

**IN THE INDEPENDENT
LEGAL SERVICES COMMISSION**

No. 008 of 2015

BETWEEN:

CHIEF REGISTRAR

Applicant

AND:

RENEE LAL

Respondent

Applicant: Mr. A. Chand
Respondent: Ms. R. Lal in person

Date of Ruling: 26th May 2022

**RULING ON ADOPTING PROCEEDINGS
AND DE NOVO HEARING**

1. When this matter was mentioned on 5th April 2022 before me for the first time it was a part heard inquiry. The Applicant's Counsel submitted that there is no order made by the previous Commissioner as regards adoption of the proceedings or of a *de novo* hearing. The Respondent was unable to show any order to that effect but submitted that a *de novo* hearing be ordered. Thus, both parties were permitted to file written submissions and only the Respondent filed written submissions on 23rd May 2022.
2. The Respondent's submission is two pronged. Firstly, it submits that a trial *de novo* had been ordered by the previous Commissioner and that this commission is bound by the same. Simultaneously submits that this is a matter in which a *de novo* hearing should be ordered and moves for a *de novo* hearing.
3. The Respondent at paragraph 30 of the written submission states that, "...on 25th March 2019 that where Commissioner Justice Goundar was of the view that previous orders of the Commission did not apply to him and he would hear the matter *de novo* and the matter was adjourned". Based on this, the Respondent submits that an order for a hearing *de novo* was made by Commissioner Judge Goundar. The Counsel for the Applicant vehemently denies this and states that no such an order was made and moves that the hearing be proceed with the evidence already led and recorded.
4. Firstly, I have to ascertain, if in fact, such an order had been made. The complainant, Reema Gokal has commenced her evidence and cross examination has just begun but far from been concluded. All this had

happened on 4th June and 11th July of 2018 before Commissioner Dr. Hickie. However, as Dr. Hickie's term ended and Judge Goundar succeeded in January 2019, this had been mentioned on several days and there had been discussions and submissions as regards proceeding with this matter. The evidence of the first witness was in progress and due to be cross examined. I especially perused the transcripts of 20th March 2019, 25th March 2019, and 17th June 2020 and find that there had been various expressions of views by the counsel as well as the Commissioner referring to a re-hearing but has been opposed to by the Applicant.

- 5: However, neither does the record nor the transcripts contain any specific order or decision, directing or ordering a *de novo* hearing.
6. The position of the applicant's counsel was that no specific order was made. The Respondent did submit that some order was made for a hearing *de novo*. As far as the record and the transcripts are concerned, what is apparent is that in view of the expression of opinions, the Respondent appear to have believed that a *de novo* hearing may be considered by Commissioner Judge Goundar. The Applicant has consistently been opposing this application for a *de novo* hearing. Nowhere do I find any order made by Justice Goundar on this matter. According to the transcript of the 20th March, no order had been made by Judge Goundar. The relevant portion of the transcript is as follows:

Commissioner: Ahh, how long was, was her evidence completed

Mr. Chand: Ahh, the

Commissioner: The two complainants

Mr. Chand: Not, not the two, only the first comp, the complainant rather, only her evidence was taken but it, it only, the examination in chief was concluded, and we, we, we, we resume, we began with, ahhh cross examination that it did not, it could not proceed for I think it was just few hours

Commissioner: so is there, is there any need to have the re-examination done, sorry, direct examination to be done again? Can't we just call and submit her for cross examination

Mr. Chand: cross examination, ahhh

Commissioner: or we want to lead some other evidence from

Mr. Chand: Umm, we have might have just on an important issue we have some additional evidence which we would be, umm, filing before this Commission

Commissioner: so you want a re-hearing?

