

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Claim No. CV2016-00507**

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO MAKE A CLAIM FOR  
JUDICIAL REVIEW PURSUANT TO PART 56.3 OF THE CIVIL PROCEEDINGS RULES,  
1998**

**AND**

**PURSUANT TO SECTION 6 OF THE JUDICIAL REVIEW ACT, CHAP 7:08**

**AND**

**IN THE MATTER OF THE TELECOMMUNICATIONS ACT CH 47:31 OF THE LAWS OF  
TRINIDAD AND TOBAGO**

**AND**

**IN THE MATTER OF AN APPLICATION BY WIN COMMUNICATIONS LIMITED FOR  
PERMISSION TO APPLY FOR JUDICIAL REVIEW**

**AND**

**IN THE MATTER OF THE THREATENED DECISION OF THE  
TELECOMMUNICATIONS AUTHORITY OF TRINIDAD AND TOBAGO TO TERMINATE  
OR RECOMMEND THAT THE MINISTER TERMINATES THE BROADCASTING  
OPERATIONS OF WIN RADIO 101.1 LIMITED AND WIN COMMUNICATIONS LIMITED  
COMMUNICATED ON 17 FEBRUARY, 2016 BY NIEVIA RAMSUNDAR CORPORATE  
SECRETARY OF TELECOMMUNICATIONS AUTHORITY OF TRINIDAD AND TOBAGO**

**BETWEEN**

**WIN COMMUNICATIONS LIMITED**

**Applicant**

**AND**

**THE TELECOMMUNICATIONS AUTHORITY OF TRINIDAD AND TOBAGO**

**Respondent**

**Before the Honourable Mr. Justice V. Kokaram**

**Date of Delivery: 26<sup>th</sup> February 2016**

**Appearances:**

**Ms. Sophia K. Chote S.C. instructed by Mr. Anil V. Maraj and Ms. Nesha Abiraj for the Applicant**

**Mrs. Deborah Peake S.C. instructed by Mr. Ravi Heffes-Doon and Ms. Natasha Bisram for the Respondent**

**JUDGMENT- SUMMARY**

1. At the beginning of the hearing of this application for leave to apply for judicial review I made reference to the proverbial “Gordian Knot” in the making of administrative decisions. It is a metaphor for an intractable problem. In administrative law it refers to those occasions when administrators are faced with the unenviable task of disentangling those difficult problems sometimes resorting to the “cutting of the Gordian Knot”. Of course the Gordian Knot refers to the myth of King Gordius’ wagon being tied to a pole with a large and intricate knot. It became part of a shrine in Gordium and was a knot which no one could loosen. The myth of its invincibility was ended by Alexander the Great slicing the Gordian Knot with his sword. Assertions that decisions of an administrative body are illogical, unreasonable or irrational must be balanced against the needs, sometimes pragmatism, of good administration and recognising that when administrators are confronted with the proverbial Gordian Knot one must not shirk from applying a common sense solution. Only if those solutions defy logic, or extend beyond the boundaries of acceptable moral standards that no reasonable administrator could have thought it correct, that the decision can be condemned by a judicial review Court as irrational or unreasonable. See *Judicial Review 5<sup>th</sup> ed*, Supperstone, Goudie and Walker para 8.3.6.
2. To describe a decision as irrational it is a contextual value judgment to be made by the Court when assessing the gravity of the issues which the decision determines. Ultimately in re-examining the nature of the problem (or knot) that is faced by administrators, the Court would not substitute its views for that of the decision maker; its concern is primarily on the process by which it arrived at its decision. Although some decisions of administrators require careful unravelling and more rigorous examination such as decisions which are oppressive or, where a fundamental right or the issues of open justice, accountability transparency and consistency are in play, there are those lower intensity subjects of review where the decisions

are essentially value judgments or decisions based upon the administrators' special skill, technical expertise or decisions about public expenditure. See **Kennedy v Charity Commission** [2014] 2 WLR 808.

