

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CLAIM NO. SLUHCV 2020/0097

BETWEEN:

HENRY MOISE

Claimant

And

THE LICENSING AUTHORITY

Defendant

Before:

His Lordship, the Hon. Mr. Justice Shawn Innocent

Appearances:

Mrs. Wauneen Louis-Harris of Counsel for the Claimant

Mr. Seryhoza Cenac, Senior Crown Counsel with Ms. Rochelle John Charles,
Crown Counsel, Attorney General's Chambers of Counsel for the Defendant

Present:

Mr. Henry Moise

2022: June 27, 28;
December 1.

JUDGMENT

[1] **INNOCENT, J.:** The claimant, an omnibus operator alleged that he was the owner of a public omnibus route permit (the 'Permit') to provide transportation to the public. The claimant alleged that the Permit had been issued to him by the Licensing Authority (the 'Authority') on 8th August 2016 and was renewed on 8th August 2018 and was set to expire on 8th August 2020.

[2] According to the claimant, the Permit specified that it would be revoked or suspended by the Authority due to breach of the traffic laws and or regulations by the owner or a driver of the omnibus and for noncompliance with the conditions upon which the Permit was granted.

- [3] The claimant claimed that on 24th July 2019, he was informed by the Gros Islet Minibus Association (the 'Association') that at a meeting held with the Minister, the Minister had communicated his intention to revoke the Permit.
- [4] The claimant also alleged that his solicitor wrote to the Chief Transport Officer by letter dated 29th July 2019 indicating that there were no justifiable grounds for the revocation of the Permit.
- [5] The claimant further alleged that on 2nd August 2019 he attended at the Ministry where, upon approaching a Licensing Officer, he was directed to hand over the Permit for inspection. When the permit was handed over it was retained by the Licensing Officer.
- [6] Initially, the claimant contended that the Licensing Authority gave no reasons for the actions of the Licensing Officer. It appears that the claimant's solicitor wrote to the Chief Transport Officer by letter dated 20th January 2022. The claimant claimed that there was no response to this correspondence. However, he subsequently referred to a letter dated 4th February 2020 from the Permanent Secretary of the Ministry responsible for transport (the 'Ministry') which contained the reasons for the Licensing Authority's suspension of the Permit.
- [7] The claimant challenged the lawfulness of the Authority's retention of the Permit on 2nd August 2019 and the decision to suspend the Permit without first cancelling the same or affording him notice of the Authority's intention to suspend the Permit.
- [8] The claimant contended, that in so acting, the Authority acted in excess of the powers conferred on it by provisions of the Motor Vehicles and Road Traffic Act¹ (the 'Act'). He challenged the conduct of the Authority on the grounds of illegality, irrationality and procedural impropriety. The court understands the latter ground of procedural impropriety to canvass the failure on the part of the Authority to observe the principles of natural justice.

¹ Cap. 8.01 of the Revised Edition of the Laws of Saint Lucia

- [9] Based on the foregoing allegations, the claimant claims that he is entitled to certain declaratory relief and orders, namely, (1) that the conduct of the Authority was unlawful and arbitrary, and was otherwise than in accordance with the principles of natural justice insofar as it deprived him of the right to be heard and a fair hearing; (2) an order of mandamus directed to the Authority for the return or reinstatement of the Permit; (3) damages together with interest and costs.
- [10] In support of the claim for judicial review the claimant relied on the following grounds, namely: (1) the Permit was not cancelled by the Authority prior to the retention of the same by the Authority; (2) the Authority failed to give the claimant notice of its intention to cancel or otherwise suspend the Permit in accordance with section 38 of the Act; (3) the Authority in unlawfully retaining the Permit, had the effect of amounting to a revocation or cancellation of the same without any prior notice to the claimant which resulted in the claimant being deprived of the opportunity to make representations prior to such revocation or cancellation and was therefore in breach of the principles of natural justice; (4) the Authority acted ultra vires or without any lawful authority when it retained the Permit and (5) the actions of the Authority were unreasonable in all the circumstances of the case.
- [11] It appears that in the claim for judicial review, the claimant relied on other grounds for redress by way of prerogative writ not canvassed in the leave application, notably, an order of certiorari quashing the decision of the Authority to suspend the Permit and contained in a letter from the Authority addressed to the claimant dated 8th August 2021⁹ sent to the claimant's solicitor and received by them on 2nd March 2020 and communicated to the claimant on or about 13th March 2020 on the grounds that the suspension of the Permit was otherwise than in accordance with the principles of natural justice and in contravention of the provisions of the Act.
- [12] The defendant contended that not only did the claimant lack legal standing to bring the present claim, but also the entire claim as it stands is without merit. According to the defendant, the claimant is not affected directly or indirectly by the conduct or

decision of the Authority as he possessed no legal title to or right to hold the Permit. Therefore, according to the defendant, the claimant has no legal interest in the subject matter of the present claim that entitles him to bring a claim for judicial review.

