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2022 – HC – DEM – CIV – FDA - 47

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE
REGULAR JURISDICTION

BETWEEN:



GLENN LALL

Applicant

-and-

1. ATTORNEY GENERAL OF GUYANA
2. ESSO EXPLORATION AND
PRODUCTION (GUYANA) LIMITED

Respondents

(Jointly and Severally)

**AFFIDAVIT OF REPLY TO THE AFFIDAVIT IN DEFENCE OF
THE FIRST-NAMED RESPONDENT**

I, **GLENN LALL**, of Lot 24 Saffon Street, Charlestown, Georgetown,
Guyana being duly sworn make oath and say as follows:-

1. That the facts stated herein are true and correct and within my personal
knowledge and belief except where otherwise stated to be based on
information in which case I verily believe the same to be true.

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2. That I have read the Affidavit in Defence on behalf of the First-Named Respondent sworn to by **GOPNAUTH BOBBY GOSSAI JR.**, Senior Petroleum Co-ordinator of the Ministry of Natural Resources on the 7th March, 2022, and save in so far as the same consists of admissions, I deny each and every allegation of fact or contention of law contained therein as if the same were herein set out verbatim and traversed seriatim.
3. That I make no admission of paragraphs 1, 2 and 3 of the Affidavit in Defence of the First-Named Respondent.
4. That I admit paragraph, 10, 19 and 20 of the First-Named Respondent's Affidavit in Defence.
5. That with regard to paragraph 4 of the Affidavit in Defence of the First-Named Respondent, I repeat and rely on paragraphs 1,2,3,5,7,8,9,10,15 and 21 of my Affidavit in Support of this Application herein.
6. That with regard to paragraph 5 of the Affidavit in Defence of the First-Named Respondent, I repeat and rely on paragraphs 4,6,11,12,16,17,18,19,20,22,23 and 24 of my Affidavit in Support of this Application herein, and the First-Named Respondent is put to strict proof.
7. That I deny paragraph 7 of the Affidavit in Defence of the First-Named Respondent, and repeat and rely on my entire Affidavit in

Support of my Application and the First-Named Respondent is put to strict proof thereof.

8. That I will further contend that the Government of the Co-operative Republic of Guyana, through the conduct and actions of the Minister of Natural Resources relative to Article 15 of the Petroleum Agreement between the Government of the Cooperative Republic of Guyana and Esso Exploration and Production Guyana Limited, CNOOC NEXEN Petroleum Guyana Limited and HESS Guyana Exploration Limited dated 27th day of June 2016 (hereinafter referred to as the “**Petroleum Agreement**”) violated the **Petroleum Exploration and Production Act Cap. 65:04** (hereinafter referred to as “**PEPA**”), the **Financial Administration (and Audit) Act [formerly Cap. 73:01]** (hereinafter referred to as “**FAA**”), **Prevention of Discrimination Act Cap. 99:08** (hereinafter referred to as “**PDA**”) and the **Constitution of the Co-operative Republic of Guyana** (hereinafter referred to as the “**Constitution**”).

9. That I deny paragraphs 8 and 9 of the Affidavit in Defence of the First-Named Respondent, and repeat and rely on paragraphs 7 and 8 of my Affidavit in Support of this Application.

10. That further to the above paragraph 8, the Minister not only exercised his power under **section 51** of the **PEPA** to make concessions or tax exemptions to the Licensees of the said Petroleum Agreement, but he

also under the said Petroleum Agreement improperly made concessions and tax exemptions for persons other than the Licensees, namely sub-contractors, affiliate companies and expatriates, contrary to the laws of Guyana. I therefore contend that the Minister acted *ultra vires* the statute, namely: **PEPA, FAA, PDA** and the Constitution of Guyana.

11. That I admit paragraph 11 of the First-Named Respondent's Affidavit in Defence in so far as the PEPA and the Order empower the Minister to provide that specified tax laws shall apply to or in relation to a licensee under the production sharing agreement, and not to sub-contractors, affiliates and expatriate employees of such persons.

