

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE COURT OF APPEAL**

**Civ. App. No. 98 of 2000**

**BARL NARAYNSINGH**

**APPLICANT/APPELLANT**

**AND**

**THE COMMISSIONER OF POLICE    RESPONDENT/RESPONDENT**

**PANEL:**

**R. Nelson, J.A.**

**A. Lucky, J.A.**

**W.N. Kangaloo, J.A.**

**APPEARANCES:**

**Dr. F. Ramsahoye S.C. and Mr. A. Ramlogan for Appellant**

**Mr. A. Darmanie for Respondent**

**DATE DELIVERED: 14<sup>th</sup> November 2002.**

I have read the judgment of Kangaloo J.A. and I agree with it.

**R. Nelson  
Justice of Appeal**

I too have read the judgment of Kangaloo J.A. and agree with it.

A. Lucky  
Justice of Appeal

## **JUDGMENT**

### **Delivered by W.N. Kangaloo, J.A.**

On the 7<sup>th</sup> March 1996 the appellant, an eighty-year-old businessman, was the holder of a firearm user's licence, which allowed him to keep, carry and use a Taurus .38 special revolver for his personal protection. He had been the holder of a firearm user's licence since 1961. On that day, at approximately 1:30 p.m. a party of persons, approximately 17 in number, consisting of at least one police officer and an Assistant Marshal entered the premises at No. 1 Edinburgh Gardens, Chaguanas at which premises the appellant and his wife resided, the property being vested in the name of the appellant's wife. The entry on the premises was for the purpose of lawfully executing process in respect of an order of the Petty Civil Court against the appellant. Neither the appellant nor his wife was acquainted with any of the individuals in the party.

During the levy a man, whom the appellant assumed to be part of the party, produced a firearm and a quantity of ammunition and alleged to the appellant that he found them on the premises. The appellant immediately informed the police officer in the party that:

- (a) the items did not belong to him;
- (b) that he was not aware that the items were ever present on the premises; and
- (c) that the items could not have been found on the premises.

On the said 7<sup>th</sup> March 1996, the appellant and his wife were charged with unlawfully being in possession of a firearm and a quantity of ammunition viz. a .22 revolver and 46 live and 1 spent round of .22 ammunition.

On the 17<sup>th</sup> March 1996 the appellant's Taurus .38 special revolver and a quantity of ammunition which were covered by his licence were confiscated by the police.

On the 14<sup>th</sup> October 1997 the charges against the appellant and his wife were dismissed for non-appearance of the complainant in the Magistrates' Court. The appellant then initiated a series of correspondence commencing with a letter of the 1<sup>st</sup> November 1997 to the Commissioner of Police for the return of his licensed firearm and ammunition. There being no response to this letter the appellant again wrote the Commissioner of Police on the 19<sup>th</sup> January 1998.

On the 21<sup>st</sup> July 1998, the Commissioner wrote the appellant in the following terms:

July 21, 1998.

Mr. Barl Naraysingh,  
1, Edinburgh Gardens,  
CHAGUANAS:

Dear Sir,

On October 16, 1991, you were re-issued with Firearm User's Licence Number 2730/91, authorising you to possess Taurus .38 Special Revolver, Serial Number LE - 6254 for protection of self and property.

It has been drawn to my attention that during the execution of a Levy from the Petty Civil Court at your home on March 07, 1996, a .22 Revolver and a quantity of ammunition were found, which resulted in charges of Possession of Firearm and Ammunition being preferred against you.

Notwithstanding that the matters were dismissed by the court due to the non appearance of the complainant, the fact remains that the firearm and ammunition were found in your possession.

In view of the above, I am extending an opportunity to you to address me in writing within fourteen (14) days of receipt of this letter on matters raised above.

Yours faithfully,

/f/ Commissioner of Police

On the 25<sup>th</sup> August 1998, the appellant through his attorney-at-law replied as follows:

25<sup>th</sup> August, 1998.

Mr. Hilton Guy  
Commissioner of Police  
Sackville Street,  
PORT OF SPAIN.

Dear Sir,

Re: **Barl Naraynsingh –  
Firearms Users License**

I act on behalf of Mr. Barl Naraynsingh the holder of the captioned Firearms Users License (sic) and write in response to yours in relation to same.

