IN THE SUPREME COURT OF SEYCHELLES

Civil Side: MC65/2014

[2015] SCSC 733

Elke Sabine Talma Petitioner

versus

The Minister of Land Use and Housing Respondent

Heard: 12 and 28 October 2015

Counsel: Anthony Derjacques for petitioner

Vipin Benjamin for respondent

Delivered: 12 January 2016

JUDGMENT

M. TWOMEY, CJ

[1] The Petitioner was at all material times the owner of Parcel PR 2552, a parcel of land of the extent of 260,833 square metres (64 acres) at Anse Lazio, Praslin and the Respondent a government ministry responsible for the national socio-economic development of Seychelles through the sustainable and efficient use of land resources for habitat, economic, social and infrastructure needs. The Petitioner applied for and was granted leave for judicial review of the decision of the Respondent not to grant it planning approval for the development of its land, in particular for a tourism project.

[2] As a background to this administrative review matter it must be noted that a previous case between the parties had been heard by the Constitutional Court in 2010 (*Talma v Michel* (2010)

SLR 477). In that case the Petitioner had submitted that the Respondent having determined, unilaterally and without consultation that an area of land at Anse Lazio including the Petitioner's land was an area of outstanding beauty had declared it as a No Development Zone. In so doing it had breached the Petitioner's constitutional right to property.The Court found in the Petitioner's favour stating that the No Development Zone policy had no basis in law and could not be the basis for a refusal to consider the Petitioner's project proposal by the relevant authorities. An award of moral damages in the sum of SR 50,000 was made in favour of the Petitioner.

[3] The Respondent appealed the decision (*Michel v Talma* (2012) SLR 95) on the limited issues of prescription of the constitutional case and the award of damages. The Court of Appeal ruled the matter not statute barred on the basis that the matter was a continuing breach of the Petitioner's constitutional right and upheld the decision of the Constitutional Court in its entirety. The court proceedings containing these judgements and the file for the execution of the Court's decision, which matter was later withdrawn, are appended to the currentapplication for judicial review.

[4] The Petitioner submits that she has made at least four different applications in relation to proposed tourism projects on her land to the Planning Authority, a department within the Respondent ministry. She further submits that despite numerous meetings, discussions, preparation and submission of plans she remains frustrated in her goal of developing her land.

[5] On 15th November 2012 the Seychelles Investment Board (SIB), thebody responsible under the Ministry of Finance, Trade and Investment and charged with assisting investors and liaising with the Ministry of Land Use and Housing, conveyed to the Petitioner that the government would allow her to develop only 800m^2 of 260, 883$m^2$of her land, that is 0.31% of her property. For these proceedings it is important to note that the SIB "acts as an intermediary between the public and private sector in order to formulate proposals to the government for the improvement of the business environment (see http://www.sib.gov.sc/index.php/about-us). The SIB assists investors in Seychelles and abroad and also has an advisory role in the planning and investment process for tourism related projects. It is general knowledge that for an investment of the magnitude of a hotel project, the Ministry of Land Use and Housing directs the investor and or developer to SIB in order to progress the development of the project.

[6] Subsequent to the letter of the SIB, the Planning Authority on 11th July 2013 formally informed the Petitioner that she would only be able to develop her land as per the new guidelines contained in the new Land Use Plan that had been put into effect on 17 April, 2013. This in effect was a confirmation of what had been conveyed to her by the SIB.

[7] The Petitioner appealed the decision of the Planning Authority to the Respondent on the grounds that it was both unjust and unreasonable to apply the provisions of the new Land Use Development Plan to its project which had been submitted before the latter had come into force, that the permission to only allow development of 0.31% of her property was arbitrary, harsh and excessive, that her constitutional right to property was breached and that the decision was on the whole unreasonable, disproportionate and excessive.

[8] A reminder of the said appeal was sent to the Respondent on 16th April 2014 and the Petitioner submitted that there has been neither acknowledgment nor a decision of this appeal by the Respondent.

[9] Aggrieved by the response of the Planning Authority and what she perceived as a refusal to consider her appeal of the planning process by the Minister, the Petitioner applied to the Supreme Court for judicial review of the Respondent's decision and prayed for the issue of a writ certiorari quashing the Respondent's decision, a writ mandamus compelling the Minster and the Planning Authority to allow meaningful development of her land and to pay her the sum of SR 350,000 as exemplary damages, together with interests and costs.

