

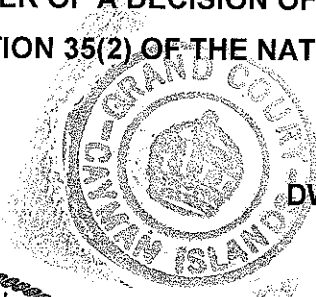
IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 130 OF 2016

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW UNDER ORDER 53 OF
THE GRAND COURT RULES 1995

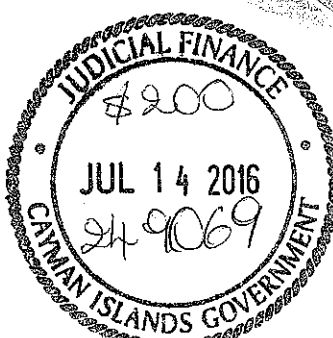
IN THE MATTER OF A DECISION OF THE NATIONAL CONSERVATION COUNCIL
UNDER SECTION 35(2) OF THE NATIONAL CONSERVATION LAW 2013

BETWEEN:

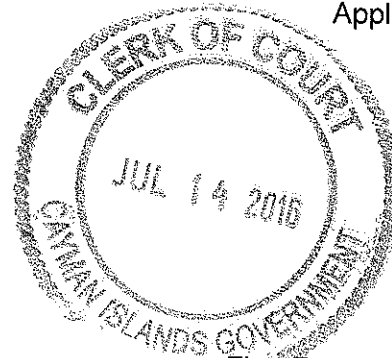


DWENE EBANKS

Applicant



-and-



THE DEPARTMENT OF THE
ENVIRONMENT

First Respondent

-and-

THE NATIONAL CONSERVATION
COUNCIL

Second Respondent

NOTICE OF ORIGINATING MOTION

TAKE NOTICE that the Honourable Mrs. Justice Mangatal, a Judge of the Grand Court at the Law Courts, George Town, Grand Cayman will be moved on 19th July 2016 at 9.30 am or as soon thereafter as counsel can be heard, by counsel on behalf of the Applicant, Dwene Ebanks for an order that:

- (a) A Declaration that the Contested Decision, the advice to the Department of Agriculture on the application for the import of the GMMs, and the grant of the import licence by the Department of Agriculture are legally flawed.
- (b) Orders quashing the same.
- (c) Orders prohibiting:
 - (i) the open release of the GMMs; and,
 - (ii) the further import of GMMs pursuant to the same.
- (d) A stay of the Contested Decision and all further imports of GMMs pursuant to the said import licence pending the final determination of this matter.

And for an order that costs of and incidental to this application may be paid by the First Respondent and/or the Second Respondent.

AND FURTHER TAKE NOTICE that the grounds of this application are set out in the attached document.

Dated this 14th day of July 2016.

HSM Chambers

HSM CHAMBERS

TO: The Clerk of the Court

AND TO: The Department of the Environment
The National Conservation Council

c/o The Attorney General
Fourth Floor
Government Administration Building
133 Elgin Avenue
George Town
Grand Cayman
Cayman Islands

Attorney for the First and Second Respondent

AND TO: Oxitec Cayman Ltd
(By an undertaking to the Court, the Solicitor General has agreed to serve this application on Oxitec Cayman Ltd in accordance with the Court Order dated 13 July 2016)

Filed on behalf of the Applicant
DWENE EBANKS
First Affidavit
Sworn on the 12th day of July 2016

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 136 OF 2016

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW UNDER ORDER 53 OF THE
GRAND COURT RULES 1995

IN THE MATTER OF A DECISION OF THE NATIONAL CONSERVATION COUNCIL UNDER
SECTION 35(2) OF THE NATIONAL CONSERVATION LAW 2013

BETWEEN:

DWENE EBANKS

Applicant

-and-

THE DEPARTMENT OF THE
ENVIRONMENT

First Respondent

-and-

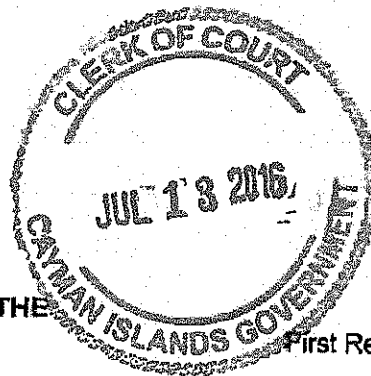
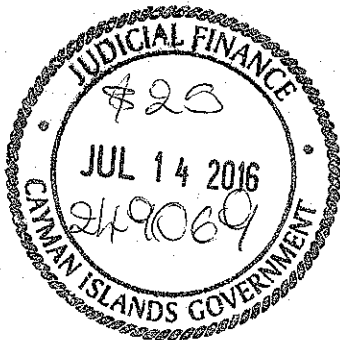
THE NATIONAL CONSERVATION
COUNCIL

