

**IN THE CARIBBEAN COURT OF JUSTICE**  
Original Jurisdiction

**CCJ Application No. OA 2 of 2009**

**BETWEEN**

**Trinidad Cement Limited  
TCL Guyana Incorporated**

**Applicants**

**AND**

**The State of the Co-operative  
Republic of Guyana**

**Respondent**

**EXECUTIVE SUMMARY**

[1] By order dated August 20, 2009 (“the Order”) the Court ordered Guyana to implement and maintain the CET in respect of imported non-CARICOM cement within 28 days of the Order, i.e. by September 17, 2009. Guyana failed to meet that deadline but applied for an extension of time in order to comply with the Order. That application was dismissed on October 14, 2009, and on October 15, 2009 the Commissioner-General of the Guyana Revenue Authority instructed the Deputy Head, Customs and Trade Administration to reinstate the CET on cement imported from non-CARICOM sources but only on shipments ordered after October 15, 2009.

[2] On October 6, 2009 Trinidad Cement Limited and TCL Guyana Incorporated (“the Applicants”) filed an application, which in its amended form, sought the following orders:

- (1) An order compelling the Attorney-General of Guyana to attend court and show cause why he should not be held in contempt of court;
- (2) A declaration that the Attorney-General’s failure to implement and give effect to the Court’s Order constituted a contempt of court;

(3) A declaration that Guyana was in breach of Article 215 of the Revised Treaty of Chaguaramas (“the Revised Treaty”).

- [3] The Court held that an oral claim made at the hearing inviting the Court to declare Guyana in contempt of court was not properly raised and so could not be entertained. Even on the assumption that the Court had a jurisdiction in civil contempt (which it doubted) it was elementary justice that proceedings for civil contempt had to be formally directed to and served on the alleged contemnor so as to allow him an opportunity of preparing a defence in advance of the hearing.
- [4] The Court ruled that the terms of the Order were sufficiently clear to be enforceable and that counsel for Guyana understood that the Order required the reinstatement of the CET on all cement imported from non-CARICOM sources whenever ordered. The Court found that there was ample evidence that Guyana had not complied promptly with the Order, as was apparent from its application for an extension of time to comply with the Order, which the Court dismissed. The Court therefore made the declaration that Guyana was in breach of Article 215 of the Revised Treaty. The Court rejected a submission that full compliance with its Order on January 8, 2010 rendered the present proceedings otiose.
- [5] The remaining two orders sought on the application were (a) a “show cause” order against the Attorney-General and (b) a substantive order declaring that the Attorney-General was in contempt of court. The Court held that, if it had jurisdiction, a “show cause” order could only be made against the Attorney-General if there was a likelihood of an eventual finding of contempt being made against him. In the instant case there was no such likelihood since the Attorney-General was not a party to the proceedings and it had not been demonstrated that he was the person responsible for reinstatement of the CET on cement imported from non-CARICOM sources.
- [6] Having disposed of the specific issues arising on the application the Court considered the issue whether it had jurisdiction to make orders for contempt, and in particular, civil contempt of court, i.e., disobedience of a court order.

The Court noted that contempt of court was a common law concept, not known to civil law systems of some Member States, where offences against the administration of justice tended to be statute-based.

- [7] The Court found that Article XXVI of the Agreement Establishing the Caribbean Court of Justice (“the CCJ Agreement”) did not confer an express power on the Court to treat disobedience of its orders as a contempt of court. The provision assumed that the Court would have such powers to punish contempt of court as the national courts had, without adverting to the fact that civil law systems of some Member States knew no such concept. It was unclear what forms of contempt, if any, the CCJ Agreement meant to introduce on the international plane.
- [8] The Court considered that while it appeared that *ad hoc* international criminal tribunals such as the International Criminal Tribunal for the Former Yugoslavia (ICTY) asserted an inherent jurisdiction to punish contempt of court, it had not been established that such power existed in non-criminal cases.
- [9] Thus, it had not been shown that the Court was endowed with an express, implied or inherent power to make declarations or orders with respect to civil contempt of court. Further, even if such a power existed on the international plane, the only practical remedy was a declaration that a party was in contempt of court. The fact that such a declaration was not significantly different from a declaration of non-compliance under Article 215 of the Revised Treaty suggested that the drafters of the CCJ Agreement might not have intended to confer on the Court any jurisdiction over civil contempt.
- [10] The Court emphasized that national legislation could neither confer powers on the Court nor diminish the powers the Court had in its original jurisdiction. The Court noted that although orders made in its original jurisdiction might require the assistance of the enforcement machinery of the national courts no express provision had been made for that purpose in Guyana, whereas a provision had been enacted for enforcing in the local jurisdiction orders made in the Court’s appellate jurisdiction.

[11] The Court expressed the hope that the States Parties might agree on a protocol which would clarify what was the intended scope and effect of the provision relating to “contempt of court” in Article XXVI of the CCJ Agreement in the light of the issues raised in the judgment. The Court granted a declaration that Guyana was in breach of Article 215 of the Revised Treaty and dismissed the claims in respect of the Attorney-General. The Applicants were awarded one-half of their taxed costs of the application.