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**IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE OF GUYANA
CIVIL JURISDICTION
(CONSTITUTIONAL AND ADMINISTRATIVE DIVISION)
PROCEEDING FOR RELIEF UNDER THE CONSTITUTION**

2021-HC-DEM-CIV-FDA-

**IN THE MATTER OF THE CONSTITUTION OF THE
CO-OPERATIVE REPUBLIC OF GUYANA**

- and -

**IN THE MATTER OF AN APPLICATION FOR
REDRESS UNDER ARTICLE 153 OF THE
CONSTITUTION FOR CONTRAVENTION OF THE
APPLICANT'S FUNDAMENTAL RIGHTS
GUARANTEED BY ARTICLES 40, AND 149(J) OF
THE CONSTITUTION**

BETWEEN:-

- 1. TROY THOMAS**
- 2. QUADAD DE FREITAS**

Applicants

- and -

ATTORNEY GENERAL OF GUYANA

Respondent

**FIXED DATE APPLICATION
MADE UPON NOTICE**

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicants.

The claim made by the Applicants is set out in the following pages.

THIS APPLICATION will come on for a hearing on

2021, at

, at

before the Hon. Mr. Justice F. Holder

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Attorney-at-Law acting for you must forthwith prepare an Affidavit in Defence in Form 10C prescribed by the Civil Procedure Rules 2016, serve it on the Applicant's Attorney-at-Law or, where the applicant does not have an Attorney-at-Law, serve it on the Applicant, and file it, with proof of service, at a Registry, AT LEAST FOUR DAYS before the date fixed for the hearing of the Application, and you or your Attorney-at-Law must appear at the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, AN ORDER OR JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

THIS NOTICE OF APPLICATION has no validity unless it is served on you at least seven (7) days before the date fixed for the hearing of the application.

Date:

21/5/21

Signature of Registry

Issued by:

Wendell J. Hargrave

Address of Registry where issued:

Georgetown

TO:

ATTORNEY GENERAL OF GUYANA
95 CARMICHAEL STREET,
GEORGETOWN



APPLICATION

1. The Applicants make application against the Respondent for:

- (i) A DECLARATION that the State's duties under Article 149J (1), require the State to refrain from authorising activities that would contribute significantly to climate change, ocean acidification and/or sea level rise;
- (ii) A DECLARATION that the direct emission of 22,030,000 tonnes of greenhouse gases from petroleum operations in the Liza Phase 1 Development Project would make the environment more harmful to the health and wellbeing of citizens and future generations by significantly exacerbating and/or contributing to climate change, ocean acidification, and rising sea-levels and as such would amount to a violation of Article 149J(1);
- (iii) A DECLARATION that the direct emission of 34,545,000 tonnes of greenhouse gases from petroleum operations in the Liza Phase 2 Development Project would make the environment more harmful to the health and wellbeing of citizens and future generations by significantly exacerbating and/or contributing to climate change, ocean acidification, and rising sea-levels and as such would amount to a violation of Article 149J(1);
- (iv) A DECLARATION that the direct emission of 35,720,000 tonnes of greenhouse gases from petroleum operations in the Payara Development Project would make the environment more harmful to the health and wellbeing of citizens and future generations by significantly exacerbating and/or contributing to climate change, ocean acidification, and rising sea-levels and as such would amount to a violation of Article 149J(1);
- (v) A DECLARATION that the increase in direct greenhouse gas emissions from the on-going Liza Phase 1 Development Project and the proposed

Liza Phase 2 and Payara Development Projects ('the Projects') is contrary to the State's Nationally Determined Contribution of 2015, its commitments under the Paris Agreement, and the State's duty to take reasonable measures under Article 149J(2) thus constituting a violation of Article 149J(1);

- (vi) A DECLARATION that the individual and/or cumulative direct and indirect emissions of greenhouse gases from the combustion of oil and gas produced from the Projects will make the environment more harmful to the health and wellbeing of citizens and future generations by significantly exacerbating climate change, ocean acidification, and rising sea-levels and as such would amount to a violation of Article 149J(1);
- (vii) A DECLARATION that the State's duty under Article 149J(2) to protect the environment for present and future generations through reasonable legislative and other measures to prevent pollution and environmental degradation requires the State to take reasonable measures to prevent pollution of the atmosphere and of the oceans from greenhouse gases subject to the State's control, including greenhouse gases emitted as a result of extracting, processing, or burning petroleum obtained from Guyana's exclusive economic zone;
- (viii) A DECLARATION that the State's duty under Article 149J(2) to take reasonable measures to protect the environment for present and future generations requires the State to carry out or obtain independent verification of the types and amounts of greenhouse gases actually emitted by the Liza Phase 1 Development Project, and the greenhouse gases actually to be emitted by future petroleum development in the Liza Phase 2 Development Project, the Payara Development Project and other subsequent oil and gas development.
- (ix) A DECLARATION that that the State's duty under Article 149J(2) to take