The incident referred to in the said letter arose on the occasion of a levy at my client's residence by reason whereof there were numerous persons in and upon the premises who were unknown to my client. It was during the levy, whilst my client was outside the residence in the presence of a police officer, that a man, whom my client assumed was part of the party executing the levy, approached my client and the said officer and presented a firearm which he alleged that he had found on the premises.

My client maintains that the said firearm does not belong to him, nor was he aware that such a firearm was on his premises. It was my client's hope that he would have the opportunity in the Magistrates Court to determine from the said man by means of cross examination the exact circumstances of the alleged discovery as he is convinced that same was not discovered on his premises. Regrettably this opportunity never arose as the matter was dismissed by the Learned Magistrate for reasons attributable to the Prosecution.

Please do not hesitate to contact me if you should require any further information

Yours faithfully,

/s/ DHARMENDRA PUNWASEE  
Attorney-at-Law

On the 28<sup>th</sup> December 1998 the Commissioner of Police cancelled the firearm user's licence of the appellant when he wrote to the appellant in the following terms:

December 28<sup>th</sup> 1998.

Mr. Barl Naraynsingh,  
1 Edinburgh Gardens,  
CHAGUANAS:

Dear Sir,

I acknowledge receipt of a letter on your behalf from Messrs. DHARMENDRA PUNWASEE, Attorney-At-Law dated August 25, 1998, the contents of which has (sic) been duly noted.

Please be informed however, that Firearm User's Licence Number 2730/91 which was issued in your name on October 16, 1991 authorising you to keep, carry and use Taurus .38 Revolver, Serial Number L.E. 62654 for personal protection is cancelled for the reason outlined in my letter to you dated July 21, 1998.

Yours faithfully,

/s/ Commissioner of Police

The appellant on the 16<sup>th</sup> April, 1999 obtained leave to apply for judicial review of the decision of the Commissioner of Police to cancel the appellant's firearm user's licence. The relief sought were as follows:

- “(a) An order of certiorari to quash the decision made by the Commissioner of Police on December 28, 1998 wherein it was decided to cancel Firearms User's Licence No. 2730/91 which said Licence authorised the applicant to keep, carry and use Taurus Special .38 Revolver Number L.E. 62654 for his personal protection.*
- (b) A declaration that the Commissioner of Police acted ultra vires and/or in excess of his jurisdiction in arriving at the said decision against the applicant.*
- (c) A declaration that the Commissioner of Police acted in breach of natural justice in arriving at the said decision against the applicant.*

- (d) *A declaration that the said decision of the Commissioner of Police was irrationally made.*
- (e) *Damages.*
- (f) *Costs.*
- (g) *All such further or consequential directions which the Court may seem (sic) just.”*

On the 27<sup>th</sup> March 2000 the appellant's Notice of Motion was dismissed and he now appeals to this Court. The grounds of appeal as amended are as follows:

*“ Grounds of Appeal:- The Learned Judge erred in law in refusing to grant to the Applicant/Appellant the reliefs sought as follows:-*

- (a) *An Order of Certiorari to remove into the Honourable High Court of Justice and quash the decision (hereinafter referred to as 'the said decision') the (sic) made by the Commissioner of Police on December 28, 1998 wherein it was decided to cancel Firearms Users Licence No. 2730/91 which said Licence authorized the Applicant/Appellant to keep, carry and use Taurus Special .38 Revolver Number L.E. 62654 for his personal protection. The Respondent was not entitled to invoke section 21 of the Firearms Act, Chapter 16:01 “the Act” to revoke the Appellant's licence on a bare allegation by a constable levying execution at the Appellant's premises that he had found an unlicensed firearm and ammunition there. The dismissal of charges against the Appellant raised an unrebutted presumption that there was nothing of probative value in support of the alleged illegality or criminal conduct on the part of the Appellant which gave rise to the prosecution.*

*(b) A Declaration that the Commissioner of Police acted Ultra Vires and/or in excess of his jurisdiction in arriving at the said decision against the Applicant/Appellant. The Respondent in applying section 21 of the Act was taking away the right of the Appellant to hold a firearm and ammunition. The Respondent's authority to do so depended upon a proper construction of section 21. No authority to revoke a licence vests under section 21 where unfitness is not found but there is a bare allegation made but denied by the Appellant that an unlicensed firearm and ammunition were found on his premises.*

