



[2023] JMSC Civ. 151

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**CIVIL DIVISION**

**CLAIM NO. SU2022CV02054**

<b>BETWEEN</b>	<b>SHAUNA ANDERSON GUTHERIE (T/A IG MARKETING AND CONSULTANCY)</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>SOUTHEAST REGIONAL HEALTH AUTHORITY</b>	<b>1<sup>st</sup> DEFENDANT</b>
<b>AND</b>	<b>MINISTER OF HEALTH &amp; WELLNESS</b>	<b>2<sup>nd</sup> DEFENDANT</b>

OPEN COURT

**Ms. Ariana Mills & Ms. Keisha Spence instructed by Henlin Gibson Henlin for the Claimant.**

**Ms. Faith Hall, the Director of State Proceedings for the 1<sup>st</sup> & 2<sup>nd</sup> Defendants.**

**13<sup>th</sup> June 2023 & 27<sup>th</sup> July 2023**

**JUDICIAL REVIEW – Illegality- Powers of the Minister under the National Solid Waste Management Act- Circumstances that Mandamus may be granted- Legitimate Expectation.**

**SIMONE WOLFE-REECE, J**

**INTRODUCTION**

[1] The Claimant is seeking Judicial review of a decision of the Defendants with regard to the National Solid Waste Management Authority (NSWMA) being the only authorized contractor to collect ship/vessel waste. The circumstances that have led to this claim are outlined below.

- [2] The Claimant is a business woman who owns and operates IG Marketing and Consultancy. Her business focuses on waste disposal, specifically the collection and disposal of garbage and other waste from maritime vessels. The structure of her business is that the shipping agent will send a form to the Port Health and Quarantine services (Port Health) requesting disposal of ship generated waste. Port Health is under the direct control of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.
- [3] On approval the Claimant would advise the shipping Agent of the details for her agents and vehicles which would be supplied to the security personnel at the port, who would then give them access to the port for the waste to be removed.
- [4] The Claimant has been in this business since about September 2021. On October 30<sup>th</sup> 2021, the Claimant was advised by a Client that they had received an email from the Senior Quarantine Officer of Port Health stating that NWSMA is the only authority authorized to collect maritime waste.
- [5] The Claimant states that despite her attempts to clarify same with Port Health and the Maritime Association of Jamaica she has received no response. Mrs Anderson Guthrie in her capacity that she is directly affected by the decision is seeking judicial review and orders to quash the said decision as well as an order from the Court directing the Defendants to permit her to continue to collect maritime waste.
- [6] The Claimant was granted leave on 10<sup>th</sup> June 2022 by Nembhard, J, to file a Claim seeking judicial review. The Fixed Date Claim form filed on June 29, 2022 seeks the following orders:
1. An Administrative order by way of an order for certiorari to quash the Defendants decision confirmed in email dated the 29<sup>th</sup> October 2021 that only the National Solid Waste Management Authority is the only authorised entity to collect maritime waste from ships.

2. An administrative order by way of an order for mandamus directing the Defendants to permit the Claimant to continue to conduct her business of the disposal of maritime wastes
3. Costs & Attorneys' Costs
4. Damages

## ISSUES

[7] The 3 main issues for determination as follows:

- 1) Whether the decision as stated in the email dated October 29, 2021 is illegal/unlawful
- 2) Whether the Claimant is entitled to an order for certiorari to quash the decision confirmed in the email dated 29<sup>th</sup> October 2021 that only the National Solid Waste Authority (NSWMA) is the only authorized entity to collect maritime waste from ships
- 3) Whether the Claimant is entitled to an order for mandamus directing the Defendants to permit the Claimant to continue to conduct her business of disposing of maritime waste

## ANALYSIS

[8] The Claimant exhibited to her affidavit<sup>1</sup> an email dated October 29, 2021. This email was sent out from the email address [porthealthne2@gmail.com](mailto:porthealthne2@gmail.com) under the hand of Coloma Conville, Senior Quarantine officer and reads as follows:

*Good Evening,*

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<sup>1</sup> Affidavit of Shauna Anderson Guthrie filed on 29<sup>th</sup> June 2022 Exhibit SA 1