12. That I deny paragraph 12 of the First-Named Respondent's Affidavit in Defence and contend that *section 6 of the Financial Administration (and Audit) Act [formerly Cap. 73:01]* only allows tax exemption, remissions and concessions to be granted under tax legislation, and PEPPA is not a tax legislation, therefore the purported grant of any exemptions or remissions by the Minister under the PEPA is in violation of section 6 of FAA, as follows:

*“(1) Save as maybe expressly provided by any law for the time being in force, no expenditure involving a charge on the revenue shall be incurred; nor shall any sum due to the revenue be remitted, **unless the Minister is empowered by the specific provisions***

of the relevant tax Act to permit the remission or by Order or other subsidiary legislation made under such Act.” [emphasis added]

13. As to paragraph 12 thereof, I aver that a careful reading of section 6 of the **FAA**, Articles 15.1, 15.4, 15.5, 15.7, 15.9, 15.10, 15.11 0 and 15.12 of the said Petroleum Agreement violate section 6 of the **FAA** and I am further advised by my Attorney-at-law and verily believe that this is not a dispute of facts, but the construction and interpretation of the relevant statutes and rather an Application for the Honourable Court to review the actions of the Minister on behalf of the Government of Guyana in signing the said Agreement and permitting clear violations of legislations and inconsistency with the Constitution of Guyana.

14. That I admit paragraph 13 of the First-Named Respondent’s Affidavit in Defence to the extent that it applies to licensees only and not to any other person, and the First-Named Respondent is put to strict proof that it does.

15. That I deny paragraph 14 of the First-Named Respondent’s Affidavit in Defence and I repeat and reply on paragraphs 12, 13, 14 and 18 of my Affidavit in Support of this Application.

16. I further aver that as a citizen, businessman, newspaper publisher and taxpayer of Guyana, I am advised by my Attorney-at-law and verily

believe that the Constitution broadly provides me with the right to make this Application for an interpretation by the Honourable Court of whether the concessions given to expatriate employees under Article 15.12(ii) of the Petroleum Agreement are discriminatory of contractor, affiliated companies and non-resident sub-contractors.

17. I am advised by my Attorney-at-law and further aver and repeat paragraph 18 of my Affidavit in Support of this Application that the concessions and tax exemptions allowed to persons other than licensees to the said Petroleum Agreement are not enjoyed by Guyanese employees and taxpayers and are excessive, unfair and discriminatory.

18. That I deny paragraph 15 of the First-Named Respondent's Affidavit in Defence and avers that both waiver of taxes and remission of taxes by the Government of Guyana on behalf of Licensees are both concessions granted to Licensees since they involve loss of revenue to Guyana, since section 51 of PEPA merely empowers the Minister responsible for Finance to direct that certain specified written laws *"shall not apply to, or in relation to, a licensee where the licensee has entered into a production sharing agreement with the Government of Guyana."* [emphasis added] and do not permit this largess to be extended to persons who are not Licensees

19. That I deny paragraph 16 of the First-Named Respondent's Affidavit in Defence and repeat and rely on paragraph 11 above, the First-Named Respondent is put to strict proof thereof.
20. That I deny paragraph 17 of the First-Named Respondent's Affidavit in Defence and contend that the long title to the PEPA describes it as an act "to make provisions with respect to prospecting for and production of petroleum, and for matters connected therewith" and is not a tax act of Guyana under which any concessions must be granted.
21. That further, section 49 of PEPA violates *section 6 of the FAA* as previously cited herein at paragraph 11.
22. That I deny paragraph 18 of the First-Named Respondent's Affidavit in Defence, and he is put to strict proof.
23. That I deny paragraphs 21 and 22 of the First-Named Respondent's Affidavit in Defence and repeat and rely on paragraphs 14 and 15 above and the First-Named Respondent is also put to strict proof.
24. That I deny paragraph 23 of the First-Named Respondent's Affidavit in Defence and I aver that the said Agreement regulates the exploitation of petroleum in its natural condition which is vested in the state of Guyana; is signed by a cabinet member on behalf of the Government of Guyana; and is the subject of an Order of the National Assembly of Guyana signed by the Minister responsible for Finance.

