

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CLAIM NO: CV2018-04838

BETWEEN

TRINIDAD AND TOBAGO COPYRIGHT COLLECTION ORGANISATION

Applicant/Intended Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

First Respondent/Intended Defendant

THE CONTROLLER OF INTELLECTUAL PROPERTY OFFICE

Second Respondent/Intended Defendant

Before the Honourable Madame Justice Quinlan-Williams

Date: February 7, 2019

Appearances: Mr. Nigel Transcoso for the Applicant/Intended Claimant

Mr. Stefan Jaikaran instructed by Ms. Savitri Maharaj for the First and Second Respondents/Intended Defendants

ORAL DECISION DELIVERED ON THE 14TH JANUARY 2019 REDUCED TO WRITING

1) The Applicant/Intended Claimant Trinidad and Tobago Copyright Collection Organisation ("TTCO") is a non-profit company operating as one

of the four Collective Management Organisations (“CMO”) in Trinidad and Tobago charged with the responsibility of managing specific intellectual property rights of its member.

- 2) The Applicant/Intended Claimant avers that its portfolio covers three types of members including author/composer of original musical and literary works (“Class 1”); neighbouring rights holders (“Class 2”); and works of mas (“Class 3”). As such, TTCO monitors the use of its members’ works by broadcasters, event promoters, disc jockeys, corporate and/or government premises and entities. By virtue of assignments from Class 1, Class 2 and Class 3 members, TTCO is the owner and/or assignee of copyright and/or as the authorised collection agent in Trinidad and Tobago. TTCO is responsible inter alia, for the issuing of licences to broadcasters, event promoters, disc jockeys, corporate and/or government premises and entities.

- 3) It is the Applicant/Intended Claimant case that by virtue of the Media Release of the Respondents/Intended Defendants on the 24th January 2018 there was a steady decline in the licences being issued to broadcasters, event promoters, disc jockeys, corporate and/or government premises and entities despite being the exclusive licensee to administer Class 2 and Class 3 works. The Applicant/Intended Claimant contends that several media houses and broadcasters have been taking photos and covering works within TTCO’s repertoire without the relevant licence granting permission.

- 4) As a result, TTCO filed a notice of application on the 20th December 2018 pleading with the court for the interim reliefs and reliefs as follows:
 - i. An interim injunction pursuant to section 8(1)(b) and 8(2) of the Judicial Review Act 7:08 that the Respondents publish a media release retracting the media release dates 24th January 2018 until the hearing and determination of the Application for judicial review;

- ii. An order that the time for applying for leave to apply for Judicial Review for the decision of the Attorney General and the Controller of Intellectual Property Office to publish a media release that the event promoters bear the responsibility to determine which CMO(s) represent the copyright musical and sound recordings to be used be extended to 20th December 2018.
- iii. A declaration pursuant to section 8(1) (b) and 8(2) of the Judicial Review Act 7:08 compelling the Defendants to issue an official public statement/media release advising broadcasters, event promoters, disc jockeys corporate and/or government premises and entities, hosting any event in Trinidad and Tobago or using a premises or covering an event where soca, and/or calypso and/or chutney music or works of mas, must obtain a CMO licence from the Intended Claimant.
- iv. A declaration pursuant to section 8(1)(b) and 8(2) of the Judicial Review Act 7:08 that the Defendants' media release dated 24th January 2018, in particular the words "that event promoters bear the responsibility to determine which CMO(s) represent the copyright musical and sound recordings to be used" is deemed an abuse of power and an error of law, whether or not apparent on the face of the record an; conflict with the Copyright Act Chapter 82:02; and unreasonable, irregular or improper exercise of discretion.
- v. A declaration pursuant to section 8(1) (b) and 8(2) of the Judicial Review Act 7:08 that broadcasters, event promoters, disc jockeys corporate and/or government premises and entities, hosting an event or using a premises or covering an event where soca and/or calypso and/or chutney music or works of mas is in the programmed that the broadcasts, event promoters, disc jockeys corporate and/or government

premises and entities must obtain a CMO license from the Claimant.

- vi. An order mandamus compelling the Defendant to reissue a media release advising that broadcasters, event promoters, disc jockeys corporate and/or government premises and entities hosting an event or using a premises or covering an event where soca and/or calypso or works of mas is in the programme that the broadcasters, event promoters, disc jockeys corporate and/or government premises and entities must obtain a CMO licence from the Claimant.
- vii. An order or certiorari to bring the decision to publish a media releases that the event promoters bear the responsibility to determine which CMO(s) represent the copyright musical and sound recordings to be used null and void.
- viii. Damages.
- ix. Costs; and
- x. Such further orders, direction or writs that the Honourable Court considers just as the circumstances warrant.

The Law and Analysis

5) The Civil Proceedings Rules part 56.3(1) provides:

“(1) No application for judicial review may be made unless the court gives leave.”

The application, accorded with the requirements of the CPR. The application was for leave to apply for judicial review.

6) *Matalulu v Director of Public Prosecutions* [2003] 4 LRC 712, 733 sets out the requisite standard the Applicant/Intended Claimant’s case must meet when requesting leave for judicial review:

“It is not enough that a case is potentially arguable: an applicant cannot plead potential arguability to ‘justify the grant of leave to issue proceedings upon a speculative basis which it is hoped the interlocutory processes of the court may strengthen.’”

7) The test for granting leave for judicial review was applied at page 63 of the judgment in *Sharma v Browne-Antoine and ors.* [2007] UKPC 57:

“The ordinary rule now is that the court will refuse leave to claim judicial review unless satisfied that there is an arguable ground for judicial review having a realistic prospect of success and not subject to a discretionary bar such as delay or an alternative remedy: *R v Legal Aid Board, Ex p Hughes* (1992) 5 Admin LR 623, 628; Fordham, *Judicial Review Handbook*, 4th ed (2004), p 426. But arguability cannot be judged without reference to the nature and gravity of the issue to be argued. It is a test which is flexible in its application...”.

8) The court determined that the Media Release dated 24th January 2018 which states, in part, “Event promoters bear the responsibility to determine which CMO(s) represents the copyrighted musical works and sound recordings to be used” cannot be read alone or in isolation of the other paragraphs. When considered in totality, the Media Release was an accurate reflection of the architecture established by the Copyright Act Chapter 82:02. It correctly set out the obligations and responsibilities of the parties.

9) Further the court found, that as the Media Release stated, it was and is the duty of the event promoters to be aware of the different CMOs and it was their responsibility to obtain the necessary licences.

10) The Applicant/Intended Claimant had no realistic prospect of success in proving that the Media Release published on the 24th January 2018 was responsible for the steady decline in licences issued by TTCO.

11) The applications for interim relief and for, leave to apply for judicial review were refused.

12) The Applicant/Intended Claimant was ordered to pay the Respondents'/Intended Defendants' costs in the sum of Three Thousand Five Hundred Dollars (\$3500.00).

Justice Avason Quinlan-Williams

JRC: Romela Ramberran