

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

CIVIL APPEAL NO. P 030 OF 2022

BETWEEN

**TELECOMMUNICATIONS AUTHORITY OF TRINIDAD AND TOBAGO
(APPELLANT)**

AND

**TELECOMMUNICATIONS SERVICES OF TRINIDAD AND TOBAGO LIMITED
(RESPONDENT)**

CIVIL APPEAL NO. P 032 OF 2022

**TELECOMMUNICATIONS AUTHORITY OF TRINIDAD AND TOBAGO
(APPELLANT)**

AND

**AMPLIA COMMUNICATIONS LIMITED
(RESPONDENT)**

Panel:

Justice of Appeal Dean-Armorer

Justice of Appeal Kokaram

Date of delivery: June 21, 2022

Appearances:

Mrs D. Peake SC leads Mr. R. Heffes-Doon instructed by Mr. R. Ramoutar on behalf of the Appellant

Mr. M. Daly SC leads Mr. C. Sieuchand instructed by Ms. S. A. David-Longe on behalf of Respondents

JOINT JUDGMENT

Introduction

1. By the ***Telecommunications Act***, 2004¹, (***the Act***), Parliament created a legislative structure, which was designed to regulate telecommunication services in Trinidad and Tobago.
2. Section 4 of ***the Act*** established the Telecommunications Authority of Trinidad and Tobago, (***the Authority***), and it was envisioned that the Authority would have general oversight over the administration of the telecommunications sector under the Act. See section 18 of ***the Act***.
3. The actual supply of the service would be by persons who received concessions from the line Minister. The ***Act*** stipulated the essential terms of each concession. See section 21 of ***the Act***.
4. One required term of the concession related to contributions to the universal service fund "USF". This was a fund, which supported one aspect of the legislative vision which was the provision of universal service. At minimum, universal service was required to include a quality telephone service. See section 28 (2) of ***the Act***.
5. Contributions to the USF by the concessionaire was not only an essential term of each concession but was required in mandatory language by the ***Telecommunications (Universal Service) Regulations***.
6. The Authority contended that TSTT² and its subsidiary, AMPLIA, were in default of their

¹ Ch. 47:31

² Telecommunications Services of Trinidad and Tobago Limited (TSTT)

contributions. In 2021, the Authority filed claims against them to recover the outstanding contributions as a debt to the Authority. It was understood at all times that, the Courts at both first instance and on appeal, would hear the claim against TSTT and that AMPLIA would abide any decision made.

7. TSTT and AMPLIA , however filed applications seeking to strike out the claims on the ground, among others , that the Court lacked jurisdiction.³ Upon hearing these applications, the Judge declared that she had no jurisdiction to entertain the claims. In response, the Authority, filed this procedural appeal, challenging the decision of the first instance Judge.
8. In the course of determining the procedural appeal, we explored the various situations, in which a court will hold that it had no jurisdiction to hear a claim. One such circumstance occurs when a statute, although silent as to the issue of jurisdiction, creates rights and liabilities, which did not exist at common law, while providing a special remedy for the vindication of the new rights. Where this occurs, parties must have recourse to the remedy provided by statute, as long as the statutory remedy constitutes an adequate substitute for the common law right of action.
9. In the case at bar, we held that **the Act** indeed created rights and remedies which did not exist at common law. We held, however, that the measures provided by **the Act** to compel compliance did not provide an adequate substitute for the common law remedy of an action in debt, and that the Authority still had access to the Court in an action in debt. Accordingly, we held that the Judge was wrong to decline jurisdiction. We set aside her orders and remitted the claim for further management and adjudication.

Factual and Procedural History

10. The Appellant, the Telecommunications Authority of Trinidad and Tobago (the Authority), is a statutory authority established by section 4 of the ***Telecommunications***

³ By Notice of Application filed on September 6, 2021

Act ('the Act').⁴

11. The Respondent, TSTT, is a company incorporated under the laws of Trinidad and Tobago, while AMPLIA is its wholly owned subsidiary. They are public telecommunications service providers and holders of a concession, pursuant to section 21 of **the Act**.
12. On December 31, 2005, TSTT was granted a *"Concession For The Operation Of A Public Telecommunications Network And /Or Provision Of Public Telecommunication And Or Broadcasting Services.*⁵
13. The Concession is a comprehensive document, which covers a wide range of activities by the service provider. For the purpose of these appeals, three sections are relevant.
14. By section A 9, compliance is specifically required of the concessionaire in respect of the payment of concession fees.⁶ By section A 2, the concessionaire is required to comply with **the Act**, all regulations or other instruments made under **the Act**, the conditions of the Concession, and all laws in force from time to time in the Republic of Trinidad and Tobago.⁷ By section A 3, the concessionaire must also comply with the lawful decisions and directions of the Minister or the Authority.⁸
15. The concessionaire is required specifically to comply with regulations as to universal access. In particular, concessionaires are required to make contributions to any fund or accounts as may be required by such regulations.⁹
16. Section A 25 of the concession provides for the eventuality of a material breach on the part of the concessionaire, in these words:

"In the event of a material breach of the Act, regulations, instruments or directions made under the Act, or any condition of this Concession, the Authority or the

⁴ The Telecommunications Act Chap 47:31

⁵ This document was exhibited as "A" to the Statement of Case filed on March 15, 2021.