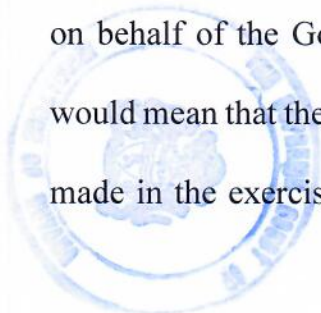
25. That the opinion of the First-Named Respondent that the agreement is between the licensees and the Government of Guyana in private law is misconceived and erroneous.
26. That I have been further advised by my Attorney-at-Law, and verily believe that Administrative law is considered a branch of public law and it deals with the decision making of such administrative units of government that are part of the executive branch in such areas as international trade, manufacturing, the environment, taxation etc.
27. That I have been further advised by my Attorney-at-Law, and verily believe that in the case of Bernard J in LJ Williams v Smith and AG (1980) 32 WIR 395 defined a person as acting in the capacity of a public authority where “the person is endowed under the law with functions, duties and powers of a public nature and for the purpose of the application of the law he was clothed with coercive powers.”
28. That I have been further advised by my Attorney-at-Law, and verily believe that Ministers of Government are considered to be public authorities. The Petroleum Agreement clearly states that the Minister responsible for petroleum represents the Guyana Government and accordingly, his functions, duties and powers are of a public nature and he has the authority to ensure compliance with the law.
29. That I have been further advised by my Attorney-at-Law, and verily believe that the Minister responsible for Petroleum in consultation

with the Minister of Finance approved and authorised the tax and royalty provisions outlined in the Agreement. The Petroleum (Exploration and Production) Act No.3 of 1986 cap 65:04 confers on these ministers functions, duties, and powers of a public nature and responsibility to secure implementation of the law.

30. That I have been further advised by my Attorney-at-Law, and verily believe that where the State plays a dominant role in the activity of the authority or body the tendency would be to treat that authority or body as a public authority. Benjamin et al v Minister of Information et al no. 56 of 1997 High Court of Anguilla.

31. That I have been further advised by my Attorney-at-Law, and verily believe that the Minister with responsibility for Petroleum and the Minister with responsibility for Finance are not acting in their private capacity under the Petroleum Agreement as it is therein distinctly stated that petroleum in its natural condition in strata in Guyana is vested in the State.

32. That I have been further advised by my Attorney-at-Law, and verily believe that as it relates to the Agreement both ministers are operating on behalf of the Government of Guyana as public authorities. This would mean that the tax and royalty provisions in the Agreement were made in the exercise of a public function and additionally, it would



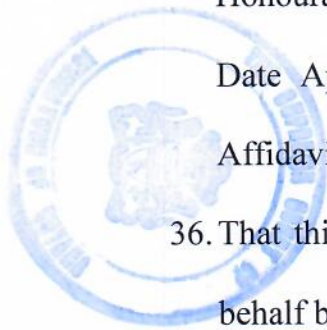
mean that such provisions have the potential to affect public law rights, obligations and expectations.

33. That I have been further advised by my Attorney-at-Law, and verily believe that the Petroleum Agreement clearly envisions the possibility that its provisions can affect public law rights, obligations and expectations. This is seen by the fact that the Guyana Geology and Mines Commission (GGMC) is required in the exercise of its responsibilities under the Petroleum Agreement “to ensure for the people of Guyana the maximum benefits there from and for doing such things in relation thereto.”

34. That I have been further advised by my Attorney-at-Law, and verily believe that in the case of Williams Construction Ltd v AG of Barbados (1994) 45 WIR 914 (PC), William construction Ltd, instituted proceedings for judicial review against the Cabinet of Barbados in connection with the award of the contract to Bayside.

35. That I deny paragraphs 24, 25 and 26 of the First-Named Respondent’s Affidavit in Defence and I am respectfully asking this Honourable Court to grant the Declarations prayed for in my Fixed Date Application and to strike out the First named Respondent Affidavit of Defence immediately with cost.

36. That this Affidavit was drawn on my instructions and filed on my behalf by **Mr. Mohamed R. Ali**, Attorney-at-law, whose address for



service and place of business is situate at Lot 185 Charlotte Street and King Streets, Lacytown, Georgetown, Guyana.



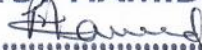
GLENN LALL

Sworn to at Georgetown Demerara

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This 31st day of March, 2022

BEFORE ME

PATSY HAMID



Justice of Peace &

Commissioner of Oaths to Affidavits

COMMISSIONER OF OATHS TO AFFIDAVITS



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MR. MOHAMED R. ALI, ATTORNEY-AT-LAW
FOR THE APPLICANT, OF 185 CHARLOTTE
AND KING STREETS, LACYTOWN,
GEORGETOWN, GUYANA.