- [13] In light of the foregoing contention, the defendant argued that in any event the Permit itself was invalid not having been issued in accordance with the formal requirements of the Act. For all intents and purposes the defendant regarded the Permit as having been unlawfully issued or issued at all.
- [14] Therefore, the defendant argued that only a permit that was lawfully issued pursuant to the provisions of section 54 of the Act would be valid and thereby qualify the claimant to pursue recourse by way of administrative action within the scope of the exercise of the Authority's statutory powers under section 38 of the Act.
- [15] The defendant maintained as part of its case that at all times material to the present case the claimant had not been issued with a public omnibus route permit by the Minister pursuant to section 54 of the Act.
- [16] The defendant also held the position that since the claimant was not the owner of the Permit, but was only entitled to the use thereof by virtue of a lease agreement with the owner to whom the Permit had been originally issued, it followed that the Authority only owed a duty to the owner and not the claimant.
- [17] According to the defendant, it followed by extension that the claimant lacked sufficient or any legal interest in the subject matter of the claim and therefore had no right to be heard or no entitlement to a natural justice hearing prior to the action taken by the Authority to retain the Permit or to suspend the same. The defendant claimed as a fact that the Permit, apart from not having been issued to the claimant, was also invalid ipso facto, the same having been obtained by fraud or otherwise than in conformity with the statutory procedure for obtaining the same.

Therefore, the Authority acted appropriately and in accordance with the provisions of section 38 of the Act in suspending the Permit.

- [18] It was upon the foregoing basis that the defendant argued that the court ought to decline jurisdiction to hear the claim for judicial review.
- [19] The defendant's fallback position was that should the court find that the claimant was indeed the owner of a valid permit, then the court should go on also to find that the Authority's decision making process was not illegal, irrational or procedurally improper. In arriving at this conclusion, the defendant relied on the factual contention that the Authority took into account that the Permit was invalid on account of its falsity and the absence of any documentation in its records of any application having been made by the claimant for the issuance of a permit to him or the issuance of a permit to the claimant by the Minister pursuant to section 54 of the Act.
- [20] The logical conclusion flowing from the defendant's argument was that the claimant was seeking to obtain relief by way of judicial review in respect of some benefit which was obtained illegally or fraudulently, and that the court ought to find that the Authority was right when arriving at its decision to take such illegality and fraudulent conduct into consideration. In the circumstances, the respondents contend that the court should refuse to exercise its jurisdiction on a claim for judicial review where it is shown that the claimant's right to relief has been obtained by illegality or fraud.
- [21] Based on the grounds for judicial review advanced by the claimant and the respective submissions of the parties it appears that the questions to be determined by the court are as follows: (1) whether the claimant had established any sufficient legal interest in the subject matter of the claim which entitled him to bring the claim for judicial review; (2) the determination of question (1) is dependent on the question of whether the Permit was invalid having been obtained illegally or fraudulently; (3) if the answer to question (2) is in the

affirmative, whether the Authority's decision to detain and subsequently suspend the Permit was illegal, irrational and contrary to the principles of natural justice.

[22] In its written closing submissions the defendant has raised for the first time the objection that the claimant has wrongfully joined the Authority as a party to the proceedings; and that the only necessary and proper party to the proceedings is the Minister. According to the defendant's submissions, the decision to suspend or cancel the Permit was that of the Minister and not that of the Authority. Therefore, since there was no decision made or capable of being made by the Authority the claim for judicial review fails. This issue was not previously raised by the defendant and was not addressed by the judge on the hearing of the application for leave. However, the court thinks that it is appropriate to examine this issue as a preliminary issue notwithstanding the stage to which the matter has progressed.

[23] The court has made the observation from the outset that the claimant and to some extent the defendant appeared to have conflated the Authority, the Transport Board and the Minister in terms of their statutory existence and their powers and functions under the Act. At times the first two bodies were described interchangeably. This is entirely misconceived. The several entities are established separately under the Act and each have separate and distinct functions assigned to them under the Act. This distinction is clearly identifiable from the provisions of the Act itself.

[24] The Authority is established by section 4 of the Act. Its statutory functions are described by section 5 of the Act which confers on the Authority responsibility for the administration of the registration, licensing and permit systems established under this the Act. Section 6 of the Act empowers the Authority to delegate its functions to a Licensing Officer.