Second Respondent

-and-

THE DEPARTMENT OF
AGRICULTURE

Third Respondent



FIRST AFFIDAVIT OF DWENE EBANKS

I, DWENE EBANKS, of 367, North West Point, Grand Cayman, Cayman Islands **MAKE OATH AND SAY** as follows:

1. I am the Applicant in this matter and make this Affidavit in support of my Application for Judicial Review under Order 53 of the Grand Court Rules, of the decision of the Department of the

Environment on behalf of the National Conservation Council ("NCC") to grant a permit to Oxitec Limited ("Oxitec") (a UK based biotech company) and the Mosquito Control Research Unit ("MRCU") under section 35(2) of the National Conservation law 2013 ("NCL 2013") for the release of up to 22 million genetically modified mosquitoes ("GMMs") in the West Bay District of the Cayman Islands ("the Contested Decision").

2. Save where the contrary is indicated, the facts and matters deposed by me are true to my best knowledge, information and belief.

Locus Standi and 'Sufficient Interest':

3. I was born in Grand Cayman and have full Caymanian status as defined by section 21 of the Immigration Law (2015 Revision).
4. During April 2016, I became aware of the intention of MRCU to release GMMs (*Aedes aegypti*) in an area of West Bay where I live and decided to undertake research on the subject matter to increase my awareness of the topic as a whole.
5. I remembered that GMMs had previously been released in the East End district of the Island in 2009/10. I recall being surprised at the time, because there had been little or no publicity about the project until some time after the event release. However, I have now seen documentation dated 18th March 2009 which suggested that a collaboration agreement was entered into between Oxitec and MRCU. I now produce and mark as Exhibit "DE 1" the document "Oxitec collaboration with MRCU, Cayman (draft)" and a further undated doc "Annex I – Experimental plan" (which looks to be related to the 2009 application).
6. Reports locally, suggested that some residents had been shocked by the lack of information and on the internet, there had been international concern that the trial releases in Grand Cayman (the first open releases in the world) had been secret. I now produce and mark as Exhibit "DE 2", copies of two articles: (i) Science Magazine on 19th November 2010 ("First Article") and (ii), and article published on SciDev.net on 11th November 2010.
7. In summary, it was reported in the first article that at a press conference in London on 11th November 2010, Luke Alphey (Chief Scientific Officer, Oxitec), revealed the Grand Cayman release and presented *unpublished* results which he declared a "complete success". The scientific community were surprised at the release: Anthony James, the leader in a programme funded by the Gates Foundation to develop and test GM Mosquitoes (of which Oxitec was a key member) stated in response, "that the project would "never" release GM Mosquitoes the

way Oxitec had now done in Grand Cayman.....As a private company, they can push their own agenda".

8. Mr. Alphey said "I would completely reject any notion that this was done secretly" and noted that the trial was well-known within the island's population of 50,000 'but just not picked up internationally'. Whilst Mr. Alphey stated that the study had been published in local newspapers (It is not clear if he meant before or after the release), he candidly admitted that there had not been any town hall meetings or public debates because the Cayman Islands Government 'didn't deem them necessary'.
9. Further concerns surrounding the lack of publicity and consultation were reported in the second article. Ricarda Steinbrecher, a geneticist and co-director of EcoNexus - a UK-based non-profit research organisation - expressed surprise that the trials had occurred, saying that they had not been mentioned at the fifth meeting of the Parties to the Cartagena Protocol on Biosafety - which addresses international safety issues relating to GM organisms - in Nagoya, Japan, last month. She described the lack of publicity surrounding the trials as "worrying, both from the scientific perspective as well as public participation perspective". Steinbrecher said that until a full, long-term environmental assessment of the Cayman trials has been carried out, the recently announced Malaysian trials of the same strain should not go ahead.
10. Kathy Jo Wetter, a researcher with the ETC Group (Action Group on Erosion, Technology and Cooperation), a Canada-based organisation that promotes the socially responsible development of technologies, said ETC was unaware of the release. "Oxitec considers its trial 'successful' just days after the experiment has ended," she said. "But unintended impacts on the environment cannot be known, and Oxitec's unproven technology could make things worse in the long term. There is no possibility of recall if something goes wrong - who takes responsibility in that case?" "Extreme techno-fixes require extreme precaution," she added.
11. I believe that the people of Grand Cayman really didn't know about the release of GMMs - it was done in secret. It appears that we are not the only country where secrecy was used to facilitate release of GMMs to avoid the issue of public concern. On 21st December 2011, 6000 GMMs were released by Oxitec in Malaysia which came as a surprise to both opponents and even scientists who support the technology. I hereby produce and mark as Exhibit "DE 3" a second article published by Science Magazine on January 27th 2011, referring to the release in Malaysia. This time, Mr. Alphey commented that Oxitec did not announce the news itself because it wasn't the company's role. "This was a study by the Malaysian Government done in Malaysia. It was up to them to announce it", he said.