*Based on the directives from the Ministry of Health and Wellness (MOHW) with immediate effect all requests for garbage disposal/discharge must be accompanied by the requisite forms with all the sections completed. Increasingly garbage disposal/discharge requests are being received and all the sections of the form (Appendix 1) are either not completed or not included. Please note that failure to complete/include all the sections will result in delays in processing/approving. Appendix 1 has four (4) sections (all sections must be included and completed which are highlighted below*

1. SHIP PARTICULARS
2. PORT AND VOYAGE PARTICULARS
3. TYPE AND AMOUNT OF WASTE FOR DISCHARGE TO FACILITY
4. WASTE CONTRACTOR AND END USER'S PARTICULARS

***NB The National Solid Waste Management Authority (NSWMA) is the only authorized contractor to collect ship/vessel waste.***

*Please be reminded that all vessels should submit a Crew Temperature log 4 hours before arrival and a recent Crew Temperature Log must be submitted/included in the pre-arrival documents before approval is sent to the Pilot's office/dispatcher.*

*Coloma Conville*

*Senior Quarantine Officer (Ag.)*

*Port Health & Quarantine Services*

*New Port East*

*Kingston 15*

[9] Ms. Conville indicates in her email that the directive is coming from the Ministry of Health & Wellness (MOHW). However, there is no reference as to who made the decision that the NSWMA is to be the only authorized contractor to collect ship/vessel waste.

[10] In the affidavit in response to the claim, Dr Sandra Chambers, the Regional Technical Director at the South East Regional Health Authority gave evidence that the Maritime Authority of Jamaica (MAJ) is the repository for discharging Jamaica's obligations under the International Convention for the Prevention of Pollution from ships (MARPOL 73/78). There is no dispute that this international convention has

not yet been incorporated in the laws of Jamaica. However, there are obligations which Jamaica recognizes and seeks to implement pursuant to the convention. The provision of waste reception facilities at the ports for the collection of ship generated waste is one such obligation.

- [11] In light of the implications that waste management can have on public health and the environment and in the absence of a specific legal framework it is incumbent on the government to provide and implement a system for the collection and disposal of waste.
- [12] Dr Chamber's evidence is that in effort to meet the obligations of proper waste management in relation to ship generated waste they developed a ***National Development Manual. In particular Volume 5 Section 7 encapsulates the Management of ship generated, Medical and Hazardous Waste.***<sup>2</sup>
- [13] She further contends that it is the Minister of Health and Wellness who is responsible to monitor the maintenance of proper health standards. It's is on this basis that the Defendants have instructed the NSWMA as the sole collector of ship generated waste.
- [14] The Claimant states that this decision made by the defendants to vest in the NSWMA solely the responsibility to remove and dispose of ship generated waste is illegal. That is the National Solid Waste Management Act only authorizes the Authority to collect solid waste, and ship generated waste does not fall within the ambits of the legislation.
- [15] In judicial review proceedings the role of the Court and the scope of the proceedings are clear. The basis of any challenge in the confines of judicial review

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<sup>2</sup> Affidavit of Dr Sandra Chambers filed February 2, 2023 Exhibit SC 1

is limited to errors of law and must be firmly rooted in one of recognized grounds of illegality, irrationality or procedural impropriety.

[16] In *Council of Civil Service Unions v Minister for the Civil Service*<sup>3</sup> Lord Diplock stated:

*“By ‘illegality’ as a ground for judicial review, I mean **the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.** Whether he has or not is par excellence a justiciable question to be decided, in the event of dispute by those persons the judges, by whom the judicial power of the state is exercisable.”*  
*(emphasis mine)*

[17] It is accepted by this Court that issues that concern matters of public health fall within the purview of the Minister of Health and Wellness. The Public Health Act is one piece of legislation that seeks to guide and regulate public health in Jamaica. In relation to the management of ship-generated waste there is no specific legislative scheme within the laws of Jamaica.

