACCRA BEACH HOTEL LTD

FIRST CLAIMANT

KENNETH CHARLES

SECOND CLAIMANT

AND

**THE REGISTRAR OF THE
CORPORATE AFFAIRS AND
INTELLECTUAL PROPERTY OFFICE**

DEFENDANT

**Before Dr. The Honourable Madam Justice Sonia L. Richards, Judge of the
High Court**

2017: May 31, Written submissions filed by Defendant

July 14, Written submissions filed by Claimant

2018: June 01

**Mr. Khamaal A. Collymore, Attorney-at-Law of George Walton Payne & Co.
for the Claimants.**

**Ms. Anika N. Jackson, Attorney-at-Law of the Attorney-General's Chambers
for the Defendant.**

DECISION

Introduction

[1] The Claimants have brought judicial review proceedings challenging the
legality of a decision made by the Defendant to impose a non-statutory

precondition to the registration of a business name. The parties agreed that the Court may prepare and deliver this decision based on the pleadings and the written submissions.

Background

- [2] The First Claimant is a company incorporated in Barbados, with its principal place of business at Rockley, Christ Church. The Second Claimant is an individual and a director of the First Claimant.
- [3] On 07 October 2016, counsel for the Claimants submitted an application to register “The Abidah by Accra” as a business name. Subsequently, counsel received an oral request for information additional to that submitted on the statutory form. This additional information was with respect to the immigration status of the Second Claimant.
- [4] By letter dated 17 October 2016, counsel for the Claimants advised the Defendant that the Registration of Business Names Act, Cap. 317 (“the Act”), did not require an applicant to provide information as to his status. Counsel contended that in making this request the Defendant exceeded her statutory powers.
- [5] The Deputy Registrar communicated with counsel by letter of 02 November 2016, stating:

“Please be advised that notwithstanding the representations made...this Office maintains the position taken by the Corporate Registry that the application received to register “The Abidah by Accra” under [the Act] does not in its present state satisfy the requirements for the issuance of a Certificate of Registration under Section 13 of the Act.

You are advised that based on the said Act and the Business Names Rules [“the Rules”] made thereunder together with longstanding departmental policy and practice regarding the processing of such applications, the applicant in proceeding with the application is required to address the following matters:

...

Item 6. Present Nationality

The applicant having indicated a nationality other than Barbadian is required to meet a status requirement to establish a link to this jurisdiction as evidenced by a work permit issued by our immigration officials

Item 8. Address of each Individual

The applicant is required to provide an address within Barbados”.

- [6] The Claimants submitted a revised application under cover of their counsel’s letter of 16 November 2016. However, they resisted the request for the information sought under Items 6 and 8 of the Deputy Registrar’s letter.
- [7] The Defendant responded to counsel by letter dated 09 December 2016. She

explained the continued insistence for receipt of the requested information as follows:

“I have reviewed the correspondence on file inclusive of your response to our letter of November 2, 2016 regarding the requirement for evidence of the applicant’s status and the provision of an address in Barbados as the Applicant has identified his present nationality as Trinidadian.

As you are aware, this Department is the competent Office which is responsible for all matters pertaining to Business Names and Companies within this jurisdiction, and as a Member State of CARICOM it is required, and has therefore established for several years now, administrative procedures which govern applications by CARICOM Nationals for the registration of Business Names within the CARICOM Single Market and Economy, pursuant to the Revised Treaty of Chaguaramus. These administrative procedures support the statutory requirements contained in our domestic legislation namely [the Act and the Rules], and as a member state of CARICOM, these administrative procedures have been ‘settled’ with the Prime Minister’s Office which has responsibility for matters arising under the Single Market and Economy and the Immigration Department respectively.

In the present application for registration [the Second Claimant] has given his present nationality as Trinidadian and his address as.... Trinidad, West Indies. As a CARICOM National he is required to comply with the following where applicable:

- If he has permanent resident or immigrant status he is required to produce a valid passport with the appropriate stamp or a letter/Certificate issued by the Chief Immigration Officer, showing evidence of his status in Barbados together with a recognized form of identification.
- If he is registered as a CARICOM Skilled National, then he is required to submit a valid passport with the appropriate stamp.
- In the event that his passport has not been endorsed it must be accompanied by a letter of approval from the Chief Immigration Officer verifying his status.
- Where however he is a visitor to Barbados and has not been prohibited from employment, he is required to have a valid passport with permission to reside in Barbados for a minimum of six (6) months from the date of the application for registration of the Business Name.