⁶ See A 9 of the concession

⁷ See A 2 of the concession

⁸ See A 3 of the concession

⁹ See A 14 of the concession

Minister, whichever is appropriate in accordance with the relevant provisions of the Act, may:

- a. suspend or terminate this Concession or the concessionaire's right to operate any network or provide any service under this Concession; or,*
- b. take such other action as it deems appropriate;*

in accordance with the relevant provisions of the Act and any regulations.

17. By the terms of their concession, by **the Act** and by the **Telecommunications (Universal Service) Regulations**¹⁰, TSTT and AMPLIA, and indeed all concessionaires, are required to make contributions to the Universal Service Fund "USF".¹¹ The contributions are payable to the Authority by virtue of regulation 12.
18. On March 15, 2021, the Authority, in separate claims, instituted proceedings against TSTT and its wholly owned subsidiary. In each case, the Authority sought orders for the payment of outstanding contributions to the USF.¹²
19. On September 6, 2021,¹³ TSTT and AMPLIA filed Notices of Application seeking to strike out the claims. They sought three (3) orders, namely:
 - (i) that pursuant to rule 9.7 (a) of **CPR**¹⁴, the Court should exercise its inherent jurisdiction to declare that it has no jurisdiction to determine the claim or
 - (ii) alternatively that, pursuant to rule 9.7 (b) of **CPR**, the Court should declare that it will not exercise any jurisdiction, which it may have.¹⁵
20. TSTT also sought Orders that the claims should be struck out as being an abuse of the Court's process; that the statement of case disclosed no grounds for bringing the claim

¹⁰ Telecommunications (Universal Service) Regulations LN No. 63 of 2015 (the Regulations)

¹¹ See regulation 5 of the regulations

¹² In the case of TSTT, the Authority claimed \$26 467 445.00
in the case AMPLIA, the Authority claimed \$258,264.00

¹³ See ROA Vol 1 page 406

¹⁴ Civil Proceeding Rules 1998 ("CPR")

¹⁵ See para 1. a. and b. of the Notice of Application filed on September 6,2021.

and that the Court should exercise its inherent jurisdiction to stay the proceedings.¹⁶

21. On February 3, 2022, the Judge delivered her Ruling and granted the orders, as sought by TSTT and AMPLIA in their Notices of Application¹⁷. The Judge declared, pursuant to rule 9.7 **CPR**, that it had no jurisdiction to hear the claim and that the claim should be struck out.
22. The Judge also ordered that the Authority pay to TSTT costs fit for Senior and Junior Counsel on the prescribed scale.

The Judgment

23. The essence of the Judge's decision was that in **the Act**, Parliament had set out a comprehensive code, which did not contemplate the Authority's recourse to the Court for the vindication of indebtedness of the part of concessionaires. For this reason, the Judge granted the order sought by TSTT and declared that she lacked jurisdiction to adjudicate on the claims before her.
24. As a corollary to this core finding, the Judge considered whether **the Act** provided an adequate substitute for an action in debt. Accordingly, she began her Ruling by identifying the question that arose for her determination. She said:

*"The question which I have to determine is whether, as the Defendant submits the provisions of the Act and the regulations made thereunder and such of the statutory terms as are incorporated into the concession granted to the Defendant, constitute a comprehensive code which governs the relationship between the relevant Minister, TATT and TSTT and whether by this prescription Parliament intended that the processes, remedies and penalties provided, would be a substitute for a common law right of action for recovery of debt."*¹⁸

25. The Judge answered this question in the affirmative and held that she had no jurisdiction to hear the Claim. She said:

¹⁶ See para 2. a. and b. and c of the Notice of Application filed on September 6,2021.

¹⁷ See Supra. Notices of application filed on September 6, 2021

¹⁸ See paragraph 3 of the Ruling

*“I have considered the submissions and the Act as a whole and hold that this Court has no jurisdiction to hear the claim because the intention of Parliament was to establish a comprehensive scheme under the Act which would provide reasonable adequate and effective remedies for non-compliance and material breaches for terms of concessions, **thereby excluding the jurisdiction of the Courts....**” (emphasis mine).¹⁹*

26. She held that **the Act** provided adequate measures to compel concessionaires to comply with the requirement to make contributions. In her view, the prospect of criminal proceedings and the suspension and termination of concessions were adequate substitutes for an action in debt. As to the spectre of termination, the Judge held that there could be no more effective mechanism to enforce compliance than the prospect of the suspension or cancellation of the concession.
27. The Judge reinforced her finding by reference to the Preamble of **the Act**, which in her view, supported the conclusion that **the Act** contained a comprehensive code. The Judge also referred to section 81 of **the Act**, which gave the Authority the power of forbearance. From the power of forbearance, the Judge drew this conclusion:

“This supports TSTT’s contention as to the scope of the legislation and the intention of Parliament to confer on TATT sufficiently wide powers while limiting the access of the Court....”