[25] The Saint Lucia Road Transport Board (the 'Board') is established and constituted by the provisions of section 48(1) of the Act. The Board is composed of such members as set out in the provisions of section 48(2) of the Act. In particular

section 48(2)(i)(ii) of the Act entitles the Minister to appoint one representative from the umbrella Public Omnibus Association as a member of the Board.

- [26] Section 49(1) and (2) of the Act sets out the functions of the Board which includes among other things, advising the Minister on all matters pertaining to road transport, any matter incidental to the administration of the Act and any other matter affecting transport referred to the Board by the Minister.
- [27] Of particular relevance is the provisions of section 49(3) of the Act which provides that the Board shall regulate the operation, including the grant of concessions, of public motor vehicles on any road or route in Saint Lucia in such manner and on such conditions as it determines.
- [28] The determination of this preliminary issue raised by the defendant depends largely on the construction of the Act. The court will first deal with the provisions of the Act that regulate the issuance of public omnibus route permits. It is apparent from the Act that each of the entities fulfilling administrative and executive functions of the Act play a separate role in the issuance, registration and cancellation of public omnibus route permits under the Act. In resolving the matters in dispute between the parties it is critical to understand the role that each entity plays in the process and the procedural requirements for applying and obtaining a public omnibus route permit under the existing legislative scheme.
- [29] Section 54(1) of the Act makes provision for the application for a public omnibus route permit and the issuance of the same. The section provides:
- “Upon application in the prescribed manner and on payment of the prescribed fee, the Minister shall issue a public omnibus route permit to a registered owner of an omnibus who is recommended by the Board for such public omnibus route permit.”
- Therefore, pursuant to section 54(1) of the Act, the Minister is the sole authority responsible for the issuance of a public omnibus route permit under the Act.
- [30] Pursuant to section 54(2) of the Act, the public omnibus route permit authorises the operator of a public omnibus identified in it to provide transport to the public. A

public omnibus route permit is, unless cancelled, valid for a period of 2 years and is renewable on the date coinciding with the date on which it was first issued.

- [31] The Act itself does not set out the entire procedure to be observed by an applicant for a public omnibus route permit. It appears that the Act is silent on the matters that the Board may take into account when making recommendations for the issuance of a public omnibus route permit to the Minister pursuant to sections 49(1), 49(2) and 54(1) of the Act.
- [32] However, it appears by virtue of section 48(6) of the Act, that the Board can adopt its own rules of procedure for the conduct of business. In any event, based on the evidence presented at the trial, which the court is inclined to accept, the court has discerned that the following represents the procedure that has been adopted in relation to an application for a public omnibus route permit.
- [33] Mr. Danny Edward ('Mr. Edward') is the President of the Gros Islet Minibus Owners Association (the 'Association'). Prior to holding that position he held the position of Vice-President of the Association. Mr. Edward, in his evidence, set out the procedure for applying for a public omnibus route permit.²
- [34] It appeared from Mr. Edward's evidence that the Association is the only authorised body through which persons seeking to operate on the Gros Islet bus route must apply. The applications when received are processed by the Association and then forwarded to the Board. According to Mr. Edward, the Association is responsible for the management and facilitation of the grant of public omnibus route permits to its members.
- [35] Mr. Edward's evidence was that at all stages of the application process for the grant of a public omnibus route permit, all documents received are kept in a file labelled with the name of the applicant. Mr. Edward stated that the Association had no record of an application in the claimant's name having been made. He also stated that a search of the Association's records revealed that there was no

² At para 11

receipt made out to the claimant with respect to an initial application fee or a renewed application fee. Also, the Association had no record of an approval letter from the Board in respect of a grant of the Permit to the claimant.

[36] It appeared from Mr. Edward's evidence that the claimant was an auxiliary member of the Association. He explained that auxiliary members were not owners of public omnibus route permits but would usually operate as drivers of omnibuses on the assigned bus route. Such an arrangement did not require an auxiliary member to hold a permit in his own right. The court understood Mr. Edward's evidence to be that the owner of an omnibus who is renting a route permit would qualify that individual to be an auxiliary member of the Association.

[37] Mr. Edward's evidence in this regard has shed light on the claimant's reliance on the receipt for the payment to him of a rebate by the Association. Mr. Edward explained that it was the Association's policy to pay the rebate to the member of the Association including an auxiliary member if that member was the owner and operator of an omnibus assigned to the bus route. This evidence is telling as the claimant seemed to have relied on this receipt as evidence of his ownership of the Permit.