12. As I undertook further research, my concerns about Oxitec and its Cayman collaborator, MRCU increased. I discovered numerous discrepancies and contradictions in what was being published and stated verbally to members of the public in the United States. I intend to set out some of those matters in a separate section below but I came across a report from a not-for-profit organisation in the UK, Genewatch, which expressed major concerns about poor standards of risk assessments and lack of timeliness, transparency, public consultation and informed consent to the Oxitec programme. I now produce and mark as Exhibit "DE 4", a copy of said report.
13. On 24th May 2016, I attended a public meeting at the Sir John A. Cumber Primary School hall in West Bay in which Bill Petrie (MRCU Director) and Derek Nimmo (Product Development Manager at Oxitec) (amongst others) gave a presentation about the technology involved and then took questions from audience members.
14. I had prepared a number of questions for the panel in which I probed answers on both the technology and some of the research I had uncovered. Members of the panel were coy in their answers and it was clear to me that their relative presentations were not revealing the whole picture as they failed to mention important information (see below). On 22nd June, the Cayman Islands Government published a video of the event in which all audience questions were edited out, including those of Ms. Tara Rivers, a Cabinet member of the Government. The video may be viewed on <https://youtu.be/6EXF-tKWZV0> (the "video").
15. In consequence of the meeting and my concerns of the project generally, I set up an on-line petition on 28th May 2016 to protest against the proposed release of the GMMs. To date, I have 669 individuals who signed the electronic version and between 2-300 other individuals who signed a hard copy. I have since been active on radio and television broadcasts as part of general debate on the issue, where I have expressed my concerns of misleading statements being articulated to the public at large by MRCU & Oxitec and, that there was a lack of independently verified data assessment for the public to be given a reasonable opportunity to provide informed consent.
16. As a result of my residency in the intended area for the release of GMMs, in combination with my active efforts to hold the Cayman Islands' Government to account, and given the gravity of the situation and the clear risks to the biodiversity of the Cayman Islands and potential risks to human health, I believe that I satisfy the requirement to have "sufficient interest" in bringing the proposed Application.

Concerns about misleading statements

Biting Female GMMs are released as part of the Oxitec programme

17. During the 24th May presentation by Oxitec/MRCU (the "meeting"), both Messrs. Petrie and Nimmo emphasised repeatedly that the Oxitec programme involved the release of male GMMs and that it was only female mosquitoes that 'bite'. There was not a single reference in either presentation to the potential release of female GMMs which in my view, would have the effect of misleading the public, as without such reference, the public would be entitled to infer that it was impossible to be bitten by a GMM and thus there were no risks of transference of genes from the GMMs.
18. Mr. Nimmo went to great lengths to explain the technology and reassure members of the audience of safety issues. However, when describing the sieving process involved to separate male and female GMMs, he did not reveal to the audience that it was inevitable that a percentage of female GMMs would 'escape' the sieving process.
19. Upon being questioned by myself, Mr. Nimmo revealed that the process was over 99% successful. Only upon being pressed by me to answer the question in more detail, was there any sort of admission that the process was not infallible. This tactic to avoid any voluntary disclosure to the public on this issue, was also experienced by a similar audience in Florida Keys (see a further video at www.youtube.com/watch?v=OdLT9Bpzshs).
20. In fact, Oxitec/MRCU have now admitted that 1 in every 1,000 (or in some reports, 1 in every 1,500) GMMs that are released into the open, are females. Whilst this would appear to be extremely low, those figures have to be taken into the context of the overall amount of GMMs that need to be released to achieve any measure of success in 'breeding' with the wild female population. As it is proposed to release in the region of 22 million GMMs in West Bay, this would result in between 15,000 and 22,000 biting female GMMs of the overall figure.
21. In 2012, Dr. Petrie wholly dismissed any criticism or concerns about the 2009/10 release of GMMs in Grand Cayman. He further re-stated that no female GMMs had been released. I hereby produce and mark as Exhibit "DE 5", a newspaper article from the Cayman Compass dated 17th January 2012 in which he reportedly said: "They don't care what lies they tell. Only male mosquitoes were released and they cannot bite and do not live long".