3. I use this as the starting point of my analysis of the application for leave to apply for judicial review made by the Applicant, WIN Communications Limited (WIN) which is before the Court, for the reason that one of the primary pillars of WIN's complaint against the administrator is its irrational or unreasonable conduct in virtually bringing an end to WIN's operations of a radio and television licence in this jurisdiction. Ultimately this will call for an analysis of the problem that both WIN and the administrator faced, the options available to it and a testing of the decisions made against the broad principles of legality, rationality and procedural propriety.
4. The decision that is being complained of, and for which they seek leave to apply for judicial review, is a threat allegedly made by the Respondent administrator, Telecommunications Authority of Trinidad and Tobago (TATT), on 17<sup>th</sup> February 2016 to terminate or recommend that the Minister terminates their broadcasting operations of WIN Radio 101.1 FM and WIN TV. WIN is not an unknown operator in the telecommunications industry. From the evidence before me WIN is a household name, contributing to the life of the Borough of Chaguanas and the country, promoting local culture by bringing to viewers and listeners various important social and cultural events such as Divali celebrations, Divali Nagar, J'ouvert and Carnival celebrations, Phagwa, Indian Arrival Day, Easter parades. It has brought prominence to many tourist attractions in central Trinidad such as the famous Temple by the Sea and the Hanuman Temple. There is no doubt that the work in spearheading indigenous and local programming is laudable and commendable.
5. The difficulty (or Gordian Knot) which forms the backdrop to this application for leave for judicial review, is that WIN is neither the holder of a concession nor licence to operate these telecommunications or broadcasting services under the Telecommunications Act of Trinidad and Tobago Chap 47:31("the Act"). It is Mohan Jaikaran the Chairman and majority shareholder of WIN who is the holder of a concession for the operation of a public telecommunications network and broadcast services and associated licences for a period of 10 years from 2006. He is also in breach of the concession's conditions. The associated radio

licence expired on 23<sup>rd</sup> February 2016 and the television licence will expire on 28<sup>th</sup> February 2016.

6. From the evidence, Mr. Jaikaran operated the TV and Radio stations through “his” company WIN. TATT as far back as 2011 was treating with Mr. Jaikaran as the principal of WIN in entertaining a request for the change in control of the concessions and licences in his name to WIN. TATT in very clear terms by its letter dated 8<sup>th</sup> November 2011 approved the proposed transfer subject to two “conditions precedent”. Put simply they were first that payments due under an agreement between Mr. Jaikaran and TATT for the payment in instalments of a debt of outstanding concession and licence fees be brought up to date and that WIN provide a written undertaking to TATT to assume all the liabilities which have been incurred by Mr. Jaikaran.
7. Mr. Jaikaran himself is described as a self made man. He started working in humble circumstances as an immigrant in the USA and through hard work built up several businesses. As an entrepreneur he has promoted local indigenous and Indo Trinidadian culture. Unfortunately there is nothing on the record to suggest that Mr. Jaikaran took any steps to follow through on the regularization of the proposed transfer or more importantly to settle with TATT his outstanding concession and licence fees then which then stood in the sum of approximately \$1.6million. This state of affairs remained the same between 2011 and the date of his sudden and untimely passing on 12<sup>th</sup> April 2015. His daughter Shantal Jaikaran, the Managing Director of WIN frankly admits that Mr. Jaikaran has been responsible for the management and operations of WIN and after his death “the Company was in a state of disarray”.
8. Indeed with respect to the operation of the radio and television stations the stark reality was that up until 2015 within months of the expiration of these licences and concession no transfer of control from the concessionaire or licence holder had yet been made to WIN. Mr. Jaikaran had been in breach of the conditions of his licences and concession in failing to pay concession and licences fees which has amassed to no insignificant sum. Additionally he was in breach of the conditions of his concession and the Regulations to furnish TATT with information and to submit revenues and financials on a regular basis. In fact during his lifetime, TATT had obtained and registered a judgment against Mr. Jaikaran for the payment

of outstanding concession and licence fees in the sum of \$2.7million. Mr. Jaikaran himself was also the subject of an “oppression action” claim with respect to other shareholders in WIN for which he was ordered to pay approximately \$5million to them. The Court of Appeal having been satisfied that Mr. Jaikaran acted oppressively in the conduct and management of WIN towards the defendant shareholders in that action considered it appropriate to effect a “clean break” between them. The Court of Appeal interestingly stopped short of ordering Mr. Jaikaran to transfer his licence to WIN as the order of compensation effectively restored complete control of the company to Mr. Jaikaran and afforded the disputants their clean break.