*(c) A Declaration that the Commissioner of Police acted in Breach of Natural Justice in arriving at the said decision against the Applicant/Appellant. The Appellant was entitled to a hearing by the Respondent upon a proper inquiry by the Respondent to ascertain the truth of the allegation. Such an inquiry ought to have followed the letter to the Respondent by the Appellant's attorney dated 25<sup>th</sup> August 1998 in which the Appellant denied that the firearm and ammunition belonged to him and further denied that they were found on his premises. There was no inquiry and the revocation was unfair to the Appellant.*

*(d) A Declaration that the said decision of the Commissioner of Police was irrationally made. The Respondent's conclusion that the Appellant was unfit to retain his licence was on the facts disclosed to the Appellant wholly irrational. The conclusion was based solely upon a bare allegation which the Appellant was not allowed to contest in a proper manner."*

Essentially the contentions advocated on behalf of the appellant as contained in his skeleton submissions can be summarised as follows:

- (a) The Report of Senior Superintendent Christopher, to which the Commissioner of Police clearly attached some weight in arriving at his decision, was hearsay. The respondent's decision was not informed by any matter of probative value, which was essential where administrative decisions were to be based on facts. It was contended that without the support of matters of probative value, administrative decisions become capricious and arbitrary and are outwith the law;
- (b) The respondent could not reasonably say that the appellant was found in unlawful possession of a firearm and ammunition so that the authority to revoke could not operate against the appellant. Therefore the decision to revoke was ultra vires and or in excess of jurisdiction. The reason for this proposition was that it was merely an allegation which existed against the appellant and the respondent did not attempt to discern between falsity and truth of the allegation;
- (c) The respondent could not proceed to hold that the appellant was in fact in possession of the firearm and ammunition without holding an inquiry. The respondent was entitled to determine the form of the inquiry but it had to be fair. Fairness required that the allegation should be put under scrutiny to test its authenticity. And so it was submitted that the appellant could not have been fairly treated unless he was given an adequate opportunity to test the truthfulness of the report made to the police officer against the appellant; and finally,

(d) Section 5(2) of the Firearms Act, which was taken into account by the Commissioner of Police in coming to his decision, was irrelevant because there was no prosecution afoot. The Commissioner therefore took into account extraneous matters in coming to his decision, thereby making his decision irrational in the Wednesbury sense.

The issues which therefore arise for this Court to determine are as follows:

- (1) Was the allegation by Constable Legendre that he found on the premises the .22 revolver and 46 live and 1 spent round of .22 ammunition (which allegation was contained in the report of Senior Superintendent Christopher to the Commissioner of Police) hearsay and therefore of no probative value?
- (2) What was the nature of the inquiry necessary to be held by the Commissioner of Police to determine whether or not to revoke the appellant's firearm users licence?
- (3) Was the Commissioner of Police in error in his interpretation and use of Section 5(2) of the Firearms Act in coming to his decision to revoke?

### **ISSUE 1**

To put this issue in its proper perspective it is necessary to go into some of the details of the respondent's affidavit. It will be recalled that the appellant first wrote the Commissioner of Police with respect to the return of his firearm and ammunition on the 1st November 1997. The Commissioner of Police deposes that upon receipt of this letter he requested a report from the Senior Superintendent, Central Division on the following day, 13<sup>th</sup> November

1997. He received the report from Senior Superintendent Christopher on the 24<sup>th</sup> May 1998. The report is annexed to the respondent's affidavit and because of its importance is reproduced in full as follows:

**Commissioner of Police:**

Mr. Barl Naraynsingh who resides at #56, Chaconnia Drive, Edinburgh Gardens, Chaguanas is the holder of Firearm User's Licence 2730/91 for a Taurus, .38 Special Revolver, Serial Number LE62654.

On 7<sup>th</sup> March, 1996, No. 8397 Constable Legendre (retired 28-12-96) accompanied a Marshall from Port-of-Spain High Court to the home of Barl Naraynsingh at #1, Edinburgh Gardens, Chaguanas and executed a Levy from the Petty Civil Court Action against him.

During the execution Constable Legendre found on the premises a .22 revolver and forty-six (46) live and one (1) spent round .22 ammunition. Mr. Naraynsingh and his wife, Sylvia Naraynsingh were arrested and subsequently charged for (1) Possession of a firearm and (2) Possession of ammunition (46 live and 1 spent round).