Survival to adulthood

22. Mr. Petrie told the audience at the meeting (at 8.49 of the video), that "all progeny die before development and never become flying biting insects". If true, it would be reasonable for members of the audience to deduce that there were no risks at all of GMM offspring growing

to adulthood. The statement repeats a reference from Oxitec on their website. I hereby produce and mark as Exhibit "DE 6" the text from webpage <http://www.oxitec.com/our-solution>.

23. Undertaking further research on this point, I came across two pieces of further documentary research. The first, which I hereby produce and mark as Exhibit "DE 7", is the answer to a direct question (FAQ) on Oxitec's website which indicates that survival rates in their own laboratories were in the region of 5%. The second, is a confidential internal report which reported a survival rate of 15% within a laboratory of a collaborating party. This will inevitably include both male and female GMMs I hereby produce and mark as Exhibit "DE 8" a report entitled "Eliminating Tetracycline Contamination".
24. The words of Dr. Petrie were clear and unambiguous. Mr. Nimmo, when given the opportunity to clarify the position within his own presentation, failed to do so. On this point, I, and I believe any reasonable person attending a public meeting in order to be satisfied of both safety and science, were misled to pass on a positive message to the public at large.

The Consequences of being bitten by a GM Mosquito

25. It is beyond doubt that Female GMMs will be released in West Bay and that progeny of the Male GMMs will survive to adulthood; the admitted figures speak for themselves. Oxitec say, that even if humans were somehow bitten, no genetically modified DNA would enter their bloodstream: it would be the same as being bitten by a wild female *Aedes aegypti*.
26. Oxitec/MRCU continually make definitive statements as if the science is proven conclusively in the hope that the public will take their assertions at face value. It is only when people like myself go to the trouble of researching the subject matter, that a different range of opinion is identified.
27. On the subject of DNA transference, even a distinguished supporter of GMMs, Phil Lounibos, (Ph.D Harvard, Distinguished Professor Ecology and Behaviour), who studies mosquito control at the Florida Medical Entomology Laboratory said in response to the claims made by Oxitec: "What Oxitec is trying to spin is that it's highly improbable that there will be negative consequences of this foreign DNA entering someone that's bitten by an Oxitec mosquito. I'm on their side, in that consequences are highly unlikely. But to say that there's no genetically modified DNA that might get into a human, that's kind of a gray matter". I now produce and mark as Exhibit "DE 9" a copy of the Washington Post, dated January 26th 2015.

Continued reference that the World Health Organisation (WHO) recommends the Oxitec technology for operational use.

