

IN THE HIGH COURT OF JUSTICE
(Sub-Registry - San Fernando)

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Challenger

CP 11

HCA: NO: 1024 of 1987

IN THE MATTER OF CHAPTER 1 OF THE
CONSTITUTION OF TRINIDAD AND TOBAGO
GUARANTEEING THE RECOGNITION AND
PROTECTION OF FUNDAMENTAL HUMAN
RIGHTS AND FREEDOMS

and

IN THE MATTER OF ORDER 55 OF THE RULES
OF THE SUPREME COURT

and

IN THE MATTER OF THE CONTRAVENTION OF
SECTIONS 4(a), 4(b), 4(d), 5(2)(e) AND
5(2)(h) of the CONSTITUTION OF TRINIDAD
AND TOBAGO

BETWEEN

LUVINA BAIRD

Applicant

And

THE ATTORNEY GENERAL OF TRINIDAD
AND TOBAGO

Respondent

Before The Honourable

Mr. Justice Mustapha Ibrahim

Dr. F. Ramsahoye Q.C.
(R.L. Maharaj with him)
for the Applicant;
Bereaux for the Respondent.

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J U D G M E N T

This is an application by the applicant for leave
to serve on the respondent interrogatories relating to
the motion filed by the applicant on April 27, 1987.
The applicant had filed an appeal on February 17, 1975
to the Court of Appeal against the judgment of Roopnarine
J. delivered on February 05, 1975 in an interpleader pro-
ceeding No. 36 of 1974 concerning a sum of money which

/became.....

INTERROGATORIES

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&
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became payable upon the death of the applicant's deceased husband Milton Baird on February 01, 1975 under and in pursuance of the Employer's Benefit Plan of Texaco Trinidad, Incorporation. The appeal was heard on 10th and 11th March, 1986 by the Court of Appeal comprising Justices of Appeals des Isles, Warner and Mac Millan.

By April 27, 1987, the justices had not yet delivered their judgment and the applicant filed this motion seeking orders and declarations to the effect that the applicant's rights have been contravened by the judicial arm of the State and that the failure of the justices to give any judgment after more than one year from the date when the appeal was heard is unconstitutional.

It is not in issue that by virtue of Section 30 of the State Liability and Proceedings Act, Ch. 8:02, the Court can make an order granting leave to serve interrogatories on the State. The question is should such an order be made in this case. The sole complaint in the motion is one of delay: delay on the part of the State by its judicial arm in making available to the Attorneys for the applicant certified copies of the notes of evidence and the judgment of the trial judge to enable them to file the record of appeal with the Court of Appeal to have the appeal heard (a delay of some 10 years) and after the appeal was heard, delay of more than one year in the Court delivering its judgment. In fact, when the motion was filed some thirteen and a half months after the appeal was heard, the Court of Appeal had not yet delivered its judgment. The

/basic idea...

basic idea behind the interrogatories is to ascertain the facts to support the contention of the applicant that she was denied the right to equality before the law and the protection of the law and the equality of treatment from the judicial arm of the State in the exercise of its functions.

The principles on which interrogatories are allowed are well settled and too well known to require any discussion in detail. The prime object of interrogatories is to enable both parties to ascertain before hearing what are the exact points on which there will be conflict of evidence on the facts, thereby saving trouble and expense in preparing for the trial. To this end interrogatories, as a general rule, will be allowed whenever the answers to them will serve either to maintain the case of the party administering them or to destroy the case of his adversary. (Robinson v. Chokalingo and Maharaj 1970, 16 WIR 407 at p. 408).

In Attorney General v. Gaskill (1882) 20 Ch. D. p.519, at p.528, Jessel M.R. said:-

"Now one of the great objects of interrogatories when properly administered has always been to save evidence, that is to diminish the burden of proof which was otherwise on the plaintiff. Their object is not merely to discover facts which will inform the plaintiff as to evidence to be obtained, but also to save the expense of proving a part of the case."

/Cotton.....

