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annex '2'

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
HELD AT GEORGE TOWN ON THE 28TH JULY 1982  
BEFORE THE HON. W. HERCULES, ACTING CHIEF JUSTICE  
CAUSE NO. 88/82



BETWEEN FRANK EBANKS APPELLANT  
AND THE CENTRAL PLANNING AUTHORITY RESPONDENT

Mr. R. Alberga Q.C. instructed by Mr. C.C. Adams for appellant  
Mr. John Martin for respondent

JUDGMENT

These proceedings stem from the revocation by the Central Planning Authority of permission in principle, or outline permission granted to the appellant herein and then later revoked by the Authority.

A short history of the matter should suffice to throw some light on the matter as presented in this Court.

The appellant, a Caymanian, is the owner of a piece of land located on South Church Street in Grand Cayman, registered as Block 14BH Parcel 96.

On the 29th June 1981, having in mind the erection of a Marine Bunker Station on this spot, he submitted an application to the Central Planning Authority, in which he sought final permission for his proposed development. His application complied with all the particulars required for such an application, and he fulfilled the legal requirements by advertisement in two consecutive issues of The Times, a local newspaper.

The appellant's application was considered by the Central

he received a letter from the Acting Director of Planning in the following terms:

"Mr. Frank Ebanks  
c/o Kenneth Ebanks  
P.O. Box 527  
George Town  
Grand Cayman

Dear Sir,

Proposed marine gas station off  
South Church St. Block 14BH  
Parcels 94 & 95 (296/81)

The above application was considered by the Central Planning Authority at their meeting on 30 July 1981 when they resolved to defer a decision.. The application has been forwarded to the Executive Council for their consideration. The Central Planning Authority will then determine the application in the light of these comments.

Yours sincerely  
Sgd. Judith Cousins  
Planning Assistant  
For Acting Director of Planning".

On the same date, the Acting Director of Planning sent a memorandum to the Principal Secretary, Agriculture Lands & Natural Resources in this manner:

"To: P. S. (A. L. & N. R.)  
From: Acting Director of Planning  
Date: 5th August 1981  
Subject: Marine Petrol Station off South Church St.  
George Town Block 14 BH Parcels 94 & 95

Enclosed please find drawings for the above application from Mr. Frank Ebanks. The site, comprising approximately 7,400 sq. ft. is located opposite the Island Taste Restaurant with a small existing building on the main road. The application was considered by the Central Planning Authority at the meeting held on 30th July 1981 (CPA/17/81 and a decision was deferred pending consideration of the dock facility by Executive Council.

Briefly, the development envisages the provision of two 3000 gallons fuel tanks (diesel and gasoline) underground, approximately 13' from the main road with underground pipes down to the proposed dock facility.

If any further information is required, I suggest you contact Mr. Kenneth Ebanks of Peter Isbell & Associates; who made the submission on behalf of Mr. Frank Ebanks.

Sgd. Raymond Jackson  
Acting Director of Planning".

In the light of the above correspondence, the appellant on

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the 7th August promptly wrote this letter to the Central Planning Authority which speaks for itself.

"P. O. Box 1266  
Grand Cayman Island  
August 7, 1981

Central Planning Authority  
Administration Building  
P.O. Box 1036  
Grand Cayman.

Re: Block 14BH Parcels 94 and 95  
Proposed Marine Bunker Station

Gentlemen:

I am writing this letter to clarify the apparent confusion regarding the docking facilities on the waterfront.

I will not and have no intention of, changing the shoreline on the waterfront. It is a natural cove and no alterations are required to facilitate the fueling of boats. It will be using a hose which has been designed for the purpose by the company, from the pumps to the boats.

Please disregard the dock section on the plan which is now before the Board, and please pass the rest of the plan while I am a true citizen of the Cayman Islands.

Sincerely,  
Sgd. Frank S. Ebanks."

It seems to me to be clear from this letter that any consideration whatever in respect of docking facilities, which would have had to engage the attention of the Port Authority and the Executive Council, was withdrawn by the appellant, and the matter now rested exclusively in the hands of the Central Planning Authority ~~alone~~ for their consideration.

It would appear that after the withdrawal in respect of docking facilities by the appellant in his letter of the 7th August, the Central Planning Authority, met on the 12th August, and in keeping with section 12 (1) of the Development and Planning Law, approved in principle, the appellant's application for the proposed marine petrol station, subject to certain conditions being fulfilled which were communicated to Mr. Ebanks by letter on the 13th August 1981.

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All the required conditions were satisfied according to a memo dated 31st August 1981 from the Acting Director of Planning to the Principal Secretary, Agriculture Lands and Natural Resources.

In spite of this however, the Acting Director of Planning refers the Principal Secretary to the Principal's Secretary's memo of the 19th August 1981, and to use his own words, "it was resolved to defer any further consideration and forward the application to the portfolio, to be submitted to Executive Council for comments and consideration".