9. But upon Mr. Jaikaran’s death in April 2015, the clock was ticking on the expiration of his concession and licences. Unless renewed it would naturally mean the end of WIN radio and WIN TV upon the expiration of the concession and licences. To think otherwise would mean that WIN could operate the licences and concession indefinitely after their expiration until they “sort out” their affairs with TATT. If that was the case it would indeed put the administration of the telecommunications providers by TATT in a mire and one could well imagine the similar cap in hand applications the regulator may be faced with.
10. In that 10 month period from April 2015 to February 2016, WIN negotiated with TATT on the subject of the transfer of the licence and the payment of the outstanding fees to TATT. Of course this would have been in the face of four years of inactivity since the 2011 letter to Mr. Jaikaran. The reality is however that no acceptable payment plan was made to TATT nor could be made by WIN as of the date of WIN’s instant application. This is unsurprising given the sudden change in management of WIN. The evidence before this Court reveals a stirring humanitarian plea that was made by WIN to TATT constantly for it to be given time to pay. As Ms. Jaikaran puts it “the Company has no objection to assuming the liabilities of my late father to TATT. It is just that we needed time to pay off the sums due”. The intractable problem for WIN however is that to date there is no firm time frame suggested by it nor acceptable formula for the liquidation of this debt. Even its last offer exhibited as SJ 15 makes no firm guarantees that arrangements can be put in place to satisfy the debt.
11. As it stands therefore upon making this instant application, WIN has made no formal application to renew Mr. Jaikaran’s licence, until belatedly in February 2016. It has made no

formal application for a licence or concession in its name. It has operated their radio and TV stations on the concession and licences in the name of Mr. Jaikaran and being in breach of the conditions imposed by the Act and the conditions contained in the licences and concession. The problem WIN now faces is the very concession and licences expiring but being in no better position now to pay to TATT the concession fees due to it nor to say that any applications for renewal or for new licences can be properly processed before that expiration date.

12. Against this backdrop the question is being asked by WIN whether TATT in making a decision or acting in a way which demonstrates that the licence or concession in the name of Mr. Jaikaran will not be renewed in favour of WIN or in bringing an end to WIN's operations of the radio and television frequencies upon the expiration of the concession and licence, is irrational; a breach of WIN's legitimate expectation and the principles of natural justice; an exercise of a discretion for an improper purpose and is a disproportionate response to all the circumstances of the case. WIN is also seeking from the Court interim relief which would effectively allow WIN to operate its radio and television stations beyond the life of the expired licences until there is a full investigation of WIN's complaint.
13. On my first reading of these papers, quite apart from the fact that interim relief was being sought, I was concerned that WIN had not clearly identified the decision made by TATT which is the subject of challenge nor had it clearly articulated justiciable grounds of challenge of the actions of TATT on its own evidence. Its own evidence concedes that it needed time to pay these outstanding fees. That TATT had made several accommodations but without itself resiling from its entitlement to its fees nor that until transferred, the licences remain in the name of Mr. Jaikaran with a fixed expiration date. Additionally TATT has requested in its response to the "pre action protocol" letter of WIN that it be heard in response to any application it may make to the Court for relief. Indeed as Lord Donaldson MR observed in **R v Legal Aid Board ex p Hughes** [1992] HLR 698 it was the type of case, apart from the application for interim relief that, "I really need to know a bit more about". For these reasons I had ordered that the application for leave be served on TATT and heard in open Court pursuant to rule 54.3 CPR. As a footnote I commend both parties for following proper pre action protocols in this matter. It is of immense value for the Court in assessing

the merits of leave applications and gives the parties one last opportunity to re-evaluate their respective positions.