As for the requirement of the Applicant to provide an address in Barbados you would no doubt agree that it makes good sense [for] the owner of a business who is not a national of Barbados and whose intention is to conduct business in this jurisdiction to have an address in Barbados”.

The Claimants’ Case

[8] The Claimants were not persuaded to the Defendant’s view. They filed a fixed date claim form, together with the affidavit of the Second Claimant, on 07 March 2017. The remedies sought are:

1. a declaration that the Defendant's request to know the status of the Second Claimant as a precondition to registering the business name is contrary to law and in excess of the jurisdiction conferred on the Defendant by the Act;
2. a declaration that the said request to know the status of the Second Claimant was unreasonable, irregular or an improper exercise of jurisdiction;
3. a declaration that the said request to know the status of the Second Claimant evinces the Defendant taking into account irrelevant considerations in determining whether to register the business name;
4. a declaration that the refusal to register the business name was an omission by the Defendant to perform her duty to register the business name in accordance with the Act;
5. an order of mandamus directing the Defendant to immediately register the business name in accordance with the Act;
6. damages;
7. interests;
8. costs; and
9. such further or other relief as the Court deems fit.

[9] The grounds on which relief is sought are that the administrative action complained of:

1. was unauthorized by and contrary to the Act;
2. was in excess of the Defendant's jurisdiction;
3. was an unreasonable, irregular or improper exercise of discretion;
4. constituted the Defendant taking irrelevant considerations into account;

and

5. is an omission by the Defendant to perform her duty to register the business name in accordance with the Act.

The Defendant's Response

[10] The Defendant filed her affidavit in response on 22 May 2017. In that affidavit the Defendant did not contest the factual background to the dispute between the parties (See para.7 of affidavit). However, she denied that her refusal to register the business name was arbitrary and unlawful.

[11] The Defendant deposed that:

“8.The relevant legislative provisions for the processing of applications for the registration of business names are set out in the requisite laws of Barbados. However, as a Member State of [CARICOM, the Corporate Affairs and Intellectual property Office [“CAIPO”]] has adopted settled guidelines or best practices in relation to the processing of applications amongst Member States in pursuance of the Right of Establishment under

the CARICOM Single Market and Economy (hereinafter referred to as “CSME”) and in accordance with the Revised Treaty of Chaguaramus (hereinafter referred to as the “RTC”).

9....Barbados being a Member State of CARICOM, and CAIPO the competent authority in this jurisdiction for matters pertaining to the registration of business names and companies, has instituted administrative guidelines or best practices which govern the processing of applications for the registration of business names for CARICOM nationals. These guidelines or best practices were developed in consultation with the Immigration Department and address the circumstances which are generally applicable to CARICOM nationals. Applicants from CARICOM Member States are required to comply with these requirements which relate to immigration clearance and the documents for presentation at the Companies Registry. These requirements were drawn to the attention of the Claimants’ Attorney-at-Law by letter dated December 9, 2016....

10.....CAIPO is the Barbados Government’s principal office with statutory authority for the registration, general administration and regulation of business activities within this jurisdiction. Given the nature, conduct and scope of any business activities where an applicant is seeking to register a business and therefore in so doing carrying out business activities within this jurisdiction; the issue of the applicant’s immigrant status must be satisfied in instances where the applicant is a non-national and is resident outside of this jurisdiction.

11....whereas the requisite laws of Barbados set out the requirements for the registration of the

business names, given the implications for the operation of any business in this jurisdiction, it is clearly in line with best practices, in circumstances such as in the present case, where an applicant has indicated that he is a non-national and states an address that is outside of this jurisdiction, for CAIPO to request that applicant to provide details of his link to this jurisdiction; namely immigrant status as well as an address within this jurisdiction.

12...in accordance with the requisite laws of Barbados [the Defendant] may require any applicant to provide such particulars as deemed necessary for the purpose of ascertaining whether an application for registration is in order. Further, it is well established that where any person or authority is empowered to carry out any act all such powers are deemed to be also given as are reasonably necessary to enable that person or authority to carry out that act.

