

October 14, 2009

Senator John S. Jeremie S.C.
Attorney General of Trinidad and Tobago
Cabildo Chambers
23-27 St. Vincent Street
PORT OF SPAIN

**Law Association
of Trinidad and Tobago**

established by the
Legal Profession Act 1986



Dear Attorney General,

Criticism of Mr. Justice Narine in Parliament

I have already acknowledged receipt of your letters of September 29, 2009 and October 9, 2009 enclosing the opinions of your Counsel.

I now write on behalf of the Council of the Law Association to respond to the three documents enclosed comprising an opinion given by B. St. Michael Hylton Q.C. dated September 25, 2009, a Summary of Conclusions of Dr. Lloyd Barnett dated September 27, 2009 and an opinion of Dr. Barnett dated October 5, 2009.

The Council made a statement indicating that it was wrong to say that the affidavit of Mr. Abu Bakr did not exist legally. It is extraordinary that you would rely on the opinions of Hylton Q.C. and Barnett to suggest that the Council's statement should be corrected, when their opinions confirm the correctness of the Council's position.

In paragraph 5 of the Hylton opinion, the author states as follows:

"On the other hand, the fact that the Challenged Affidavit is irrelevant to these proceedings and so should be struck out does not mean that it may not be relevant in other proceedings. It is therefore equally clear (and I think not in dispute) that the Challenged Affidavit could be used in other proceedings and for other purposes. It may be for example, that if the Director of Public

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Prosecutions is aware of the contents of the affidavit he or she may consider them in determining whether to take a particular course."

To pose the obvious question, if something does not exist legally how can it be used in other proceedings and for other purposes? It is precisely because it exists legally that, in the words of your Counsel, it is clear and beyond dispute that it can be used in other proceedings and for other purposes.

The Summary of Conclusions of Barnett also concedes that a copy of the affidavit may be used in unrelated proceedings. In yet another concession, in paragraph 27 of his Opinion, when referring to the Standing Orders of Parliament, Barnett admits that the Association's criticism is justified.

Now that it is established as common ground that the affidavit continues to exist legally, the disagreement on the case law centres upon whether Mr. Justice Narine had jurisdiction to direct the Registrar of the Supreme Court to forward a copy of the affidavit to the Acting Commissioner of Police and the Acting Director of Public Prosecutions for their consideration.

As it is common ground that the affidavit may be used in other proceedings and for other purposes it seems equally obvious that forwarding a copy of the affidavit as directed is a use for another purpose and/or a use that is unrelated to the proceedings before Mr. Justice Narine, namely a summons for the sale of land in order to satisfy a judgment.

Having carefully considered the two opinions on this issue on which you rely, the Council finds them unconvincing. With the greatest respect, the conclusions stated are not borne out by the reasoning or the case law cited and the conclusions are seriously undermined by the concessions made.

We are also disturbed by the serious error made in the second Barnett opinion dated October 5, 2009. He has criticized the Law Society (sic) for exaggerating the nature of your statement, but, in doing so, he is in error in stating that the Council described your remarks as "derogatory". That reference was made to another critic of the learned Judge and not to you, as you have already acknowledged. The error is compounded by Barnett stating that, the Attorney General is a member of the Judicial and Legal Service Commission in his inaccurate description of the Association's press release, in paragraph 11(6).

It is readily observable that no credible reason is given why *Midland Bank v Green* citing *Jones v Trinder* are not reliable authorities. In fact Dr. Barnett seeks only to distinguish them. However, in our view, in interpreting the consent order that was before it in *Jones v Trinder*, the Court of Appeal held that the struck out affidavit could be used for another purpose. The principle of use for another purpose is conceded in the two opinions on which you rely.

With further respect to learned Counsel on whose opinions you rely, the authorities which they cite take the matter no further than confirming that a struck out affidavit cannot be used in the same proceedings. This is a position which we have always accepted, but we assert that the struck out affidavit can, in the words of your own Counsel, "be used in other proceedings and for other purposes", as was permitted in *Jones v Trinder*.

Whatever the disagreement between the Council and yourself on the relevant case law, the Council considers it disgraceful that you descended into a personal attack on me, presumably using the cover of Parliamentary privilege. It is significant that you have never identified the lie which you allege that I spoke as President of the Law Association. I spoke no lie. I put forward the Council's view relating to the matter at caption, bearing in mind that a sitting Judge

would not be expected to enter the arena to answer the criticism of him.

Moreover, in making a personal attack on me you ignored the obvious fact that the statement was a statement of the Council, comprising as it does a body of lawyers democratically elected to represent their colleagues.

In view of the fact that you accused someone in the Senate of a lie which you never identified, the Council has decided that this letter be copied to the President of the Senate with a request that he advise whether the practices and procedures of Parliament permit such conduct.

It is unnecessary for the Council to express its condemnation of such behaviour any further given that it received advice from another Senior Counsel, that:

"It is obvious that the Attorney General disagrees with your reading of the case law. We as lawyers are accustomed to such disagreements and we have a code for expressing such with dignity, restraint and decorum. The Attorney General has not followed these basic principles."

For the sake of completeness, we should let you know that that Senior Counsel takes yet a different view of this matter contending, unlike Barnett, that the dictum of the Court in *Midland Bank v Green* is wrong and points out other ways in which Mr. Justice Narine could have given the direction which he did. While we respect the that view, until a court of competent jurisdiction says otherwise, we are entitled to follow the existing authorities and regard them as correctly decided.

With regard to using Parliament instead of the Court of Appeal to challenge the Judge's order, we note that the Opinion of Barnett dated October 5, 2009, argues that there could be no appeal against the Judge's direction, and cites in support of this argument the case of *Lake v Lake*

[1955] 3 WLR 145. We respectfully disagree with this proposition for the following reasons.

Lake v Lake is authority for the principle that a right of appeal lies against a judgment or order and not against the reasons for such decision. Indeed this case cites with approval the statement of Lord Esher MR in *Onslow v Inland Revenue Commissioners* (1890) 25 QBD 466 that: "A judgment, therefore, is a decision obtained in an action and every other decision is an order."

It is clear therefore that the decision of Mr. Justice Narine to refer a copy of the affidavit for investigation is an order from which an appeal lies. The Attorney General as a party, and, indeed, the Prime Minister as a "person aggrieved", could have appealed such decision. See the judgment of the Court of Appeal in *Krishna Persad v George Nicholas*, C.A. 99 of 2005.

The Council therefore stands by its statement and does not accept that the opinions which you have provided require us to make any correction of the Council's press release. We look forward to a return to disagreement with civility, when such disagreement is necessary.

Yours sincerely,



Martin G. Daly S.C.
President