14. I have had the submissions of Senior Counsel for both parties and I am still unconvinced that WIN's application amounts to more than a humanitarian plea and can be pegged on justiciable grounds for judicial review on the traditional heads as espoused in this application. There may be great humanitarian reasons for the transfer or renewal of Mr. Jaikaran's licence and concessions to WIN. However these businesses operate within a regulated environment and the Court must ever be mindful to balance the interests of WIN and their great contributions to society with the interests of good administration and the policy of the Act. The Court will always have regard to the bounds of logic or legitimacy in decision making, giving the deference due to telecommunication regulators who do not stray into illegality or improper purposes and who within the context of the unique facts, time constraints and sudden activity of WIN within the space of a few months before the deadline, have acted fairly.
15. The starting point of course is the test that must be met by WIN in its application for leave to apply for judicial review and interim relief. This is the type of case which highlights the importance of applications for leave to apply for judicial review to act as a filtering exercise preventing the resources of the court being wasted with trivial or unarguable grounds and to create a framework for certainty in administrative action. The established test which will guide the Court in determining whether to grant a litigant permission to apply for judicial review is that the court will refuse leave to claim judicial review unless satisfied that there is an arguable ground for judicial review having a realistic prospect of success and not subject to a discretionary bar such as delay or an alternative remedy. See **Sharma v Browne Antoine** [2006] UKPC 57.
16. Kangaloo JA explained recently in **Galbaransingh v AG** Civil Appeal 60 of 2007 that the test must be applied contextually against the nature of the decision maker, the decision and the circumstances of the case. Arguability is a test which is "flexible in its application". It must only be in wholly unmeritorious cases which are patently unarguable (barring issues of delay and alternative remedies) that the courts should exercise its discretion in refusing to grant leave. However it is not enough at this stage to say that a case is "potentially arguable".

More recently Jamadar JA in **Baksh v Ejenny Espinet** CA 145/09 explained that on an application for leave the fundamental merits of the application must be addressed where all the evidence must be considered.

17. Section 10 of the Judicial Review Act Chapter 7:08 gives the court a discretion to grant interim relief. Such relief of course simply cannot get off the ground if the application for leave is refused. Interim relief is granted when the court considers that it has a duty, where appropriate, to ensure that any order made on the eventual hearing of the matter would be rendered nugatory. See **Belize Alliance of Conservation Non-Governmental Organisations v The Department of the Environment and Belize Electricity Company Limited** Privy Council Appeal [2003] UKPC 62. In public law cases the court should approach the matter along the lines indicated in **American Cyanamid Company v Ethicon Limited** [1975] AC 396 but with modifications appropriate to the public law element of the case.
18. Of course in my view, reference to the **American Cyanamid** test must be modified by its recent treatment in the decision of **National Commercial Bank Jamaica v Olint Corp PC** 61/08 which broadly speaking called for a contextual approach to the question of interim relief and examining the American Cyanamid principles through the broader spectrum of determining where the greater risk of irremediable prejudice or injustice lie, recognising that such interim relief is an interference with the freedom of action of others. Indeed the underlying theme is for the Court in public law cases to take the course which seems most likely to produce a just result. See **ex parte Greenpeace** and **Factortame (No. 2)**. See also the judgment of Bereaux JA in **Chief Fire Officer v PSC** 49/13. The applicant must first however cross the threshold of showing a serious issue to be tried.
19. One of the interim reliefs sought is in fact one requiring TATT to recommend an interim renewal of the concession. Such mandatory features of the injunctive relief demonstrates the greater risk of injustice if it is granted than withheld as this goes well beyond preserving the status quo and obtains further indulgences to WIN to operate notwithstanding its non payment of concession fees.