28. The Judge’s decision that the statutory remedies were an adequate substitute for an action in debt, was buttressed by her view that it was the public and not the Authority, which was the ultimate beneficiary of contributions to the USF. In her view, the Authority was merely authorised to collect contributions. The Judge specifically referenced section 53 (1), which in her view made it clear *“that USF contributions were not TATT’s funds.”*²⁰ Consequently, the Judge held that the Authority suffered no loss or injury as a result of non-payment of fees.²¹ On that premise, the Judge held that it was not the intention of Parliament that the Authority should be able to approach the Court

¹⁹ See paragraph 6 of the Ruling

²⁰ See paragraph 10 of the Ruling

²¹ See paragraph 10 of the Ruling

for compensation.

29. According to the Judge, "*Parliament had provided a comprehensive regime which did not contemplate TATT having to go outside of it for enforcement of a material breach....*"²²
30. The Judge contrasted the claim before her with sections of **the Act** where jurisdiction was specifically conferred on the High Court. In so far as Parliament did not expressly confer jurisdiction for recovery of concession fees, this in the Judge's view, was impliedly excluded.

Grounds of Appeal

31. The Authority challenged the findings of the Judge on nine *grounds*, contending essentially that the Judge was plainly wrong to hold that she lacked jurisdiction.
32. They argued that the Judge was wrong to find that:
 - Parliament intended to establish a comprehensive scheme under the Act,
 - The Authority did not suffer loss or injury because the public and not the Authority was the ultimate beneficiary of the USF.
33. The Authority contended as well that the Judge had placed an incorrect interpretation on the Preamble of **the Act** and on section 81, which gave the Authority the power of forbearance.
34. The Authority averred that the Judge was wrong in failing to conclude that the power of termination or suspension of concession was invested in the Minister and not the Authority.

Submissions of the Appellant , the Authority

35. On behalf of the Authority , Senior Counsel , Mrs. Peake referred to the Judge's formulation of the question for the Court's determination, at paragraph 3 of the

²² See paragraph 10 of the Ruling

Ruling.²³ Mrs. Peake observed that the issue, as identified by the Judge mirrored the reasoning of the High Court of Australia in *Mallinson v Scottish Australian Investment Co. Ltd*²⁴. According to Mrs. Peake, there had been no challenge by way of an appeal against the Judge’s formulation of the issue.

36. Mrs. Peake relied on statements in *Mallinson* and *Earthquake Commission v. Insurance Council of New Zealand*²⁵ and submitted that *the Act* did not provide an adequate substitute for the common law action in debt. Mrs. Peake proceeded to identify each of the remedies, which in the Judge’s opinion constituted a substitute for the common law right of action in debt. These were the procedures of suspension or termination of the concession and criminal prosecution.²⁶ In her submission, these remedies failed to provide an adequate substitute for the common law right of action.
37. Mrs. Peake argued that that the Judge was wrong in holding the view that the funds collected from concessions were for the use of the public and not of the Authority.
38. Mrs. Peake also argued that the Judge was wrong in her interpretation of the Preamble to *the Act* and in her view that the Preamble confirmed that Parliament had intended to establish a comprehensive code.

Submissions on behalf of the Respondent

39. In his written submissions, Mr. Daly , Senior Counsel for the Respondent addressed the Court on the issue of jurisdiction and noted that, at paragraph 4 of her Ruling, the Judge considered the classic authorities, that is to say: *AG v Chaman Algoo*²⁷ and *Western United Credit Union Co-operative Society Ltd v Corrine Ammon (Western United)*²⁸.
40. Senior Counsel set out the principles, which were listed by Kangaloo JA in *Western*

²³ See the quotation at para 24 supra

²⁴ See *Mallinson v Scottish Australian Investment Co. Ltd* [1920] 28 C.L.R. 66 (H.C of Australia) page 66 at page 70 , where the Knox CJ formulated the test in this way:

“...whether it appears from the whole purview of the Act that it was the intention of the Legislature that the remedy provided should be a substitute for the right of action which would otherwise exist...”

²⁵ [2015] N.Z.L.R. 381

²⁶ See section 30 of the Act and regulation 26 (2) of the Telecommunications (Universal Service) Regulations 2015

²⁷ Civ. App 47 of 1984

²⁸ Civ. App. 103 of 2006

United and submitted that the summary of the key principles was “*entirely correct*” and consistent with the leading authorities on the issue of jurisdiction.

41. In his submission, the starting point was the decision of Davis JA in **Chaman Algoo**. Senior Counsel referred to **Wolverhampton New Waterworks Co. v Hawkesford**²⁹, an authority cited and relied upon by Davis JA in **Chaman Algoo**.
42. The submissions set out the formulation in **Wolverhampton**, where Willis J identified 3 classes of cases.³⁰ Mr. Daly submitted that the case at bar fell within the third **Wolverhampton** category. In his submission, it was indisputable that the alleged liability of TSTT, in respect of which the Authority purported to sue, did not exist at common law.
43. In arguments before this panel, Mr. Daly distinguished the case of **Mallinson**³¹, by observing that it related to common law rights and duties that pre-dated the statute in question.
44. By contrast, in Mr. Daly’s submission, the relationship in the present appeal were that of regulator and concessionaire, a relationship, which was created by the Act and did not exist at common law. Accordingly, there was no pre-existing common law right as in **Mallinson**. In such event, the Appellant’s right to sue must be found in the Act itself.
45. Senior Counsel relied on **Chaman Algoo**³² and **Wolverhampton**³³ and argued that Judge was plainly right in finding that there was a clear intention of Parliament to create a complete framework for the enforcement of obligations under the Telecommunications legislation.³⁴

