

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN MISCELLANEOUS

SUIT NO. M-89 OF 1998

**BEFORE: THE HON. CHIEF JUSTICE
THE HON. MR. JUSTICE ELLIS
THE HON. MR. JUSTICE SMITH**

**IN THE MATTER of an Application by
CABLE AND WIRELESS JAMAICA
LIMITED for leave to apply for Orders
of CERTIORARI AND PROHIBITION**

AND

**IN THE MATTER of a decision by the
Minister of Commerce and Technology
made on or about the 16th day of June
1998 and on divers dates not yet known
to the Applicant granting licences for
operation of Radio and Telegraph
stations for the purposes of wireless
telecommunications under the Radio
and Telegraph Control Act.**

Richard Mahfood Q.C., Dennis Goffe Q.C. and Miss Minette Palmer instructed by Messrs. Myers, Fletcher and Gordon for the Applicant.

Dr. Kenneth Rattray Q.C., Solicitor General and Douglas Leys instructed by the Director of State Proceedings for the Respondent.

Dr. Lloyd Barnett and Harold Brady for Amerijet - Third Party

Walter Scott and Mrs. Sharon Usim for Compu Works Multi Media instructed by Linton Walters - Third Party

Mrs. Pamela Benka Coker and Patrick Bailey for Info Channel Limited

Clifton Daly instructed by Daly, Walker and Lee Hing for N.5. Systems Limited -Third Party

Christopher Cheddar watching on behalf of Comtech Ltd.

Heard : March 8, 9, 11, 12, 29, 30, 31, June 21, 28, 29, July 1, 2, October 25, and December 16, 1999.

WOLFE C.J.

By an order of Langrin J., as he then was, dated September 15, 1999 the Applicant was granted leave to apply for Orders of Certiorari and Prohibition to remove into the Honourable Court and to quash the decision of the Minister of Commerce and Technology made on or about the 16th day of June, 1998, 27th February, 1998, 6th May 1998 and 16th May 1998, granting licences for the operation of Radio and Telegraph Stations for the purposes of international wireless telecommunications under the Radio and Telegraph Control Act, and to prohibit the issue of any other such licences.

The Grounds upon which the relief was sought are as set out below :-

1. The Minister of Commerce and Technology in granting the said licences has acted in abuse of the statutory discretion under the Radio and Telegraphic Control Act.
2. In granting the said licences the Minister has denied the Applicant an opportunity to be heard in respect of a material interference with the Applicant's property rights.
3. The grant of the said licences constitutes a denial of the Applicant's legitimate expectations under the licence previously granted to it by the said Minister.

4. The Minister of Commerce and Technology in granting the said licences has acted ultra vires in that the Minister had no power to grant any licence without complying with the terms of the Applicant's licence.

It is crystal clear from the grounds, that the Applicant's complaint is that the Minister acted improperly. There is absolutely no allegation against any of the Third Parties.

It was pointed out earlier, the Applicant's case was a challenge to the Minister's authority to issue the licences, complained about, to the Third Parties. The issues were joined between the Applicant and the Minister. Whether or not the Third Parties succeeded depended upon the strength or weakness of the Respondent's position in law.

The Third Parties enjoyed no status, independent of the Respondent's authority to issue the licences to them. Put simply, the presence of the Third Parties in the Proceedings was of absolutely no significance.

On July 2 after twelve (12) days of hearing the matter was adjourned to October 25, 1999 for continuation. In the interim the Applicant and the Respondent negotiated a settlement. When the matter resumed on October 25, 1999 the Court was advised that the Applicant and Respondent had arrived at a settlement and the Court was moved to endorse the records in the following terms :-

"Action against Respondent discontinued in terms endorsed on Counsel's brief. Each Party to pay its own costs".

The Third Parties moved the Court to make an order for costs in their favour against the Applicant.

What are the rules governing the award of costs to Third Parties? The Learned Author of Judicial Review Handbook Second Edition at page 227 paragraph 20.1 states:-

“As always, costs are a matter for the Court’s discretion, but there are important conventions. Among these, it is normal that the losing party will be ordered to pay the winning party’s costs, but not normal for a victorious third party to secure a second set of costs”.

In *R v Industrial Dispute Tribunal ex parte American Express Co. Inc.* [1954] 1 WLR

1118 Lord Goddard C.J. opined:-

“The Court does not like to having to give two sets of costs in these cases. The opinion of the court is that in future, in matters of this sort, we shall not grant more than one set of costs. It is not necessary for parties to appear merely because they are served. I have no doubt that both the Minister and the Union ought to be served, but as a general rule they might be able to settle who is going to argue the matter. It is very seldom that we have found it necessary to hear both Counsel for the Minister and the Union”. (emphasis mine).

I am settled in the view that it was unnecessary to hear from Counsel for the Third Parties. The arguments which they advanced were merely supportive of the full arguments by the Learned Solicitor General. Counsel for the Third Parties broke no new ground in their arguments. The other Third Parties could easily have adopted the position which Mr. Christopher Cheddar adopted in respect of his client Comtech Ltd. He announced that he was only holding a watching brief. He filed no affidavits and advanced no arguments. No doubt he realized that the validity of the licence which he held depended entirely upon whether or not the Minister had the authority to grant the licence. The position of Comtech Ltd. was essentially the same as that of the other Third Parties.

The arguments of the Learned Solicitor General were exhaustive. The arguments proffered by the Third Parties, with respect, were no more than "*a gilding of the lilly*".

For the reasons mentioned I would not make an order for costs in favour of the Third Parties. Accordingly the applications for costs, by the Third Parties, are refused.

ELLIS J.

I have read the reasons of the Chief Justice in this case.

There is nothing which I could respectfully add and I too would refuse the Third Parties' applications for costs.

SMITH J.

The issues raised in this matter have been dealt with fully in the Judgment of the Chief Justice, which I have had the benefit of reading.

I am in agreement both with the reasoning and the conclusion arrived at.

I too would therefore refuse the applications of the Third Parties, seeking an award of costs.

WOLFE C.J.

Applications for costs by the Third Parties are refused.