[18] There are international treaties that seek to address the interaction and protection of the marine environment. The International Convention for the prevention of pollution from ships (MARPOL) has established certain obligations to help combat pollution from ships and prevent same within the marine environment. Jamaica is a State party to MARPOL which came into force for the country in 1991. This treaty has created a framework internationally to address oil, noxious liquid substances carried in bulk, harmful substances carried in packaged form, sewage, garbage, and air pollution. It is therefore incumbent on the Minister with responsibility for public health and disposal of waste in the absence of a legislation to put in measures to ensure Jamaica abides by the international framework that we are a party to.

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<sup>3</sup> [1985] AC 374 at 410

**[19]** I accept the evidence and it has not been challenged that the 2<sup>nd</sup> Defendant's role in the process is to monitor environmental conditions and to ensure proper health standards are maintained. I therefore find that the The Minister has the authority to use existing legislation and to implement regulations and directives to manage ship generated waste.

**[20]** Is the NSWMA a vehicle for the Minister vested with the responsibility to collect ship generated waste? The NSWMA Section 2 defines solid waste as follows;

*“solid waste” includes medical and hazardous waste and –*

- (a)** *Refuse or sludge from a waste treatment facility, water supply plant, air pollution control facility and garbage*
- (b)** *Solid, semi solid or contained gaseous or liquid matter resulting from industrial, commercial mining or agricultural operations or domestic activities; and*
- (c)** *any contained substance or object which is or is intended to be or required by law to be disposed of*

*but does not include-*

- (i)** *animal manure and absorbent bedding used for soil enrichment;*
- (ii)** *suspended solid or dissolved material in sewage; and*
- (iii)** *industrial discharges from pipelines conveying waste*

**[21]** The Claimant has submitted that ship generated waste does not fall with the scope of the NSWMA. I accept the fact that the Act does not make specific reference to ship generated waste but in the definition of solid waste it refers to any contained substance or object which is intended to be or required by law to be disposed of. I am of the view that the Act does not preclude the NWSMA from dealing with or handling ship-generated waste.

[22] The evidence of Dr Chambers<sup>4</sup> is that ship generated/ maritime waste is not covered under the NSWMA as being an area under the sole purview of the Authority. However, I accept that the regulation of same must fall to the Minister with responsibility and the legislation does not preclude such a directive.

[23] *Section 4 of the NSWMA provides the functions of the Authority as follows:*

*“4.-(1) The Authority shall-*

*(a) take all steps as necessary for the effective management of solid waste in Jamaica in order to safe guard public health, ensure the waste is collected stored, transported, recycled, reused or disposed of, in an environmentally sound manner and promote safety standards in relation to such waste.*

*(b) promote public awareness of the importance of efficient solid waste management and foster understanding of its importance to the conservation, protection and proper use of the environment;*

*(c) advise the Minister on matters of general policy relating to solid waste management in Jamaica*

*(d) perform such functions pertaining to solid waste management as may be assigned to it by the Minister or under this Act or any other enactment.” (emphasis mine)*

[24] The Claimant has urged on the Court to conclude that the Defendants have no authority to assign the exclusive role of collecting maritime waste as this function is not included in the scope of the Act. I must disagree with the Claimant’s Counsel that the Act authorizes the Authority to perform such functions pertaining to solid waste management as may be assigned by the Minister, which does not include ship generated waste. As per the NSWMA, solid waste management includes-

**(a)** The systematic control of the generation, collection, separation, storage, reuse, recycling, transportation, transfer, treatment and disposal of solid waste and

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<sup>4</sup> Affidavit filed on June 29, 2022 para 8



(b) The characterization and measurement of solid waste.

- [25] If I am incorrect in my interpretation of the scope of the definition of solid waste in the legislation, I find that the Minister has the authority to regulate and control matters of ship generated waste in the absence of a specific generated framework, as there is no evidence that the designation by the Minister, which is that the NSWMA is the only authorized contractor, is unlawful.
- [26] The Claimant had no contract with the Ministry or the Government of Jamaica. In her affidavit filed on April 27, 2023 she gave evidence that she is licensed under the public Procurement Act and has been given a Public Procurement Commission Certificate of Registration and Classification for goods and services for garbage collection and disposal. She exhibited the certificate as proof thereof.
- [27] The certificate provides that the Claimant can be included on the Government of Jamaica Approved Register in the category of Transportation and haulage of – Garbage collection and Disposal. I am of the view that this certificate only places the Claimant in position to be considered in procurement exercises specifically related to transportation and haulage –garbage collection and disposal. Further to that it makes no reference to ship generated waste or maritime waste.