28. At the meeting, Mr. Nimmo stated that the WHO "has recommended our technology for operation use". (see 36:10 of the video). The way in which it was conveyed - and repeated in a similar vein within the media - was that the WHO fully endorsed the use of GMMs and as such, was satisfied by all results, data, assessments as supplied to the organisation by Oxitec.
29. I now produce and mark as Exhibit "DE 10", the conclusions of WHO's Vector Control Advisory Group (VCAG) which were published on its website on 18th March 2016. To summarise, between 14th and 15th March 2016, the VCAG reviewed five potential vector control tools and existing tools for use in the context of the response to the Zika virus outbreak, including: "mosquito control through genetic manipulation (OX513A)".
30. The main conclusions and recommendations of the VCGA were as follows:
 - 30.1 Full-scale programmatic deployment is *not currently* recommended for any of the five new potential tools reviewed by VCAG. However, the VCAG recommended the carefully planned pilot deployment [...] of OX513A transgenic mosquitoes) accompanied by rigorous independent monitoring and evaluation; and,
 - 30.2 The technology has demonstrated the ability to reduce the Ae. aegypti populations in small-scale field trials in several countries, *but there is an absence of data on epidemiological impact*. Additionally, sustained release of transgenic male mosquitoes is needed to maintain suppression of wild Ae. aegypti populations.
 - 30.3 The recommendation of the VCAG was as follows: *This committee recommends carefully planned pilot deployment under operational conditions accompanied by rigorous independent monitoring and evaluation that builds entomological capacity to support operational use. RCTs with epidemiological outcomes should be carried out to build evidence for routine programmatic use of OX513A Aedes against Aedes-borne diseases.*
31. From my understanding from the observations and recommendations of the WHO, there is clearly an absence of data and assessment which inhibits recommendation of full scale operational release of GMMs. The recommendations fall well-short of full operational use as Mr. Nimmo led the audience to believe at the meeting.
32. The imminent release in West Bay is not a *carefully planned pilot programme*. The pilot

programme occurred in 2009/10; and, if results, data, research and assessments (not only from the Cayman Islands, but from Panama, Brazil & Malaysia), were insufficient to satisfy the WHO for full-scale operational use, then surely the Oxitec programme is being brought to my home, prematurely. In fact, Mr. Nimmo stated at the meeting that the release in West Bay was "a good place to start for roll-out for the whole island" (see 37:20 of the video).

33. I verily believe that Oxitec/MRCU have misrepresented the findings of the WHO in March 2016. By referencing the WHO in such a manner, they are attempting to lead the general public to believe that their programme has been fully endorsed by such an internationally respected organisation.

The absence of independent and peer-reviewed assessments.

34. At the meeting, Mr. Nimmo stated that an independent environmental assessment had been undertaken and was available for public inspection. It had been "conducted by independent collaborators all over the world and MRCU is an independent collaborator" (see 35:44 of the video).

35. By any stretch, it is difficult to accept that an assessment undertaken by the company which stands to make financial gain from the subject matter or, a collaborative body acting in partnership with that company, can be regarded as 'independent'. Mr. Nimmo chose his words carefully and again, on the Oxitec website, there are repeated assertions of independent assessments and peer-reviewed analysis which are set out to suggest that the technology has been fully approved by the scientific community. I now produce and mark as Exhibit "DE 11" an extract from the Oxitec website.

Regulatory approval for release of the Oxitec GMMs in the United States

36. Mr. Nimmo stated at the meeting that Oxitec had obtained regulatory approval for GMM release in the United States (see 31:49 of the video). Despite all efforts of research, I have not found any such approval.
37. As a result of my concerns above, I obtained legal advice as to whether there were legal options available to challenge the decision of the NCC and ultimately quash the Contested Decision of 18th May 2016.

The application for Judicial Review of the Contested Decision

38. I fully adopt the grounds set out in Form 53 of my application for leave to apply for Judicial Review pursuant to Order 53, rule 3 of the Grand Court Rules.

39. On 18th April 2016, the Cayman Islands Ministry of Health participated in the signing of a partnership agreement between Oxitec and MRCU. Surprisingly, the partnership preceeded any application (and therefore consideration or any decision by the NCC) being made by Oxitec/MRCU for a permit to introduce or release the GMMs to Grand Cayman. I now produce and mark as Exhibit "DE 12" a joint press release from Oxitec and MRCU dated 5th May 2016.
40. On 26th April 2016, Mr. Petrie was the signature applicant of a joint application by Oxitec and MRCU pursuant to section 35(2) of the NCL for a permit to import and release 1.65 kilograms of genetically modified *Aedes aegypti* eggs for rearing and ultimate release as part of a mosquito control programme (the "MRCU Application"). I now produce and mark as Exhibit "DE 13" a copy of said Application. I understand that on 18th May 2016, the MRCU Application was granted with conditions by the NCC which is the Contested Decision. I refer to documents relating to that decision which form part of Exhibit "DE13" which indicate the basis on which the Contested Decision may have been taken.
41. I make this application for a Judicial Review of the Contested Decision on 5 principal grounds that:
- 41.1 there was a failure to carry out an independent risk assessment upon which to base any properly informed decision to grant the MRCU Application;
 - 41.2 there was a failure on the part of the NCC to properly verify compliance with EU Regulation 1943/2003 which governs the transboundary movement of genetically modified organisms from the UK;
 - 41.3 there was a failure to carry out a proper public consultation of the intended release of the GMMs in West Bay; and,
 - 41.4 the Contested Decision was irrational.
 - 41.5 possible fettering of discretion and/or taking into account immaterial considerations.