The Legislative Framework

46. In our view, the resolution of this appeal depends almost entirely on the construction

²⁹ **Wolverhampton New Waterworks Co. v. Hawkesford** (1859) 6 CBNS 336

³⁰ See the **Wolverhampton** categories set out at paragraph 78 below

³¹ **Mallinson v Scottish Australian Investment Co. Ltd** [1920] HCA 51

³² **The Attorney-General v Chaman Algoo** Civ App 47 of 1984

³³ **Wolverhampton New Waterworks Co. v Hawkesford** (1859) 6 CBNS 336

³⁴ See paragraph 23 of the Submissions on behalf of the Respondent.

of the Act. We have therefore set out the relevant provisions of the Act in detail.

47. The Authority, and its role and functions have been established by the provisions of the Act and supporting regulations. For the purpose of this appeal, the relevant regulations are the Telecommunications (Universal Service) Regulations 2015.
48. The Authority was established as a body corporate by section 4 of the Act and is subject to the management of a Board, which comprises experts in a variety of fields. Board members are appointed by the President of Trinidad and Tobago.
49. The Authority is invested with wide powers and exercises functions listed at section 18 of the Act. For the purpose of this appeal, section 18(h) and (k) are relevant. Section 18(h) requires the Authority to *“implement and enforce the provisions of the Act...”* while section 18 (k) empowers the Authority to *“collect all fees including concession and licence fees and any other charges levied under this Act...”*.
50. By section 19, the Minister is empowered to issue written directions to the Authority on matters of general policy.
51. Part III of the Act comprises 15 sections: sections 21 through 36. This Part provides for concessions. Section 21(1) is critical to the instant appeal in that it prohibits the operation of a public telecommunications network, or the provision of a public telecommunications service or broadcasting service, without a concession granted by the Minister.
52. Applications for concessions are to be made to the Authority.³⁵ Sections 21 (2) to (10) prescribe the manner in which applications for concessions may be made and processed.
53. Section 22 of the Act provides for the contents of concessions. For the purpose of this appeal sections 22(1) (a) and (f) are relevant. Section 22(1) (a) mandates that every concession must require the concessionaire to pay annual fees to the Authority, while section 22(1) (f) requires concessions to include a requirement of observance of

³⁵ See section 21(1) of the Act

regulations made pursuant to the Act. One such regulation is the Telecommunications (Universal Service) Regulations, which require concessionaires to contribute to the USF.

54. Section 28 of the Act provides for universal service. By s. 28 (1) the Authority shall determine the public telecommunications services in accordance with the policy established by the Minister. At minimum, universal service shall include a quality public telephone service.
55. By section 28(4), the Authority is empowered to require payment of contributions to the USF.
56. Concessions may be terminated or suspended by the Minister, on the recommendation of the Authority. See section 30(1). Two broad grounds are provided upon which a concession could be terminated or suspended: where the concessionaire has failed materially to comply with the provisions of the Act or the Regulations (subsection (a)) or has failed materially to comply with the directions of the Authority. See section 30(1) (b).
57. Section 30, sub-sections (4) sets out the procedure for termination and suspension, while subsection (5) allows the concessionaire to continue to operate, while the Minister is considering termination or suspension.
58. Section 53(1) (d) specifies the source of funds of the Authority. Significantly, these include fees collected in respect of concessions granted under the Act. The funds of the Authority also include sums collected in respect of universal service obligations.
59. The **Act** provides for criminal penalties at section 65. By s. 65 (g), failure to contribute to the funding of the universal service is a criminal offence, punishable on summary conviction. Criminal penalties are also prescribed by section 71, in respect of failure to comply with any of the provisions of **the Act** or any Regulations made hereunder.

Telecommunications (Universal Service) Regulations 2015

60. By Regulation 3 of the Regulation, the obligation to administer the USF is carried by the

Authority. One of the Authority's functions in this regard is the collection of contributions to the USF. See regulation 3(2).

61. The concessionaires, for their part, carry an obligation to contribute to the USF. They are included in the definition of "contributor" at Regulation 2, which provides:

"contributor" means concessionaire or other person as identified in Schedule 2 who contributes to the Universal Fund in accordance with the Regulations."

62. By Regulation 5(1), contributors are required to make an annual contribution to the USF. The contribution is calculated, in accordance with the directions of the Authority, as a percentage of the contributor's gross annual revenue.
63. At regulations 9 to 13, the **Regulations** establish a system for the payment of contributions. Accordingly, by regulation 9, the contributor is required to submit audited financial statements to the Authority, within 6 months after the end of the financial year.
64. Regulations 10 and 11 require the Authority to issue an invoice at the commencement of each financial year, while Regulation 12 requires a contributor, in mandatory terms, to pay an amount specified in an invoice issued by the Authority.
65. Criminal penalties are prescribed for defaulting contributors by regulation 26. Regulation 26(2) creates a specific offence in respect of a contributor who, like TSTT, fails to contribute to the USF, in accordance with the Regulations.
66. Regulation 26(3) creates a broader offence in respect of failure to comply with the Regulations.
67. We have also relied heavily on the authorities which were submitted by the respective Senior Counsel for the parties. The authorities are summarised and considered in the discussion which follows.