Mr. Chand: so we would have

Commissioner: what is the estimated length

Mr. Chand: sorry My Lord

Commissioner: of the hearing

Mr. Chand: Sorry

Commissioner: What do you think is the estimated length of hearing

Mr. Chand: The length of hearing

Commissioner: Yes

Mr. Chand: Umm

Commissioner: How long will it take

Mr. Chand: The prosecution case might take Commissioner, might take two weeks

Commissioner: Two weeks

Mr. Chand: That's because I, I take into consideration the cross examination that would be according to our witnesses

Commissioner: That including the cross examination

Mr. Chand: Yes

Commissioner: And that is like starting even from 8 o'clock to 5 o'clock everyday two weeks

7. It is apparent from this transcript that no order had been made.
8. There being no order made in this regard, the expression of a view or opinion or even the then Commissioner thinking aloud so to say cannot determine this matter and there must be a specific order made upon hearing the parties. Thus, now it is incumbent upon me to determine this matter.
9. As cited in the written submissions of the Respondent in the case of **The Queen v His Honour Stephen Olive QC [2005]** eqhc 291 (Admin) Case No. CO/2602/2004 eqhc, Evans – Lombe J., of the High Court of Justice, Queen's Bench Division, Administrative Court, London stated the common law position when the death or incapacity of a judge in the middle of the case occurs thus,

"By contrast the position at common law is not entirely clear. As a matter of practice as I myself experienced at the bar, the death or incapacity of a judge in the middle of the case will usually require the case to be re-heard before another judge....."

"In my judgment the balance of authority leads to the conclusion that the common law position is that the death or incapacity of a judge in the middle of a case (including a Commissioner in the course of a tax appeal) does not mean that there is no jurisdiction for a second judge to take over the case in mid-trial and complete it. It will be open to him, particularly under modern rules of evidence, so to order the trial that costs thrown away are minimized. In a case not involving witnesses this will be relatively easy. However, in the majority cases, and in particular where witnesses are involved, it will be necessary, as a matter of case management, to try the matter de novo ...".

10. Hence, the position is that the succeeding Commissioner has jurisdiction to take over the matter in mid-hearing and complete it. This being so in order to ascertain the exact position of this matter, I have perused the entire record and the transcripts. There has been some discussions and expression of views or opinions as regards a *de novo* hearing but certainly no order or ruling had been made.
11. Thus, in the absence of any order or ruling by my predecessor it is now incumbent upon me to decide and determine as to the future course of action and to be specific if a hearing *de novo* as requested by the Respondent should be ordered. It is common ground that only the evidence of the complainant 1st witness has commenced and that the major part of cross examination is yet due. On an examination of statutory provisions and the authorities it is settled that under the common law a Commissioner or a Judge is empowered and entitled to adopt and proceed with the evidence led before a predecessor. This being the rule in certain circumstances *de novo* hearings has been permitted. What are these determining factors? The only factor that requires consideration is, if the demeanor and the deportment of the witness is pivotal importance in determining the credibility of the witness and for the acceptance of his/her evidence. If the evidence recorded before a predecessor is adopted the only and only factor a succeeding a Judge or a Commissioner will not have the benefit of seeing and observing the demeanor and deportment of such a witness who had given evidence before his predecessor. Apart from this, all other factors and considerations relevant to evaluating the truthfulness and veracity of a witness is available to and can be considered by a succeeding Judge or Commissioner. Thus, in determining if a hearing *de novo* should be ordered the Judge or

Commissioner should be satisfied that the demeanor and the deportment is of vital importance and necessary to determine the credibility of the witness. In my view in the absence of any statutory provision to the contrary, this is the only and only logical and lawful reason and ground on which a hearing *de novo* may be ordered.

12. In the present case the witness is yet to be cross examined. The demeanor and the deportment of the witness is primarily and necessarily seen and observed during cross examination. Therefore, in the present case even if the evidence is adopted and proceeded with, as the cross examination is due the opportunity to observe the demeanor and the deportment of the complainant first witness is available. Thus, I see no reason in law or justice or otherwise to allow this application to commence the hearing a fresh.
13. On the perusal of the record and the transcript I observe that the complainant 1st witness' evidence in chief has been quite lengthy and the counsel when inquired as to the time they might take if the witness is recalled and re-heard has suggested that it may take at least 2 weeks. As there is no legal necessity of ordering a trial *de novo*, I observe that if such an order is made merely to satisfy the Respondent the cost and expense and delay would be unconscionable and unjustifiable. The application of the Respondent for a hearing *de novo* is refused.
14. In the circumstances, I direct and hereby order that the evidence led up to now be admitted and adopted as being proceedings before me and to continue with this hearing from where it was stopped. Further, I would give priority to this matter and call upon both parties to act with due diligence and assist this Commission to hear and conclude this matter without further delay.



Gihan Kulatunga
COMMISSIONER