The failure to carry out an independent risk assessment

42. In coming to the Contested Decision, the NCC relied solely on a risk assessment authored by Oxitec in collaboration with MRCU in October 2009 (together with reference to additional data information since that date). I now produce and mark as Exhibit "DE 14", a copy of said risk assessment.

43. The NCC appear to have failed to give any consideration (and therefore not taken any proper measures) to the fact that such a risk assessment could not be regarded as independent; the principal author was a party with a commercial interest in the MRCU Application. In short, there was a clear conflict of interest on the part of Oxitec.
44. Further, I believe that the failure of the NCC to carry out its own independent risk assessment, is a failure on the part of the NCC to properly discharge its functions under the NCL 2013. It has the function of promoting biological diversity and the conservation and sustainable use of natural resources. In failing to carry out an independent risk assessment of the application arguably constitutes an unlawful failure in the exercise (or non-exercise) of these functions.
45. Additionally, on reading the MRCU Application, the NCC clearly regarded that compliance with the advance informed agreement/prior informed consent requirements of EU Regulation EC 1943/2006 ("EC 1943/2006") was material to its decision. Oxitec, as an exporter of genetically modified organisms from the UK, is required to comply with EC 1943/2006 and must provide certain information specified in Annex 1 (Article 4) which includes a previous or existing risk assessment report consistent with Annex II of Directive 2001/18/EC.
46. Further, an independent risk assessment was required in order to comply with the duties of the Cayman Islands' Government under the Constitution Order 2009, Schedule 2, Part 1, Article 18.
47. The October 2009 risk assessment does not meet the requirements of a risk assessment under Annex II of Directive 2001/18/EC in terms of its content or its provision of a site specific environmental risk assessment.

The failure to assess compliance with EC 1943/2006

48. Despite the fact that the NCC indicated that compliance with EC 1943/2006 was material to its decision, the NCC simply relied on the assertions of Oxitec/MRCU on the matter. However, neither the UK authorities nor the European Commission had themselves assessed the October 2009 risk assessment. I now produce and mark as Exhibit "DE 15" an extract from Hansard from 29 November 2010 and the response to a written parliamentary question given on 13 January 2011 detailing responses on behalf of the UK Government, and as Exhibit "DE 16" copies of correspondence between Genewatch UK and UK's Department for Environment, Food and Rural Affairs (DEFRA) dated 9th April 2001 and a letter from the European Commission dated 13th April 2001 copies of which have been released to me.

49. The NCC failed to verify the contents of the October 2009 risk assessment against the criteria in Annex II of EC 1943/2006. Had it done so, it is my view that much more detailed and cogent evidence would have been required before the application could properly have been considered.

The failure to carry out public consultations

50. The release of GMMs in 2009/10 was undertaken in secret. There were no public meetings as far as I am aware and I cannot recall any publicity given to the release prior to its occurrence. Although there was press coverage that GMMs were to be released earlier in or around March 2016, again, predating the MRCU Application, the only public meeting which has taken place was on 24th May 2016 as described above in paragraphs 10 & 11.
51. On 14th June 2016, Oxitec and MRCU released a press release and thereafter published, a fact sheet in the Cayman Compass in which one of the questions they addressed was: *Was the public consulted?*, a reference to the 2016 release. The answer given was as follows: *"The choice of mosquito suppression tool is a matter for government and has been made in the public health interest, based on the most appropriate interventions available. The regulatory process is transparent and included public sessions. We are actively engaging in education of the public."* I now produce and mark as Exhibit "DE 17", a copy of said press release.
52. I believe that without proper and truthful information on a topic which may have an impact on the health of the public and an effect on the environment, the people of the Cayman Islands are not in a position to give their informed consent to the release of an alien and genetically modified species to the Cayman Islands. As such, a failure to carry out any public consultation, is contrary to the Cayman Islands Constitution and the European Convention on Human Rights.
53. There is clear public interest in ensuring that an informed consultative exercise is carried out prior to the taking of a decision to approve the release of GMMs into the open. It is wholly inadequate merely to engage in a limited degree of community involvement in the period between the Contested Decision and release.