Mr. Naraynsingh (sic) firearm one (1) Taurus revolver .38 Special serial number LE62654 with seventeen (17) rounds .38 Special ammunition and Firearm User's Licence No. 2730/91 were also seized and lodged at Chaguanas Police Station as property number 343/98.

On 27<sup>th</sup> October, 1997, Mr. Naraynsingh appeared before Chaguanas Magistrate's Court on 27<sup>th</sup> October, 1997 where both charges preferred against him were dismissed on the grounds –

- (1) No appearance of complainant (who retired on 28-12-96);
- (2) No appearance of witnesses.

In the circumstances outlined I await your directions in this matter.

/s/ Christopher S/Supt.  
Snr. Superintendent –  
CENTRAL DIVISION



It is to be noted that this report wrongly states the date of dismissal of the charges as the 27<sup>th</sup> October 1996, when in fact the correct date is the 14<sup>th</sup> October 1996 but nothing turns on this error.

The case of **Kavanagh v The Chief Constable of Devon and Cornwall** [1974] 2 ALL ER 697 is authority for the proposition that those who exercise administrative jurisdiction never held themselves bound by the strict rules of evidence. They acted on any material that appeared to be useful in coming to a decision including their own knowledge.

Lord Denning MR says at pg 698 g:

*“To bring the procedure up to modern requirements, I think they should act on the same lines as any administrative body which is charged with an inquiry. They may receive any material which is logically probative, even though it is not evidence in a court of law. Hearsay can be permitted when it can be regarded as reliable. No doubt, they must act fairly. They should give the party concerned the opportunity of correcting or contradicting what is put against him, but it does not mean that he has to be given a chance to cross-examine. It is enough if they hear what he has to say.”*

From this passage it appears, therefore, that the appellant’s contention that Constable Legendre’s allegation is hearsay, is misplaced but the question remains whether the allegation was “*logically probative*”. The answer to that question is to be found when one examines the letters passing between the respondent and the appellant dated 21<sup>st</sup> July 1998 and 25<sup>th</sup> August 1998, respectively and the way the contents of these letters were interpreted by the respondent. It will be remembered that in the respondent’s letter of 21<sup>st</sup> July 1998 he told the appellant “... *the fact remains that the firearm and ammunition were found in your possession....*” On behalf of the appellant, in

the letter of 25<sup>th</sup> August 1998, the following is the reply to that allegation:  
*“My client maintains that the said firearm does not belong to him nor was he aware that such a firearm was on his premises... he is convinced that same was not discovered on his premises....”*

The respondent in paragraphs 9, 10 and 11 of his affidavit says as follows:

*“(9) I consider the response submitted on behalf of the Applicant by his Attorney-at-Law, Mr. Dharmendra Punwasee ... exhibited and marked “B.N.6” and annexed to the Applicant’s second affidavit and understood the Applicant to be saying that:-*

*(a) the .22 firearm and ammunition was not discovered on his premises and probably was brought unto his premises by member of the Levy party who wanted to frame him.*

*(b) Alternatively the .22 firearm and ammunition were discovered on his premises and he was not aware of how it came to be on his premises.*

*(10) With respect to paragraph 9(a) above I found no suggestion of a reason why a member of the Levy party, unfamiliar to the Applicant would “plant” a firearm on his premises. I chose to adopt the opinion of Constable Legendre who, on the 7<sup>th</sup> March 1996 had decided on the basis of what had transpired on that day to charge the then 76 year old Applicant for the offence of possession of a firearm without the requisite user’s licence. I adopted Constable Legendre’s opinion, as expressed in his decision to charge, against the background of my own experience which has taught me that the response “I do not know how that got*

*there” is a standard response from persons in whose premises prohibited items are found.*

*(11) With respect to paragraph 9(b) above I noted section 5(2) of the Firearms Act Chapter 16:01 which provided that once a firearm was found on the premises of the Applicant that there was a presumption that he is in possession of the firearm unless the presumption is disproved by the Applicant. In the letter of the 25<sup>th</sup> day of August, 1998 annexed and marked “B.N.6” to the Applicant’s second affidavit there was insufficient evidence to disprove the presumption of the contravention of section 6 of the Firearms Act Chapter 16:01.”*

It appears from the respondent’s affidavit therefore that the logic which operated in the mind of the respondent in respect of the allegation that the firearm and ammunition were found on the appellant’s premises, is that since there was no suggestion of a reason why a member of the party levying execution, all of whom were unfamiliar to the appellant, would ‘plant’ a firearm on the appellant’s premises, he chose to prefer the contention of Constable Legendre that the firearm was so found.

