

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN EQUITY

SUIT NO. E199 OF 1989

IN THE MATTER OF THE CONTRACTOR GENERAL ACT

AND

IN THE MATTER OF AN AGREEMENT FOR THE PURCHASE  
OF LANDS BY TELECOMMUNICATIONS OF JAMAICA  
LIMITED

BETWEEN ASHTON GEORGE WRIGHT PLAINTIFF

AND TELECOMMUNICATIONS OF JAMAICA LIMITED DEFENDANT

S.C. 6.10.89

IAN RAMSAY AND DERRICK MCKOY FOR PLAINTIFF

DAVID MUIRHEAD Q.C. AND NOEL LEVY FOR DEFENDANT

HEARD:

CORAM: WOLFE J.

The Plaintiff Ashton George Wright is the Contractor General of Jamaica, having been duly appointed as such, under the Contractor-General Act, which was promulgated on the 6th day of October, 1983.

The defendant is a company, registered and incorporated under the Companies Act of Jamaica with registered office at 47 Half Way Tree Road in the parish of St. Andrew. There is no dispute that on the 6th June 1989 the Register of Members showed that of a total number of 965,683,648 issued shares there were 386,423,504 shares held and registered in the name of the Accountant General of Jamaica.

It is also common ground that on the 13th day of December, 1988 the Defendant entered into an agreement with Development Properties Limited to purchase lands registered at Volume 1180 Folio 336 and Volume 1005 Folio 325 of the Register Book of Titles at a price of \$49,189,200.00.

The Contractor General purporting to act under Section 15(1) of the Contractor General Act 1983, sought to investigate the terms of said contract. The Defendant contended that he was not entitled so to do. In consequence thereof, the Contractor General on the 13th day of June 1989 invoked the jurisdiction of the Court by way of Originating Summons to

have the following questions determined:

- (a) Whether the Defendant is "a public body" within the intendment of the Contractor-General Act; and/or
- (b) Whether the agreement for the purchase of land by the Defendant is a "Government contract" within the intendment of the Contractor-General Act; and/or
- (c) Whether the Contractor-General has jurisdiction pursuant to the Contractor-General Act in relation to such an Agreement as in (b) above.

Subsequent to the filing of the Originating Summons, on the 13th June 1989 the Accountant General effected a transfer of 193,136,800 of the shares standing in his name to Cable and Wireless Limited. This transfer was registered on the 27th day of July 1989. Cable and Wireless Limited now holds 569,753,560 shares or 59% of the shares whereas the Accountant General now holds 193,295,454 shares or 20% the shares and the public holds 20% of the shares. Prior to this transaction the Accountant General held 40% and Cable and Wireless 39%.

Section 15 states:

- (1) "Subject to subsection (2), a Contractor General may, if he considers it necessary or desirable, conduct an investigation into any or all of the following matters -
  - (a) the registration of contractors;
  - (b) tender procedures relating to contracts awarded by public bodies;
  - (c) the award of any Government contract;
  - (d) the implementation of the terms of any Government contract;
  - (e) the circumstances of the grant, issue, use, suspension or revocation of any prescribed licence;
  - (f) the practice and procedures relating to the grant issue, suspension or revocation of prescribed licences.

(2) A Contractor-General shall not, without the prior approval of the Secretary to the Cabinet acting at the direction of the Cabinet, investigate;

- (a) any Government contract or any matters concerning any such contract entered into for purposes of defence or for the supply of equipment to the Security Forces, or
- (b) the grant or issue of any prescribed licence for the purposes of defence or for the supply of equipment to the Security Forces and any report or comment thereon by the Contractor-General shall be made only to the Cabinet.

It is clear from section 15(2) that in relation to matters touching upon defence and supply of equipment to the Security Forces the Contractor-General must first obtain approval from the Secretary of the Cabinet before he can embark upon an investigation of such matters.

I turn now to the questions which the Plaintiff seeks to have determined.

(a) Is the Defendant a Public Body?

Section 2 defines "Public Body" as meaning;

- (a) a Ministry, department or agency of Government;
- (b) a statutory body or authority;
- (c) any company registered under the Companies Act, being a company in which the Government or an agency of Government, whether by the holding of shares or by any other financial input, is in a position to influence the policy of the company. (emphasis mine).

Paragraphs (a) and (b) are clearly not applicable to the instant case. In respect of paragraph (c) it is common ground that the Defendant is a company registered under the Companies Act. It is also common ground

that Government holds shares in the company. What must now be resolved is "whether by the holding of 40% of the shares the Government is in a position to influence the policy of the company". Giving the words contained in the phrase "in a position to influence the policy of the company" their ordinary meaning I understand the phrase to mean that in exercise of its voting rights the Government plays a substantial role in shaping or determining the policy which the company will pursue. As the largest shareholder the Accountant General's vote must be significant in arriving at any decision. If the Accountant General and Cable and Wireless vote together it means that 79% of the shareholding would be voting for or against the motion. Similarly if the Accountant General and the public vote together it means that 60% of the shareholding would be voting for or against the motion. Whilst by himself the principal shareholder cannot command a majority yet it is my view that his shareholding, in terms of how the shares have been allocated, places him in a position to influence the policy of the company. Consequently I hold that Telecommunications of Jamaica Limited is a public body within the meaning of the Contractor-General Act.