[10] The Respondent submitted that the application for administrative review of the Planning Authority's decision was premature as the Petitioner had not submitted formal plans of its development project and that in any case no decision had been made by the Department of Planning and that only preplanning advice based on the new Land Development Plan had been proffered to the Petitioner.

[11] The Respondent further denied that on relying on the new Land Development Plan it had acted retroactively in informing the Petitioner that only 0.31% of its land could be developed for a tourism project. It repeated that there had been no formal application for any specific project in terms of the Town and Country Planning Act by the Petitioner and that it need not consider her

request; that in any case the Planning Authority had not refused to consider the Petitioner's project but that if one was forthcoming it would be decided in accordance with procedure and law and the Land Use policy for the area in conformity with the Town and Country Planning Act. It denied liability for any damages.

[12] For the purposes of this review, Article 125(1)(c) of the Constitution and the Supreme Court (Supervisory Jurisdiction over Subordinate Courts, Tribunals and Adjudicating Authority) Rules apply. The issues which have to be decided are the following:

1. Has an application been submitted by the Petitioner to the Respondent for a decision?
2. Has a decision been made by the Respondent in the consideration of such an application?
3. Has this decision been legal, reasonable and fair, rational and proportionate?
4. If not, what remedy is available to the Petitioner?

1. The Petitioner's Application to the Respondent

[13] In deciding the first issue of whether there is indeed an application submitted to the Respondent for a decision, I have meticulously examined the documents submitted by both parties including the planning files from the Planning Authority of the Ministry of Land Use and Housing. Counsel for the Respondent is at pains to convince the Court that there has been no substantial planning application by the Petitioner to the Planning Authority or the Minister meriting consideration and a decision. He submits that at the very most only pre-planning meetings were held between the parties and that the correspondence from the Respondent to the Petitioner only conveyed pre-application advice.

[14] As has been pointed out before, this matter in one form or another has been languishing both in the corridors of the Ministry of Land Use and Housing and the courts of Seychelles for more than two decades. I have taken judicial notice that there are two distinct stages in the process of planning for tourism and other large developments in Seychelles: firstly, the submission of an outline planning application and secondly, the submission of a detailed planning application (See also affidavit of Jones Belmont at C23 in CC 02/2010). However, there has never been produced

to this court an explanation as to how the planning process in relation to a project of this kind is managed, especially when counter proposals are made. This information would have been most helpful to assist the court in deciding whether the administrative authority in question acted legally, reasonably, fairly, rationally and proportionately.

[15] Without a clear planning process outlined by the parties in court and the lack of information generally on how projects of this kind are dealt with, it is difficult to assess what decisions, by whom in the Ministry and how decisions are actually made. It became obvious at the beginning of the hearing that no review of the decision(s) could be undertaken by this Court without perusing the administrative files concerned with this case. An order was made by this Court to this effect. I specifically asked to be provided with the :

> "Ministry of Land Use and Housing Files in relation to Elke Sabine Talma in relation to PR2552…but also previous files in relation to that matter…in the name of Alwyn Talma and secondly Elke Talma." (see court proceedings dated 12th October 2015).

I also ordered that a more detailed plan of the area in issue which is affected by the Baie St. Anne development plan be produced to ascertain whether the project lies within the low density area outlined in the Land Use Plan.

[16] The Plan requested has not materialised. The Court had to go on a wild goose chase to find the official gazette Notice of the approval of the Baie Ste. Anne Land Use Development Plan. As for the administrative files in relation to the Petitioner's development applications requested, the Chief Executive Officer of the Planning Authority wrote to the Court on the 27th October stating inter alia:

> "I have the pleasure to enclose both originals and copies of the cases/applications I could lay my hands on for the Talmas as at the 26th October for records and active electronic databases for development applications in the Planning Authority…"

With this letter were attached the following files: DC/94/87, MW/526/00, DC438/15, PA/AAP/63/15. These files relate to an outline application by the Petitioner for a 40 bed holiday accommodation, application, an application for a non-motorable access bridge, an application for

the reconstruction of a collapsed bridge and an appeal for the re-construction of a collapsed bridge respectively.