### ***Legitimate Expectation***

- [28] The Claimant asserts that she has a legitimate expectation which has been breached by the Defendants by this directive. In **Salada Foods Jamaica Limited v Jamaica Agricultural Commodities Regulatory Authority**<sup>5</sup> In considering the issue of legitimate expectation Nembhard, J stated:

***"[71] The concept of a legitimate expectation arose in the case of Council of Civil Service Union and Ors v Minister of the Civil Service. Lord Fraser opined that a legitimate or reasonable expectation may arise either from an express promise given on behalf of a public***

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<sup>5</sup> [2020] JMSC Civ 198

***authority of from the existence of a regular practice which a claimant can reasonably expect to continue.***

***[72] In the broadest terms, the principle of legitimate expectation is based on the proposition that, where a public body states that it will do (or not do) something, a person who has reasonably relied on the statement should, in the absence of good reasons, be entitled to rely on the statement and enforce it through the courts. The principle cannot be invoked if, or to the extent that, it would interfere with the public body's statutory duty. Neither can there be a legitimate expectation which is contrary to law and which the authority has no power to grant.***

***[73] The Court accepts that, in order to make out a case for legitimate expectation, there must be a clear and unambiguous promise or representation made which is within the power of the Authority to grant..."***

**[29]** I adopt this reasoning from the Learned Judge as a sound assessment of the principle. The evidence in this claim reflects that the Claimant has been operating her business of collecting maritime waste for approximately two (2) months before this directive was given. In her affidavit<sup>6</sup> it is patently clear that it is the vessel agent that interfaces with Port Health and makes the application.

**[30]** In the two (2) month period of operation it cannot be determined on the evidence how many times approval was given in regard to the Claimant. Coupled with the fact that there was no direct relationship or arrangement between Port Health and the Claimant. I do not find that the evidence of the Claimant can be deemed a regular practice to satisfy a claim of legitimate expectation.

**[31]** The Claimant is seeking this Court to grant an order of mandamus, which would compel the public authority to permit the Claimant to conduct her business of the disposal of maritime waste.

**[32]** Having concluded that the Minister has not acted unlawfully or outside of his jurisdiction, therefore an order of mandamus would not be appropriate in this

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<sup>6</sup> Affidavit of Shauna Anderson Guthrie filed April 27, 2023

circumstances. The Court accepts that the Claimant through her Counsel would have made a demand in writing and the Minister would have failed to respond. Further to that as noted by Brooks, JA (as he then was) in ***Latoya Harriot v The University of Technology***<sup>7</sup>, it is whether the decision lies within the discretion of the decision-maker. At para 21 of the judgment the Court cited the case ***Medical Council of Guyana v. Dr Muhammad Mustapha Hafiz***<sup>8</sup> where the Court stated:

*“A clear and settled principle of law is that the person being compelled to the performance of an act by an order of mandamus must have a clear duty imposed on him as opposed to a mere discretion.”*

- [33] For the Court to compel the Minister to permit the Claimant to continue to conduct her business of disposal of maritime waste would be to interfere with the discretion of the decision maker.
- [34] On the above analysis the Applicant has failed on balance of probabilities to show that the decision was illegal and therefore the following orders are made:

#### **DISPOSITION**

- 1. The application for an administrative order of Certiorari to quash the Defendants’ decision confirmed in email dated 29<sup>th</sup> October 2021 that only the National Solid Waste Management Authority is the only authorised entity to collect maritime waste from ships is refused.**
- 2. The application for an administrative order by way of an order for mandamus directing the Defendants to permit the Claimant to continue to conduct business of disposal of maritime waste is refused.**

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<sup>7</sup> [2022] JMCA Civ 2

<sup>8</sup> (2010) 77 WIR 277 at page 283

- 3. The Injunction granted on the 23<sup>rd</sup> September 2022 compelling the Defendant/Respondent to permit the Claimant/Applicant to conduct her business of disposal of maritime waste is discharged.**
- 4. No order as to costs.**