13...it is therefore within the scope of [the Defendant] to inquire into the status and any other particulars as appear necessary for the purpose of determining whether an application is in order. The request for the provision of evidence of the Second Claimant's immigration status is neither unreasonable, irregular or an improper exercise of [the Defendant's] discretion. Similarly, the request for the provision of such information prior to the grant of permission for the commencement of business operations in this jurisdiction is not an irrelevant consideration.

14....it has been CAIPO's established departmental policy since in or about the year 2002, as devised by [the Defendant], in the interest of the protection of the office and in the interest of good governance and business efficacy, to require the

provision of information relating to the status of an applicant seeking to set up business operations in this island, where an applicant is a non-national”.

- [12] The Defendant has conceded that her refusal to register the business name was not because of the failure of the Claimants to fulfill all the statutory requirements of the Act. The Defendant considers that it was lawful for her to impose non-statutory criteria arising out of Barbados’ treaty obligations under the Revised Treaty of Chaguaramus. To this end CAIPO developed policy guidelines for determining the conditions under which CARICOM nationals would be permitted to register a business name in Barbados.
- [13] The request for the Second Claimant to provide information pertaining to his immigration status was made in keeping with CAIPO’s policy guidelines. However, according to the Defendant’s correspondence of 09 December 2016, the requirement for a Barbados address is based on “good sense”, and not on the policy guidelines.
- [14] It was submitted on behalf of the Defendant that Section 12 (1) of the Act permitted her to request such particulars from the Claimants as were necessary to ascertain whether the business name should be registered. Reliance was placed also on Section 3 (2) of CAIPO’s governing legislation, Cap.21A. The argument was that the policy guidelines were the basis of the request for particulars, and so authorized by Section 12 (1).

[15] Additionally, counsel for the Defendant contended that Section 19 (3) of the Interpretation Act (“Cap.1”), conferred on the Defendant powers that were reasonably incidental to her express powers under the Act. In this regard, the policy guidelines were developed in the Defendant’s exercise of a power ancillary to her statutory authority to register business names. Counsel relied on **Tomlinson v. State of Belize et al [2016] CCJ 1 (OJ)**, and on Lord Denning’s dicta in **Sagnata Ltd. v. Norwich Corporation [1971] 2 QB 614** at 626.

The Claimants’ Submissions

[16] The Claimants argue that there is no provision in the Act that mandates them to provide information about the immigration status of the Second Claimant. Although the Act permits the Defendant to request particulars, such particulars must relate to the exhaustive list of statutory particulars. Any request made by the Defendant for additional particulars must be limited to the particulars itemized in the Act. Therefore, the Second Claimant’s status was an irrelevant consideration.

[17] Counsel for the Claimants proffered that the question of immigration status was the sole province of the Minister responsible for immigration under the Immigration Act. The Defendant has no jurisdiction, power or authority to enforce the immigration legislation. And there is nothing in the Act that

authorizes the Defendant to regulate the conduct of a business by a person who has no immigration status in Barbados.

[18] With respect to the policy guidelines, the Claimants contend that at the community level there is no requirement for a CARICOM national, who wishes to register a business name in a country other than his own, to provide his status information as a condition precedent to registration. The **Tomlinson** case did not assist the Defendant, as she is not an organ or functionary of CARICOM. Her powers are limited to those conferred on her by domestic law. According to **Shanique Myrie v. The State of Barbados [2013] CCJ3 (OJ)**, decisions taken at treaty level must be incorporated into domestic law to be enforceable within a state. Therefore, the policy guidelines were unlawful as they were not part of the domestic law. Neither did the Defendant have the power to make such law.

[19] Finally, counsel for the Claimant was of the view that in so far as the Defendant relied on the **Sagnata** case, the policy guidelines were neither reasonable, fair nor just. The Defendant had not considered the merits of the Claimant's application, but had applied the policy guideline *carte blanche*.