reasonable measures to protect the environment for present and future generations requires the State to take into account the direct and indirect greenhouse gas emissions to be emitted by a proposed project before approving, licensing or permitting any proposed project that may have a significant effect on the environment.

(x) A DECLARATION that any bill or delegated legislation to amend or alter the Environmental Protection Act Cap 20:05 or subsidiary legislation made under such statute, with the aim or effect of allowing activities that make the environment more harmful to human health and wellbeing would be a violation of the State's duty under Article 149J(1) to protect the environment and would be unconstitutional unless passed in accordance with the procedure for altering the Constitution;

(xi) costs;

(xii) such further and/or other orders as the Court deems just.

2. The grounds for the application are:-

- (1) The Applicants are both citizens of Guyana.
- (2) The First Applicant is a scientist and the Dean of the Faculty of Natural Sciences at the University of Guyana. He brings the application on his own behalf, on behalf of his two children, and in the public interest. The First Applicant and his family have observed and been affected by increased flooding in Wakenaam and Georgetown.
- (3) The Second Applicant is from the Rupununi. His family are ranchers, ecotourism operators and conservationists who depend on the environment for their livelihoods. They have observed and been affected by increased droughts and floods in the area. The Second Applicant brings the application on his own behalf and in the public interest.
- (4) The Respondent is the legal representative of the State.

- (5) The earth's atmosphere and oceans have been and continue to be polluted by the release and accumulation of greenhouse gases resulting in two distinct but related phenomena that make Guyana's environment more harmful to the health and wellbeing of citizens and future generations, viz. climate change and ocean acidification.
- (6) Through the Greenhouse Effect, carbon dioxide (CO₂) and other greenhouse gases trap the sun's heat in the atmosphere, making the earth hotter. This global warming alters the earth's climate systems causing climate change. Climate change is resulting in extreme weather, more frequent droughts and floods, and spread of disease vectors, among many other impacts.
- (7) As excess CO₂ is absorbed by the oceans, it makes the water more acidic. This ocean acidification is harmful to marine wildlife and marine ecosystems, as well as having deleterious impacts on those who depend on the ocean for their lives and livelihoods.
- (8) The Government of Guyana has warned that climate change is an existential threat, that the adverse and potentially catastrophic effects of climate change are already affecting Guyana, that climate change is getting worse, and that Guyana is particularly vulnerable to the impacts of climate change and rising sea-level.
- (9) Climate change, rising sea-level and ocean acidification threaten Guyana's environment, agriculture and fisheries, increase the risk of transmission of diseases such as malaria and dengue, and put at risk the capital city and coastal areas.
- (10) Climate change and ocean acidification are harmful to human health and wellbeing. Existing emissions have long-term impacts that will affect children and future generations disproportionately.
- (11) As a result of the pollution by greenhouse gases, the earth's ambient temperature has already risen by about 1°C above pre-industrial levels and will continue to rise unless there are significant reductions in global greenhouse gas emissions.
- (12) The production, transportation, refining and use of fossil fuels (oil, gas and coal) emits greenhouse gases at every stage of the product lifecycle. This includes

'scope 1 emissions' or direct emissions emitted as a result of the process of producing oil and gas, such as through drilling or gas flaring. This also includes 'scope 3 emissions' or indirect emissions resulting from the combustion of fossil fuels by the end user.