[17] A perusal of these files together with the court files appended to this application show that this is not complete disclosure by the Respondent. It is clear from the many different cases taken by the Petitioner together with the particulars contained in the present petition that there have been many submissions by the Petitioner in relation to tourism developments on PR 2552. These were referred to in previous judgments of the courts and the Ministry of Land Use and Housing file numbers even specified in some cases. The failure to produce all the administrative files in relation to this case may not be deliberate. However, even if the omission to provide them by the Respondent is inadvertent or an act of incompetence, it hampers the judicial review process and will be taken into account when deciding this case. A court of law does not lightly make orders and it has as its disposal means for making unwilling parties comply with them.

[18] The limited information in the Ministry of Land Use and Housing files produced together with the material contained in court files (CC02/2010, SCA 22/2010, MA 194/2013, MC 65/2014) annexed to the present matter together with the affidavit of one Jones Belmont sworn on 23rd March 2010 (and contained at C26 of the Constitutional Court case file 02/2010) reveal that:

1. On 30th March 1987, the Petitioner and or her father applied for a 40 bed holiday accommodation project on the site. This was refused (File DC/94/87 refers and has been disclosed by the Respondent).

2. On 16th March 1994, the Petitioner applied for a restaurant project on the site (File DC797/94 refers but has not been disclosed).

3. Outline permission was granted to the Petitioner for the construction of a 24 bedroom 5 star hotel in 1997 (File DC462/97 refers but has not been disclosed).

4. On 13th November 2000 an application was made for the construction of a non-motorable access bridge to his land. This was granted on 6th March 2001 (Application number MW526/00 refers but has not been disclosed).

5. On 3rd August 2001, permission was granted to the Petitioner to construct a motorable bridge. This permission was conditional on the Petitioner providing a time frame for completing their hotel development as per the approval in file DC462/97 which is not disclosed.

6. The Petitioner together with an investor, Joe Albert proposed a 30 bed 5 star hotel development which received outline approval on 7 September 2005 (File CO5/M24 refers but has not been disclosed).

7. In 2006 the area of land on which the proposed 5 star hotel was to be built was declared a No Development Zone. On 26 March 2006 the Petitioner's investor, Joe Albert was informed that the proposal had failed to obtain Environmental Impact Assessment authorisation. Effectively this paid put to the Petitioner's proposed development.

8. On 13 March 2007 the Petitioner submitted another development plan and project memorandum for a luxury resort on the site. This was not approved.

9. On 6th March 2011 the Petitioner resubmitted the development plan of 2007 and project for a luxury resort which had been refused.

10. An eco-tourism project was deposited with the Seychelles Investment Board in September 2012 by the Petitioner and forwarded to the Planning Authority. The Petitioner was by letter of the 11th July 2013 referred to the Land Use Plan of April 2013 limiting development on her land. (Ref MLUH/CEOPA/GC310/13)

11. On 31st March 2015 an application was made for the reconstruction of a collapsed bridge which was refused on 21st August 2015 (DC/438/15 refers and was disclosed).

12. On 21st September 2015 the petitioner appealed the decision not to grant permission for the reconstruction of the collapsed bridge, a decision is pending (PA/AAP/63/14 refers and was disclosed).

[19] It is clear from the above facts therefore, that the first question of whether an application has been submitted by the Petitioner to the Respondent for a decision must be answered in the affirmative and I so find. There were indeed numerous applications before the Respondent for a decision. These in effect had coalesced into one application: a proposal to develop a sustainable tourism accommodation project on the Petitioner's land.

2. The Respondent's decision

[20] Meetings and site visits by the Respondent's servants and/or agents in 2012 led to the decision that the Petitioner would be able to use some of her land for development as it was situated in an area zoned under the new Land Use Plan as a "Very Low Density Residential and Tourism" area. In a letter dated 15th November 2012, Vivianne Dubel of the SIB states in reference to the Petitioner's "eco-friendly tourism development" that :

> "Following consultation with the Planning Authority for guidance with regards to your proposed development, please note that the proposal has been considered in relation to the Land Use classification of the Anse Lazio area on Praslin as part of the new Land Use Plan (LUP). It should be noted that given your proposal, a 4000 sqm area has been taken out of your parcel and classified as low density residential/tourism area.
>
> Further to the above, kindly note that within this area, you would be able to implement a tourism project of up to 20% plot coverage, which corresponds to an 800 sqm footprint sealed and/or covered area(s)."