[38] Ms. Francis' evidence in relation to the procedure on application for a public omnibus route permit is supported by the evidence of Mr. Edward. Ms. Francis gave a similar description of the procedure involved in processing applications for public omnibus route permits to that of Mr. Edward.³ In the course of his evidence at the hearing, the claimant stated that he was aware the applications for public omnibus route permits were processed through the Association.

[39] According to Ms. Francis' evidence, the procedure on the application for a public omnibus route permit was that the application was submitted to the Association by a member and then presented to the Board by the Association on behalf of the member. The application is then tabled before the Board for approval. The

³ At para 7

application is then approved by the Minister upon the Board's recommendation. Ms. Francis also testified that the original application submitted remains with the Board. It should be recalled that this witness indicated that no application by the claimant formed part of the Board's records.

- [40] The claimant's claim for relief is premised on the assumption that during the period August 2016 to 2nd August 2019 he was the owner of the Permit being the person to whom the Permit was issued and in whose name it was issued and registered in accordance with section 54 of the Act; and that the Permit was valid and not liable to cancellation during the period 8th August 2018 and 8th August 2020 on account of any breach or violation of the conditions upon which it was issued to him.
- [41] In support of his claim to ownership of the Permit, the claimant relied on a copy of the Permit issued for the period 8th August 2018 to 8th August 2020.⁴ It is noteworthy that the claimant did not produce a copy of the original Permit issued in August 2016. The court makes this point in light of the fact that it was the claimant's contention that the Permit was first issued to him in August 2016.
- [42] In any event, it appears that the Permit produced by the claimant does not bear the signature of any of the persons authorized to sign the Permit or the stamp of the Ministry affixed thereto. In fact, in cross-examination the claimant admitted that there was no signature on the Permit. He also admitted that the Permit did not have the stamp or seal of the Board or the Licensing Authority affixed to it.
- [43] In his evidence given at the trial, the claimant accepted that a person who is desirous of obtaining a public omnibus route permit has to apply to the Board. Initially the claimant insisted that an application had been made to the Board in his name. However, when pressed further in cross-examination, he reluctantly admitted that this was not the case.

⁴ Exhibit HM1

- [44] The claimant also accepted that there was a required route permit fee that required payment upon the issuance of a public omnibus route permit which was payable to the Board. He agreed that he did not have any receipt evidencing the payment of a route permit fee. The claimant also accepted that he did not exhibit a letter from the Board or the Minister as proof of having been granted a public omnibus route permit in accordance with the Act in support of his claim.
- [45] However, it appeared that the claimant was adamant, notwithstanding the foregoing admissions made by him, that he was indeed granted a public omnibus route permit by the relevant authority. He also insisted that the initial route permit had been renewed.
- [46] It also appeared that notwithstanding the claimant's insistence that he had been granted a public omnibus route permit, he failed to give any or any reasonable explanation for his failure to produce a copy of the receipt as proof of payment of the fee for the grant of the Permit or its renewal. He simply admitted to not having the receipt in his possession. The claimant also testified that he was not aware that the Permit was registered to Mr. David Reynolds ('Mr. Reynolds'). At no time did the claimant attest to there being in existence any rental agreement between himself and Mr. Reynolds. He simply claimed ownership of the Permit in his own right.
- [47] It is also worthy to note at this stage that the claimant did not produce or rely on any further documentary proof, which on a balance of probabilities would confirm that he had been issued with a Permit by the Minister pursuant to section 54 of the Act at any point in time.
- [48] In support of his claim to the ownership of the Permit or the same having been issued or assigned to him, the claimant relied on a letter from the Acting Permanent Secretary in the Ministry who incidentally is also a member of the

Board by virtue of section 48(2)(b) of the Act, dated 27th May 2019 and addressed to the President of the Association.⁵ The letter stated:

“Please be informed that enquiries were made into the issuance of the four route permits between July 25th and August 8th 2016. These permits were not new issuances but were reassigned to the respective individuals and were due for renewal in 2018.

The former President of the Gros Islet Minibus Owners Association, Mr. Claudius Joseph, was in discussion with the Transport Division regarding the reassignment of the permits and facilitated the stamping/signature of the application document on behalf of the applicants.

The following information was gleaned from the records of the Transport Division:

M1093

The permit for this vehicle is registered in the name of Mr. Henry Moise and is valid until August 3, 2020. M1093 has been registered in the name of Mr. Henry Moise from 2011.”

[49] It is not disputed that the claimant is the registered owner of omnibus registration number M1093; this is clearly reflected in Vehicle Enquiry Report dated 24th October 2018 which showed that the claimant became the registered owner of omnibus M1093 on 13th April 2012.⁶ The information contained in the Vehicle Enquiry Report appears to conflict with some of the information contained in the letter dated 27th May 2019. In addition, the claimant’s assertion that he is the owner of the Permit is in direct conflict with the evidence lead by the defendant with respect to the records kept by the Authority and the Association.