- (b) Whether an agreement for the sale of land by the Defendant is a "Government contract" within the intendment of the Contractor-General Act.

Section 2 of the Act states that "Government contract" include any licence, permit or other concession or authority issued by a public body or agreement entered into by a public body for the carrying out of building or other works or for the supply of any goods or services.

In dealing with the question of Interpretation Clauses the Learned Author of Craies on Statute Law 7th Edition at page 212 said:

"In most modern Acts of Parliament, there is an 'interpretation clause' enacting that certain words when found in the Act are to be understood as regards that Act in a certain sense, or are to include certain things which, but for the interpretation clause they would not include".

The Learned Author continues at p.213.

"There are two forms of interpretation clause. In one, where the word defined is declared to 'mean' so and so, the definition is explanatory and prima facie restrictive. In the other, where the word defined is declared to 'include' so and so, the definition is extensive, e.g. 'sheriff' includes 'under sheriff'".

It is settled law that an interpretation clause which extends the meaning of a word does not have the effect of nullifying the ordinary meaning of the word. Applying the ordinary meaning of the word contract, an agreement for sale of land by the Government would be a "Government contract".

In Exp. Ferguson (1871) L.R. 6 Q.B. 280, 291.

"A question arose as to the meaning of the enactment in section 2 of the Merchant Shipping Act 1854 that the word 'ship' shall include 'every description of vessel used in navigation not propelled by oars'. It was consequently contended that a fishing-boat 24 feet long, partially decked over and fitted with two masts and a rudder but also with four oars, was not a ship within the meaning of the Act because it was propellable by oars. In deciding against this argument Blackburn J said: 'The argument against the proposition that this is a ship is one which I have heard very frequently, viz, that when an Act says that certain words shall include certain things the words must apply exclusively to that which they are to include. That is not so; the definition given of a ship is in order that the word 'ship' may have a more extensive meaning, and the words 'not propelled by oars' are not intended to exclude all vessels that are ever propelled by oars.'"

The Judicial Committee approved this principle of interpretation in The Gauntlet (1872) L.R. 4 P.C. 184.

Acting upon the aforesaid principle of interpretation all contracts entered into by Government would be caught by the definition of Government contract. However I take the view that the introduction of the words 'public body' into the definition of 'Government contract' indicates that parliament intended to create a distinction between contracts entered into by Government per se and contracts entered into by organs which are not purely Government and which are designated 'public body' i.e. organs which do not come within the ordinary and established meaning of Government, but which perform public functions. If this were not so then the words 'or agreement entered into by a 'public body' for the

carrying out of building or other works or for the supply of any goods or services would be superfluous. Not only has Parliament created a distinction between Government per se and "public body" but it has limited the agreements entered into by a "public body" which may be regarded as "Government contract by adding the words "for the carrying out of building or other works or for the supply of any goods or services".

These words, clearly, do not include a contract for the sale of land.

I therefore hold that notwithstanding that Telecommunication of Jamaica is "public body" the contract entered into by it for the purchase of land from Development Properties Limited is not a Government contract within the meaning of the Contractor-General Act.

- (c) Whether the Contractor-General has jurisdiction pursuant to the Contractor-General Act in relation to such an Agreement as in (b) above. The jurisdiction of the Contractor-General as prescribed by the Act relates to the monitoring of Government contracts as set out in section 4(1) and to the investigation of certain matters as detailed in section 15, the provisions of which have already been set out herein.

A careful examination of section 15 reveals that the section is designed to deal with contracts which are in the nature of public works. Firstly it speaks of the registration of contractors, then it speaks of the tender procedures relating to the award of contracts then it refers to the actual award of Government contracts and finally to the implementation of the terms of any Government contracts which are awarded.

In the particular contracts between Telecommunications of Jamaica and Development Properties Limited none of the elements referred to in section 15 (1) (a) to (f) inclusive is present. Section 15 (1) (a) to (f) prescribes and limits the areas which are subject to investigation by the Contractor-General.

I therefore hold that the Contractor-General does not have jurisdiction over the contract for the sale and purchase of land between the Defendant Company and Development Properties Limited.

En passant I wish to observe that a keen reading of the Act clearly indicates that Parliament in promulgating this Act has only addressed the question of contracts which are in the nature of public works e.g. building contracts and the supply of goods and services to Government. It might very well be that Parliament intended otherwise but I make bold to say that if this was the intention it has not been achieved by the present legislation.

The public interest demands that contracts such as the instant one should come within the ambit of the Contractor-General Act.