20. Senior Counsel for WIN has argued that there are indeed triable issues and that the Court must take cognisance of the entire picture of TATT's interaction with WIN to understand its complaint of irrationality and fundamental unfairness. TATT has by its inconsistent conduct created uncertainty in the minds of WIN. She complains that since the death of Mr. Jaikaran TATT represented that it will renew or transfer the concession and licences to WIN subject to two conditions as set out in TATT's letter (SJ2) only to be suddenly told on 17<sup>th</sup> February 2016 that it has changed its position and advised WIN that it does not have a licence to operate a radio station and TV Station as that had expired with the death of Mr. Jaikaran. It also said that given the state of arrears it is not in a position to recommend the grant of licence to WIN unless they settled their arrears in two days time. This is being characterised by WIN as an about turn and that such action amounts to oppressive, irresponsible action by a public authority. Simply and classically put it was unfair. It is irresponsible for TATT to be bullying WIN to pay a debt without regard to the disastrous consequences to WIN and its impact to the wider public and community. WIN complains that TATT engaged in an irrational decision making process when all TATT's dealings are examined chronologically. It made a decision on the legal status of the personal nature of Mr. Jaikaran's licence without affording WIN due process. WIN of course is not contesting the fact that Mr. Jaikaran had a duty to sort out his affairs before his untimely passing but certainly there is no licence for TATT, it is argued, to act inconsistently and unfairly with the "forked tongue" in the one hand saying that it will shut down the radio and TV stations and on the other hand accepting and treating with an application to renew the licence made by WIN in February 2016.

21. Senior Counsel for the Respondent has submitted principally that TATT has consistently made it clear to WIN that unless the arrears are paid no favourable consideration can be given to a renewal of the licences or concession. That on its own evidence there is no complaint of a decision identified in the application nor foundation to complain that the actions of TATT were unreasonable. To the contrary the actions of TATT were well within the four corners of the Act and the conditions of the licences and concession. To act in any other manner would be unfairly discriminatory in favour of WIN over all other concession and licence holders who are dutifully paying their fees to TATT. In essence WIN is seeking to foist an illegality on TATT to permit a concession holder to continue to operate a concession or licence in breach of its own conditions. Finally it is being submitted that WIN

has not come to Court with clean hands principally being unable to say to the Court that it is in a position to liquidate the arrears of concession fees owed to TATT. This disentitles it from any equitable relief. In short the only fault of TATT is in its benevolence in granting to WIN too many concessions, no pun intended, in the satisfaction of the arrears of licence and concession fees.

22. The following broad issues therefore arise for consideration:

(1) Whether WIN has raised an arguable ground for judicial review with a reasonable prospect of success that:

- a. TATT has made a decision which is not within the range of reasonable decisions open to a decision maker as a regulator of the telecommunication industry.
- b. That its decision was inconsistent with the policies of the Act.
- c. That it was procedurally unfair by failing to give WIN an opportunity to be heard in response to the real decision to terminate the licences or by breaching its legitimate expectation that WIN was entitled to carry on its operations under Mr. Jaikaran's licence.
- d. That TATT in reality terminated the licence which is a disproportionate response when adjudged against all the circumstances of the relationship of WIN and TATT and WIN's contribution to the wider public.

(2) If there are serious grounds to be heard, whether the balance of convenience or the least risk of injustice lies in favour of granting interim relief.

23. No authorities save for one was referred to the Court during argument as I imagine the applicable legal principles are well known. The classic formulation of *Wednesbury* unreasonableness is where a decision was so outrageous in its defiance of logic on moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. There was no submission by Senior Counsel for WIN for a "hard edged review" of the decision made by TATT. But courts must tread cautiously as I pointed out earlier when reviewing the administrator's approach to their own Gordian Knots. In considering legitimate expectation three main questions arise (i) what has TATT committed

itself to? (ii) What has it proposed to act unlawfully in relation to its commitment? And (iii) what should the Court do? See **R. v The London Borough of Newham and Bibi** [2001] EWCA Civ 607. A claim for legitimate expectation can only be based on a promise which is a “clear, unambiguous and devoid of any qualification”. As to whether the representations were “clear, unambiguous and devoid of relevant qualification” the question is how, on a fair reading of the promise it would have been reasonably understood by those to whom it was made. Any change in policy may be justified in the public interest. It is for the authority to identify an overriding interest on which it relies to justify the frustration of the expectation. It will thereafter be for the court to weigh the requirements of fairness against that interest. See also **Paponette and Ors v AG** [2010] UKPC 32 and **Ramnath v PSC** C.A. Civ 123/2008.