[50] Mr. Edward who was the Vice-President and Executive Secretary of the Association between 2016 and 2018, was shown a copy of the Vehicle Enquiry Report and was cross-examined in relation thereto. He testified that the claimant was renting the Permit.

⁵ Exhibit HM6

⁶ Exhibit HM7

- [51] According to this witness, the policy adopted by the Association and the Board was that the name of the owner of the route permit together with the name of the person renting the permit from the owner must be registered and therefore ought to appear on the Vehicle Enquiry Report. He stated further that the documents submitted by the Association to the Board for renewal of the permit would reflect both the names of the owner and the person renting the permit. This witness insisted that the Association had never submitted any documents to the Board bearing the claimant's name.
- [52] Consistent with Mr. Edward's assertions regarding irregularities concerning the issuance of the Permit in the claimant's name, the defendant relied on the evidence of Ms. Hermia Lorde ('Ms. Lorde'). Ms. Lorde at the material time was the Executive Secretary of the Association having held that position two years prior. She was also a member of the Association for the past twenty years. Ms. Lorde's evidence was that by virtue of her substantive position and long membership in the Association, she was intimately acquainted with the events and circumstances surrounding the Permit.
- [53] According to Ms. Lorde's affidavit,⁷ she was aware of the irregularities surrounding the Permit. Her evidence was that as a result of these irregularities the Association wrote to the Permanent Secretary in the relevant Ministry requesting a meeting.⁸ This meeting was convened on 25th July 2019 and in attendance were herself in the capacity as Executive Secretary of the Association, the Minister, the Permanent Secretary and other members of the Board. She recorded the minutes of the meeting.⁹
- [54] It appeared from the minutes of the meeting, that investigations into the provenance of the Permit revealed that the Permit was originally issued in the name Mr. David Reynolds. However, the renewal form contained the claimant's

⁷ At paras 6 – 7 Affidavit filed 17th November 2020

⁸ Exhibit DE

⁹ Exhibit HL1

name. It was also revealed that the name on the Permit had been changed by the Liaison Officer on the Board upon the renewal of the Permit.

[56] It was also documented in the minutes that the Minister engaged in discussions with the Acting Permanent Secretary and the Acting Chief Transport Officer, after which they decided that an independent investigation would be undertaken by the Ministry with respect to the Permit.

[57] It is reasonable to infer from Ms. Lorde's evidence that it was the meeting held by the Board on 25th July 2019 with the Minister that precipitated the investigative action by the Board and the Authority which subsequently resulted in the suspension of the Permit.

[58] The Authority's reasons for the suspension of the Permit were communicated to the claimant's solicitor by letter from the Acting Permanent Secretary of the Ministry in the person of Mr. Claudius Emmanuel ('Mr. Emmanuel') dated 4th February 2020¹⁰ which was in response to the claimant's solicitor's letter to the Acting Permanent Secretary dated 20th January 2020.¹¹ The Permanent Secretary's letter of 4th February 2020 stated inter alia:

"The Licensing Authority suspended the route permit as per Section 38 of the Motor Vehicles and Road Traffic Act, Revised Edition showing the law as at December 31, 2014.

Section 38(1) indicates that the Licensing Authority may by notice in writing, cancel a license, permit or an endorsement by fraud or misrepresentation whether negligent or not.

The Licensing Authority has no record of route permit being assigned or reassigned to Mr. Henry Moise. The permit attached to Registration Number M1093 was assigned to Mr. David Reynolds on August 3, 2016.

Mr. Moise's name was affixed to Permit Number K0124 without the requisite supporting documents or letter of issuance from the Licensing Authority. This incident was the subject of an internal review which lead to the resignation of a staff member."