Issues

68. As in every matter before the Court of Appeal, the first and principal question is whether

the Judge was plainly wrong in the exercise of her discretion and unless the answer to this question is in the affirmative, an appellate court will not allow the appeal. Should any authority be needed for this statement, it could be found in the judgment of the Court of Appeal in *Miguel Regis*³⁶.

69. In this appeal, the Judge declined to exercise jurisdiction. The central issue is therefore whether she was plainly wrong in doing so.
70. Ancillary issues arise. The first of these is whether the Preamble and section 81 of the **Act** are consonant with the view that **the Act** created a comprehensive code, which excluded the facility of instituting an action in debt.
71. The second ancillary issue is whether on a true interpretation of **the Act**, contributions to the USF were for the benefit of the public and not for the use of the Authority.
72. The third ancillary issue arises out of the Judge's finding that the inclusion in the **Act** of sections which expressly confer jurisdiction on the High Court, by implication excludes the Court's jurisdiction in every other respect.

Discussion

73. The resolution of these issues depends on the interpretation of **the Act**, in the light of authorities, which identify the circumstances in which a Court will decline jurisdiction.
74. The first leading authority is *Chaman Algoo*³⁷, where the Court of Appeal of Trinidad and Tobago considered the effect of section 47 of the **Industrial Relations Act**³⁸ and decided that the High Court lacked jurisdiction to hear a claim for sums due and owing to an employee, whose union held a collective agreement.
75. Davis JA, delivering the judgment on behalf of the panel set out section 47 of **Industrial Relations Act** and had this to say:

"In my view, a Court of law must always be astute to determine whether in any

³⁶ A.G. v. Miguel Regis C.A. Civ. 79/2011

³⁷ See paragraph

³⁸ Ch. 88:01

*particular matter coming before it, it has no jurisdiction to entertain the matter, and I think this is even more the case, where a matter before it appears to be governed by the provisions of special legislation bearing in mind in particular that want of jurisdiction cannot be cured by consent....*³⁹

76. Davis JA observed that section 47 (1) did two things: *“it prescribes that the terms and conditions of registered agreements are to be binding on the parties....and secondly it prescribes that the terms and conditions of such agreements are enforceable but only in the Industrial Court”*⁴⁰

77. Ultimately, Davis JA expressed his view at paragraph 11 in this way:

*“Now in my view, the dispute procedure, the limited right of appeal and the procedure for enforcing awards or orders of the Industrial Court set out above, seem to me to be laying down a special remedy for the resolution of trade disputes and the enforcement of rights thereunder and I think it highly unlikely that Parliament intended that a worker could by-pass these procedural remedies for breach of contract of his employment and sue in the High Court....”*⁴¹

78. In the course of his decision, Davis JA relied on the classification of Willis J in ***Wolverhampton New Waterworks Co. v. Hawkesford***⁴². In that case, Willis J identified three classes of cases, where liability could be founded on a statute. At page 356, he said:

“There are three classes of cases in which a liability may be founded upon a statute. One is where there was a liability existing at common law and that liability is affirmed by a statute which gives a special and peculiar remedy different from the remedy which existed at common law: there, unless the statute contains words which expressly or by necessary implication exclude the common law remedy and the party suing has his election to pursue either that or the statutory remedy. The second class of cases is, where the statute gives the right to sue merely, but

³⁹ Chaman Algoo of page 4

⁴⁰ See Chaman Algoo at page 6

⁴¹ See page 11

⁴² (1859) 6 C.B. (N.S.) 356

provides no particular form of remedy: there, the party can only proceed by action at common law. But there is a third class, viz where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it.... The remedy provided by the statute must be followed..." (Emphasis mine)

79. Willis J did not use the word "jurisdiction". It is clear however that, in the third class which he identified, an issue of jurisdiction will arise, since parties will be compelled to have recourse to the remedies provided by the legislation and a Court would be precluded from adjudicating on an application for any other remedy.
80. More recently, the issue of jurisdiction arose before the Court of Appeal in **Western United**⁴³. The Court of Appeal there heard an appeal challenging the grant of summary judgment to the Respondent/Claimant, Corrine Ammon. The Appellant contended that the Court lacked jurisdiction by virtue of section 67 of the **Co-operative Societies Act**⁴⁴. Section 67 (1) provides

*"(1) If any dispute touching the business of a society arises—
.....the dispute shall be referred to the Commissioner for decision"*

81. Kangaloo JA, writing on behalf of the panel began the consideration of the jurisdiction point by observing:

*"Section 67 is an ouster clause and in determining whether it applies in the context of this appeal it must be borne in mind that the Supreme Court does not lightly relinquish its jurisdiction. Thus any provision which attempts to oust its jurisdiction must be clearly worded and strictly construed...."*⁴⁵

82. The Court of Appeal decided that the Appellant had failed to demonstrate that the dispute fell within section 67 of the **Co-Operative Societies Act**⁴⁶, so as to oust the