24. Lord Bridge underscored the contextual nature of the principles of fairness when he commented that the rules of natural justice themselves are not engraved in tablets of stone. What the requirements of fairness demands depends on the character of the decision making body the kind of decision it has to make and the statutory framework. Proportionality imports the notion that the legislative objective is sufficiently important to justify limiting a fundamental right, the measures designed to meet a legislative objective are rationally connected to it and the means used to restrict a right of freedom, in this case to operate a licence, are no more necessary to accomplish the objective. See **Huang v Home Secretary** [2007] UKHL 11.
25. Upon considering the submissions and all the evidence on this application I cannot grant leave to apply for judicial review or obviously grant interim relief. I say so for the following reasons.
26. In my view WIN has not satisfactorily identified the decision of TATT which is being challenged. WIN has identified four decisions of which it complains (a) a refusal to accept an application for renewal (b) a decision not to recommend the renewal of the concession (c) a decision that it will shut down WIN’s operations (d) that WIN has no licence to operate. But these are neither the subject of its “pleaded case” nor made obvious in its complaint from the reliefs sought. It is not sufficient to claim that its inability to properly identify a reviewable decision is the fault of TATT’s alleged bungling and inconsistent approach in this matter. WIN must be clear in approaching this Court. Having regard to the purpose of judicial review

it must identify the decision which is under review, (if that is how the applicant is framing its case as distinct from some general conduct), so that this Court can properly subject that decision to proper analysis whether on the “pleaded” grounds of challenge or on the discretionary factors such as delay or whether there are alternative remedies. Indeed it was revealed in the exchanges with the Court that it is the Minister who ultimately makes the decision whether or not to renew licences or concessions and although TATT’s makes recommendations to the Minister, the Minister’s eventual decision is also subject to review.

27. Importantly it is not for this Court to step into the shoes of TATT and to substitute its views for the administrator to consider what can be done to unravel the Gordian Knot. The main focus is on the process by which the decision has been made and not the substance or merits of the decision. The Court should only intervene if persuaded that TATT’s decision was perverse or there is merit in the other grounds of review. But it is not for this Court to say it would have reached a different conclusion because TATT should have attached more weight to one rather than another factor. See **R Crown Court at Manchester ex p McDonald** [1999] 1 WLR 841.

28. But strictly speaking even if the various decisions identified are the subject of this application there can be no legitimate complaint. I was concerned and indeed anxious that TATT was placing too much emphasis on the need to recover its fees perhaps giving credence to WIN’s criticism that TATT was converting its purpose from a regulator of a telecommunications industry to a debt collector. However I am satisfied that after a proper examination of the regulatory framework, WIN’s operating the licence and concession through a historical relationship between itself TATT, and Mr. Jaikaran and TATT’s obligations to other operators in the market, there is no illegal or improper purpose being pursued by TATT or a response which can be characterised as disproportionate.

29. Within the context of the legislative regulatory environment in which these parties operate the following are pellucid:

- (a) No person can operate a public telecommunications network or radio communications service without a concession granted by the Minister or a licence by TATT. To so operate without a concession constitutes an offence under the Act.

- (b) If WIN is interested in operating a network or providing a service it must apply to TATT in the manner prescribed in the legislation. Similarly if it wishes to apply for an renewal it must make its appropriate application to TATT.
- (c) The concessions and licences granted to Mr. Jaikaran required the concessionaire to pay fees annually to TATT, prohibited the transfer of control of the concessionaire without the prior written approval of TATT and prohibited the assignment of the concession without the prior written approval of TATT.
- (d) Applications for renewal are to be made no later than 3 months before the end of the term in this case that would have been no later than November 2015.
- (e) TATT in assessing any application for renewal shall be entitled to consider and have regard to previous compliance with the conditions of the licence/concession any material contravention of the Act or regulation and or whether there was a failure to comply materially with any lawful direction of TATT.

See sections 21(1), 22(1), 31(1), 65 of the Act.