¹⁰ Exhibit HM4

¹¹ Exhibit HM3

- [59] It appears that the letter from the Acting Permanent Secretary dated 4th February 2020 is in direct conflict with the substance and purport of the letter from the Acting Permanent Secretary dated 27th May 2019 relied on by the claimant.
- [60] The court has also observed that the letter of 27th May 2019 purporting to have come from the desk of the Acting Permanent Secretary was not signed by the holder of that office but was in fact signed by someone else on his behalf.
- [61] Whatever significance this may have is unclear as it has not been placed in context by any evidence regarding its provenance. What appears more than seemingly odd however, in the absence of any explanation, is the fact that the Acting Permanent Secretary would have written two letters on different dates each containing diametrically opposite and conflicting information.
- [62] The defendant asserted that the information contained in the letter dated 27th May 2019 was either inaccurate or false. The basis for this assertion came from the evidence of Mr. Edward and Ms. Francis concerning what was contained in the records of the Association and the Authority.
- [63] The defendant relied on the evidence of Ms. Kora Francis ('Ms. Francis') who is employed as the Senior Licensing Officer with the Authority. She testified that she held the post of Chief Transport Officer with the Ministry between 1st April 2020 and 30th September 2020. Ms. Francis testified that by virtue of her position as Chief Transport Officer, she had access to all records kept by the Authority pertaining to route permit applications. She said that a search of the Authority's records failed to reveal any record of an application or renewal application for a public omnibus route permit in the claimant's name.
- [64] According to Ms. Francis, the Route Permit¹² was inscribed with the claimant's name but did not bear the signature of either the Chief Transport Officer or the Senior Licensing Officer who are authorised to sign the same and were the usual

¹² Exhibit HM1

signatories. Also, the Permit also was not stamped with the Authority's seal as was required.

[65] In addition, Ms. Francis stated that the Authority's records did not reveal the existence of a receipt issued in the claimant's name as evidence of the payment of the permit fee. This receipt is generated upon issuance of the permit.

[66] Ms. Francis's evidence was also that in April 2019, an internal investigation was conducted by the Authority which revealed that there was no record of a permit having been issued or reassigned to the claimant. According to her, the information contained in the letter dated 27th May 2019¹³ was either inaccurate or incorrect.

[67] Mr. Edward's evidence was that in his capacity as President of the Association, he was able to confirm that the claimant never applied for or had been granted a public omnibus route permit. In addition, Mr. Edward affirmed that the claimant was not the owner of the subject permit.

[68] According to Mr. Edward, the claimant owned and operated the omnibus registration number M1093 with the Permit by virtue of a rental agreement. This witness testified that as far as he was aware the records of the Association did not reflect the existence of an application made by the Association in the claimant's name. He went on further to state that the last recommendations made by the Association to the Board with respect to the granting of public omnibus route permits with respect to its members would have been about fifteen years ago.

[69] The claimant's assertion that the Authority acted illegally or otherwise than in conformity with the provisions of sections 38(1) and 38(2) of the Act by failing to give the claimant notice of the suspension of the Permit to him by registered post. There are several apparent difficulties with this assertion.

[70] The first difficulty arises from the provisions of section 38 itself. The court having determined that the Permit was not properly issued to the claimant pursuant to the

¹³ Exhibit HM6

provisions of the Act and that the claimant was not the owner thereof, it is more than passing strange that the claimant would assert the right to be notified of any decision taken by the Authority.

[71] The wording of section 38(1) is plain, it states that the Authority “may, by notice in writing, cancel a licence, permit or an endorsement on a licence”. Whether the use of the word “may” in the statutory provision is imperative or discretionary is irrelevant to the present discussion. What is relevant is that such notice be given to the license or permit holder. In the present case the claimant was not the permit holder and the Authority’s records did not reflect that he was the owner. It follows that the Authority was under no obligation to notify him of any suspension or cancellation of the Permit. In fact, notwithstanding the assertions made at the trial that the Permit has been assigned or leased to the claimant, the Authority’s records did not reflect that this was the case.

[72] It appeared from the evidence that the Authority did in fact make a valiant attempt at communicating the suspension of the permit to the claimant. In the letter dated 4th February 2020, the claimant’s solicitor was informed that a letter dated 8th August 2019 was issued wherein the claimant and the Association were informed of the suspension of the Permit. This letter was addressed to the claimant and copied to the President of the Association.

[73] It also appeared that the claimant did not receive this letter promptly. It appears that the Acting Permanent Secretary in his letter of 4th February 2020 disclosed that at the time of writing the claimant had been contacted and was asked to collect the letter. It appears that the explanation given for the Authority’s failure to communicate the suspension of the Permit to the claimant was due to the unavailability of a postal address for him as the Authority’s records did not reflect any known address for the claimant.

[74] In light of the foregoing evidence the court is inclined to accept that the claimant not being in possession of a public omnibus route permit, the same having been retained by the Authority, could not have possibly conducted the business of

transporting commuters along the prescribed route. To have done otherwise would have been illegal and in any event he would not have been permitted to operate on the bus stand. The evidence lead at the trial also suggested that the claimant would have been prevented from operating on the assigned route by the relevant officer or officers of the Association.