⁴³ Supra at paragraph 39

⁴⁴ Ch. 81:03

⁴⁵ See Western United at paragraph 6

⁴⁶ Ch. 81:03

jurisdiction of the Court.⁴⁷The appeal was however allowed on the ground that the Judge erred in holding that the defence had no realistic prospect of success.⁴⁸

83. Kangaloo JA, determining that the Court's jurisdiction had been ousted, cited and relied on this formulation of Luckhoo JA in **Guyana Sugar Corporation v Teemal**⁴⁹:

“ (1) The jurisdiction of the court was not ousted by statute except by express words or by necessary implication; (2) a statute imposing restrictions upon a citizen's right of action in court should be strictly construed and should not be extended beyond what the words used actually covered; and (3) where right or liability not existing at common law was created by statute, which gave a special remedy for enforcing it or appointed a specific tribunal for its enforcement, a party seeking to enforce his right must resort to that remedy or to that tribunal and not to others.....”

84. In our view, the clear directive of these authorities is that a Court will not lightly relinquish its jurisdiction and *“any provision which attempts to oust its jurisdiction must be clearly worded and strictly construed....”*⁵⁰ In the words of Luckhoo JA in **Sugar Corporation v. Teemal**, the ousting provision must do so by clear words or by necessary implication.

85. We observe *en passant* that there are gradations of ouster provisions. There are absolute prohibitions. An example of these may be found at section 38 of the **Constitution**, which protects the President from being answerable to a Court. See as well section 30 of the **Immigration Act**, which provides that no court has power to review quash or reverse the decision of the Minister, Chief Immigration Officer or Special Inquiry Officer.⁵¹

86. At a lower grade, one finds those provisions which direct parties to have recourse to a particular forum for the vindication of their rights. This was the case in **Chaman Algoo**

⁴⁷ See paragraph 22 of *Western United*

⁴⁸ *Ibid.*

⁴⁹ *Guyana Sugar Corporation v Seeram Teemal* (1983) 35 WIR 239

⁵⁰ See Kangaloo JA in *Western United*

⁵¹ *Immigration Act* Ch. 18:01

and *Western United*.

87. In the instant appeal, however, there is no provision, which expressly, seeks to oust the jurisdiction of the Court. There is also no provision which expressly directs an aggrieved party to use another forum. On the contrary, *the Act* is silent on the issue of the jurisdiction of the High Court and any barriers to jurisdiction must be gleaned by an examination of *the Act* as a whole.
88. Where however the statute creates rights or liabilities which did not exist at common law and provides specific remedies for their enforcement, there exists another grade of ouster. Parties are not at liberty to choose. They are permitted to pursue only the remedies provided by the statute. This was the clear effect of both the formulation of Willis J in *Wolverhampton* and more recently, by Luckhoo JA in *Teemal*.⁵²
89. The application of this principle was graphically demonstrated in *Chaman Algoo*, where Davis JA found in section 47 (1) of the *IRA*, a special remedy of recourse to the Industrial Court. In *Chaman Algoo*, an employee held no common law right to sue, since the collective agreement was made between the employer and the union. The statute conferred a right of suit on the employee, but provided at section 47 (1), that the right could be vindicated in the Industrial Court.
90. It was our view, however that *Chaman Algoo* was distinguishable from the present appeal in that the *IRA* expressly provided that the terms and conditions of the collective agreement should be directly enforceable “...but only in the Court...” Court being defined as the industrial court.
91. There is no analogous provision in *the Act*. One finds no provision, which confers a right of recovery of concessionaire’s fees, while directing that they be recovered only in a prescribed way or through a prescribed forum. The *Act* is merely silent as to the method, if any, by which the concessionaire’s fees could be recovered from the defaulting concessionaire.
92. Even where there is no express statutory provision, which directs parties to use a

⁵² See *Teemal* (1983) 35 W.I.R. 239 at 248

specific remedy, there are circumstances where nonetheless parties will be compelled to have recourse to the remedy provided. This was the effect of the statement of Willis J in **Wolverhampton**.

93. The prescription of Willis J, while by no means of legislative force, was restated, more recently in **Teemal**.⁵³ We consider therefore whether, as Mr. Daly submits, this appeal falls within the third **Wolverhampton** category. For ease of reference, the third **Wolverhampton** category is set out below:

“But there is a third class, viz where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it.... The remedy provided by the statute must be followed...”

94. In our judgment, it cannot be disputed that the liability of the concessionaire to make contributions to the USF did not exist at common law. The question to be answered is therefore whether the statute gives a particular remedy for enforcing it. There must be a remedy for enforcement, and according to Mrs. Peake for the Appellant, that remedy must present an adequate substitute for the common law action in debt.
95. Mrs. Peake relied on **Mallinson**⁵⁴, which was a decision of the High Court of Australia and was cited and relied upon by the Appellants. It concerned proceedings instituted by Mallinson, as an employee, to recover the difference between wages paid to him and his minimum wage, as fixed by an award of the Commonwealth Court of Conciliation and Arbitration, established by the Commonwealth Conciliation and Arbitration Act⁵⁵.
96. The respondent Company, in **Mallison**, contended that the only remedies available to the Appellant were those expressly provided by the Commonwealth Conciliation and Arbitration Act 1904-1915, as amended by the Act of 1918. They relied on the doctrine that where a statute confers a new right and provides a remedy for the enforcement of such right, no other remedy is available.