- 30. Against this legislative backdrop there can be no complaint of TATT's insistence on the satisfaction of the conditions which deal with the payment of outstanding concession fees as set out in its 2011 letter (SJ2) and which it repeats in its negotiations before any application by WIN for a renewal or transfer of Mr. Jaikaran's licence or concession can be viewed favourably.
- 31. Taking such a position by TATT is logical and eminently reasonable. To do or to insist that TATT act otherwise would be to legitimise indiscipline in the regulation of the telecommunications industry.
- 32. Far from characterising TATT as the "Shylock" seeking its pound of flesh from "a debtor", there are significant legislative provisions which buttress the payment of concession and licences fees. The intention of the legislation was to establish an independent regulator to execute the various and diverse technical matters required in the regulations of the telecommunications market such as establishing spectrum plans, conducting inspections, establishing standards. These important operations for the industry discharged by TATT are funded in part by these fees (section 53(1) of the Act). It is not surprising therefore that one

of the objects of TATT is to collect all fees levied under the Act (Section 18(1) (c) of the Act). According to the Telecommunication (Fees) Regulations 2006 (the Regulation) those fees are calculated based upon in part the revenues of the concessionaires. The formula utilised is the total revenue earned by the concessionaire divided by total revenue of the sector multiplied by TATT's total cost related to concessions. Significantly therefore an operator who withholds its financial information from TATT impedes its ability to accurately calculate its fees. Those fees are invoiced to the concessionaire and become due within 28 days of issuing its invoice. See Regulations 3, 4, 5, 7, 9, 20. The continuous reminders by TATT of the concessionaire obligations are legitimate and one can from an administrator's perspective excuse any impatience that TATT may have expressed during the course of its dealing with WIN.

33. In examining the chronology and sequel of facts as set out by Ms. Jaikaran I can discern no alteration nor change from the position taken by TATT that (a) fees are due to it by Mr. Jaikaran (b) TATT cannot entertain an application for a renewal of the licence or concession unless these fees are paid (c) at its highest that if those fees are paid it would look favourably on such applications. It is sufficient to allude to the representations made by TATT as stated in paragraph 25, 26, 31, 32 and 38 of Ms. Jaikaran's affidavit. There was no promise that concessions or licences would have been renewed or transferred to WIN unconditionally.
34. It must have also been understood by the parties that the licences or concession of Mr. Jaikaran has a shelf life of 10 years. What is disappointing is that WIN knowing what was at stake in terms of its radio and television operations would take the risk of not having put in an application for a renewal of the licence as soon as possible or make an application for a licence or concession in its own name and wait for the 11<sup>th</sup> hour to make entreaties with TATT and present payment plans yet to date it is in no better position to guarantee the full liquidation of the outstanding fees. This may not be the fault of the younger Jaikaran as it is with Mr. Jaikaran. Unfortunately this was the intractable problem which the managers of WIN faced upon his untimely passing.
35. It is not for this Court to assess the merits of WIN's repayment plans but simply to ensure that TATT was not in making its strident demands for compliance acting in some way in contravention with the policies of the Act or unfairly. I am satisfied that it has not. It must be

underscored that the purpose of the Act was to regulate telecommunications in Trinidad and Tobago and to transform it from a virtual monopoly to a liberalised telecommunications market. It is clear from the preamble of the Act that a necessary part of such transformation was to prevent anti-competitive practices. Certainly what would be a legitimate consideration for the regulator is to ensure that like are treated alike, that policies are applied across the board, that making exceptions or refraining from exercising any of its duties under the Act must be consistent with the agreed telecommunications policy objectives. In this case public notices were published by TATT notifying all radio and television broadcasters whose concessions are due to expire before the end of February 2016 that they are required to settle all outstanding arrears due to the Authority on or before 16<sup>th</sup> February 2016 failing which the concession may not be renewed with the consequence that broadcasting service will no longer be authorised. There is no deviation from this public statement in the position taken by TATT with WIN. In fact it is consistent with it. If TATT was to resile from this publicly stated position it begs the question on what basis could it legitimately do so for a holder of licence or concession who has been in default of his obligations since 2011, who has not attempted to liquidate the arrears of fees due for a period of 2 years before Mr. Jaikaran's death and then belatedly failed to provide a satisfactory payment plan and has simply come to Court saying on affidavit in essence "we need more time".