[21] On 23rd November 2012, Miss Dubel wrote again and stated:

> "As per our letter dated 15th November 2012, kindly note that you would be able to implement a tourism project of up to 20% plot coverage, which corresponds to an 800sqm footprint/sealed and/or covered area(s). Please also note that 6-8 chalets will be possible within the 20% plot coverage.
>
> Further to the above, please note that the remainder of the parcel remains as a protected coastline which also corresponds to a no-development zone…"

It is this decision that resulted in the Petitioner meeting the Respondent on 30th April 2013 and other Ministers at which the Respondent stated that the decision to limit the Petitioner's development to 800 square metres of her land was in compliance with law. In her subsequent letter of 6th May 2013 the Petitioner questioned whether the decision to limit her development to 800 square metres was legal. In her submission, the Land Use Plan had not met the provisions of the Town andCountry Planning Act. The Respondent replied through Gerald Hoareau, the Chief Executive Officer of the Planning Authority on 11th July 2013. He stated:

> "Thank you for our letter of 6th May 2013 addressed to Minister Christian Lionnet and referring to the meeting held on 30 April, 2013 to discuss your proposed development on PR2552 at Anse Lazio Praslin.
>
> As communicated to you at the meeting, any proposed development at Anse Lazio, Praslin will have to be considered in line with the Baie Ste Anne Praslin Land Use Development Plan in force.
>
> For your information, notice of the draft Baie Ste Anne, Praslin Land Use Development Plan was published in the Official Gazette on 6 August 2012 (Official Gazette No 45 of 2012) and in the Nation newspaper on 8 August 2012… the said plan was approved on 16th April 2013. Notice of the approval of the Baie Ste. Anne Land Use Development Plan was published in the Official Gazette on 17 April, 2013 (Official Gazette No 23 of 2103).
>
> As you will appreciate from the above, the Baie Ste Anne Praslin Land Use Development Plan was prepared and brought into operation in accordance with the law…"

[22] The answer to the second issue as to whether a decision was indeed made by the Respondent is also answered in the affirmative. It is this decision that this court must review to decide whether it was legal, reasonable, fair, rational and proportionate.

3. Is the Respondent's decision legal, reasonable and fair, rational and proportionate?

[23] Section 6(2) of The Town and Country Planning Act obliges the Planning Authority to publish notice of drafts of such plans or proposals for amendment of such plan, including the place or

places that the public may be able to inspect such draft plans and or proposals. Provision is made for objections to be made. The plan or proposals for amendment so submitted to the Minister may be approved by him and that approval shall be published in the *Gazette* and at least one newspaper. Section 6(6) of the Act provides:

> "A development plan, or an amendment of a development plan, shall become operative on the date on which its approval by the Minister is published in the Gazette or on such later date as the Minister may determine."

At the time of the Constitutional Court case in 2010, there existed a departmental Land Use Plan that had not been published in accordance with the Town and Country Planning Act provisions set out above. In the circumstances, the Constitutional Court found that the Petitioner's property right had been breached by the fact that the restriction on her property right was done not according to law but according to departmental policy which had not been formulated in accordance with the relevant laws. The restriction to her property right was in the circumstances both unconstitutional and illegal.

[24] At the hearing of this judicial review Counsel for the Respondent was asked about the Land Use Plan and its effect vis a vis the Petitioner's land, the Court was referred to a document entitled Land Use Planning Guidelines for Seychelles authored by one Florian Rock for the Respondent. The guidelines contain categories and sub categories of zones for land use. It was submitted by the Respondent that the Petitioner's land falls within Code RO or an area zoned residential to be used for private dwellings, villas, bungalows, chalets for residential or tourism use. The development density for such an area is indicated as "20% with a minimum plot size of 4000 square metres." Learned Counsel for the Respondent, Mr. Benjamin submitted that the Respondent had taken into account the Courts' previous decision and had changed the zoning for the area from no development to "very low density residential and tourism land use."

[25] There are three matters arising from the Minister's decision as reflected in the letter above: the first is whether the new Land Use Development Plan had been formulated and approved in conformity with the provisions of the Town and Country Planning Act as set out above; the second is whether the Petitioner's project proposals which spanned twenty years was subject to

the 2013 Plan; the third is whether the plan has been interpreted properly and reasonably to restrict the development of only 0.31% of the Petitioner's land.

[26] In both *Jouanneau v Seychelles International Business Authority* (2011) SLR 262 and *Michel v Dhanjee* (2012) SLR 258, the Court of Appeal explained that in judicial review cases, the duty of the Court is to review the decision-making process of a decision-making body or person. In acquitting itself of this duty, the Court has to consider whether relevant considerations were taken into account, whether there was any evidence of deception or bad faith, and whether the body or person making the decision had the legal or constitutional power to make the decision it did.