⁵³ Ibid.

⁵⁴ [1920] 28 C.L.R. 66

⁵⁵ Commonwealth Conciliation and Arbitration Act 1904-1915 as amended by the Act of 1918

97. Knox CJ sitting in the High Court of Australia considered the argument and said:

“The rule applicable here is stated in Shepherd v Hills (1) as follows viz, “Where an Act of Parliament creates a duty or obligation to pay money, an action will lie for its recovery, unless the Act contains some provision to the contrary”; and when the amount is liquidated the action of debt is appropriate (Hopkins v Swansea (2)). The obligation is none the less a debt because the statute gives no particular method of enforcing it (Booth v Trail (3)).”⁵⁶

98. Knox CJ then provided guidance as to the proper test to be applied in cases in which the statute contains no express denial of the right to bring an action. He said :

“the proper course to adopt in order to determine whether it contains “some provision to the contrary” within the meaning of the rule stated above is to consider whether it appears from the whole purview of the Act that it was the intention of the Legislature that the remedy provided should be a substitute for the right of action which would otherwise exist;...”

99. Knox CJ also expressed this view:

“It is also material to consider whether the provision made by the Act for compelling obedience to its commands is in the nature of a penalty for disobedience or in the nature of compensation to the person whose rights are affected by failure to perform the obligations imposed by the Act.”

100. Where an Act of Parliament creates a duty for the payment of money, an action will lie for its recovery and in the case of a liquidated sum, the appropriate action is an action for debt. This continues to be the rule even where the statute is silent as to the method of recovery.⁵⁷

101. Where the statute does not expressly prohibit or prevent the right to bring the action, the proper course to adopt is to consider, given the whole purview of the Act, whether the remedy provided by the statute could be a substitute for the right of action which

⁵⁶ Mallinson [1920] C.L.R. 66 at 70

⁵⁷ See Mallinson per Knox CJ at page 70.

would otherwise exist.

102. Mr. Daly S.C. distinguished *Mallinson*, in which there was the pre-existing relationship of employee and employer, which was recognised and protected at common law. Mr. Daly argued that *the Act* provided remedies of criminal proceedings and the possibility of the cancellation of concession. Those are the remedies provided by *the Act*, with which the Court must abide.
103. We considered the terms of *the Act*, in the light of available authorities. The *Act* created the Authority and placed on it the duty of general administration of telecommunications in Trinidad and Tobago and in particular the administration of the USF. Under the *Telecommunications (Universal Service) Regulations*, the Authority is fixed with responsibility for collecting contributions from concessionaires. Detailed provision is made for the method by which the required contribution should be calculated. The Authority is required to issue an invoice and the concessionaire is required to honour the invoice within 28 days of having received it.
104. The *Act* and *the Regulations* are silent however as to the recourse of the Authority in the case of a recalcitrant concessionaire. We found the proper judicial response to the statutory silence in *Mallison*.
105. While recognising the vintage and geographical remoteness of this authority we nonetheless found the analysis of Knox CJ, to be compelling even in contemporary times. We are persuaded by *Mallinson* in the absence of contrary authority.
106. According to Knox CJ, where the Act is silent, the Court must consider whether the remedy provided by the statute constitutes an adequate substitute for an action in debt.
107. In our view, the fulcrum of this debate lies in the word “remedy’ and its meaning. The possibility of criminal proceedings is punitive and not remedial. Similarly, the cancellation of the concession transcends the punitive, bringing the role of concessionaire to an end. Like the termination of any relationship, it is both stark and severe. It is not however remedial. It does not provide a remedy. Getting rid of the

recalcitrant concessionaire is not a measure which assists the USF and is ineffective as a remedy for recovering outstanding contributions.

108. Moreover the power to effect the suspension or termination of a concession is invested in the Minister , by section 30 of the **Act**. The Authority is empowered to make a recommendation to the Minister and nothing else . Accordingly the Authority has no facility to avail itself of the measure of suspension or termination, in order to compel payment of contributions due to the fund. The very clear result of this facet of section 30 is that no remedy is created by the possibility of termination or suspension . The defaulting concessionaire will be entitled to glare defiantly at the Authority and assert that only the Minister could terminate .

109. It is therefore our view that **the Act** provides no remedy at all for the USF, where the concessionaire fails to pay its debts. There should therefore be implied into the silence of **the Act**, the right of recourse to the Court in an action for debt.

110. We proceed to consider whether the Judge was plainly wrong. At paragraph 3 of her decision the Judge identified two questions for her determination; whether the statute constituted a comprehensive code and *“whether by this prescription Parliament intended that the processes remedies and penalties provided would be a substitute for a common law right of action for recovery of debt....”* This very clear formula echoes the words of Knox CJ in **Mallinson**, and there was no challenge to the Judge’s formula, by way of counter-appeal.

111. It is our view that both questions as formulated by the Judge, should have been answered in the affirmative, before there could be a conclusion of no jurisdiction.