The Statutory Framework for Registration

- [20] The legislation regulating the registration of business names was enacted in May 1940, and has remained on the statute books for three quarters of a century with few amendments. The Act is described in its long title as “An Act to provide for the registration of firms and persons carrying on business under business names and for related matters”.
- [21] Except for a minor amendment, there was no discussion surrounding the ethos of the original legislation in the House of Assembly. (See Minutes of the Assembly Meeting of 23 April 1940). Passage through the Legislative Council was similarly uneventful. However, the then Colonial Secretary revealed a continuing “evil” that the legislation was intended to prevent. He referred to:-

“...the existence of certain firms and individuals carrying on business as traders of one kind or another under fictitious names or, at least, under names that did not convey any true indication of the real name or names of the owners of the business. One result of this practice was that, it occasionally happened, when payments were due from such traders that the persons responsible - the actual offenders who had in-vented these various trade names which were not truly descriptive of themselves or of the businesses they conducted, could not be traced.” (See Legislative Council Debates 1940, 16 April 1940 at p.34).

[22] Section 3 of the Act refers to the individuals or entities required to register their business name. This section provides in part that:

“Subject to this Act

(a) every firm having a place of business in Barbados and carrying on business under a business name which does not consist of the true surnames of all partners who are individuals and the corporate names of all partners who are corporations without any additions other than the true christian names of individual partners or initials of such christian names;

(b) every individual having a place of business in Barbados and carrying on business under a business name which does not consist of his true surname without any addition other than his true christian name or the initials thereof;
.....

shall be registered in the manner directed by this Act.....”.

[23] Only firms (partnerships) or individuals may register a business name under the Act. In fact “firm” is defined as meaning:

“an unincorporated body of one or more individuals and one or more corporations ...who have entered into a partnership with one another with a view to carrying on business for profit”. (See S.2 (1) of Act).

[24] The Claimants applied together on the same form as a company and an individual. The obvious inference is that they are in a partnership with a view to carrying on the business, which is to bear the business name, for a profit.

The assumption then is that the business name is required to be registered because it does not comprise the corporate name of the First Claimant and the name of the Second Claimant.

[25] Section 3A of the Act provides for the business names that are prohibited. And Section 3B sets out five conditions under which the Registrar may refuse to register a business name. These sections were added to the Act in 2015. (By Act No.1 of 2015). Neither of these sections have any direct bearing on the Claimant's application. (See para. [47] *infra*).

[26] An application to register a business name reaches the Defendant by way of "a statement in writing in the prescribed form". (S. 5(1)). This section also lists the particulars to be included on the forms as follows:

- “(a) the business name;
- (b) the general nature of the business;
- (c) the principal place of business;
- (d) where the registration to be effected is that of a firm, the present christian name or surname, the nationality and, if that nationality is not the nationality of origin, the nationality of origin, the usual residence and the other business occupation (if any) of each of the individuals who are partners and the corporate name and registered or principal office of every corporation which is a partner;

- (e) where the registration to be effected is that of an individual, the present christian name or surname, the nationality and, if that nationality is not the nationality of origin, the usual residence and other business occupation (if any) of such individual;
- (f) where the registration to be effected is that of a corporation, its corporate name and registered or principal office; and
- (g) if the business is commenced after [03 May, 1940] the date of commencement of the business”.

[27] The abovementioned particulars to some extent appear on Form 1 of the prescribed forms found in the Appendix to the Business Name Rules, 1940 (“the Rules”). (See S.18 (a) of the Act, and R.11 of the Rules). Included in Form 1 to the Rules is a category for “Registered Office of Business (if any)”. But according to Section 5 (1) (d) and (e), it is the registered or principal office of a company that is required, not just the registered office of the business. Another confusing aspect of Section 5 (1) is that although Section 3 limits the registration of business names to firms or individuals, Section 5(1) (f) appears to add another category i.e. the registration of a corporation.

[28] Both applications filed by the Claimants use Form 1. There is no category in those applications for the registered office of the business. It may be that this form was adapted and varied as permitted by the Rules. (R.11). The second

application differs from the first in that the person signing on behalf of the First Claimant stated his full name, and indicated that he was a director of the First Claimant.

[29] In the first application the Second Claimant placed “Director” under his signature. This designation was removed from the second application in compliance with the Deputy Registrar’s request that it be changed to reflect that the Second Claimant was applying as an individual. (See Item 13 of letter of 02 November 2016). The Court infers that the Second Claimant is the only individual involved in the firm.

[30] There is a requirement in Section 6 for an application by a firm to be signed by all the individuals in the partnership, and by a director or secretary of all companies in the partnership. This would explain the inclusion of the designation “Director” below the signature on behalf of the First Claimant in the second application.