Irrationality

54. I also consider that in light of the above and given the controversial nature of the technology involved, the Contested Decision was not one which the NCC could, as the responsible body under the NCL 2013, rationally have taken.

Possible fettering of discretion/ taking into account immaterial considerations

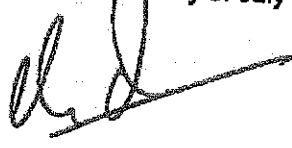
55. The signing of a partnership agreement between MRCU and Oxitec prior to the MRCU Application being made to the NCC, raises my concern that the NCC fettered its discretion o- in two ways, namely

55.1 Firstly, that given the signing of the partnership agreement before there has been any consideration of the MRCU Application, the NCC may – through taking this fact into account - have fettered its discretion in the decision making process, as a rejection of the application would be in conflict to a binding agreement involving another Government Department; and,

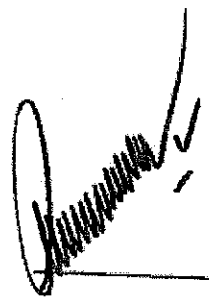
55.2 Secondly, there are or may be, commercial arrangements between MRCU (and possibly other governmental entities) and Oxitec on the proposed research, releases and trials which predate the date of the Contested Decision.

Conclusion

56. For all the reasons set out above, I invite the Court to grant leave to apply for a judicial review of the Contested Decision. Taken as a whole, I believe that the decision of the NCC was procedurally flawed, unsupported by a robust risk assessment, unreasonable and/or irrational in all the circumstances.

Sworn before me at George Town,)
Grand Cayman this 12th day of July)
2016:)
)
_____)

NOTARY PUBLIC



DWENE EBANKS

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 2016

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW UNDER ORDER 53 OF THE GRAND COURT RULES 1995

IN THE MATTER OF A DECISION OF THE NATIONAL CONSERVATION COUNCIL UNDER SECTION 35(2) OF THE NATIONAL CONSERVATION LAW 2013

BETWEEN:

DWENE EBANKS

Applicant

-and-

THE DEPARTMENT OF THE ENVIRONMENT

First Respondent

-and-

THE NATIONAL CONSERVATION COUNCIL

Second Respondent

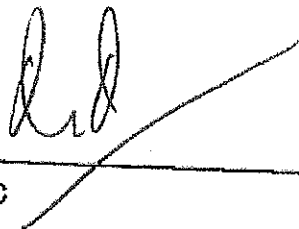
-and-

THE DEPARTMENT OF AGRICULTURE

Third Respondent

Exhibit "DE 1"

This is Exhibit "DE 1" as referred to in the Affidavit of Dwene Ebanks dated 12th July 2016.



NOTARY PUBLIC

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 130 OF 2016

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW UNDER ORDER 53 OF THE
GRAND COURT RULES 1995

IN THE MATTER OF A DECISION OF THE NATIONAL CONSERVATION COUNCIL UNDER
SECTION 35(2) OF THE NATIONAL CONSERVATION LAW 2013

BETWEEN:

DWENE EBANKS

Applicant

-and-

THE DEPARTMENT OF THE
ENVIRONMENT

First Respondent

-and-

THE NATIONAL CONSERVATION
COUNCIL

Second Respondent

-and-

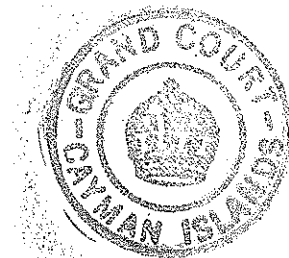
THE DEPARTMENT OF
AGRICULTURE

Third Respondent

ORDER

BEFORE THE HONOURABLE MRS. JUSTICE MANGATAL

Date of hearing: 13th July 2016



UPON HEARING Mr. Kerrie Cox of Counsel on behalf of the Applicant and Ms. Jaqueline Willson, Solicitor General, on behalf of the Respondent and,

UPON READING extracts of the Affidavit of Mr. Dwene Ebanks sworn on 12th July 2016 and the grounds set out in the Applicant's Application for Leave to apply for Judicial Review,

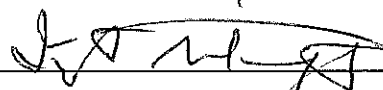
AND UPON THE COURT BEING PROVIDED by the Solicitor General, with copies of documents and information alleging that this matter is time-sensitive,