- [75] The letter dated 8th August 2019 and addressed to the claimant was in the following terms:

“The Division of Transport is in receipt of Route Permit K 0124 bearing the name Henry Moise. The Licensing Authority wishes to inform you that it has no record of a permit being assigned or reassigned to Henry Moise.

In light of the above, subject to section 38 of the Motor Vehicles and Road Traffic Act Revised Edition showing the law as at December 31, 2014, the Licensing Authority hereby informs you that Permit No. K 0124 bearing Registration No. M1093 is suspended with immediate effect until further notice.”

- [76] The court also understood part of the claimant’s case to be that the Authority had acted illegally in two respects. First, by retaining the Permit without first cancelling the same in accordance with section 38 of the Act.

- [77] Second, the claimant appears to be drawing a distinction between the actual cancellation of the Permit and its “suspension”. At the heart of this distinction appeared to be the assertion that the Authority acted illegally when it purported to suspend the Permit as opposed to cancelling it. In other words, the claimant appeared to be arguing that the Authority had no power conferred upon it by virtue of section 38 of the Act to suspend a public omnibus route permit; and therefore, the Authority’s purported exercise of the power to suspend the Permit was outside of its statutory remit which rendered its suspension of the Permit illegal.

- [78] Ms. Francis testified at the hearing that the Permit was “revoked”. According to her she was aware of the Permit being “revoked” and not suspended. Whatever nomenclature ascribed to the action taken by the Authority is irrelevant or superfluous for the purpose of resolving the issue whether the claimant can sustain his claim for judicial review against the Authority. The question that is

ultimately determinative of the present claim is whether the decision to cancel or suspend the Permit was that of the Minister or the Authority. On the evidence presented at the trial it is apparent that the decision to “suspend” or “cancel” the Permit was that of the Minister.

[79] The court agrees with the defendant’s argument that the claimant instituted the claim for judicial review against the wrong party, in this instance, the Authority. As a consequence the claim for judicial review fails and the other issues to be determined clearly fall away.

[80] The answer to the defendant’s proposition lies within the very scheme of the Act. The Act does not confer any power on the Authority to issue public omnibus route permits. This power is conferred on Minister upon recommendation by the Board pursuant to section 54(1) of the Act. This power is separate and distinct from the power conferred on the Authority by section 5 of the Act in relation to the issuance of permits, licenses and endorsements generally.

[81] The Minister and the Authority are separate and distinct entities established under the Act and they each exercise distinct functions. In the present case it would be absurd to suppose that the Authority would have ascribed unto itself the power to suspend, cancel or revoke a public omnibus route permit in the purported exercise of the power conferred on the Authority by the provisions of section 38 of the Act.

[82] The language used in the Acting Permanent Secretary’s letter of 8th August 2019 and preceded by the letter of 4th February 2020 is indeed unfortunate. However, the terms of these letters can be rationalised on the basis that the Acting Permanent Secretary was acting in his capacity as a member of the Board and under his delegated authority to communicate the Minister’s decision. It cannot be the case that the Permanent Secretary was purporting to exercise any power conferred on the Authority by section 38 of the Act.

[83] Additionally, it appears from the reading of the Act and the general context of the events giving rise to the present claim that the Authority being required to keep a

register or record of public omnibus route permits may have in any event be required to inform the claimant of the cancellation of the Permit. Section 5 of the Act specifically states that the Licensing Authority is responsible for the administration of the registration, licensing and permit systems established under this Act.

[84] However, there is no evidence presented to the court to indicate that the decision to suspend the Permit was that of the Authority and not that of the Minister acting on the recommendation of the Board. Judicial review is directed to official decision-making, and the official who took the relevant decision is the natural respondent to such proceedings.¹⁴

[85] In the present case, the claim for judicial review does not interrogate any action or decision taken by the Minister. In fact, the present claim emphasised the claimant's reliance on the provisions of section 38 of the Act and the exercise of the Authority's powers thereunder. The claimant placed no reliance on the provisions of section 54 of the Act as they relate to the procedure for the issuance of a public omnibus route permit by the Minister. The claimant's complaints were primarily concerned with an alleged decision taken by the Authority.

[86] Section 5 of the Act merely confers power on the Authority to act as a repository of information relative to the issuance of licenses and permits issued by the Authority generally or by the Minister in the case of public omnibus permits and confers no authority on the Authority relative to the specific power conferred on the Minister to issue public omnibus route permits. In short, the Act confers no power on the Authority with respect to the grant, issuance or cancellation of public omnibus route permits except with regard to record keeping. The authority to grant public omnibus route permits is strictly the province of the Minister; and the regulation of the same is the province of the Board by operation of section 49(3) of the Act.