[31] The Court had some difficulty in deciphering the latter part of Section 6. It appears to require a statutory declaration by a signatory for the corporate partner in the firm. No issues were raised by the Defendant vis-à-vis the application and this part of the section. Therefore the only comment here is that this Act is overdue for a radical drafting overhaul.

[32] Another relevant section is Section 7 (1). It provides that:

“The particulars required to be furnished under this Act shall be furnished within fourteen days after the firm or person commences business, or the business in respect of which registration is required, as the case may be”.

[33] Section 7 (1) concedes that the business, for which the business name is required, may begin its operations prior to the submission of the application to register the business name. Although the application must be made no later than fourteen days after the commencement of business, nothing in the Act or the Rules precludes the continuation of business operations until the business name is registered. It was possible for the Claimants to begin their enterprise, and then submit their application for registration of the business name up to fourteen days after commencement.

[34] Another section of interest in the Act is Section 12, which authorizes the Registrar to request information from persons. This section provides that:

“(1)The Registrar may require any person to furnishsuch particulars as appear necessary...for the purpose of ascertaining whether or not such person or the firm of which such person is a partner should be registered under this Act or an alternation made in the registered particulars and may also in the case of a corporation require the secretary or any other officer of a corporation performing the duties of secretary to furnish such particulars.

(2) Any such person when so required who fails to supply such particulars as it is in his power

to give or furnish shall on summary conviction be liable to imprisonmentor to a fine.... or to both such imprisonment or fine.

(3) Where from any information so furnished it appears to the Registrar that any firm or person ought to be registered under this Act or an alteration ought to be made in the registered particulars, the Registrar may require the firm or person to furnish to him the required particulars within such time as may be allowed..., but, where any default under the Act has been discovered from the information acquired under this section, no proceedings under this Act shall be taken against any person in respect of such default prior to the expiration of the time within which the firm or person is required by the Registrar under this section to furnish [the] particulars...”.

[35] The Defendant relies on Section 12 as authorisation for the request for additional information from the Claimants, so as to enforce the policy guidelines. According to this section, the purpose for the requested information is twofold. First, it allows the Defendant to ascertain whether an individual or a firm should be registered. Secondly, the Defendant is able to determine if the information, previously submitted by an already registered individual or firm, requires amendment.

[36] Section 12 facilitates the Defendant in any investigation of businesses that have not registered a business name, but may be required to do so by the Defendant. The section assists CAIPO to cast a dragnet for individuals or

firms that must register their business names under the Act. Registration of a business name may result from the Defendant's request for particulars.

[37] Whenever the Defendant invokes Section 12, a statutory discretion is being exercised. And it is trite law that statutory powers are to be exercised reasonably, in good faith, and on correct grounds. (See Wade & Forsyth "Administrative Law", 10th ed. at p.287). The question which this Court must address is whether the request for a local address and proof of immigration status, from the Second Claimant, was a lawful exercise of the Defendant's discretion.

[38] After receiving an application made in accordance with the Act, the Defendant is obliged to file the application and deliver a certificate of registration to the applicant. Section 13 enacts that:

"On receiving any statement or statutory declaration made in pursuance of this Act, the Registrar shall cause the same to be filed, and he shall send by post or deliver a certificate of the registration thereof to the firm or person registering, and the certificate or a certified copy thereof shall be kept exhibited in a conspicuous position at the principal place of business of the firm or individual....."

This section utilises the word "shall which is mandatory in its effect. (See S. 37 Interpretation Act, Cap.1).

Discussion

[39] There is no issue as to whether the Defendant's decision not to register the business name is an administrative act or omission amenable to judicial review under the Administrative Justice Act ("Cap.109B"). And the Defendant has not challenged the *locus standi* of the Claimants as persons adversely affected by an administrative act or omission pursuant to Section 6 (a) of Cap.109B.

[40] A perusal of the governing legislation does not reveal any provision which authorises the Defendant or any other authority to formulate or issue policy directions beyond the statutory guidelines. An example of legislation authorising policy is Section 5 of the Licensing Act 2003 (UK), which provides inter alia that:

“(1) Each licensing authority must in respect of each three year period –

(a) determine its policy with respect to the exercise of its licensing functions, and

(b) publish a statement of that policy (a “licensing statement”) before the beginning of the period”.