- (13) Any significant increase in the State's overall direct or indirect greenhouse gas emissions makes the environment more harmful to the health and wellbeing of citizens and future generations by significantly contributing to climate change, ocean acidification and rising sea-levels;
- (14) Guyana is a signatory to the United Nations Framework Convention on Climate Change which has as an objective the stabilisation of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Guyana is also a signatory to the Paris Agreement which aims to restrict the increase in global temperature to no more than 1.5°C above pre-industrial levels. The State's Nationally Determined Contribution of 2015 submitted by the State under the Paris Agreement states that Guyana will pursue a low carbon development path.
- (15) Esso Exploration and Production Guyana Ltd. ("Esso"), a subsidiary of ExxonMobil, has started to produce oil in the Liza Phase 1 Development Project, approximately 120 miles offshore in Guyana's exclusive economic zone and is emitting greenhouse gases that would not otherwise have been emitted.
- (16) Guyana's petroleum reserves will emit billions of tonnes of greenhouse gases in the future if those petroleum resources are extracted and burned for energy
- (17) By authorising, allowing, permitting and enabling the production of petroleum from the Projects in the State's exclusive economic zone, the State is facilitating the emission of substantial quantities of greenhouse gases, thereby significantly exacerbating and/or contributing to climate change, ocean acidification and rising sea-levels and making the environment more harmful to health and wellbeing.
- (18) Future pollution of the earth from greenhouse gas emissions will have more devastating and catastrophic impacts as they interact with impacts from previous emissions.
- (19) Article 149J of the Constitution of Guyana states that:

- (1) *Everyone has the right to an environment that is not harmful to his or her health or well-being.*
- (2) *The State shall protect the environment, for the benefit of present and future generations, through reasonable legislative and other measures designed to*
-
- (a) *prevent pollution and ecological degradation;*
 - (b) *promote conservation; and*
 - (c) *secure sustainable development and use of natural resources while promoting justifiable economic and social development.*
- (20) Section 2 of the Environmental Protection Act Cap 20:05 defines the “environment” as
- “all land, area beneath land surface, atmosphere, climate, all water, surface water, ground water, sea, seabed, marine and coastal areas, and natural resources or any combination or part thereof.”*
- (21) Article 149J(1) imposes upon the State two primary obligations:
- (a) An obligation to respect the environment, which requires the State to refrain from interfering with or causing damage to the environment; and
 - (b) An obligation to protect or guarantee the health of the environment.
- (22) Where the State directly or indirectly interferes with the right under Article 149J(1), this will entail a violation of its obligation to respect the environment.
- (23) The State will violate Article 149J(2) where it fails to take action required by law or where it has failed to take reasonable measures to prevent harm to the environment.
- (24) The requirements for an environmental impact assessment under the Environmental Protection Act Cap 20:05 constitute a reasonable legislative measure within the meaning of Article 149J(2).
- (25) Section 11 of the Environmental Protection Act Cap 20:05 requires an environmental impact assessment to identify, describe and evaluate the direct and indirect effects of a proposed project on the environment and human beings.
- (26) Article 36 of the Constitution states that:

"The wellbeing of the nation depends upon preserving clean air, fertile soils, pure water and the rich diversity of plants, animals and eco-systems."

(27) Article 38B states that:

"The best interest of the child shall be the primary consideration in all judicial proceedings and decisions and in all matters concerning children, whether undertaken by public or private social welfare institutions, administrative authorities or legislative bodies."

(28) Article 39(1) of the Constitution states that:

"It is the duty of Parliament, the Government, the courts and all other public agencies to be guided in the discharge of their functions by the principles set out in this Chapter, and Parliament may provide for any of those principles to be enforceable in any court or tribunal."

(29) Article 39(2) of the Constitution states that:

"In the interpretation of the fundamental rights provisions in this Constitution a court shall pay due regard to international law, international conventions, covenants and charters bearing on human rights."

(30) The State and all State agencies and entities must be guided by Article 36, Article 38B and applicable principles of international law pursuant to Article 39(2) of the Constitution in carrying out any of their functions. The Court must interpret and apply Article 149J in accordance with those legal principles.

(31) In view of this factual and legal background, the Applicants aver:

- (a) The State's acts in facilitating the direct emissions from the Projects individually and cumulatively, are contrary to the State's NDC and the Paris Agreement, and make the environment more harmful to human health and/or well-being and violate Article 149J(1);
- (b) The State's acts in facilitating the indirect emissions from the Projects, outlined at sub-paragraphs 17 to 20 above, individually and cumulatively, constitute a disproportionate interference with the environment, and violate Article 149J(1);

3. The following documentary evidence will be used at the hearing of the application:

- (i) Affidavit of Troy Thomas
- (ii) Affidavit of Quadad de Freitas

Issued this ^{21st} day of May 2021



Melinda Janki

Ronald Burch-Smith

Attorneys-at-Law

The Registry is located at the Law Courts, Georgetown, Demerara. The office is open to the public between 8:30 am and 3:30 pm Mondays to Thursdays and 8:30 am and 2:30 pm on Fridays, except holidays.



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