To this Court, that logic appears to be sound. The appellant apparently did not know any of the members of the party who were present and carrying out the business of the Petty Civil Court. Why would anyone of them want to frame the appellant? If the appellant in his response made even the slightest suggestion of impropriety on the part of any of the members of the party, then the respondent without more, would not have been entitled to act on the allegation of Constable Legendre. But, however, Legendre being for all intents and purposes, disinterested in the appellant’s affairs and there not having been advanced by the appellant any reason whatsoever, when given the opportunity why Legendre should not be believed, it was in this Court’s view

open to the respondent to conclude that Legendre's allegation was logically probative.

It will be recalled that included in the appellant's grounds of appeal was the following statement:

*"The dismissal of charges against the Appellant raised an unrebutted presumption that there was nothing of probative value in support of the alleged illegality or criminal conduct on the part of the Appellant which gave rise to the prosecution."*

Although this proposition was never developed by Senior Counsel for the appellant, it appears to this Court that the submission also is misconceived. In the case of **Health Care Complaints Commission v Litchfield CA 40748/96**, (unreported) a decision of the Court of Appeal of the Supreme Court of New South Wales, the facts as they are relevant were that a doctor had been acquitted on criminal charges arising from the same facts which were the basis of a subsequent complaint brought by the Health Care Complaints Commission against him before the Medical Tribunal. The Tribunal found the complaint proved and took disciplinary action against the doctor short of striking his name off the register. The Commission appealed seeking an order that the doctor's name be erased from the register and the doctor cross appealed contending that the disciplinary proceedings in respect of the complaint should be dismissed because they involved double jeopardy. It was held that because of the different standard of proof (apparently referred to as an onus in the Australian cases) in civil and criminal proceedings an acquittal does not debar disciplinary proceedings arising out of the same facts. The Court in its judgment said:

*“Even if, in this case, the parties in both proceedings are the same there is still no res judicata estoppel. These are civil proceedings in which the civil onus applies as explained in Briginshaw v Briginshaw (1938) 60 CLR 336. See Bannister v Walton (1993) 30 NSWLR 699. Even if the factual questions were identical, the difference in the onus of proof prevents the issues being the same. Whether particular conduct has been established beyond reasonable doubt is not the same question as whether that conduct has been established on the balance of probabilities. Thus an acquittal does not bar civil proceedings against the accused arising out of the same facts. See generally Helton v Allen (1940) 53 CLR 691, Rejjek v McElroy (1965) 112 CLR 517”; and*

*“The proposition that an acquittal does not inhibit disciplinary proceedings arising out of the same facts is well established in other common law jurisdictions. See Re Stinson (1911) 22 Ont LR 627; Re A Medical Practitioner (1959) NZLR 784 (CA); Bodna v Deller [1981] VR 183 at 196-8; Basser v Medical Board [1981] VR 953 at 971-2; and Saeed v Inner London Education Authority [1985] ICR 637. It is also sound in principle because both the onus of proof and the purpose and focus of the proceedings are different.”*

It is the view of this Court therefore, that based on the quoted dicta in Litchfield, it can similarly be successfully contended in this case that notwithstanding the acquittal of the Appellant on the charges in the Magistrates’ Court, it was still open to the Respondent to find on a balance of probability that the firearm and ammunition were found on the premises occupied by the Appellant, as in fact the Respondent did contend in his letter to the Appellant of 21<sup>st</sup> July 1998.

The answer to the first issue therefore, is that although Legendre's allegation was hearsay (because it was not directly communicated to the respondent, but through the medium of Senior Superintendent Christopher) it was permissible for the respondent to act on it as it could have fairly been regarded as reliable.