¹⁴ Bahamas Hotel Maintenance and Allied Workers Union v Bahamas Hotel Catering and Allied Workers Union and others [2011] UKPC 4; National Bank of Anguilla (Private Banking and Trust) Limited (in administration) and another v Chief Minister of Anguilla and another [2021] ECSCJ No. 665.

- [87] The framework of the Act leads ineluctably to the conclusion that the entire scheme of regulating the application for and issuance of public omnibus route permits and public transportation in general is regulated by the Minister acting upon the recommendation of the Board. This is a specialised or specific power conferred on the Minister and by extension the Board.
- [88] In the court's view, the decision to cancel, suspend or revoke a public omnibus route permit was that of the Minister acting on the recommendation of the Board. The Authority was merely acting in the fulfilment of an administrative function by recording the decision to cancel the Permit in conformity with the Minister's decision. In this context the Authority was merely a "rubber stamp" that gave effect to the Minister's decision.
- [89] The court has given considerable thought to the question of whether the current proceedings can be saved by the combined effect of the provisions of CPR 8.5(1) and CPR 19.2. In this regard the court has examined the decision in the case of **Quoram Island (BVI) Limited v Virgin Islands Environmental Council, The Minister of Planning**¹⁵ where the claimant had wrongly joined the Attorney General as a party to the claim.
- [90] The Court of Appeal in **Quoram Island**, allowing the appeal, substituted the Minister of Planning for the Attorney General. In so ordering the Court of Appeal held that pursuant to CPR 19.2, the judge should have removed the Attorney General and rejoined the Minister as defendant when the issue was raised on the preliminary objection at the trial. The Court of Appeal reasoned that the joinder of the Minister could be facilitated even at that stage of the proceedings. In addition, the Court of Appeal found that CPR 8.5(1) provided that a claim shall not fail because a person who should have been made a party was not made a party to the proceedings or that a person was made a party who should not have been

¹⁵ [2011] ECSCJ No. 182

made added. In making this determination the Court of Appeal relied on the dictum of Lawrence Collins LJ in **Dunnwoody Sports Marketing v Prescott**.¹⁶

- [91] The court in this instance has formed the view that the present case is not deserving of similar treatment as in **Quoram Island**. In the court's view the situation that arose in **Quoram Island** is distinguishable from the present case. In the present case, the claimant has made no complaint regarding any decision or action taken by the Minister in the exercise of his statutory authority conferred upon him by section 54(1) of the Act. The focal point of the claimant's complaint, quite misguidedly, is with respect to actions taken by the Authority.
- [92] Had it been the case that the present claim substantially interrogated the decision of the Minister and the joinder of the Authority was merely erroneous, then the court would have been inclined to apply the provisions of CPR 8.5(1) and CPR 19.2. The difficulty that arises on the claimant's case is that it implores the court to grant relief by way of a prerogative writ of mandamus to command the Authority to perform a function that it is not empowered to perform. Simply put, the Authority is not empowered under the Act to grant or issue public omnibus route permits.
- [93] The court is fortified in its foregoing conclusion by the fact that in the initial leave application the claimant named the "Government of Saint Lucia, Department of Economic Development, Transport and Civil Aviation" as the respondent. The leave application was later amended to reflect "The Licensing Authority, c/o Government of Saint Lucia, Department of Economic Development, Transport and Civil Aviation" as the respondent. The Fixed Date Claim was also intitled in the latter fashion.
- [94] In the court's considered view, this issue having been resolved in the defendant's favour is entirely dispositive of the present claim for judicial review.
- [95] The defendant's proposition with respect to the misjoinder of the Authority is fortified by the decision in **Colville Walcott v The Licensing Authority and**

¹⁶ [2007] WLR 2343 at para 23

others¹⁷ where the Court had to decide the question whether the Licensing Authority was a proper party to the claimant's claim for judicial review. In **Walcott v The Licensing Authority** one of reliefs sought by the claimant was an order of mandamus that his application for a route permit renewal be determined by the Licensing Authority. The court in **Walcott v The Licensing Authority** held, on the basis of the construction of the Act and the operation of section 54 of the Act that the ultimate decision maker was the Minister; and that being the case the claimant's claim for judicial review against the Authority must fail.¹⁸

[96] In the premises, and for the foregoing reasons given in this judgment the claimant's claim for judicial review is dismissed. The court makes no order as to costs. The court's costs order reflects the view that the claimant's decision to seek redress consequent on the suspension of the Permit was not unreasonable in the circumstances.

Shawn Innocent
High Court Judge

By the Court



Dp. Registrar

¹⁷ [2018] ECSCJ No. 333

¹⁸ Per Wilkinson J. at paras 50-52