IT IS HEREBY ORDERED THAT:

1. The Applicant is granted Leave to apply for Judicial Review upon the grounds stated the Application and his Affidavit;
2. The grant of Leave is to operate as a Stay of the decision by the First Respondent (on behalf of the Second Respondent) on or around 18th May 2016, to grant a permit to the Mosquito Research and Control Unit ("MRCU") and Oxitec Ltd for the import and release of up to 22 million genetically modified mosquitoes (GMMs") in the West Bay district of Grand Cayman, Cayman Islands. Such Stay shall operate and be in force until 19th July 2016.
3. The Judicial Review hearing shall be in open court fixed for an expedited substantive hearing on 19th July 2016 at 9.30 am, with a time estimate of one day.
4. By consent of the Applicant and the Department of the Attorney General, the third Respondent is not be included as a party to the Judicial Review application.
5. The Applicant is to file and serve all documents in accordance with Order 53, r. 5, no later than 4.30pm on 14th July 2016.
6. The Applicant shall serve said documents on the respondents and Oxitec Cayman Ltd.
7. The Respondents and any of the persons served, if so advised, shall file and serve Affidavits in response no later than 3pm 16th July 2016.
8. Skeleton Arguments and copies of any authorities to be relied upon, shall be filed and served by 12 noon on 18th July 2016.

Dated: 13th July 2016

Filed: 14th July 2016



JUDGE OF THE GRAND COURT



Application for Leave to Apply for Judicial Review

Order 53, rule 3

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 130 OF 2016

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW UNDER ORDER 53 OF THE GRAND COURT RULES 1995

IN THE MATTER OF A DECISION OF THE NATIONAL CONSERVATION COUNCIL UNDER SECTION 35(2) OF THE NATIONAL CONSERVATION LAW 2013

BETWEEN:

DWENE EBANKS

Applicant

-and-

THE DEPARTMENT OF THE ENVIRONMENT

First Respondent

-and-

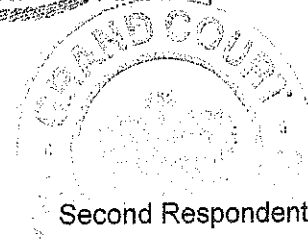
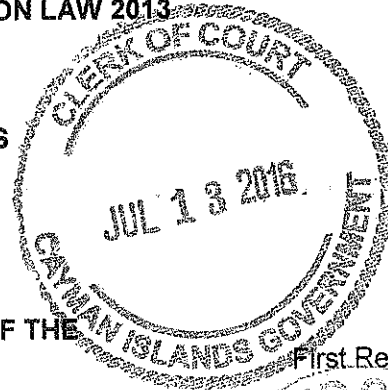
THE NATIONAL CONSERVATION COUNCIL

Second Respondent

-and-

THE DEPARTMENT OF AGRICULTURE

Third Respondent



APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

To the Clerk of the Court, Law Courts, George Town, Grand Cayman

Name, address and description of applicant(s)

Mr. Dwene Ebanks
367, North West Point
West Bay
Grand Cayman
Cayman Islands

Judgment, order, decision or other proceeding in respect which relief is sought

The decision by the Department of Environment on behalf of the National Conservation Council to grant a permit to Oxitec Limited and the Mosquito Research and Control Unit under section 35(2) of the National Conservation Law 2013, to release into the West Bay area of Grand Cayman, of up to 22 million genetically modified mosquitoes.

Relief Sought

- (i) A declaration that the Contested Decision, the advice to the Department of Agriculture on the application for the import of the GMMs, and the grant of the import licence by the Department of Agriculture are legally flawed.
- (ii) Orders quashing the same.
- (iii) Orders prohibiting (i) the open release of the GMMs and (ii) the further import of GMMs pursuant to the same.
- (iv) A stay of the Contested Decision and all further imports of GMMS pursuant to the said import licence pending the final determination of this matter.

Name and address of applicant's attorneys, or, if no attorneys acting, the address for service of the applicant	HSM Chambers Buckingham Square, 720 West Bay Road, PO Box 31726, Grand Cayman KY1-1207, Cayman Islands
Signed <i>HSM Chambers</i>	Dated <i>12th July 2016</i>

GROUND ON WHICH RELIEF IS SOUGHT

The detailed grounds for the relief sought are contained in the attached Bundle.