[27] Subsidiary legislation is any rule, bye law or other instrument made under a Parent Act. As delegated legislation it is not made by the Assembly and therefore not those democratically elected to be responsible for legislation. For those reasons it is important that strict controls are imposed on their creation. Moreover, the right to property is a constitutional right and only laws including subsidiary legislation can limit it. But these laws have to be valid. In order to be valid the provisions for their enactment have to be met. The Town and Country Planning Act have those controls in place. As I have stated above, section 6 of The Town and Country Planning Act obliges the Planning Authority to do a number of things before the subsidiary legislation is put in place.

[28] It is important to set out the relevant provisions:

> "(1) The planning authority may, in the course of preparing a development plan relating to any land, or proposals for alterations or additions to any such plan, consult with such persons or bodies as they think fit.
>
> (2) Notice shall be published in the Gazette and in at least one newspaper that the planning authority have prepared in draft any such plan or proposals for the amendment of any such plan, and of the place or places where copies of such plan or proposals may be inspected by the public.
>
> (3) If any objection or representation with respect to any such plan or proposals is made in writing to the planning authority within one month of the publication of thenotice

referred to in subsection (2), the planning authority shall appoint a person to hold a public inquiry into the objection or representation and the planning authority shall, before submitting any such plan or proposals for the approval of the Minister, take into consideration the objection or representation together with the report thereon of the person holding the public inquiry.

(4) If as the result of any objection or representation considered, or public inquiry held, in connection with a development plan or proposals for amendment for such a plan, the planning authority are of opinion that any authority or person ought to be consulted before they decide to make the plan (either with or without modifications) or to amend the plan as the case may be, the planning authority shall consult that authority or person, but shall not be obliged to consult any other authority or person, or to afford any opportunity for further objections or representations or to cause any further public inquiryto be held.

(5) The approval of the development plan, or of proposals for amendment of such a plan, by the Minister shall be published in the Gazette and in at least one newspaper, and copies of any such proposals as approved by the Minister shall be available for inspectionby the public.

(6) A development plan, or an amendment of a development plan, shall become operative on the date on which its approval by the Minister is published in the Gazette or on such later date as the Minister may determine.

[29] It is clear from the facts I have previously outlined that some of the steps outlined above were not substantively applied but rather lip service paid to them. Notice of the Praslin Baie Sainte Anne Development Plan was indeed published. However, no plan was effectively available for public inspection. If it was, it was hidden in an inaccessible glass cabinet or some dusty shelf. At the very least as the Petitioner was in negotiation with the Respondent it was incumbent on him to at least seek the views of the Petitioner whose land was clearly affected by the Plan. It does not wash with this court that the Petitioner's land was not specifically targeted. Why was this Plan when it was of national interest or at least when it concerned landowners of Praslin rushed

through without so much as a national consultation? The property rights of Pralinois were to be affected. Did it not matter that they were consulted or even properly informed? And why was it and continues to be the case that this exercise was not extended to all Seychelles. Why was this particular area a priority?

[30] In the case of *A.H.F.I. Training Board v Aylsbury Mushrooms Ltd* [1972] 1 WLR 190, a minister who had statutory powers to make orders for an industry failed to observe the prescribed procedure for introducing regulations. These were held to be invalid. Similarly in the present case the Minister has not substantially followed the provisions of the Town and Country Planning Act either to the letter or in the spirit it was intended in introducing the Plan. There was no proper consultation. He has acted procedurally ultra vires his powers. In the circumstances I hold that the Plan is invalid.

[31] The Petitioner has also submitted that the Plan was also substantively ultra vires as it was unreasonable. She has also submitted that the Minister’s decision was taken in bad faith and made to thwart the decisions of the Constitutional Court and the Court of Appeal with respect to her property rights.

[32] I have in my review of this matter given much consideration to this issue. I have set out the long engagement by the Petitioner and her father with the Ministry in order to be able to develop their land as was their right. I have outlined the many different decisions along the way. The manner in which this plan was prepared in the middle of negotiations with the Petitioner and after court cases decided and actions taken to enforce this court decision leaves a distinct impression that the creation of the Plan was not made in good faith and in the national interest but rather by stealth and for other motives. I am left in no doubt after having reviewed the administrative files (with the knowledge that not all the files were submitted to the court after being so ordered) and the court cases linked to this review that the Minister has indeed been unreasonable in his decision.