36. In my view TATT's statement that the licence had expired upon the death of Mr Jaikaran in its letter dated 11<sup>th</sup> February 2016 in no way changes the complexion or dramatically alters the state of affairs between the regulator and concessionaire. At best it is academic and at its lowest it is a "red herring". Even if the legal advice TATT received was wrong, it does not change in substance its concern that a licence or concession was being operated with a considerable level of arrears of fees owed to TATT. Put another way if indeed there is a breach of natural justice and WIN is allowed the opportunity to be heard or to make representations that these licences are not personal to Mr. Jaikaran, (which incidentally it does in WIN's letter through its attorney Mr. Clarke), it does not change the fact that concession and licences fees are due and owing. It would be proper to say that the only legitimate expectation WIN can claim to have (and Ms. Jaikaran has said it as much) is that if the debt is repaid, of course before the expiration of the concession and licences, TATT can

treat with their application for renewal. TATT has said as much to the public at large to other licences and concession holders. Indeed neither the letter nor the subsequent meeting prevented WIN from making albeit belatedly a formal application to renew the concession/licences. TATT's response to such an application is nothing short of administratively processing the application and not a representation that it will unconditionally renew the licence or concession.

37. Finally TATT's decision cannot be characterised as an implied termination. Section 30 clearly sets out a legislative process which has not been invoked to terminate the licence or concession held by Mr. Jaikaran.

38. Returning to the issues identified above. TATT's decision is not outrageous or in defiance of logic nor beyond the range of responses open to a reasonable regulator of a liberalised telecommunications industry. WIN has not convinced me that there is an arguable claim that the decision of TATT was irrational nor unreasonable. There is no decision made by TATT to terminate the licences of Mr. Jaikaran to invoke section 30 of the Act. As such there can be no arguable complaint that there was a failure to give TATT an opportunity to be heard before such a decision was made. In fact the decision made with regard to treating with the unpaid licence fees as a condition for renewing or transferring the licence is a legitimate object of the Act, is consistent with the legislative policy and is not a tool to collect a judgment debt. There is no legitimate basis to assert that WIN had a legitimate expectation that it was entitled to carry on operations under the licence simpliciter when it also knew that (a) the licences were in the name of Mr. Jaikaran (b) they were not renewed (c) there are outstanding concession fees due to TATT and breaches of the Act by Mr. Jaikaran. (d) TATT never conceded that it would renew the licences unconditionally or after their expiry.

39. My conclusion on the application for leave in reality brings an end to an application for interim relief. It fails on the first instance to raise any triable issue. Indeed through the vehicle of interim relief WIN will in effect obtain the luxury of operating its radio and television station after the expiry of its concession and licenses and in the face of accepted breaches of their conditions. I would have expected a much more serious complaint mounted against TATT on clearly articulated, not fanciful or speculative, justiciable grounds to have obtained such relief.



40. WIN is facing its own Gordian Knot. I have in some brief exchanges explored with Senior Counsel for both parties whether any practical solution may exist bearing in mind the consequences to WIN's and to a certain extent the national community. One can take the hard line that these are business decisions, that companies rise and fall, that succession plans need to be given careful thought. There is also a softer more conciliatory approach. But even so such approaches must be done against the backdrop of the legislative environment. Ultimately the decisions of TATT that have been brought to my attention are not detrimental to good public administration. Lord Diplock observed even though more strands may be added to the traditional grounds of review, they are and will always be closely interwoven. But however the cloth emerges from the loom, it must never be forgotten that the Court exercises a supervisory and not an appellate jurisdiction and I have found no reason to intervene in the decision making process of TATT. The Gordian Knot may be difficult to untie and at times "out of box" thinking may be useful to cut it. But that is a matter for the parties and if they request it a suitable Judicial Settlement Conference can be convened to allow them the opportunity to employ such out of the box ideas.

41. As far as the application for leave for judicial review is concerned it will be dismissed.

**Vasheist Kokaram**  
**Judge**