[41] The policy applied by the Defendant in this case, was not enunciated pursuant to any directions or authorizations contained in the Act. There is nothing in the Act that authorizes the Defendant to formulate or publish criteria to be

applied when deciding whether to register a business name. (See **R (Nicholds) v. Security Industry Authority [2006] EWHC 1792 (Admin)**).

The Defendant has no power under the Act to make rules to regulate the exercise of any discretion to register a business name. (See **R (Sayaniya) v. Upper Tribunal [2016] EWCA Civ.85**). Indeed, if the statutory criteria are satisfied, the Defendant has no discretion with respect to the actual registration of a business name. (See para. [38] supra).

[42] When the Defendant receives an application that conforms to the statutory requirements of the Act, she is duty bound to file the application and issue a certificate of registration. (S.13). In **R (Lumba) v. Secretary of State for the Home Department [2012] 1 AC 245**, Lord Dyson opined that:

“35. The individual has a basic public law right to have his or her case considered under whatever policy the executive sees fit to adopt provided that the adopted policy is a lawful exercise of the discretion conferred by the statute”.

[43] The Defendant relies on the discretion contained in section 12 (1) of the Act, which permits her to request information from persons so as to ascertain whether individuals or firms should register a business name. The information requested should only be in the context of the specific criteria set out in the Act for registration. The Defendant has no statutory authority to request or consider particulars pertaining either to the immigration status of

the Second Claimant, or to the local address of the Second Claimant. All that Section 5 (1) (d) of the Act requires of the Second Claimant is his nationality of origin and his usual residence. This information was provided on both application forms. Therefore, the Defendant exceeded her powers by requesting information that was not required by statute.

[44] Even if CAIPO's policy had a legislative foundation, there is no evidence that it was publicised. Elliott and Varuhas point out that:

“...the policy must be clear and accurate. Another significant requirement is that the policy be published... an individual liable to be affected by a policy should know the criteria to be applied so that he can make meaningful representations to the decision-maker before the decision is made”. (In “Administrative Law: Text and Materials”, 5th ed, Oxford Univ. Press at p. 183).

[45] In this case, the Claimants became aware of the policy after submitting the first application. The policy was explained in the Defendant's correspondence of 09 December 2016. However, nothing in her affidavit of 22 May 2017 speaks to the publication of the policy by CAIPO, although it has been in existence since 2002.

[46] In **Nzolameso v. City of Westminster [2015] UKSC 22**, there was a challenge to the lawfulness of a local authority's policy of accommodating homeless people a long way from the authority's own area of operation, where

the homeless persons were previously living. It was held that not only should the local authority have an up to date policy for procuring sufficient temporary accommodation to meet anticipated demand, but that the policy should be made publicly available. A published policy would enable persons to know what to expect, and what factors would be relevant to the authority's decision.

Additionally:

“[40]...it would enable applicants to challenge not only the lawfulness of the individual decision, but also the lawfulness of the policies themselves.

[41] Indeed, it would also enable a general challenge to those policies to be brought by judicial review”. (Per Lady Hale).

[47] The only statutory authority under which the Defendant is permitted to refuse to register a business name is found in Sections 3B and 16(1) of the Act. There is no allegation by the Defendant that the Claimants were attempting to register a business name that:

- (1) is deceptively inaccurate in describing the business, goods or services in association with which it is proposed to be used (S.3B (a));
- (2) is likely to be confusing with that of a company that was dissolved (S.3B (b));

- (3) contains the words “credit union”, “cooperative”, or “co-op”, when it connotes a co-operative venture (S.3B (c));
- (4) is for any reason offensive to the name or reputation of an individual, company or institution (S.3B (d));
- (5) is a registered trademark or resembles that mark (S.3B (e)); or
- (6) contains any word calculated to imply that the business is owned or controlled by Commonwealth citizens (S.16 (1)).

[48] The Rules contemplate a special procedure when the Defendant refuses to register a business name under Section 16(1). (See Rules 4 to 8). However, these Rules were not extended to a refusal under Section 3B. Even without the application of the Rules to Section 3B, the rules of natural justice should inform the Defendant’s deliberations.