112. The statute provided criminal sanctions for failure to comply with the **Act** and **Regulations** and in particular for the failure to pay fees. This in our view is punitive and not remedial and does not, in the words of the Judge provide a substitute for an action in debt, that is to say a prescribed measure which compels the concessionaire to pay monies due and owing to the Authority. The Judge also found that the prospect of termination or suspension of the concession provided an adequate remedy. As stated

above, this is not remedial and does not provide a mechanism for compelling the debtor to make good the debt. It gets rid of defaulter with no guarantee that the debt will ever be paid.

113. It is therefore our view that the Judge failed to consider the proper meaning of the words of her own formula, that is to say, *“a substitute for a common law right of action for recovery of debt....”* The common law action in debt, once liability has been established, provides a machinery of enforcement to compel payment. No equivalent remedy or process is provided by **the Act** and in so finding, in our view, the Judge was plainly wrong.
114. Having so held, it is strictly unnecessary for us to consider the ancillary issues. Nonetheless, we proceed to do so. In respect of the Judge’s finding that the Preamble tended to suggest that there was a comprehensive code, we are of the view that this does not imply, or write into **the Act**, the provision of a remedy, which is an adequate substitute for the common law right of action. Accordingly, even if we agree with the Judge’s interpretation, such an interpretation would have no effect on our finding. We hold a similar view in respect of section 81 of the **Act** and the power of forbearance.
115. As to the Judge’s interpretation of section 53(1) of **the Act**, it is our view that this section at subsection (c) includes in the funds of the Authority: *“fees collected in respect of concessions”*. Arguably, this could include contributions towards the USF. However, it is our view that the interpretation which is placed on section 53(1) will have no effect on the Court’s jurisdiction. Should it be that the Authority has no right to lay claim to contributions to the USF, that can be placed in TSTT’s statement of defence and may even be a ground for striking out the claim as lacking a reasonable cause of action. Such interpretation will not however deprive the Court of jurisdiction and will not operate to provide *reasonable adequate and effective remedies*⁵⁸ which are substitutes for the common law action in debt.
116. We turn now to the third ancillary issue, that is to say whether Parliament, by providing expressly for recourse to the Courts at sections 30 and 70, impliedly prohibited access

⁵⁸ See para 6 of the Judge’s ruling

to the Court for the recovery of contributions by the concessionaire. We considered this issue in the light of the authorities cited above.⁵⁹

117. The first and paramount principle, as stated by Kungaloo JA in **Western United**, is that a Court does not lightly relinquish its jurisdiction.⁶⁰ Ergo, a statutory provision will be construed as an ouster provision only if it does so by express words or by necessary implication.⁶¹ An implied ouster occurs where the **Act** creates rights and obligations which did not exist at common law, while providing new and express mechanisms for their enforcement.⁶²

118. There has been no suggestion that the **Act** contains any express ouster provision. We proceed to consider therefore whether there is any implied ouster by virtue of the express provisions at either section 30 (7) or section 70. This will be so only if the section in question creates a mechanism by which the Authority could recover outstanding contributions which were due to the USF. The mechanism must effectively provide an adequate substitute for the remedy of an action in debt.

119. We begin with Section 30 (7) which provides:

“A decision of the Minister pursuant to this section may be reviewed by the High Court.”

This section facilitates recourse to the High Court for a review from the Minister’s decision to terminate or to suspend a concession.

120. Section 70 makes this provision :

“A person convicted under section 69 is liable for all expenses reasonably incurred in the repairing, restoration or replacement of any facility, works or other installation damaged, removed or destroyed by him and the expenses are recoverable summarily as a civil debt.....”

Section 70 therefore imposes civil liability on a person who has been convicted under section 69 of damaging removing or destroying a facility, works or installation, operated by one of the protective services.⁶³

⁵⁹ See sections 30 and 70 of the Act set out in the Appendix below

⁶⁰ See **Western United** at paragraph 81 supra

⁶¹ See Teemal as cited by Kungaloo JA in **Western United** at paragraph 84supra.

⁶² Ibid.

⁶³ Section 69 provides : 69. (1) A person who maliciously damages, removes or destroys any facility, works or other installation of a public telecommunications network or a public telecommunications service or of any telecommunications service operated by the Police Service, the Fire Service, the Prison Service or the Trinidad

121. An examination of these sections suggests that they are altogether unrelated to the right of the Authority to recover arrears of contributions to the USF , by way of a claim in the High Court. Read together or separately , they do not , in our judgment, imply an ouster of the Court’s jurisdiction to determine claims to recover outstanding contributions to the USF.

Conclusion and Disposition

122. It is therefore our view and we hold that the appeal should be allowed. The orders which were made by the Judge are hereby set aside and the Claim is remitted to the trial Judge for further management and adjudication.

.....
Mira Dean-Armorer⁶⁴
Justice of Appeal

.....
Vasheist Kokaram⁶⁵
Justice of Appeal

and Tobago Defence Force commits an offence and is liable on summary conviction to a fine of two hundred and fifty thousand dollars and to imprisonment for five years.

⁶⁴ Judicial Research Counsel :Mrs. Aleema Ameerli-Roop

⁶⁵ Judicial Research Counsel : Ms. Khamatie Singh