[33] It must be further noted that when the Ministry operated a policy of no development in the area before the Plan now at issue, it still found it possible to grant the Respondent outline planning permission to construct a 24 bedroom 5 star hotel in 1997 and a 30 bed 5 star hotel development in 2005.

[34] Why then may I ask that under this new Plan where some of the land of the Petitioner has been zoned as "very low density housing and tourism" that it is now only possible to construct hotel comprising of 6- 8 chalets? The fact remains that the Petitioner owns 260, 833 square meters of land affected by the Plan and she has been told that she can only develop 800 square metres of it, that is 0.31% of it. Without a shadow of a doubt the decision is not only arbitrary but also preposterous.

[35] In the words of Lord Diplock in the case of *Council of Civil Service Unions v Minister for Civil Service* [1985] AC374, the Petitioner's decision is irrational as it is:

> "so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question could have arrived at it."

I therefore have no doubt in finding that the decision arrived at by the Petitioner was neither legal, reasonable, fair, rational or proportionate.

4. The Petitioner's Remedy

[36] I now come to the fourth question to be decided. What is the remedy available to the Petitioner? She has prayed this Court for a writ certiorari to quash the Respondent's decision, an order of mandamus to compel the Respondent to allow her to develop her land and for exemplary damages against the Respondent in the sum of SR350, 000.

[37] As I have pointed out this suit was filed pursuant to Article 125(1) (c) of the Constitution and the Supreme Court (Supervisory Jurisdiction over Subordinate Courts, Tribunals and Adjudicating Authority) Rules apply. On a petition under Rule 2 this court is permitted for the purpose of enforcing or securing the enforcement of its supervisory jurisdiction to issue:

> "injunctions, directions, orders or writs including writs or orders in the nature of habeas corpus, certiorari, mandamus, prohibition and quo warranto as may be appropriate."

[38] Writs certiorari or quashing orders issue to quash a decision which is ultra vires. The Petitioner's decision is tainted both with procedural and substantive ultra vires. The Petitioner has powers which must be kept within its legal bounds. He has strayed outside those limits. I quash his decision.

[39] The Petitioner has also failed in his duty towards the Respondent. In such circumstances the Court must make orders to prevent further breaches of duty and injustice. I am aware that this discretionary remedy and should be withheld where it would not be in the interests of justice to grant it (see *R v Garland* (1879) LR 5 QB 269). I have in this decision tracked the journey of this matter across decades in the Planning Department and previous decisions of the Supreme Court and the Court of Appeal. It is necessary that a writ mandamus be issued.

[40] In terms of exemplary damages, the Court of Appeal stated in *Michel v Talma* (2012) SLR 95:

> "The infringement of a constitutional right is a serious matter and should be viewed as such by all concerned. In the defamation case of *Regar Publications Ltd v Lousteau-Lalanne* (CA25/2006 unreported) the Court of Appeal made the following remark:
>
> "Apart from the fact that exemplary damages should be specifically pleaded, it should be awarded only in cases falling within the following categories:
>
> (a) oppressive, arbitrary or unconstitutional action by servants or the Government..."

[41] I am of the view that this is indeed a case falling within the parameters of the decision of *Regar* (supra). The old case of *Wilkes v Wood* (1763) 19 St. Tr. 1153 applies to this day. Oppressive action by servants of the government justifies an award of exemplary or punitive damages. This is a case where the Court does not merely take into account the actual loss to the Petitioner but also the outrageous conduct of the Respondent. May the Respondent also learn from this case that administrative decisions which are neither legal, reasonable, fair, rational and proportionate will attract the condemnation of the reviewing court. In the circumstances I grant the prayer for exemplary damages in the sum of SR 350,000 to the Petitioner.

[42] I make the following orders:

1. I quash the order of the Respondent restricting the Petitioner her right to develop only 800 square metres of her land for a tourism project.

2. I order that the Respondent reasonably engages with the Petitioner with a view to allowing her meaningful development of her land for a tourism project within reasonable

parameters of planning regulations and environmental protection laws at least to the extent that was initially granted in 1997 for the construction of a 25 room hotel.

3. I order that the Petitioner pays the Respondent the sum of SR 350,000 exemplary damages.

4. I order that the Respondent pay the costs of this suit.

Signed, dated and delivered at Ile du Port on 12th January 2016.

M. TWOMEY
Chief Justice