

(1242). 10th August 2022 (Wednesday)
994/2022-FDA

Tabitha Sarabu-Halley vs. The Attorney General of Guyana
Mr. R. Forde, SC for the Applicants via zoom
nos. 1, 2, 3, 4, 5, 6 and 8 Applicants present via zoom
Mr. A. Mandall, SC for Mr. N. Hawke, Mr. D. Kumar,
Ms. S. Hall, Mr. L. Sergeant, Mr. S. Dewniah for
the no. 1 Respondent via zoom
no. 1 Respondent present via zoom
Mr. S. Gauraj for the nos. 2 and 3 Resps.
via zoom
nos. 2 and 3 Respondents present via zoom

The Court heard oral arguments from counsel for the parties.
Mr. Mandall, S.C. indicated that the grounds of his Appln are
set out in the Aff. filed in support and he relies on that.

Mr. Gauraj adopts the subs. by the no. 1 Respondent. He also
highlighted para 8 ~~and~~ of the Applicants' Aff. in Ans as
setting out the procedure under the Rules. He contends
however, that para 9 of the very Aff. is contradictory.

Mr. Forde, SC in response argued that the Applicants were req'd
to serve when they received the date from the Court, which
they did the day after. He referred to Part 3 which speaks to
the filing of an Appln to ~~also~~ extend time, pointing out that
the Resps have not set out reasons showing that it was
impractical to file the Appln before. In addition, Mr. Forde

submitted that the Reps' Affs are insufficient to establish grounds for granting the Orders sought. The Court was referred to several authorities including ^{the cases of} Rabindranath Dayanock and Brocker to support his position. After thanking counsel for their submissions the Court read out the following:

Ruling: what is before this Court for consideration at this stage of these proceedings are two notices of Appln. The No. 1 Rep. has filed a NOA for an Order granting him an extension of time to file an Aff. in Defence to the Fixed Date Appln as amended and an Aff. in Ans to the NOA filed by the Appo for certain Conservatory Orders. A similar Appln was also filed on behalf of the No. 3 Rep. seeking an extension of time to file an Aff. in Defence and/or Aff in Ans together with other reliefs. Both of these Reps also seek relief from sanctions. As at the time of this Ruling, the Court was not in receipt of any NOA filed for or on behalf of the No. 2 Rep. The grounds of these Applns are also similar in that they essentially center around the time between service of these proceedings and the date fixed for the hearing of the matter. They contend that the time was too short to allow for them to file their necessary documents. In this regard, in an effort to actively manage this case, the time for compliance with Part 10 of the CPR was abridged by the Court. In their Aff. in Ans sworn to by the No. 5 App., the Applicants contend, inter alia, that the Reps have not set out satisfactory grounds which would allow the Court to exercise its discretion to grant the reliefs sought. They take issue with the No. 1 Rep's request for 28 days to file their Affs., saying that this period is unreasonable. They have also expressed their concern that the Reps' Applications for an extension of time could delay the determination of their own NOA for interim relief. This Court, having perused the FOA and NOA for interim relief has taken note of the number of issues raised in this matter. Given the complexity of this matter, the determination of which would be of public interest, this Court finds that the notices of Appln. have merit. However, this Court is also cognizant of the fact that both the Nos. 1 and 3 Reps in their respective Applns have signaled their intention to dispute the Court's jurisdiction. In this Court's considered view, before this matter can proceed further, it would be prudent for the jurisdictional question to be answered first. The procedure for disputing

The Court's jurisdiction is succinctly set out in Part 9 of the CPR. R. 9.01 (1) states that "A party who seeks to dispute the Court's jurisdiction or who contends that the Court should not exercise its jurisdiction to determine the SOC or FOA must make an application for a declaration to that effect within the time required for filing a Defence or Aff. in Defence." It is only after the Court determines that it has jurisdiction to entertain a matter that directions are given to file a Defence or Aff. in Defence as the case may be. (Rule 9.02 (2)). R. 9.02 (1) goes on to provide that "a Defendant or Respondent who does not make an application disputing the Court's juris. within the time required is deemed to have accepted the Court's jurisdiction to try the SOC or hear the FOA, unless the Court orders otherwise." So that, in this Court's considered view, an Order granting leave to file an Aff in Defence to dispute the jurisdiction of the Court as sought by the No. 1 Resp. would be counterproductive. Disputing the Court's jurisdiction can only be done by way of an Appln. in accordance with R. 9.01 (1) and further, the inference may be drawn from R. 9.02 (1) that once a Resp files an Aff. in Defence he is deemed to have accepted the Court's jurisdiction. Having considered the NOAs filed by the Nos. 1 and 3 Respondents, together with the Aff. in Ans. of the Apps. and leaving taken into account the circumstances of this case, it is Ordered that an extension of time be and is hereby granted to the Nos. 1 and 3 Resps to file an Appln under R. 9.01 (1) of the CPR for a declaration disputing the Court's jurisdiction on or before the 29th August 2022. It is Ordered that the Applicants do file their Affs in Ans to the Applns disputing the Court's jurisdiction on or before the 19th September, 2022 and that the Nos. 1 and 3 Resps do file their Affs in Reply, if necessary, on or before the 3rd October 2022. No Order as to costs since it was the Court that fixed the hearing date utilizing its powers of case management under Part 25 of the CPR. After hearing further submissions by counsel for the Parties, the following additional Orders are made:

- (i) Leave to the Resp. to file Affs. in Ans to the NOA for Conservatory Orders on or before the 19th September 2022 and to the Apps to file their Affs. in Reply, if necessary,

- on or by the 3rd October 2022;
- (ii) Leave to the No. 1 Respondent to file a NDA to strike out FDA on or by the 29th August, 2022, leave to the Applicants to file Aff. in Ans to this NDA on or by the 19th September 2022 and leave to No. 1 Resp. to file Aff. in Reply, if necessary, on or by the 3rd October, 2022;
- (iii) Leave to the No. 2 Respondent to file a NDA to strike out No. 2 Resp. from proceedings on or by the 29th August 2022, leave to Applicants to file Aff. in Ans to this NDA on or by the 19th September 2022 and leave to No. 2 Resp. to file Aff. in Reply, if necessary, on or by the 3rd October, 2022;
- (iv) Written submission on all four (4) NDAs to be filed and exchanged on or by the 12th October, 2022;
- (v) Matter fixed for the 1st November, 2022 @ 9:30 am for oral arguments on all four (4) of the NDAs, commencing with the NDA disputing the Court's jurisdiction, followed by the NDA for conservatory orders, then the NDAs for striking out;
- (vi) This hearing will be conducted virtually via Zoom: Zoom Meeting ID: 845 1426 6584 and passcode: 786 445.

Mr. Forde's oral application for an interim order is refused. The Court's position on this application is unchanged for the same reasons canvassed on the last occasion.

10.8.2022