Cotton L.J. at p.528 said:-

"A party has the right to interrogate with a view to obtaining an admission from his opponent of everything which is material and relevant to the issue raised on the pleadings. Discovery is not limited to giving the plaintiff a knowledge of that which he does not already know, but includes the getting an admission of anything which he has to prove on any issue which is raised between him and the defendant..... The object of interrogatories is to see if whether the party who interrogates cannot obtain an admission from his opponent which will make the burden of proof easier than it otherwise would have been."

Lindley L.J. at p.530 said:-

✓ "It is no reason for declining to answer the interrogatories to say that the same information may be got by cross-examination at the trial."

In Flight v. Robinson (1844) 50 E.R.. at p.9,
Lord Langdale M.R. at p.13 said:-

"According to the general rule which has always prevailed in this Court, every defendant is bound to discover all the facts within his knowledge, and to produce all documents in his possession which are material to the case for the plaintiff. However disagreeable it may be to make the disclosure, however contrary to his personal interests, however fatal to the claim upon which he may have insisted, he is required and compelled under the most solemn sanction, to set forth all he knows, believes, or thinks in relation to the matters in question."

It must be borne in mind that Order 26, Rule 3, places a limitation on the power of the Court to grant leave. The rule reads thus:-

/"On the....

"On the hearing of an application under this rule, the Court shall give leave as to such only of the interrogatories as it considers necessary either for disposing fairly of the cause or matter or for saving costs."

The rules formulated by the Courts are subject to the general principle that interrogatories will not be allowed if they exceed the legitimate requirements of the particular occasion (*White and Co. v. Credit Reform Association*, 1905, 1KB at p.659) or put on the opposite party a burden out of all proportion to the benefit to be gained by the applicant. Interrogatories may be refused as a whole or in part if they are prolix, oppressive and unnecessary. (*Oppenheim v. Sheffield*, 1893, 1Q.B. p.5).

Bearing in mind the relevant law and rules, I now turn to the interrogatories. It seems to me that the thirteen interrogatories can be divided into three groups. The first group will comprise numbers 2, 3, 4, 5, 9, 10, 12 and 13. The second group will comprise numbers 1, 6, 7 and 8 and then there is 11.

I will deal with the first group first. The substance of the allegations of the applicant is that of delay as a result of which she alleges that her case was not properly and competently determined. She seeks answers to questions which are contained in public records peculiarly within the knowledge of the State. The information is required firstly as evidence and secondly to obtain admissions from the respondent of matters which she has to

/prove on.....

prove on the several issues raised by the respondent in the affidavit of Kent Reynald. Interrogatories 2, 3, 4 and 5 arise directly from the allegations contained in paragraphs 16 to 19 of the affidavit. Serious matters are raised in these paragraphs and I am of the view that the interrogatories are necessary for disposing fairly of the cause or matter and also for saving costs.

Interrogatories 9 and 10 arise directly from the statements made in paragraph 10 and is relevant and necessary. With respect to 12, Sec. 6(3) of the Supreme Court of Judicature Act, Chapter 4:01 provides that the Court may, if the Chief Justice so directs, sit in two divisions at the same time. The interrogatoris seeks to determine whether the power was in fact exercised. I will allow it. With respect to 13, I will allow it but not as framed. I would substitute "April 01, 1985" for "January 1985" because that was the beginning of the month after the record of Appeal was filed. It was filed on March 26, 1985.

With respect to the second group comprising numbers 1, 6, 7 and 8, I do not believe that they should be allowed. I do not consider them necessary. With respect to number 11, the answer is to be found in Sec. 6(1) of the Supreme Court of Judicature Act, Chapter 4:01, and it will not be allowed.

Leave is therefore given to the applicant to deliver to the respondent interrogatories numbered 2, 3, 4, 5, 9, 10, 12 and 13 as amended above. Interrogatories

/numbered.....

numbered 1, 6, 7, 8 and 11 are not allowed. It is hereby ordered that the respondent do answer in writing by affidavit the said interrogatories on or before January 06, 1988. The interrogatories are to be answered by the Solicitor General. The applicant is entitled to her costs of this application. Certified fit for Senior and Junior Advocate Attorney.

Stay of Execution pending appeal is refused.

Delivered this 30th day of November, 1987.

Mustapha Ibrahim,
Judge.