The Central Planning Authority, is a statutory body, charged with all legal authority to discharge its functions under the Development and Planning Law No. 28 of 1971 (Revised). As such it must act on matters coming before it independently of advice or comment from any other body or authority. Any decision made by this body must be its own independent decision uninfluenced by any outside interference whatsoever. There can be no abdication of its authority. If outside influences are brought to bear upon any of its deliberations, then any decision arrived at in such circumstances would certainly not be in keeping with what must have been the spirit and intendment of the Legislature, and would be tantamount to a travesty of justice. This august body like any similar body performing a judicial or quasi judicial function, must carry out its functions by conferring only amongst its members and making decisions without external influence or pressure. The decision must be the Authority's decision. Anything done to the contrary is to my mind illegal and cannot be sustained.

I have searched the Development and Planning Law, albeit without any success whatever, to find whether there is any section in it, giving authority to the Central Planning Authority to abdicate its statutory rights to any other authority or any other body.

The appellant being aggrieved by the revocation of the grant of approval in principle made to him by the Central Planning Authority in their letter to him of the 25th September, gave notice of appeal to the Appeals Tribunal, in keeping with Section 40 (1) of the said Development & Planning Law. He gave, inter alia as his

grounds of appeal, that the revocation decision of the Central Planning Authority was erroneous in Law and unreasonable.

Counsel for the appellant has argued that at that stage, the appellant should have been made aware of the Authority's reasons for the revocation. He further contended that whatever decision handed down by the Central Planning Authority at this stage was not their own decision but one forced on them by the Executive Council. Further, that at this stage, the appellant should have been given an opportunity to be heard by the Authority and to put forward to them arguments and/or evidence in support of the approval which was previously granted to him by them.

That failure to do so constituted a breach of the rules of natural justice, and that the revocation of outline planning permission granted to the appellant on the 13th July 1981 by letter dated 25th September 1981 was illegal and improper in all the circumstances, and rendered the revocation a complete nullity.

The Central Planning Authority, as has been noted before, is a legal authority, having the power to determine applications coming before it, affecting the rights of individuals. As a consequence, the implication which might of necessity be drawn from this fact, is that it is bound when exercising its authority to observe the principles of natural justice. This it appears was not done, and I have no difficulty in upholding the submission of learned counsel.

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As a result of the Authority's letter of the 25th September Ebanks gave notice of his intention to appeal to the Appeals Tribunal, in accordance with section 40 (1) of the Development and Planning Law.

This appeal was heard by the Tribunal on the 21st January 1982 and the 17th and 25th February 1982. The tribunal itself visited the proposed site, on the 17th February. The appeal took the form of a rehearing of the matter, and evidence of six witnesses, including the appellant himself was heard. On the preponderance of the evidence

before that board, in favour of the appellant's project, one finds it difficult to comprehend the decision arrived at by the Tribunal, that, "the appeal is disallowed". It would appear that the Tribunal only gave effect to the pronouncements of Capt. Bodden, who from all the evidence appears to have treated both Counsel for the appellant and the Board with great contumely, even refusing to be questioned by Mr. Adams, and then abruptly walking out from the hearing.

I have already held that the revocation of the Outline Planning Permission was not carried out in accordance with the principles of natural justice. It follows, therefore, that the purported rehearing before the Appeals Tribunal constituted an exercise in futility. Therefore, their decision cannot be allowed to stand and must be set aside.

Counsel for the Planning Authority very fairly conceded that a decision to give Planning Authority, must be a decision, not for the Government, but for the Planning Authority. What went wrong he further conceded was that Executive Council through its representatives gave a mandate that the application should be refused. He went on further to state, that Government does not have any say whatever in any such application, except in respect of a dock.

There can be no quarrel whatever with these arguments. He has argued further that the Central Planning <sup>Authority</sup> is given power by the provisions of section 14 (1) of the Development & Planning Law to revoke its own decision. This court agrees entirely with this contention, but would add, so long as the principles of natural justice are strictly adhered to.

In the final analysis, it appears to me that the ends of justice would be more properly served, if the revocation order dated the 25th September 1981 be set aside and that the outline permission granted in the Authority's letter of the 13th August 1981 should be affirmed. Accordingly, I so direct.

The appellant should then be given an opportunity to present his side to the Central Planning Authority for their consideration and

determination. And it cannot be too strongly emphasized that any decision arrived at by them must be theirs and theirs alone. Anything to the contrary would be ill conceived.

It would appear that proper docking facilities should be made a condition precedent to the final approval by the Central Planning Authority, so that there may be consistency in the organising and carrying out of the Development Plan for this Island.

The use of a rope and hose to facilitate bunkering in this area should not be encouraged or allowed, as this would tend to ravage the aesthetic beauty of the area and hinder its enjoyment by tourists and residents alike.

Accordingly, the revocation order of the 25th September 1981 in respect of the outline permission granted by the Central Planning Authority, in letter dated 13th August 1981, is hereby quashed and the Central Planning Authority is hereby ordered to deal thereafter with this application within the ambit of the principles of natural justice.

There will be no order as to costs.

WILTON HERCULES  
CHIEF JUSTICE (ACTING)

6th August 1982.

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