[49] The Defendant prayed in aid Barbados’ obligations as a CARICOM member state. She also invoked settled administrative guidelines and best practices in relation to the processing of applications amongst Member States in pursuance of the Right of Establishment under the CSME and the RTC. However, no specific article of the Treaty was brought to the Court’s attention. And no domestic legislation was shown to support the policy initiatives.

[50] The First Claimant is a company already operating in Barbados. With respect to the Second Claimant, the Act does not require him to have any immigration

status or local address in Barbados. The Act is not concerned with the actual operation of the firm, and in no way confers on the Defendant any powers as an agent of the immigration department.

[51] This Court need look no further than a very recent decision of the Caribbean Court of Justice (“the CCJ”). In **Ventose v. Chief Electoral Officer [2018] CCJ 13 (AJ)**, the CCJ held that the longstanding policy of the Electoral and Boundaries Commission, in relation to Commonwealth citizens, to register as electors only those persons who are Barbadian citizens, permanent residents or holders of immigrant status, is unlawful and ultra vires (para. [39] vi). The Court lauded counsel for the Respondent for conceding this point, and commented that:

“[28]....This was an important and wise concession because there is a wider and more important principle at stake here beyond the right of resident Commonwealth citizens to vote at general elections in Barbados. That principle is one that was long fought over in England and which was finally settled as long ago as the Glorious Revolution of 1688-1689. It is that the Crown or the Executive Authority is subordinate to Parliament; that Acts of Parliament must be obeyed by the Executive Authority. This is a fundamental aspect of the rule of law which is at the core of Barbados’ constitutionalism. Neither the Executive Authority nor the Electoral Officer is entitled with impunity to establish or implement a policy that is at variance with the Constitution and laws of Barbados. To the extent that this is what is precisely

being advanced here, the court must resolutely set its face against it. If there is good reason for the claimed policy to exist, then *before* it can lawfully be implemented the Executive must seek to have Parliament alter the law. Unless the law is altered any such policy is illegal and void and the courts must say so....”.

[52] The CCJ pointed out that both the Respondent and the Court of Appeal erred in their belief that the Respondent had an implied discretion to determine a claim for registration even when the requirements under the governing statute were met. The Court was in no doubt that:

“[35]....The legal framework is very specific as to the procedure to be followed if the relevant officers are satisfied or dissatisfied with a claim. There is no discretion to add extra criteria to statutory criteria as stated by the Eastern Caribbean Court of Appeal in *George Rick James v. Ismay Spencer and Lorna Simon* where it was held unlawful to require an applicant for registration as an elector to state his occupation on the application form”.

[53] The Defendant’s request for information pertaining to the immigration status and local address of the Second Claimant was in pursuance of a policy that has no parliamentary authorisation. Unless and until Parliament enacts a statutory foundation for this policy, it is an illegal policy that attempts to impose non-statutory criteria on an applicant who wishes to register a business name. The Defendant has no discretion to add additional criteria to the

existing statutory framework. The Claimants have satisfied the statutory criteria for registration of the business name “The Abidah by Accra”.

[54] The Court questions the efficacy of a policy which seeks to impose immigration requirements on applicants. This policy may be discriminatory given the fact that firms operating in Barbados, whose business names consist of the true surnames of all individual partners together with the corporate names of all corporate partners, are not required to register the business name. (See S.3 (a) of Act). There is a similar provision for individuals carrying on business in Barbados. (S.3 (b)).

[55] The Claimants in this case could have avoided the registration process by utilising a business name comprising the corporate name of the First Claimant and the surname of the Second Claimant. In these circumstances the Defendant has no legal right to investigate the immigration status of the partners in the business. Neither does the Act permit the Defendant to investigate the immigration status of those applying for registration.

Disposal

[56] The Court orders and declares that:

- (1) The policy of the Corporate Affairs and Intellectual Property Office to require persons applying to register a business name to provide proof

of their immigration status prior to registration is unlawful and ultra vires.

- (2) The Defendant's request for the Second Claimant to provide a local address is unlawful and ultra vires.
- (3) The Claimants have satisfied the statutory requirements and are entitled to the registration of the business name "The Abidah by Accra".
- (4) On payment of any prescribed fee, the Defendant shall forthwith issue a certificate of registration to the Claimants.
- (5) Costs are awarded to the Claimants to be agreed or quantified.

Sonia L. Richards
Judge of the High Court