

Case summary

Gaskin v Minister of Natural Resources et al

On 15th June 2017, the Minister of Natural Resources granted a petroleum production licence (PPL) to Esso Exploration and Petroleum Guyana Ltd. (Esso), Hess Guyana Exploration Guyana Ltd. (Hess), and CNOOC Nexen Petroleum Guyana Ltd. (CNOOC). The PPL was not released to the public. It was not until December 2017 with the release of the Petroleum Agreement that it became possible to obtain information about the PPL.

On 19th February 2018, Ramon Gaskin, represented by his lawyers Melinda Janki and Seenath Jairam SC challenged the grant of the PPL in a Fixed Date Application (FDA). Mr Gaskin claimed that the Minister had acted, *inter alia*, irrationally, unlawfully, illegally and without or in excess of jurisdiction by purporting to grant the PPL to Esso, Hess and CNOOC contrary to the Environmental Protection Act Cap 20:05.

Mr Gaskin relied on section 14 which says that, “A public authority shall not give development consent in any matter where an environmental authorisation is required unless such authorisation has been issued...” He argued that the Minister was a ‘public authority’ did not have the power to grant a PPL (the ‘development consent’) to all three companies - Esso, Hess and CNOOC – when Hess and CNOOC did not have an environmental permit.

On 26th February 2018 Justice Holder dismissed the application. Mr Gaskin appealed. On 29th June 2018, the Court of Appeal allowed Mr Gaskin’s appeal and granted his request for the case to be reheard by a single judge, following a change in the Civil Procedure Rules. The Court of Appeal dismissed the Respondent’s arguments that the matter should be heard by them and did not hear arguments from Esso, Hess and CNOOC to be added as respondents. The Court of Appeal also held that Mr Gaskin’s case was urgent.

On 25th October 2018, the Hon. Chief Justice (Ag) Roxane Wiltshire George ordered that Esso, Hess and CNOOC be joined as added respondents/interveners on condition that their costs not be recovered against Mr Gaskin. The parties filed their submissions by January 2019. On 11th February 2019 the Hon. Chief Justice (Ag) heard oral arguments from the various Attorneys-at-Law and fixed 29th March for a decision. This date was subsequently cancelled.

Mr Gaskin’s lawyers wrote to the Registrar for the Chief Justice (Ag.) on 4th April 2019, 17th April 2019, 7th May 2019 and 28th May 2019 requesting that a date be fixed for a decision. No date was fixed.

The Time Limit for Judicial Decisions Act Cap 3:13 states that a judge shall give an oral or written decision at the conclusion of the hearing of a case, or as soon as possible thereafter, but not later than one hundred and twenty (120) days. Mr Gaskin’s lawyers pointed out in the correspondence that the statutory time limit of one hundred and twenty (120) days expired on 11th June 2019. They also pointed out that the Caribbean Court of Justice had held that a judge should give a decision within three (3) months and that no decision take more than six (6) months.

On 12th February, a year and a day after the final hearing, the Chief Justice (ag) delivered her decision dismissing the case. The decision is *here*. [Link to decision on JI website]

Mr Gaskin had argued that CNOOC and Hess were not eligible for a PPL since they had not been granted an environmental permit. To be eligible for a PPL they would have to apply for and obtain an environmental permit. Mr Gaskin argued that since the environmental permit was issued only to Esso, only Esso had accepted the terms of the permit and only Esso was eligible to apply for a PPL. He argued that no provision of the Petroleum Agreement could relieve Hess and CNOOC from the statutory obligation to obtain an environmental permit.

The Chief Justice held that the environmental permit granted to Esso was granted in relation to a project. Paragraph 29 states, *“Thus, there was an EP [environmental permit] in existence when the PPL was issued. The EP was in relation to a project involving the extraction of natural resources, to wit petroleum.”*

According to the Chief Justice, *“...they [CNOOC and Hess] are bound to comply with the EP [environmental permit] that was issued to Esso by virtue of the PPL and the PA [Petroleum Agreement] as well as by s9(3) of the Petroleum Act. [Petroleum Exploration and Production Act]”*

The Chief Justice also awarded costs of a hundred thousand Guyana dollars (approximately five hundred US dollars) against Mr Gaskin and in favour of the Minister.

Mr Gaskin appealed on 14th February 2019, the Notice of Appeal stating that,

“The learned judge erred at law and/or was plainly wrong and/or no court acting judicially and properly instructed as to the relevant law could or would have come to such a decision or such conclusions under appeal as the learned judge did further and/or alternatively, the learned judge misunderstood and/or did not consider sufficiently or at all, the nature, purport and effect of the evidence in the case as a whole and/or the applicable law and fell into serious error in ruling against the Appellant and/or Her Honour’s decision was unwarranted, unreasonable, irrational, unjustifiable, erroneous at law, disproportionate, harsh and/or oppressive by refusing the Appellant’s request for Administrative Orders and other relief by inter alia,

- (i) *The judge misunderstood the Appellant’s case and the relief sought by the Appellant, having taken an inordinate length of time to rule on this case (arguments having been completed on 11th February 2019) contrary to the Time Limit for Judicial Decisions Act Cap 3:13 and/or the binding decisions of the Caribbean Court of Justice regarding delay in judicial decisions;”*

The grounds of appeal in the Notice of Appeal are extensive. The appeal is available [here](#). [link to the JI website]

Mr Gaskin awaits a hearing date from the Court of Appeal.