## **ISSUE 2**

In the case of **Burroughs & Or. v Rampargat Katwaroo (1985) 40 WIR 287 @ 288j** it was held that:

*“There was no express provision in the Firearms Act requiring the commissioner to allow a licence-holder a formal hearing before revoking a firearm licence, nor was any such requirement implicit in the Act; any such requirement for the licence-holder to be afforded a hearing before such revocation which might have existed would have been satisfied by the exchange of correspondence between K and the commissioner after K had been advised of the revocation of his licence.”*

In Katwaroo the revocation was made by the Commissioner of Police without any representation from Katwaroo who “appealed” to the Commissioner to vary his decision by a letter subsequent to the letter of revocation but it was held by the Court of Appeal, that this series of correspondence was sufficient to afford a hearing.

In the instant case the respondent in the first letter to the appellant gave him the opportunity to address the allegation that the firearm and ammunition were found on premises which he occupied. The appellant took advantage of the opportunity and tendered a response as already described without ever mentioning the ammunition. For the reasons given with respect

to Issue 1, it was open to the respondent to prefer the contention of Constable Legendre over the explanation of the appellant.

It is this Court's view that the series of correspondence passing between the appellant and the respondent afforded a sufficient hearing to the appellant and amounted to an inquiry reasonable in the circumstances.

### **ISSUE 3**

Section 5(2) of the Firearms Act is as follows:

*“In any prosecution for an offence under this Part or Part IV a person who is proved to have had in his possession or under his control anything whatsoever in or on which is found any firearm or ammunition shall, until the contrary is proved, be deemed to have been in possession of such firearm or ammunition.”*

When one examines paragraph 11 of the affidavit of the respondent (supra), it becomes apparent that the respondent used the word “noted” as opposed to “applied” with respect to Section 5(2) of the Firearms Act.

It appears to this Court that what the respondent was doing was comparing the response of the appellant as set out in paragraph 9(b) of the affidavit, to situations in which it is proved at trials that arms and ammunition are found in or on premises proved to be in the control of the defendants, in which case the presumption of possession arises and the reverse burden of proof is placed on the defendant. The respondent concluded, therefore, that because in the appellant's letter of 25<sup>th</sup> August 1998 there was nothing to rebut the presumption of possession, (which would have arisen if there were a prosecution) he was entitled to find, on a balance of probability, that the

appellant was in fact in possession of the firearm and ammunition and so he, the respondent, was entitled to revoke the appellant's firearm user's licence.

It is this Court's view that the respondent never for one moment misinterpreted the true purpose of Section 5(2) of the Firearms Act, but merely used it by analogy to instances where prosecutions were afoot to come to the conclusion that the licence should be revoked.

Issue 3 is therefore answered in the negative.

In Section 21(d) of the Firearms Act, the Commissioner is authorised to revoke a firearm user's licence "*in any other case if he thinks fit.*" The illegal possession of firearms and ammunition continues to be a very prevalent offence in this country. The legislature in its wisdom therefore thought it necessary to give to the Commissioner of Police a very wide discretion in the revocation of licences for firearms and ammunition but as explained in **Burroughs & Or. v Katwaroo**, the width of the discretion does not debar Courts today from their power of review of the exercise of this discretion.

In the case of **Roberts v Hopwood** [1925] All ER Rep 24 Lord Wrenbury said:

*"A person in whom is vested a discretion must exercise his discretion upon reasonable grounds. The discretion does not empower a man to do what he likes merely because he is minded to do so – he must in the exercise of his discretion do not what he likes but what he ought. In other words, he must by the use of his reason ascertain and follow the course which reason directs. He must act reasonably."*

In **Padfield v Ministry of Agriculture, Fisheries and Food (1968)**

AC at 1030, Lord Reid said:

*“Parliament must have conferred the discretion with the intention that it should be used to promote the policy and objects of the Act; the policy and objects of the Act must be determined by construing the Act as a whole and construction is always a matter of law in the court. In a matter of this kind it is not possible to draw a hard and fast line, but if the Minister, by reason of his having misconstrued the Act or for any other reason, so uses his discretion as to thwart or run counter to the policy and objects of the Act, then our law would be very defective if persons aggrieved were not entitled to the protection of the court.”*

Notwithstanding, therefore, the very wide ambit of the discretion given to the respondent under the Act, if it could be demonstrated his act of revocation was either illegal, procedurally improper, or irrational, it may be successfully reviewed by the Court. However, in all the circumstances of this case the appellant has failed to demonstrate any sustainable ground of challenge to the respondent’s decision. The appeal is therefore dismissed and the appellant is to pay the respondents costs of the appeal.

Wendell N. Kangaloo  
Justice of Appeal